

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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: :
JAMES H. LESAR, : :
: :
Plaintiff, : :
: :
v. : : Civil Action No. 77-0692
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: :
U.S. DEPARTMENT OF JUSTICE, : :
: :
Defendant : :
: :
.....

AFFIDAVIT OF JAMES HIRAM LESAR IN OPPOSITION
TO DEFENDANT'S MOTION FOR A STAY

I, James Hiram Lesar, being first duly sworn, depose as follows:

1. I am the plaintiff in the above-entitled action. This case arises as a result of a Freedom of Information Act request which I made on February 7, 1977. One item of the request asked for a copy of "The 148 page report by the Office of Professional Responsibility on its review of the King assassination." This description of the "Shaheen Report" was made on the basis of newspaper accounts. When I obtained a copy of the sanitized version of the Shaheen Report which was released to the public on February 18, 1977, I learned that it also included appendix materials, some of which were not included in the version made available to the public. Thus, parts of Appendix A were heavily excised and the materials contained in Appendix B were omitted entirely from the public version of the Shaheen Report.

2. In appealing the denial of parts of my request, I clarified it by stating that I had intended the request to include "all

appendix material" to the Shaheen Report. I specifically referred to the Appendix A and Appendix B materials. [Plaintiff's Exhibit 5]

3. In June, 1977 I also learned that the Shaheen Report also contains an Appendix C. By letter dated June 24, 1977 Mr. Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, Department of Justice, provided me with an index to the twenty volumes numbered I through XXI (there is no Volume XVIII) which comprise Appendix C. He also wrote that all the materials in these volumes, with the exception of two documents, were being denied me. [Plaintiff's Exhibit 7]

4. Mr. Shaheen's blanket denial of Appendix C materials is not a "good faith" response. Mr. Shaheen has denied me Volumes XII through XX of Appendix C on the grounds that they come within the purview of 5 U.S.C. §552(b)(7)(D), which provides that investigatory records compiled for law enforcement purposes may be withheld to the extent that they would:

(D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source.

The materials which Mr. Shaheen is withholding under this claim of exemption include "Volume XII, "James Earl Ray Handwritten Notes to William Bradford Huie." Having served as attorney for James Earl Ray since August, 1970, I am personally familiar with these notes. These notes have been entered into evidence in two different court proceedings. The substance of most of the notes was published in Look Magazine in 1968 and 1969 and in Huie's book He Slew The Dreamer. They are redundantly a matter of public record, as Mr. Shaheen well knows, and there is no justifiable basis for withholding them.

5. Volumes XIX and XX of Appendix C consist of testimony given by James Earl Ray and his brothers, John and Jerry Ray, at the evidentiary hearing held in October, 1974 on Ray's petition for a writ of habeas corpus. This testimony was given in open court, widely reported in the press, and extensively used and reproduced in public court documents. Yet Mr. Shaheen asserts that this testimony is to be withheld under Exemption 7(D).

6. For certain of the Appendix C materials, Volumes I through XI and XXI, Mr. Shaheen invokes Exemptions 1 and 5. The index to Appendix C provided by Mr. Shaheen describes Volume I as "MURKIN (HQ 44-38861)." I am personally familiar with this file. As the result of a Freedom of Information Act request of a client of mine, Mr. Harold Weisberg, this entire file, consisting of 91 sections, is being made public. Mr. Weisberg has already provided me with 85 sections totaling more than 20,000 pages. Insofar as Volume I of Appendix C consists of or contains materials taken from this file, it is apparent to me that neither Exemption 1 nor Exemption 5 may be invoked to withhold these documents. Yet Mr. Shaheen has done so, even though the documents are already public.

7. It is obvious that Mr. Shaheen has spuriously invoked Exemptions 1, 5, and 7(D) rather than properly process my request for the appendix materials to his report. This manifests a lack of "good faith" and "due diligence" in processing my information request.

8. I have read the motion for a stay and the affidavit of Mr. Quinlan Shea, Jr. in support of it which have been submitted in this case. Defendant argues that "exceptional circumstances" exist which justify a stay. The sole basis for asserting this is the backlog of administrative appeals now awaiting review by the Privacy

and Information Appeals Unit of the Department of Justice. Although the Freedom of Information Act makes it quite clear that a denial of access to records need not be reviewed by means of an administrative appeal before judicial proceedings can be commenced, defendant argues that this Court should sanction what the law does not require.

