

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED

APR 1 1983

HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

Civil Action No. 75-1996

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION

On March 22nd, in response to this Court's telephonic request of March 8, 1983, defendant filed a response to plaintiff's reply to defendant's opposition to plaintiff's motion for partial reconsideration. (Hereafter "Response") Because defendant's response makes statements that are inaccurate, misleading, untrue or illogical, plaintiff is filing this supplemental memorandum.

\* \* \*

Defendant's response begins by asserting that "[p]laintiff has selected self-serving documents and exhibits to support his claims concerning the alleged consultancy agreement between plaintiff and defendant while ignoring sworn testimony and other evidence already in the record which disprove his assertions." Response at 1. This characterization of the evidence is exactly backwards the truth. The evidence in this case which is most self-serving and unreliable is the "sworn testimony" referred to by defendant, especially the deposition of Mrs. Lynne K. Zusman. The documentary

evidence placed in the record is more reliable than the 1982 testimony cited by defendant for several reasons. First, it is contemporaneous with the disputed event, the consultancy agreement, whereas the Zusman-Metcalf depositions were not taken until four years later. The passage of time makes the testimony of Mrs. Zusman and Mr. Metcalfe unreliable, as each of them recognized.<sup>1/</sup>

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<sup>1/</sup> Mrs. Zusman stated that had she not had an opportunity to refresh her recollection with some materials provided by her counsel, "I'm really not sure that I would have remembered much, if anything." Zusman Deposition at 5. Throughout her deposition she failed to recall pertinent facts. She was unable to recall that there were two meetings in Schaffer's office, not one. Id. at 5, 26. She couldn't remember who was present at the in chambers conference on November 21, 1977, and was not even certain if Weisberg was there, saying he "may have been present." Id. at 27. Nor could she recall the meeting in AUSA Jay Dugan's office after the in chambers conference. Asked if Weisberg had agreed to the consultancy as a result of the in chambers conference, she replied: "That is not my recollection. As I already said I have a dim recollection...." Id. at 29. When she said she thought she remembered, which was rare, she was wrong. After testifying that Weisberg was to have provided "a list of specific documents, specific pages in the documents, either specific lines or paragraphs that he was contending should not have excised," she was asked if Weisberg did that. She replied, "As far as I know that was not done." Id. at 36-37. In fact, Weisberg's two consultancy reports did list specific serials about which he complained. Mrs. Zusman's capacity to recall pertinent facts was again stated near the end of her deposition: "I have a very dim recollection about the events of this period.... But my actual recollection really is very slight." Id. at 61.

Mr. Metcalfe also repeatedly emphasized his poor memory: "Let me mention at the outset that my recollection of 1978 after four years is somewhat dim." May 27, 1982 Metcalfe Deposition at 4. "Again my recollection is somewhat dim at this point." Id. at 6. "I could easily have seen this letter four and a half years ago, but I can't state with certainty that I did." Id. at 25.

Second, the potential danger of self-serving statements is greatly diminished where the documentary evidence is concerned because this evidence was an integral part of the events involving the consultancy and consists almost entirely of contemporaneous communications addressed to and received by defendant. Thus, defendant had the opportunity, and in some cases the obligation, to respond to and to correct any important errors contained in these communications. Quite the opposite is true of the post hoc allegations contained in the 1982 deposition testimony. Moreover, there are no contemporaneous records which lend any support to these allegations.

Third, where Mrs. Zusman's memory did not fail her, her representation of the facts is contradicted by logic and the record in this case. Thus, her testimony lacks credibility. For example, defendant notes that Mrs. Zusman has denied Mr. Lesar's statement that on the evening of January 15, 1978, she called him at home and offered to pay Mr. Weisberg \$75 per hour. Defendant also cites Mrs. Zusman's response at her deposition when she was shown a copy of Mr. Lesar's January 15, 1978 letter to Mr. Schaffer stating this. She said, "I dispute that fact," and then added, "[t]he statement in the letter is outrageous." Zusman Deposition at 77. This is good theater, but it immediately raises a question which undermines Zusman's credibility: namely, if Lesar's statement was such an outrage, why didn't Schaffer or Zusman immediately respond to Lesar's letter and set the record straight? Neither did so, either verbally or in writing. Their failure to do so is in-



consistent with Zusman's claim that Lesar's statement was "outrageous," and that she had not offered Weisberg \$75 per hour.

Zusman's story also does not jibe with other evidence. On December 26, 1977, Lesar wrote her a brief letter in which he noted that Weisberg had inquired about the rate of pay for the work he was doing but had received no response. He asked that Zusman find out and let him know the pay rate as soon as possible. Lesar Declaration, Exh. 11. Logically, when Zusman next contacted Lesar she should have informed him of the pay rate. But according to Zusman's version of events, when she phone Lesar at his home on Sunday evening, January 15, 1978, she did not make any offer at all, although she does admit to having mentioned the figure of \$75 per hour during the conversation. Zusman Deposition at 17.

