

W. H. H.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 HAROLD WEISBERG, :
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 Plaintiff, :
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 v. :
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 U. S. DEPARTMENT OF JUSTICE, :
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 Defendant :
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C. A. No. 75-1996

FILED NOV 19 1976
 JAMES F. DAVEY
 CLERK

PLAINTIFF'S MEMORANDUM TO THE COURT

On April 15, 1975, plaintiff requested access under the Freedom of Information Act to seven categories of Department of Justice records pertaining to the assassination of Dr. Martin Luther King, Jr. On December 23, 1975, plaintiff made a further demand for records on the King assassination. These Freedom of Information demands repeated, in part, requests for information on the assassination of Dr. King which plaintiff had made as early as March 24, 1969.

As of this date, the Department of Justice has failed to comply with either plaintiff's 1969 or 1975 requests.

Certain hard realities underlie the persistent and unlawful stonewalling of plaintiff's information requests. The first is that the Department of Justice, the paramount law enforcement agency in the land, hates the Freedom of Information Act and is determined to use whatever means necessary to subvert it. In consequence of this, the Department has erected a Rube Goldberg device for "processing" Freedom of Information Act requests. All parts

of this contrivance are always in motion. Some spin fast, others slow; some spin forward, others backwards. But all are in motion or give the illusion of motion, and all spin. Aside from all this spinning, the mechanism accomplishes nothing except to thwart the Freedom of Information Act and to create favorable statistics which the Department uses to bilk Congress and the courts.

The statistics relied upon to stall plaintiff's information requests are phony, as the testimony taken in this case has amply demonstrated. Thus, in this case the Department has submitted a May 28, 1976, affidavit by FBI Special Agent Donald L. Smith which states in its eleventh paragraph that the FBI still had, as of that date, "requests received as far back as July, 1975, on which we have not yet been able to initiate processing." Yet in another Freedom of Information case, *Bernard Fensterwald v. Department of Justice*, Civil Action No. 76-432, FBI Special Agent John E. Howard submitted an affidavit which he swore to on April 16, 1976, and in paragraph 12 of that affidavit Agent Howard represents that the FBI had just recently been able to assign for processing "those requests received in the latter part of August, 1975." Thus Howard's affidavit indicates that the FBI had reached requests of a latter date than is represented in the Smith affidavit filed in this cause, even though Howard's affidavit is executed a month and a half earlier!

An even more egregious discrepancy in the FBI's statistics has just recently come to plaintiff's attention. Attached hereto as Exhibit 1 is a copy of a letter from FBI Director Clarence Kelley to plaintiff's counsel, Mr. James H. Lesar. Director Kelley's letter, dated November 3, 1976, acknowledges receipt of Mr. Lesar's Freedom of Information-Privacy Act request dated September 30, 1976. Although the FBI testified in this cause that

it does not assign sequential numbers to Freedom of Information Act requests but merely determines their order by date of receipt, Director Kelley's letter to Mr. Lesar states that his request has been assigned number 35,136. Yet Director Kelley's November 5, 1976, letter to Mr. Howard Roffman assigns number 25,441 to Mr. Roffman's October 5, 1976, Freedom of Information-Privacy Act request. (See Exhibit 2) Although Mr. Roffman's request is subsequent to Mr. Lesar's, Mr. Lesar's request will not be reached until nearly 8,000 other requests have been processed!

The government's use of statistics is far from/^{being}the only deception it has practiced in this case. Plaintiff's April 15, 1975, request and his request of March 24, 1969, both asked for photographs of the scene of the crime. In this cause the defendant has stated that there were no such photographs, then located them later, allegedly in the Memphis field office. Yet attached hereto as Exhibit 3 is a copy of an April 7, 1968 airtel from the Memphis field office to the Director of the FBI which describes and forwards some 47 photographs of the scene of the crime! As of November 19, 1976, these photographs have still not been provided to plaintiff!

These examples make it clear that the FBI is not proceeding in good faith or with due dilligence in this case as it is required to under the decision of the Court of Appeals for the District of Columbia in Open America v. The Watergate Special Prosecution Force, et al., D. C. Cir. No. 76-1371, decided July 7, 1976. In fact, even the defendant's unacceptable representation to the Court that one analyst would be/^{assigned}to the case and that approximately two sections of 200 pages apiece could be processed each week has not been kept. On October 28, 1976, plaintiff received approximately 440 pages of documents. In the three weeks since that date, he has received none.

Nor has plaintiff yet received the three boxes of indices which should have been turned over to him long ago. Nor has plaintiff yet received unmasked copies of the documents which the Court ordered should either be turned over to plaintiff in their undeleted form or else justified as required by plaintiff's Vaughn motion.