9. The Freedom of Information Act was designed to cut the red-tape which delayed and denied citizen access to government information. However, on behalf of the government's information bureaucracy, Mr. Quinlan Shea, Jr., Chief of the Privacy and Information Appeals Unit, advances the argument that "the appeals mechanism itself has operated and continues to operate as one of the primary means of improving procedures at the initial request level throughout the Department." [Affidavit of Mr. Quinlan Shea, Jr., ¶12] In the same vein Mr. Shea also states: "Thus, although the modification rate continues to be quite high, it is clear that the quality of initial actions within the Department has improved dramatically over the past eighteen months, to a large degree as a result of the functioning of the appeals process."

10. A review of Mr. Shea's sworn statements in various Freedom of Information Act lawsuits does not bear out this contention. Thus, in describing the benefits of the appeals procedure in his April 23, 1976 affidavit, filed in Fensterwald v. Department of Justice, Civil Action No. 76-0432, Mr. Shea stated:

A reversal or a substantial modification of the initial response to the request for Justice Department records results from this procedure in over 50% of the cases appealed to the Deputy Attorney General.

Three months later, in an affidavit executed on July 15, 1976 and filed in Weisberg v. Department of Justice, Civil Action No. 75-1996, Mr. Shea made the identical statement. This assertion is

repeated verbatim in the June 20, 1977 affidavit which Mr. Shea has submitted in this case.

11. Mr. Shea's affidavits show that the initial Department of Justice components processing Freedom of Information Act requests were wrong more than 50 percent of the time fourteen months ago and are still wrong more than half of the time today. If the initial processing units continue to be as mistaken today as they were fourteen months ago, it is obvious that it cannot be claimed that the "appeals mechanism" is having a positive effect on the handling of information requests by the initial processing units.

12. My experiences under other Freedom of Information Act lawsuits also indicates that the Department of Justice units processing Freedom of Information Act requests have not reformed their attitudes and procedures. For example, in Weisberg v. Department of Justice, Civil Action No. 75-1996, the FBI has deleted the name of an FBI Agent cited for contempt of court from a newspaper clipping [See Plaintiff's Exhibit 8], excised the name of a hotel, and masked the identity of cities and countries.

13. The rate of error in excess of 50 percent which is maintained by the initial processing units contributes enormously to the backlog of Freedom of Information cases. So long as the Justice Department's FOIA analysts are allowed to engaged in such tomfoolery as masking the name of an FBI Agent in a newspaper clipping and deleting the identity of a hotel, there will likely always be a backlog.

14. Another factor which adds to the backlog is the way in which the Department of Justice processes the requests. Ordinarily the request is processed by the unit to which it is referred and a release is made to the requestor. If the requestor objects to withholdings or deletions, the Privacy and Information Appeals Unit conducts a review. If the Appeals Unit decides to reverse the pro-

cessing unit's determinations to withhold or delete, then the documents have to be processed again and new copies of the same documents xeroxed and released. Given the volume at which Justice Department records are now being made public, the waste involved in this two-tier approach must be extraordinary.

15. Since 1970 I have served as attorney for James Earl Ray, the convicted assassin of Dr. Martin Luther King, Jr. The more than 5,000 hours I have spent working on Ray's case have convinced me that he did not shoot Dr. King and has now spent nine years in jail for a crime he did not commit. The records which I seek in this case are sought in part because they may assist me in obtaining a trial for him. There is, therefore, some urgency in obtaining them.

16. The records I seek in this case relate to a review of Dr. King's assassination which was carried out under the direction of Mr. Michael E. Shaheen, Jr., of the Office of Professional Responsibility. Mr. Shaheen had a direct conflict-of-interest in reviewing the investigation of Dr. King's assassination, since he had served as law clerk to the district judge who denied James Earl Ray's petition for a writ of habeas corpus. The report on Dr. King's murder prepared under the direction of Mr. Shaheen is dishonest, false, and misleading. I have written Attorney General Griffin Bell to advise him that it imposes upon his trust. [See Plaintiff's Exhibit 9] I also seek the materials requested in this lawsuit because they will help me demonstrate this.