Zusman purports to have made this call because of a concern that Lesar would raise the issue of non-payment of Weisberg's consultancy fee in the hearing scheduled the following day in Weisberg v. Bell, et al., Civil Action No. 77-2155. This makes the alleged failure to inform Lesar of the consultancy pay rate even less credible. If Zusman intended to pacify Lesar, to restrain him from raising this issue in the other case the next day, an offer of \$75 per hour was far more likely to have accomplished this than further stalling on the exact amount of the pay rate. Indeed, the latter might only have inflamed Lesar, in view of the repeated efforts made to obtain this information, and thus have had the opposite effect of provoking him to raise the issue.

It should also be noted that the handwritten notes made by Mr. Daniel J. Metcalfe on the January 26, 1978 meeting with Le-



sar and on the February 15, 1978 meeting between Schaffer and various staff attorneys concerned with the issue express no "outrage" of the kind that might logically have found voice had there been any real doubt that Zusman offered to pay the \$75 per hour rate Lesar says she did.

Finally, it should be pointed out that if Zusman did not offer the specific \$75 per hour rate on January 15th, then a question arises as to why it took from December 26, 1977, when Lesar made his inquiry about the pay rate, to February 15, 1978, before defendant made any further contact with him about the pay issue. The most plausible explanation is that further contact was unnecessary because Mrs. Zusman knew that on January 15th she had made an offer of \$75 per hour and that Mr. Lesar shortly thereafter told her that Weisberg accepted the offer. There was no reason for her to take any further action on this matter, and she did not. However, in mid-February another attorney, Daniel J. Metcalfe began to raise questions about the consultancy, see May 27, 1982, Metcalfe Deposition at 20-24, and from that point on defendant began to re-write the history and existence of the consultancy agreement.

\* \* \*

A footnote on page six of the Response tries to make much out of the fact that the \$75 per hour amount is not mentioned in any of the pertinent documents which fall between the date of the January 15th Zusman phone call and Lesar's January 31 letter to

Schaffer. Defendant notes in particular that no mention of the amount appears in Mr. Weisberg's letter to Mrs. Zusman dated January 18, 1978, in the handwritten notes from the January 26, 1978 meeting between government representatives and Mr. Lesar, or in Mr. Metcalfe's summary of the January 26, 1978, meeting. Defendant further points out that although Mr. Weisberg's letter to Mrs. Zusman of January 27, 1978, states that she had told Mr. Lesar the rate, it does not mention the \$75 per hour rate.

Unfortunately, for defendant, this evidence cuts in Weisberg's favor, not the defendant's. The absence of any mention of the rate is evidence that this issue had at last been resolved. If it had not been resolved by Zusman's January 15 phone call, then it logically would have been raised again in these documents, and particularly at the January 26 meeting. However, since both Zusman and Lesar knew that it was no longer a bone of contention, there was no longer any need to discuss. What was discussed then was the question of an interim payment. It is uncontradicted in the record of this case that Zusman directed Lesar to write Schaffer about an interim payment. Without agreement on a specific rate of pay, there was no basis upon which Lesar could set forth a demand for payment. Since there was such an agreement, he did so soon after Weisberg notified him of the number of hours he was claiming.

\* \* \*

Although defendant employs artful language to avoid conceding outright that the consultancy agreement clearly contemplated

that plaintiff would work on it at home, it in effect admits this. See Response, n. at 12. Defendant continues to argue, however, that there was no agreement on the amount of time to be spent on the consultancy. The length of time to be spent was the time it would take Weisberg to complete the task assigned to him; that is, to review his notes and correspondence and draw up a report on them. Although he was not required to do so, once Weisberg had a basis for estimating the time it would take him to complete this job, he promptly advised defendant. On the basis of the information he provided, defendant could easily have calculated the length of the project had it been important for it to do so. See Zusman Deposition at 38.

\* \* \*

Defendant continues to deny making any use of Weisberg's consultancy reports. Response at 10. This is simply untrue. Claims that the FBI and the Civil Division did not use the reports are beside the point. Speaking of the consultancy project, Mrs. Zusman noted that the "Office of Privacy and Information Appeals, headed by Quin Shea . . . was heavily involved in what was going on, and that is why Doug Mitchell was at this meeting [in Schaffer's office]." Zusman Deposition at 22-23. Mr. Shea made extensive references to these reports in his own written and oral reports to the court, and in his testimony on January 12, 1979, he acknowledged the assistance given by Mr. Weisberg. The extent of his reliance on Mr. Weisberg's consultancy reports is perhaps best seen by exam-



ing the extensive references to these two reports, dubbed by Shea "LR" (the "Long Report") and "SR" (the "Short Report") contained in Tab A to Shea's July 27, 1978, letter to Mr. Lesar. A copy of this letter was attached to the Lesar Declaration filed on February 22, 1983, but without Tab A attached. In order for the Court to be able to see easily and at first the extent to which Mr. Shea relied on Weisberg's consultancy reports, a copy of the letter with Tab A attached is submitted herewith as Attachment 1.

\* \* \*

Defendant also argues that plaintiff's reports were not what it was seeking as a work product. Defendant's own descriptions of what the consultancy was intended to achieve are at variance with one another. At one point it states that the purpose of the consultancy was to "facilate the recognition of the issues remaining to be resolved in the lawsuit." Response at 11, citing Lesar Declaration, Exhibit 2. At another it describes it much more narrowly by stating that "defendant wanted a nonnarrative list of the deletions plaintiff was contesting." Response, at 11, citing Lesar Declaration, Exhibits 22A and 23. The latter, much narrower definition is, however, one which was developed by defendant only after it embarked upon its campaign to find some reason it could seize upon as grounds for scuttling the consultancy. The documents defendant cites date to April 7 and May 12, 1978. By contrast, no such restrictive characterization of the consultancy is found in defendant's notes and memorandum on the consultancy which were gen-

erated in January and February, 1978.