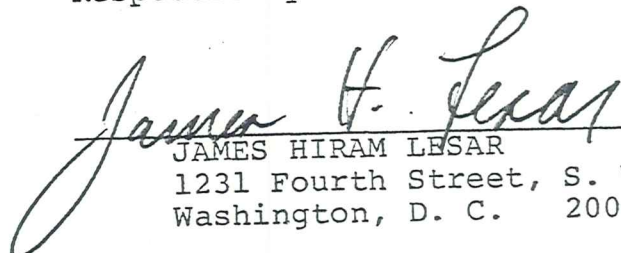
The total record in this case makes it absolutely clear that this case is not being handled in accordance with Open America. The only rational explanation of the manner in which it is being handled by the defendant is, as the Court has itself expressed, that the Department of Justice has something to hide.

Unless the Court is also to become party to this cover-up, the Court must act immediately to see that all records requested by plaintiff will be turned over to him by December 15, 1976.

Unless the Court takes this action, the processing of plaintiff's request will also inevitably interfere with delivery of all the King assassination files to the House Select Committee on Assassinations.

Furthermore, the public interest reflected by the Select Committee investigation and current news stories (see Exhibit 4), as well as plaintiff's demonstrated need for access to these documents as soon as possible, all justify an order instructing the defendant to immediately and completely process plaintiff's request and to waive all search and copying charges.

Respectfully submitted,


JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of November, 1976, mailed a copy of the foregoing Plaintiff's Memorandum to the Court to Assistant United States Attorney John R. Dugan, 3419 United States Courthouse, Washington, D. C. 20001.



JAMES H. LESAR

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

November 3, 1976

James H. Lesar, Esq.
1231 Fourth Street, S. W.
Washington, D. C. 20024

Dear Mr. Lesar:

This is to acknowledge receipt by the FBI of your Freedom of Information-Privacy Acts (FOIPA) request dated September 30, 1976.

A preliminary review of the index to our central records discloses references to a name similar to yours. Since our records contain innumerable instances of different people with the same name, and we have reviewed only the index to our records at this point, and not the records themselves, we do not know whether the records in question relate to you.

An exceedingly heavy volume of FOIPA requests has been received these past few months. Additionally, court deadlines involving certain cases of considerable scope have been imposed upon the FBI. Despite successive expansions of our staff responsible for FOIPA matters, substantial delays in processing requests continue.

Since January 1, 1975, the FBI has received a total of 27,551 FOIPA requests. Of these, our present backlog is 7,950. In an effort to deal fairly with any request requiring the retrieval, processing and duplication of documents, each request is being handled in chronological



James H. Lesar, Esq.

order based on the date of receipt. Please be assured that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date.

We are now beginning to work on requests which we received during February, 1976.

Your request has been assigned number 35,136 which you are requested to utilize in any correspondence with this Bureau regarding this request.

Should you desire a check of our field office files, you are advised that a listing of them as separate systems of records with separate indices has been published in the Federal Register, Volume 40, Number 167 - Wednesday, August 27, 1975. It will be incumbent upon you to so designate your requests directly to them.

Your patience and understanding will be appreciated.

Sincerely yours,


Clarence M. Kelley
Director

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

November 5, 1976

Mr. Howard Roffman
Apartment 156
1111 Southwest 16th Avenue
Gainesville, Florida 32601

Dear Mr. Roffman:

This is to acknowledge receipt of your inquiry concerning the status of your Freedom of Information-Privacy Acts request dated October 5, 1976.

We have received prior requests for material relating to John F. Kennedy, and we hope to begin processing these records in the near future.

Your original request was received September 7, 1976. We are now beginning to work on requests received during February, 1976. Your request, of course, is being held in chronological order according to its date of receipt and will be assigned for processing in turn. While it is impossible to furnish you a precise date at this time as to when processing on your particular request will be completed, I do want you to know that a substantial allocation of manpower and finances has been made in an effort to reduce the backlog now existing.

I regret the delay encountered in complying with your request for records and again solicit your patience and understanding.

Should you desire a check of other Government agencies, it will be incumbent upon you to so designate your requests directly to them.



Mr. Howard Roffman

Your request has been assigned number 27,441 which you are requested to utilize in any correspondence with this Bureau regarding this request.

Sincerely yours,

Clarence M. Kelley
Clarence M. Kelley
Director

FBI

Date: 4/7/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO : DIRECTOR, FBI
FROM : SAC, MEMPHIS (44-1987)
SUBJECT: MURKIN
CR
OO: Memphis

Submitted herewith for the information of the Bureau are the following photographs:

- Photo #
- 1 & 2 Photos taken from the bathroom where it is felt the shot was fired.
 - 3 Photograph taken from the approximate position where Dr. KING was shot, looking towards the rooming house from which the shot was fired. Small "X" appears above the bathroom window.
 - 4 & 5 These photographs represent a south and a north view on Main Street in the immediate area of interest.
 - 7, 8 Front view photographs of the immediate area of interest.
 - 9, 10, 11, 12 Photograph #12 particularly since it shows approximately the location and the material recovered in Memphis
 - 13, 14 in connection with this case.
 - 15, 16 Photos 15 and 16 show the area where some automobiles are parked and some junk is stored immediately adjacent to the Canipe Amusement Company.