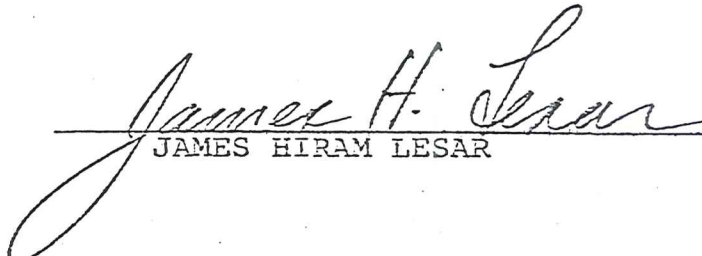
17. During the course of my representation of James Earl Ray, I have relied very heavily upon Mr. Harold Weisberg for advice and information regarding the assassination of Dr. King. Mr. Weisberg is far and away the most knowledgeable authority on Dr. King's assassination. All records which I obtain as a result of this suit

will be made available to Mr. Weisberg for his study. In October, 1975 Mr. Weisberg was hospitalized with acute thrombo-phlebitis. In recent weeks his health seems to have deteriorated and he will soon undergo tests to determine whether or not surgery is needed. Because his work capacity has already diminished considerably and he may not have much longer to live, it is imperative that these records pertaining to Dr. King's assassination be made public as soon as possible.

18. There is a direct benefit to the public involved in this which is exactly that which was envisioned by the men who enacted the Freedom of Information Act. Mr. Weisberg makes himself available, without charge, to the news media, particularly the Washington Post and the New York Times. These extensive and time-consuming consultations make it possible for the news media who do confer with him to better and more accurately inform their wide audiences in the American public. In recent months this function, which only Mr. Weisberg can fulfill because other journalists do not have the time to study the tens of thousands of government documents on this subject, has become more important as the House Select Committee on Assassinations has attempted, ludicrously, to grapple with Dr. King's murder. In recent months many newspaper articles reporting on the House Select Committee's activities have relied on Mr. Weisberg for information and evaluations and have sometimes quoted him directly. In my judgment, Mr. Weisberg, through his contacts with the news media and their use of him, has enormously enriched the information available to the American people on this subject. A much greater contribution to public understanding and knowledge will be made once Mr. Weisberg completes a second book on Dr. King's assassination. The completion of this book has been held in abeyance for more than a year now so that it can include an assessment

of the government's records pertaining to the assassination of Dr. King. This constitutes yet another reason why there is some urgency in compelling the government to disclose the records which I have requested.

19. The only way to accomplish the proper and timely processing of my request, which has already been delayed five months, is to order the defendant to do it. Otherwise it will remain ensnarled in the appeals' bureaucracy's red-tape for many more months. This will enable the Department of Justice to defeat the purposes of the Freedom of Information Act and to continue the suppression of records which are deeply embarrassing to it. This Court should not allow that to happen.


 JAMES HIRAM LESAR

DISTRICT OF COLUMBIA

Sworn and subscribed to before me this 12th day of July,
 1977.


 NOTARY PUBLIC IN AND FOR
 THE DISTRICT OF COLUMBIA

My commission expires

April 14, 1979



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

JUN 24 1977

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

Dear Mr. Lesar:

This is in reference to your June 7, 1977, request pursuant to the Freedom of Information Act for records referred to in the "Report of the Department of Justice Task Force to Review the FBI Martin Luther King, Jr., Security and Assassination Investigations". Reference is also made to my June 10, 1977, response to your March 10, 1977, request for all appendix material to that report.

Appendix C to the report is the repository for records which you are requesting. You will note that my June 10, 1977, letter denied Appendix C because the material contained therein is exempt from mandatory disclosure. However, it is the policy of the Department to make a discretionary release of documents where it is determined that such disclosure would not be detrimental to the Department's interest. In this spirit a second review of Appendix C has been conducted and a determination has been made to release the Appendix C Index, except for material classified pursuant to Executive Order 11652. A copy is enclosed. I wish to point out, however, that due to an inadvertent slip in the numbering of Appendix C volumes, there is no Volume XVIII.

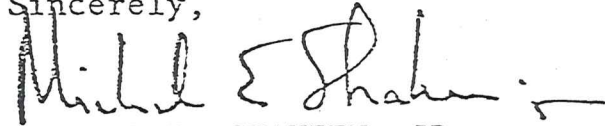
This second review has also disclosed two documents in Volume XXI, Domestic Security Investigations and Reporting on Civil Disorders and Demonstrations Involving Federal Interest, which should have been provided in the June 10, 1977, response. I apologize for this oversight.



All other documents are denied. The applicable exemptions for Volumes I through XI and XXI are 5 U.S.C. §552(b)(1) and (5). For Volumes XII through XX, the exemption is 5 U.S.C. §552(b)(7)(D) Clause 2.