Defendant's argument that it "simply wanted plaintiff to specify what deletions he took issue with . . .," in addition to being a post hoc characterization and therefore pre-eminently self-serving, does not make sense. Obviously, there was not need to hire a consultant to make a list. Any clerk could have done it at a fraction of the cost it would take Weisberg even at the low rate of \$30 an hour it later tried to foist upon him. To pretend that this type of clerical work is what was meant by hiring Weisberg as a "consultant," as defendant does at page 11 of its Response, is a fraudulent use of the term.

Moreover, insofar as defendant wanted "a list of specific documents, specific pages in the documents . . . that [Weisberg] was contending should not have been excised," Zusman Deposition at 36, Weisberg's reports provided this information, notwithstanding Mrs. Zusman's professed ignorance of this fact. Zusman Deposition at 36-37. Weisberg's reports did list specific serials and pages which he maintained had been wrongfully withheld. Of course, he also supplied his comments and analysis of the FBI's wrongful withhold or failure to search for relevant records. This, after all is what a consultant would be expected to do. Without such commentary there was no reason to do the consultancy, no need to make use of his expertise. But this was the very point and justification for the consultancy.

In this section defendant argues that plaintiff's letter of December 17, 1977, in which he said he would have to insist upon

a written contract because of defendant's failure to specify his rate of pay, shows that plaintiff knew that there was a need for further terms to be agreed upon. Response at 12. The answer to this is that this obstacle to performance of the contract was removed when Zusman told Lesar on January 15, 1978, that the Department would pay Weisberg at the rate of \$75 per hour. Thereafter, Weisberg resumed work.

Defendant also asserts that in Lesar Declaration, Exhibit 20, "[p]laintiff's counsel also admitted that there was no contract until the amount of the fee could be worked out." Response at 12. This exhibit is a draft of a letter which Lesar wrote to Dan Metcalfe immediately after Metcalfe phoned him about the consultancy on February 15, 1978. It does not say what defendant says it says. In fact, it says the opposite.

\* \* \*

Defendant argues that plaintiff should have known better than to trust its representatives to have authority to offer to pay him for his consultancy work. Mrs. Lynne K. Zusman was defendant's spokesperson and chief representative at the in chambers proceedings on November 21, 1977. In her deposition she states that she was a "line supervisor representing the fact that the Assistant Attorney General, through the Deputy Assistant Attorney General, had made this proposal." Zusman Deposition at 64. If she had this authority at the November 21 meeting, then plaintiff's counsel was certainly justified in relying on that authority when



she called him at home on January 15, 1978, to offer payment of \$75 per hour. If she did not have that authority, then she defrauded plaintiff and his counsel and did so while invoking the auspices of the court. It must be remembered that present at the in chambers conference were an Assistant United States Attorney, FBI Agents, Mrs. Zusman, and a representative from the FBI's Office of Legal Counsel. Plaintiff and his counsel never considered the possibility that these officials would lay a proposal before the Court without having the authority to do so. Under these circumstances, plaintiff reasonably relied upon the representations of these officials, especially Mrs. Zusman.

\* \* \*

Although its relevance is unclear, defendant's Response spends considerably time quoting some of Mrs. Zusman's attempts to denigrate plaintiff and his counsel.<sup>2/</sup> On page five the Response quotes Mrs. Zusman's assertions that Weisberg's letters of December 11 and 17, 1977 were "simply unreadable." However, after taking five minutes or less to read the December 11 letter, Mrs. Zusman was asked a series of questions about whether she had any trouble understanding pertinent parts of it. Each time she was asked a specific question, she replied that she had no trouble understanding the letter. Zusman Deposition at 38. Regarding the December 17,

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<sup>2/</sup> Mrs. Zusman's ad hominem attacks further lower her credibility as a witness. For a particularly vicious example, see Zusman Deposition at 50-51.

1977, letter, when asked "[i]s there anything in the first three paragraphs that you find incomprehensible," she replied "no." Zusman Deposition at 43.

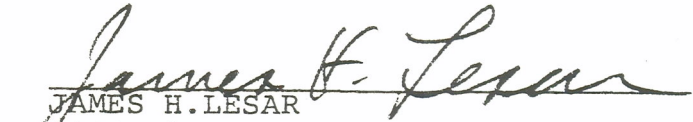
\* \* \*

At page six of the Response defendant asserts: "When a letter from Mr. Weisberg's counsel was finally sent to Mrs. Zusman on March 28, 1978, ..., claiming in clear language that Mrs. Zusman had made a specific offer to Mr. Weisberg, it was promptly answered." This is trickily worded to avoid the damning implications of the fact that Mr. Lesar's January 31, 1978, letter to Mr. Schaffer, which also claimed in clear language that Mrs. Zusman had made a specific offer to Mr. Weisberg, was not promptly answered. Although Mr. Lesar's January 31 letter was addressed to Mr. Schaffer--because of specific instructions Mrs. Zusman had given Mr. Lesar at his meeting with her on January 26th--a complimentary copy was sent to Mrs. Zusman as is indicated on the bottom of page two of the letter. The copy of the letter which is Exhibit 18 to the Lesar Declaration also clearly indicates that it was received by the Information and Privacy Section headed by Mrs. Zusman on February 2, 1978.