3 - Bureau (Enc. 47)
2 - Memphis
RGJ:ME
(5)

ENCLOSURE

REC-191 44-38861-141

APR 9 1968

BRIO

Bishop

Approved: [Signature]
Special Agent in Charge

Sent _____ M Per _____

55 APR 15 1968

[Signature]

ME# 44-1987

Photo
No.

17, 18,
19, 20

Photos 17, 18, 19 and 20 continue on down Main Street to the Fire Station, which is immediately adjacent to the lot containing the automobiles and junk in preceding pictures. Photograph 20 has completed the circuit around the Fire Station and is now looking north on Mulberry St. with the Lorraine Motel on the right hand side of the picture and the hedges and shrubbery and trees at the left, generally concealing an embankment, beyond which is the rooming house in which suspect stayed.

21, 22,
23, 24

Photographs at varying angles at the rear of the rooming house. The bathroom window from which it is believed shot was fired has been designated by an "X" in photographs 21, 22 and by an arrow in Photo #23. The arrow markings in Photos 21 and 24 indicate the window in suspect's room, which was at side of building.

25

Photo 25 is a night photograph which was taken closer to the rear of the building with an "X" above the bathroom window.

26

Photo 26 is a night photo taken of the area at which Dr. KING body fell.

27, 28,

Photographs taken on the Mulberry Street side of the Lorraine Motel facing Room 306, which was occupied by Dr. KING.

29, 30,

This room has been marked by an "X" in each of the photos.

31, 32,

33

34

This is photo of the main building of the Lorraine Motel at the corner of Huling and Mulberry.

35

This is a photo to the left side of Photo 34.

36, 37,

38, 39

These are photos in the bathroom of interest, including a photo of the bathtub where it is believed suspect may have stood.

ME# 44-1987

Photo
No.

40, 41 Photographs of the interior of the suspect's room. Of possible interest in Photo #40 is the fact that the curtain on one side appears to have been fastened. This is window from which suspect would have had to have leaned at least half way out to fire shot at Lorraine Motel.

42, 43
44, 45 These are photographs of the stairway down the rear of building, stairway up the rear of building, and shot of hallway in both directions. Photo #45 is the view down the hall from the bathroom towards Main St., which is in a westerly direction.

46, 47 Photos of the general debris and type of terrain at rear of building of interest.

FBI King Probe: 7 John Willards, Laundered Shorts

Associated Press

A pair of men's shorts with an unusual laundry mark was one of the clues FBI agents pursued in their search for the assassin of Dr. Martin Luther King Jr. in 1968, according to newly disclosed FBI files.

Agents also investigated seven men named John Willard because the suspected assassin used that name when he checked into a rooming house near the hotel where King stayed on his fatal visit to Memphis.

Those details emerged in a review of 442 pages of FBI files on its investigation of the April 4, 1968, slaying of the civil rights leader. The FBI released the documents from a total of 18,000 pages to comply with requests under the Freedom of Information Act. There was no indication when additional files would be made public.

A House committee is investigating the King slaying.

The first batch of papers dealt with the investigation's early days and did not refer to James Earl Ray, who was arrested in London on June 8, 1968, and later pleaded guilty to shooting King. Ray, serving a 99-year prison term, has since recanted and is seek-

ing to change his plea and go to trial.

The papers showed that hundreds of FBI agents chased scores of rumors and tips and tried to use such clues as the shorts and a man's T-shirt to trace the killer's identity. The underwear was found in a suitcase the assassin apparently left at the rooming house.

Agents called on the Textile Marking Machine Co. of Syracuse, N.Y., for help in tracing the laundry markings. The theory was that pinpointing the laundry that washed the assassin's underwear might provide additional clues to his identity and whereabouts.

Calls to all of Textile's sales representatives "disclosed that only one area of the United States (the Northeast) utilizes this code system," one memo said. Agents were ordered to check out a three-page list of laundries that might have made the marking.

The documents do not indicate whether the laundry mark was ever traced. Nor do they show whether any of the John Willards became involved in the case.

Agents in New York asked the American Express Co. for credit records on anyone named John Willard. The company came up with seven, all with different middle names or initials.

Agents found one John Willard at home in Oxford, Miss., and determined that he had been mowing his lawn at the time King was shot.

Another John Willard in Harlan, Ky., was found to have an "excellent reputation," and at age 65, with a "heavy build, receding hairline, gray hair and moustache," he bore no resemblance to the murder suspect, the Louisville FBI office reported.

Very little of the material dealt with the possibility of a conspiracy to kill King. Some memos indicated that agents investigated whether the Minutemen, a right-wing group, or the Ku Klux Klan had planned the assassination. Leaders of both groups were investigated.

The FBI checked out scores of tips, particularly after newspapers published an artist's sketch of the suspected assassin.

A tipster in San Francisco told of an Air Force buddy who had "said he

would kill King if he ever came to Memphis." A woman reported that her husband had been told by an Abilene, Tex., service station attendant about a man who had stopped for gas and "said he was going to Memphis to take care of the leaders of the demonstration."