Should you wish to appeal the denial of portions of your request you may do so by writing, within thirty days, to the Attorney General (Attention: Freedom of Information Appeals Unit), United States Department of Justice, Washington, D. C. 20530. The envelope and letter should be clearly marked "Freedom of Information Appeal". Following review by the Department, judicial review of the decision of the Attorney General is available, pursuant to 5 U.S.C. §552(a)(4)(b), in the United States District Court in the judicial district in which you reside, in which you have your principal place of business, or in the District of Columbia.

Sincerely,



MICHAEL E. SHAHEEN, JR.
Counsel

INDEX TO APPENDIX C

Appendix C contains voluminous notes taken from FBI Files and other sources, records of the Memphis Police Department and letters of James Earl Ray to William Bradford Huie. These documents are being retained in the Office of Professional Responsibility and are summarized herein as follows:

<u>Volume No.</u>	<u>Contents</u>
I	MURKIN (HQ 44-38861)
II	MURKIN (Memphis Field Office: ME 44-1987)
III	Atlanta Field Office (MURKIN; MLK Security; COMINFIL-SCLC; CIRM; CPUSA-Negro Question; Miscel.; MLK Racial Matters and Coretta King).
IV	Field Office Files- Albany through Indianapolis (MURKIN; MLK Security; CIRM; CPUSA- Negro Question; COMINFIL-SCLC;
V	Field Office files- Jacksonville through St. Louis (MURKIN, MLK Security; CIRM; CPUSA-Negro Question; COMINFIL-SCLC;
VI	Martin Luther King, Jr., Security (HQ 100-106670)
VII	
VIII	New York Field Office (MLK Security; COMINFIL-SCLC)
IX	CIRM (HQ 100-442529)
X	COMINFIL-SCLC (HQ 100-438794)
XI	CPUSA (HQ 100-3-116)
XII	James Earl Ray Handwritten Notes to William Bradford Huie

<u>Volume No.</u>	<u>Contents</u>
XIII	Memphis Police Department Statements- <u>State vs. James Earl Ray</u>
XIV	Memphis Police Department- James Earl Ray Supplements, Attorney General's Copy
XV	Memphis Police Department Follow Up Investigation of the Scene
XVI	Memphis Police Department Supplementary Report, James Earl Ray
XVII	Memphis Police Department Miscellaneous Records
XIX	Testimony of James Earl Ray; <u>James Earl Ray v. James H. Rose, Warden, D.Ct. WD, Tenn. October, 1974.</u>
XX	Testimony of John L. Ray, Jerry W. Ray and James Earl Ray; <u>James Earl Ray v. James H. Rose, Warden, D.Ct. WD, Tenn. October, 1974</u>
XXI	Miscellaneous

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FBI Aide C By Court

Battle Orders Fingerprint Expert To Show Cause In Publicity Order

[redacted] of Washington, a senior FBI fingerprint expert, was ordered yesterday to show cause on Dec. 6 why he should not be adjudged in contempt for violation of a Criminal Court order limiting pretrial publicity in the case of James Earl Ray.

Criminal Court Judge W. Preston Battle ordered Mr. [redacted] to appear before him on that date for the contempt hearing. Judge Battle said it was impracticable to hold the hearing before Ray's trial, set for Nov. 12.

[redacted] is expected to be a key witness, giving fingerprint testimony, as the prosecution presents its case. Ray is charged with the deer-rifle slaying of Dr. Martin Luther King here April 4.

Judge Battle cited Mr. [redacted] upon the recommendation of an amicus curiae committee of the Memphis and Shelby County Bar Association. The committee, headed by Lucius Burch, advised Judge Battle it believes [redacted] had actual knowledge of the aforesaid orders, decrees and injunctions issued by this court. . . . Your petitioners aver therefore that there is strong cause to believe that respondent [redacted] is in contempt."

The charge is based on an interview with Mr. [redacted] published in the Sept. 11 issue of the Wichita (Kan.) Beacon. Mr. [redacted] was quoted as saying Ray's fingerprints were found near the scene of Dr. King's murder in Memphis.

"There is no doubt in my mind that Ray at least handled the murder weapon," Mr. [redacted] was quoted as saying. He was in Wichita to speak on fingerprint identification at a police seminar.

In Washington, a Justice Department spokesman said there would be no comment before Judge Battle's attested order reaches Washington. But he read the "Katzenback Guidelines" governing utter-

Rule 3 says, "We do not believe department personnel should refer (publicly) to investigative procedures, such as fingerprints, polygraphs (lie detector results), ballistics or laboratory tests. Such demonstrative facts constitute evidence which should be presented publicly for the first time to the trial jury in a court of law.