#### CONCLUSION

For the reasons set forth above, defendant's Response fails to provide any justification for its opposition to plaintiff's motion for partial reconsideration. Plaintiff's motion should therefore be granted.


Respectfully submitted,

  
JAMES H. LESAR  
1000 Wilson Blvd., Suite 900  
Arlington, Va. 22209  
Phone: 276-0404


Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of April, 1983, mailed a copy of the foregoing Plaintiff's Supplemental Memorandum in Support of Motion for Partial Reconsideration to Sara B. Greenberg and Barbara L. Gordon, Attorneys, Civil Division, Room 3738, U.S. Department of Justice, Washington, D.C. 25030.

  
JAMES H. LESAR



H  UN. STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

James H. Lesar, Esquire  
Suite 600  
910 Sixteenth Street, N. W.  
Washington, D. C. 20006

JUL 27 1978

Dear Mr. Lesar:

Receipt of your letter of July 6, 1978, is acknowledged.

Although this Office has previously made administrative appeal recommendations or decisions encompassing many of the same records which are the subject of your recent letter, I have nonetheless decided that your new "omnibus" appeal should be accepted and processed. We cannot ordinarily do this, for obvious reasons, but I consider it appropriate in this particular case. We will concern ourselves with the records which were reviewed, how those records were reviewed, and whether all appropriate records were reviewed. We will, however, limit ourselves to records which have not been the subject of prior judicial rulings, which are not the subject of other pending litigation, and which were not agreed to fall outside the scope of this litigation per the Affidavit filed with the court on August 5, 1977. If you question any of these limitations, please bring your views to my attention at the earliest possible moment. My intent in imposing these parameters to our review is solely to expedite the pending lawsuit from which this appeal emanates. Needless to say, the conclusions we reach and the guidance we provide to the Bureau will also be applicable to any other King records processed by the Bureau or otherwise within the Department.

I have reviewed in detail the two reports prepared by Mr. Weisberg. The copies you furnished me are missing two pages -- page 52 of the shorter report and page 5 of the longer one. I would appreciate receiving copies of these two pages, as well as of the two indexes you mention in your letter (first, to the names that have appeared in books on the subject of Dr. King's assassination and, second, to the testimony at the habeas corpus hearing in October, 1974), if you believe they would be of value to my staff.

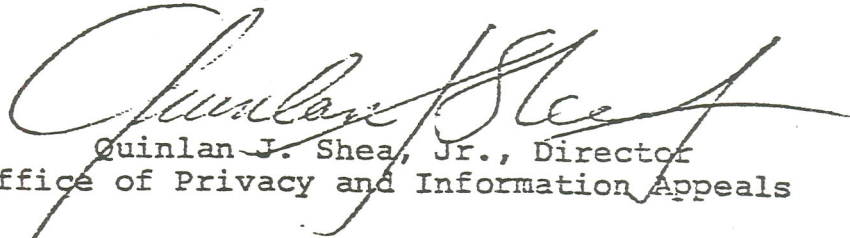


Attached is a copy of a memorandum containing preliminary guidance I have disseminated to my staff. It relies heavily on Mr. Weisberg's two reports, but that should not be taken as suggesting that we are reviewing only the excisions he mentions. As you will see from the memorandum, we are merely using these as specific examples of what should be reviewed to determine whether, and to what extent, reprocessing of these records should be required. Rather than rely on a random sample of denials and excisions, as is our usual practice in cases where a review of all withheld materials is impossible, we will focus initially and primarily on a reasonable number of those specific instances of Bureau processing which have been challenged by your client. This should ensure that the outcome is as fair to him as it can be.

On Tuesday, July 18, I spent over two and one-half hours at the Bureau, engaged in preliminary discussions concerning the processing of this omnibus appeal. I was accompanied by Mr. Mitchell, Ms. Burton and Ms. Govan of my own staff, all of whom will be involved with me in the review of the records, and by Ms. Ginsberg and Mr. Metcalfe of the Civil Division. We met with Messrs. Bresson, Beckwith, Fann, Hartingh, Wood and Mathews of the Bureau. All of us were briefed by Mr. Larry Fann, the agent in charge of the processing of the Rosenberg records, on the ways various exemptions are (and are not) being used by his team. Our subsequent discussions established that the Bureau personnel in charge of processing records pertaining to the assassination of Dr. King believe that the job was done -- in the latter stages at least -- in substantial compliance with this Department's guidelines concerning cases of historical importance and public interest, as well as in substantial conformity to the way in which the records pertaining to the Rosenberg case are being processed. The validity or non-validity of this view remains, of course, to be determined by our own review of the records. Although we will be looking at all of the exemptions cited, it seems to me, tentatively, that we should concentrate our maximum efforts on the use of 7(C) and 7(D) in situations where they have operated (or either of them has operated) to deny access either to substantive information obtained by the Bureau or to the identity of any individual known to have been involved in any way in any incident or situation relevant in the broadest sense to the assassination of Dr. King. I would welcome whatever comments or suggestions you and Mr. Weisberg might have concerning the way we plan to go about conducting our review, as I fully expect that we may need to modify our procedures as we go along.

I simply have no idea how much time will be required before we will be in a position fairly to evaluate the Bureau's processing, define the extent of any necessary reprocessing, and provide all appropriate guidance for any such reprocessing. I will, however, keep you advised of our progress on a periodic basis.

Sincerely,



Quinlan J. Shea, Jr., Director  
Office of Privacy and Information Appeals

Attachment

CC: Mr. Harold Weisberg  
Ms. Betsy Ginsberg



# memorandum

DATE:

REPLY TO  
ATTN OF:

Quin Shea

SUBJECT:

Omnibus Appeal Concerning the  
Assassination of Dr. Martin Luther King

TO:

Doug Mitchell  
Faith Burton  
Cindy Govan

JUL 27 1978

Attached hereto is a copy of a letter from me to Mr. James H. Lesar, attorney for Mr. Harold Weisberg. As indicated therein, the purpose of this memorandum is to set forth preliminary guidance for the processing of this omnibus appeal.

Our goal in this case is simple -- to ensure that all material that can be released to the general public is released. Although a "knowledgeable requester" under the Freedom of Information Act has no greater entitlement to access than any other member of the public, the expertise of such a requester can be very relevant in determining what in fact can or must be released. This is particularly true when questions under 7(C) or 7(D) are being addressed. For that reason I have reviewed two reports prepared by Mr. Weisberg and have relied on them as primary sources of matters to check out in the course of our review. Copies of these reports will be made available to each of you within the next few days.

Tab A is a list of specific matters I want looked into which go more or less to the question of the general handling of the case by the F.B.I. (to some extent these items may overlap each other, or items on Tab B, but I want each point addressed separately). References are given to pages in Mr. Weisberg's two reports which, in turn, cite to specific sections and serials. Because of his familiarity with the case, I want Doug Mitchell to coordinate the work on these points, most of which should be able to be pursued fairly expeditiously.



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OPTIONAL FORM NO. 10  
(REV. 7-76)  
GSA FPMR (41 CFR) 101-11.6  
5010-112

At Tab B are lists of specific problems, incidents and persons, again with references to the two reports. In many of these instances it will be necessary to obtain some degree of familiarity with both the persons involved and their roles in the case, as well as their treatment by the Bureau in processing the records. I want Faith Burton to coordinate this aspect of the case. In addressing 7(C) and 7(D) matters, we do have to consider the extent to which the fact that we are dealing with records which, for the most part, are less than ten years old is a relevant factor in making decisions on close questions. To whatever extent that factor is considered by you to be of significance in specific instances, please bring those matters to my attention.

I will be participating in the review process personally to the extent I can and am available to all of you any time you have questions or need interim guidance. To whatever extent it will help us, I will pass specific questions back to Mr. Weisberg to get the benefit of his knowledge of the case.

Last and most important, understand that you are not to limit yourselves to the specific points and instances covered in the Tabs. Using these as starting points, go where your sound professional instincts take you. Although we are interested in the entire file, we should concentrate on the important personages, incidents and evidence to the greatest possible extent. To the extent information in these areas is exempt from mandatory release, the public interest would seem to support release as a matter of discretion in most circumstances. On the other hand, if individuals are entitled to 7(C) or 7(D) protection, we should be careful to ensure they get it, even if the withholding of substantive information is necessary.

Attachments



TAB A

BASIC CONSIDERATIONS

1. FILES PROCESSING, GENERAL: What files, from where, have been reviewed? To what extent have files pertaining in any way to Dr. King not (or not yet) been reviewed?; why not? Give particular attention to any "Hoover" files. To what extent may possibly relevant files not require our attention at this time, by virtue of previous judicial rulings, other pending litigation, the stipulation mentioned below, etc.?

Short Report (SR) 3, 18, 19, 31, 33, 34, 35, 39, 44, 45, 46;  
Long Report (LR) 17, 81, 84, 87, 88-89, 95, 103, 142, 149.

2. STIPULATION OF AUGUST 5, 1977: A stipulation (copy attached) was filed in this case on August 5, 1977. Has all processing required by the stipulation been completed?

See SR18, 25, 43, 45.

3. INCONSISTENT PROCESSING: From the briefing we received, it appears that the first major portion of these records was processed in a considerably different fashion than was the latter portion (e.g., handling of agents' names). What were the differences in treatment? To what extent (if at all) has the Bureau satisfactorily reprocessed these records?

See SR3, 23.

4. EXEMPTIONS 2, 3, 5, 6, 7(E) and 7(F): Review again all uses of exemptions 2, 3, 5, 6, 7(E) and 7(F) that can be located without the expenditure of an undue amount of time and effort.

See SR50;  
LR13, 15(2), 22, 28, 29(2), 31, 35, 41, 57, 59, 62, 63, 65,  
66, 67, 69(2), 77, 84(2), 85, 92, 104, 107-108, 120,  
121, 133(2), 136, 138, 140.