"Disclosure of such matters to the public before trial can be deeply prejudicial without any significant addition to the public's need to be informed."

Mr. [redacted] the fifth man to be charged with contempt of Judge Battle's pretrial publicity order. Ray's chief defense counsel and an investigator employed by him and two Memphis reporters were convicted Sept. 30 of contempt with sentence deferred.

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EDITOR: FRANK R. ANGREN

JAMES H. LESAR
ATTORNEY AT LAW
910 SIXTEENTH STREET, N. W. SUITE 600
WASHINGTON, D. C. 20008
TELEPHONE (202) 223-5387

March 2, 1977

The Honorable Griffin Bell
United States Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Bell:

Although I have not yet seen the text, I am informed that on February 25th the Memphis Press-Scimitar carried a Scripps-Howard dispatch which quotes you as saying you would like to talk to and negotiate with my client, Mr. James Earl Ray.

You may not be aware of it, but in 1970 Mr. Ray rejected a similar offer. He chose instead to pursue his case through the courts. As a consequence of that decision he has spent the last six years in jail, most of it in solitary confinement.

Under normal circumstances, and if I believed that Mr. Ray shot Dr. King or had prior knowledge of a conspiracy to kill him, I would want to bargain for a commutation of his sentence.

But Mr. Ray steadfastly maintains that he did not shoot Dr. King and was not aware that Dr. King or anyone else was going to be shot. Over the past six years I have made a fairly extensive study of the evidence. I am convinced that Mr. Ray is telling the truth and that he did not shoot Dr. King or have advance knowledge of a plot to do so.

Unfortunately, the circumstances of this case are not normal. As a student of history, the closest parallel I can find is to the Dreyfus affair in France. In that case, you will recall, it took some twelve years to establish that Dreyfus was innocent. During that time the basic institutions of society, the courts, parliament, and the press, worked in concert to maintain Dreyfus was guilty. All proclaimed that a falsehood was the truth.

Press accounts of your remarks indicate that you have substantial doubts about the principal conclusion of the Shaheen Report, that Ray was the lone assassin of Dr. King. They also indicate that your doubts do not extend to Ray's guilt. Given that prejudgment, it would seem impossible for me to properly advise Mr. Ray to talk

with you.

I assume, however, that your prejudgment is based upon what is contained in the Shaheen Report. I think I should warn you that the Shaheen Report imposes upon your trust. It is filled with false statements.

To give but one example of how you and the public have been imposed upon, the Shaheen Report gives no consideration to the evidence adduced at Ray's two-week evidentiary hearing held in October, 1974. In fact, it does not even mention that there was such a hearing. Yet that hearing produced the only competent evidence in this case as it is the only occasion on which witnesses have been cross-examined in open court by adversary counsel. The witnesses so tested include James Earl Ray, although you would never know it from the Shaheen Report.

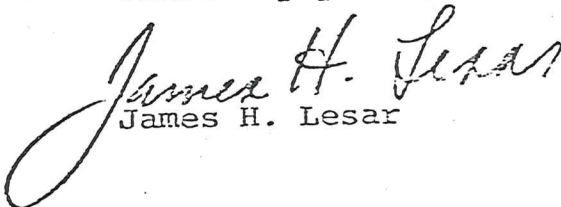
As one consequence of its failure to consider the evidence adduced at Ray's 1974 hearing, the Shaheen Report repeatedly asserts that the rifle left on the sidewalk outside Canipe's Amusement store is the murder weapon. But the uncontradicted testimony of Ray's ballistics expert at the 1974 hearing necessarily leads one to the conclusion that the alleged murder weapon did not fire the shot which killed Dr. King.

Mr. Harold Weisberg, who has served as Ray's investigator, knows more about the circumstances surrounding Dr. King's assassination than anyone else. In my judgment it is very unlikely that the crime will be solved without his assistance.

Mr. Weisberg is presently putting together a considerable amount of material not considered in the Shaheen Report. If you are interested, when he has completed this task I will arrange for its contents to be made available to you. I suggest that this may best be accomplished at a conference at which Mr. Weisberg and I present facts which you should be aware of, but obviously are not.

A little over a month ago I received a call from the Office of the Deputy Attorney General. I was informed that they had just received a letter of some urgency which I had addressed to Attorney General Levi some ten months previously. There has been no response to a telegram I sent Attorney General Levi last November. Because of these and other occurrences, I am taking the precaution of hand-delivering this letter to your office.

Sincerely yours,


James H. Lesar