5. NON-PROVIDED ATTACHMENTS: The matter of "attachments" that are listed, but have not been provided, is touched on in the stipulation filed on August 5, 1977, and is mentioned many times by Mr. Weisberg. To what extent have all reasonable efforts been made to locate such attachments outside the files reviewed by the Bureau in this case (by requests to other agencies or components of the Department, etc.)?



(continuation of Number 5)

See SR4, 6;  
LR7, 8, 9, 11, 12, 16(4), 47-48, 51, 64, 65, 110.

6. RELEASES TO OTHER REQUESTERS: Mr. Weisberg claims that relevant records have been released to other requesters, but not to him. To what extent has this occurred? To what extent is this the result of the stipulation of August 5, 1977? What other explanations can be provided?

See SR48;  
LR139, 140.

7. PROSECUTOR'S CASE: Review the matter of the "prosecution's case" index cards and their underlying records (29 sections, with only 25 numbers). Mr. Weisberg claims that the index cards were reprocessed, but that the underlying records have not been. Is this true? Must or should the underlying records be reprocessed?

See SR3.

8. CRANK AND SPITE ACCUSATIONS: Unlike the Rosenberg and Hiss cases, the investigation into the assassination of Dr. King (like that of President Kennedy) seems not to have been particularly sharply focused. In the earlier cases, there was always a connection between an individual being checked out and the subject matter or personages of the cases. We have been told that there were many allegations made to the Bureau in the course of the King investigation where it turned out that either the person making the allegation, or the person about whom it was made, or both, had no connection with the case at all. At least some of these allegations appear to have been motivated by spite, caused by the mental or emotional condition of the person making the allegation, etc. Analyze this aspect of the case and give me your views as to whether there is a reasonably discrete category of persons of this kind where names should not be released on privacy grounds -- because they in fact had absolutely no connection with the case.

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9. RELEASES TO OTHER WRITERS: Although we have once addressed the point, review again the matter of any releases by the F.B.I. to other writers (authors or media). Mr. Weisberg seems to claim that Jeremiah O'Leary admitted to him receiving information on this case from the Bureau.

See SR3-4, 40-41;  
LR30, 37, 46, 78, 106, 118, 130, 145, 146, 156.

10. REPORTS TO ATTORNEY GENERAL: There are a number of references to twice-daily reports to the Attorney General during the pendency of this investigation. Were these oral or written? If the latter, have copies been released?; if not, why not?

See LR3.

11. AG ORDER TO FBI TO INVESTIGATE MURKIN: Was there ever a written request from the Attorney General to the F.B.I. to investigate MURKIN? If so, has it been released?; if not, why not?

See LR11.

12. REFERRALS: There appear to have been referrals to other agencies and components of the Department of Justice. What is the status of these referrals, as far as we know or can ascertain?

See LR2, 19, 20, 24A, 25, 32, 33, 41, 42, 45, 56, 57, 62,  
64, 69, 91, 96, 97, 104, 107, 117, 120-121.

13. LAB-RECORDS/REPORTS: To what extent are any matters (including such "loose ends" as agents' names, etc.) pertaining to laboratory records and reports something with which we need be concerned at this time?

See SR22, 31-32;  
LR3, 9, 35A, 163-164.

14. "DUPLICATE" RECORDS: How was the matter of "duplicate" records (e.g., Headquarters and Memphis FO) handled? What were the criteria for determining whether record copies in each



were or were not duplicates which did not warrant double processing? Were any records not processed on the basis that they contained "information" that had been reported to Headquarters (even though physical copies of the same records did not exist in Headquarters files)?

See SR28, 28-29.

15. ADAMS TESTIMONY: On a number of occasions, Mr. Weisberg and I have been promised that he would be provided certain testimony by Associate Director Adams. Please get this material to me as soon as possible for transmission to Mr. Weisberg.

See SR39.

16. LOCAL AUTHORITIES AND RCMP -- 7(D): To what extent was material (information, records or things) furnished either by state or local authorities in Tennessee or by the Canadian Government withheld on the basis of 7(D)? What efforts were made to obtain consent to release this material?

See SR8, 11;  
LR26, 39, 42, 63(2), 64, 67, 78, 79, 81, 87, 96, 107,  
113, 140, 160.

17. SUPERVISOR LONG: Mr. Weisberg makes a number of references to the fact that "Supervisor Long in the (Bureau's) Civil Rights Unit" kept a tickler on thirty-five different subjects in this case. Please explore and clarify this point for me.

See SR17, 51.

18. EXEMPTION 1 MATTERS: It may well be that the exemption 1 issues actually fall outside what we are reviewing now for this suit. Even if this is true, however, there will obviously be a need at some time comprehensively to review the application of this exemption to King records. Accordingly, please review this area for me in a general way, checking to see if there are records not covered by other pending litigation, etc.

LR10, 12(2), 15, 52, 83, 98-99, 100, 104, 140, 142.

Attachment



TAB B

SPECIFIC MATTERS

PART I.

Mr. Weisberg and Mr. Lesar have challenged what they believe are excisions of the names, etc., of the following individuals and categories of persons, as well as, in some instances at least, information about them. As to the instances cited under each name or category, ascertain the reason(s) for the excision and whether the Bureau's action appears to have been appropriate in the context of this case. Using these matters as your starting point, address with reasonable comprehension the matter of excisions under 7(C) and 7(D).

AINSWORTH, KATHY  
Serials 5017, 5018  
SR10, 49;  
LR67

ANDREWS, CLIFF  
Serial 5947;  
LR129

APPEL  
SR15

AUSTIN, BLACKIE

BAIRD, CLIFTON  
SR21;  
LR143

BALLARD, CHARLES  
LR21A

BARON

BILLET, MYRON  
SR6;  
LR1, 22

BLAIR, CLAY  
SR12;  
LR71

BONEBRAKE  
SR14;  
LR2, 85

BRADLEY, E. E.  
LR39

BUCCELLI (same as Billett?)  
SR6

BURCH (Birch), P. (RCMP/Scotland Yard?)  
SR6;  
LR53

CHAMBLESS  
SR48-49

COHEN, DAN (The Fence)

COLE (brothers)  
LR134

CURTIS, RAYMOND  
SR10, 13;  
LR1, 22, 60, 65

DAVIS, MORRIS  
SR21, 38;  
LR30, 143

DE MERE

ESQUIVEL, RAUL  
SR35, 46;  
LR101, 102, 103, 104

FENSTERWALD, BUD  
LR102, 119-120

FETTERS, MAJORIE  
SR6;  
LR40, 53

FOREMAN, PERCY  
SR19;  
LR89

FRANK, GEROLD  
SR44

FREEMAN, DR.  
LR26, 33

GALT, ERIC S. (The Real One)  
LR11

GARRISON, JIM  
SR15;  
LR95

GHORMLEY, JUDSON  
LR17

GIESEBRECHT  
SR15;  
LR95, 97

HADLEY, DR. RUSSELL  
LR80

HAGEMEISTER  
LR7

HANES (Father and Son)  
SR38

HARDIN, JAMES C.  
SR26, 29, 30, 34, 38;  
LR38-39, 40(?), 57

HENDRICKS, MAYBELLE  
LR22

HUIE, WILLIAM BRADFORD  
SR14, 44;  
LR74, 75

KIMLE, JULES  
LR70

LAU, THOMAS REYES  
SR12;  
LR71

LEVISON  
LR21

LIBERTO'S, THE  
SR15, 37;  
LR93, 103

MCCRAW, JIM  
SR31



McCULLOUGH, MARRELL  
SR29, 30, 47;  
LR16

McDOULDTON (The Fat Man)  
LR44

McFERRIN, JOHN  
SR15, 37;  
LR93, 102-103

McMILLAN, GEORGE  
LR27, 43

MILTEER, JOSEPH ADAMS (Deceased)  
SR49

MUMPHREY, JIMMY SIMON  
SR36

NORDAL, SCOTT  
LR19, 122

PEPPER FAMILY  
LR58

RAY, JAMES EARL  
LR15

RAY, JERRY (and family)  
LR13, 50-51, 111

RAY, JOHN  
LR13(2), 50-51

RECILE  
SR36

REDDITT, ED  
SR15;  
LR17, 93, 101

RICHMOND  
SR15;  
LR17, 93

RIFE, WALTER  
LR15, 38

ROBINSON, JIMMY GEORGE  
LR4

ROUSSEL  
SR36

RUBIN, LEONARD  
LR91

SARTOR, BILL (Deceased)  
Serial 1816  
SR15, 37;  
LR93

SHILSTONE, CECIL  
SR37

SNYDER (Congressman)  
SR21;  
LR144

SOMERSETT, WILLIE (Deceased)  
SR10, 11, 49;  
LR62, 68-69

STEIN, CHARLES (and Family)  
SR10-11, 35, 36;  
LR34, 61, 70, 104

STEPHENS, CHARLES  
LR22, 44

STONER, J. B.  
LR78

TOMASO  
SR35

TURNER, WILLIAM  
SR46

WATSON, BYRON

Miscellaneous Categories

The women whose names were, on the scrap of Kleenex box.  
SR27

Names of police personnel and other officials.

SR7, 13;

LR6, 11, 13, 52, 66, 98

Names of Bureau of Prisons personnel.

SR7, 8;

LR55, 56, 61

Names of guards of James Earl Ray.

SR11;

LR62, 63

Names of Scotland Yard personnel.

LR72

Names of RCMP personnel.

Names of firemen/black firemen.

SR15;

LR94

People charged in Dahmer case

LR67

## PART II.

A number of specific incidents and problem areas have been raised by Mr. Weisberg. Based on my own review of his two reports, I have selected the following to be checked. Again, follow these specific leads wherever your professional instincts take you so we can have confidence in whatever conclusions we finally reach.

WITHHOLDING OF SERIAL 3348

SR5;

LR28-29

WITHHOLDING OF RCMP MATERIAL USED IN THE EVIDENTIARY HEARING

SR8

INTERCEPTS

Serials 4853 et seq.;

SR20

ALTON BANK ROBBERY AND PERSONS INVOLVED IN

Serial 5305

SR13, 14;

LR40, 58, 72-73, 84-85



WITHHOLDING OF "OPEN COURT" MATERIAL FROM SERIAL 5156.  
LR75

HANDLING OF WEISBERG-STONER MATERIAL.  
SR16, 29;  
LR114-115

POLICE SOURCES AS 7(C)/7(D) EXCISIONS.  
LR140

TECHNICAL SURVEILLANCE (INCLUDING BAG JOB) ON THE  
PEPPERS, JOHN RAY, OR JAMES EARL RAY.

See Serial 2725;

SR21, 22;  
LR24, 27-28, 35-35A, 130

ANY SURVEILLANCE, ETC., OF PERSONNEL WORKING ON JAMES EARL  
RAY'S CASE, INCLUDING MR. WEISBERG, BY F.B.I. OR OTHERS.

SR20, 22, 24, 43;  
LR109, 124-126

ALLEGED PROMISES BY SA'S HARDINGH AND  
HART TO REPROCESS RECORDS.

SR15, 23

MATTER OF THE GUN CATALOGS

SR25, 41

NON-RELEASE OF ANY PHOTOGRAPHS, SKETCHES, ETC.

SR7, 26, 35;  
LR17, 24A, 138, 151

FILES ON J. C. HARDIN AND McCULLOUGH

SR29-30

THE DE SOTO MOTEL/HOTEL MATTER

SR30;  
LR10, 110

NEWSPAPER PICTURES

SR32

POLICE RADIO LOGS

SR32

THE THOMAS/CHASTAIN/YOUNGBLOOD INCIDENT

SR32

HARRIS (Paisley?)  
SR33, 42, 46

ATLANTA FILES  
SR33-34

GARNER (BAG JOB?)  
SR34;  
LR36 (?), 119 (?)

NOFO FILE ON RAUL ESQUIVEL  
SR46

THE MAP OF NEW ORLEANS  
SR27, 36

THE MAILING OF THE KEY/THE KEY  
SR36;  
LR17-18

DAN COHEN "THE FENCE"  
SR37

PICTURES OF RAYS AND WALTER RIFE  
SR38

FBI INVOLVEMENT IN OR FOREKNOWLEDGE  
OF THE VIOLENCE IN MEMPHIS ON 3-28-68.  
SR21, 39;  
LR122

AUTHORIZATION FOR THE PLAN TO DISCREDIT KING FOR  
NOT STAYING AT THE LORRAINE MOTEL.  
SR18, 40

SHOWING OF PICTURES OF JAMES EARL RAY, ETC.  
TO PERSONS AT AEROMARINE.  
SR41

THE "TRAMP PICTURE" AND THE PICTURE AND  
SKETCH OBTAINED FROM MR. WEISBERG.  
SR7, 31, 42;  
LR10, 106

TREATMENT OF CHICAGO FO FILES.  
SR44;  
LR131

MANFRED BARON (Fat Man Williams?) -- INFORMANT  
IN CELL WITH JAMES EARL RAY?  
SR45.

THE LETTER FROM THE PRISONER  
TO 2731 SHEFFIELD, CHICAGO  
SR47

WAS THERE AN EARLIER INTERVIEW OF REV. KYLES?  
LR21-22

SERIAL 3196  
LR25-26

THE "BRADLEY EPISODE"  
LR39

THE WOMAN WITH JAMES EARL RAY IN CANADA (C. Keating?)  
SR14;  
LR41, 103

SERIAL 4193  
LR41

THE CONTENTS OF RAY'S WALLET  
LR51

REPORTERS AS 7(D) SOURCES  
LR91

INTERVIEW OF FATHER OF JAMES EARL RAY  
LR59

PERSONS AT THE WILLIAM LEN HOTEL  
SR12, 14;  
LR40, 68, 77

RAY'S ACTIVITIES IN CANADA  
LR68

SERIAL 4989  
LR65

SERIAL 5600  
LR104



MEMORANDUM FROM ROSEN TO DeLOACH, 3-10-69.

LR105

SERIAL 5684

LR107

SERIALS 5809 and 5810

LR111

SERIAL 5879

LR119

THE ENTIRE BYRON WATSON MATTER.

LR120 et seq.

SERIAL 5936

LR122

THE "CLIFF" STORY.

LR123

SERIAL 5951

LR124

SERIAL 6024

LR132

"RALPH" AND THE COLE BROTHERS.

LR133

IF ANY KING COINTELPRO MATERIAL HAS BEEN RELEASED  
TO ANYONE -- WHY NOT TO HAROLD WEISBERG?

LR139 et seq.

NAMES OF PERSONS SUBPOENAED FOR THE MEMPHIS HEARING.

SR14;

LR87

ALL BALLISTICS TESTS ON ALL TESTED RIFLES -- RESULTS.

SR21, 22, 29;

LR9, 31

ALL COMPARISON PHOTOGRAPHS.

References in latter part of LR.

LAB SPECIMENS

Serial 3332

LR163-164

INTERVIEW OF BENNY EDMONDSON.

SR10

THE RAY BROTHERS' POST OFFICE BOX NUMBER.

SR11;

LR61

THE BODY OF DUNAWAY.

LR25, 32

FAMILY DATA ON REAL RAMON SNEYD.

LR42

BIOGRAPHICAL INFORMATION ON P. E. BRIDGEMAN.

LR46

INTERCEPTIONS OF RAY'S COMMUNICATIONS.

LR55, 62, 65, 66, 74, 77, 78, 79, 81 et seq., 107

LIST OF PRISONERS.

LR86, 145

GAINES FAMILY.

LR124.