

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOV 11 1977
JAMES H. LESAR

JAMES H. LESAR,
Plaintiff,

v.

Civil Action No. 77-0692

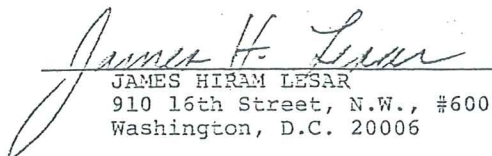
U.S. DEPARTMENT OF JUSTICE,
Defendant

MOTION UNDER VAUGHN V. ROSEN TO REQUIRE
DETAILED JUSTIFICATION, ITEMIZATION AND INDEXING

Plaintiff James H. Lesar moves the Court for an order requiring the defendant to provide, within 30 days of the date of said order, a detailed justification for any allegations that the requested documents are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552, including an itemization and index which correlate specific statements in such justification with actual portions of the requested documents.

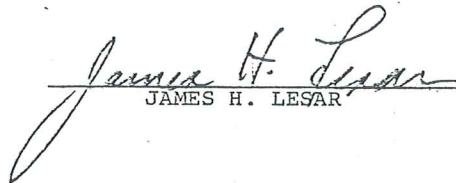
A Memorandum of Points and Authorities and a supporting affidavit by plaintiff are attached hereto.

Respectfully submitted,


JAMES HIRAM LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Attorney pro se

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of November, 1977 mailed a copy of the foregoing Motion Under Vaughn v. Rosen To Require Detailed Justification, Itemization and Indexing to Lynne K. Zusman, Chief, Information and Privacy Section, Civil Division, Room 6339, U.S. Department of Justice, Washington, D.C. 20530, attorney for the defendant.



JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

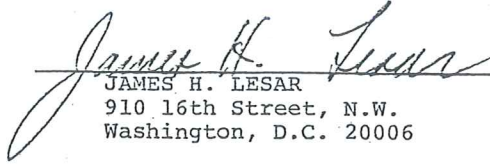
This Court previously stayed an earlier and somewhat different Vaughn v. Rosen motion by plaintiff pending the completion of administrative review by the Office of Deputy Attorney General. That review has now been completed. (See Exhibit 1-A) While some materials that were previously withheld are now being made available to plaintiff, the most important ones are still withheld.

The legal basis for this motion is well-established. Vaughn v. Rosen, 484 F. 2d 820 (D.C. Cir. 1973), cert. den., 415 U.S. 977 (1974); Ash Grove Cement Co. v. FTC, 511 F. 2d 815 (D.C. Cir. 1975); Pacific Architects & Engineers, Inc. v. Renegotiation Board, 505 F. 2d 383 (D.C. Cir. 1974); Cuneo v. Schlesinger, 484 F. 2d 1086 (D.C. Cir. 1973), cert. den. sub nom. Rosen v. Vaughn, 415 U.S. 977 (1974). The Freedom of Information Act places the burden of entitlement to exemption from disclosure upon the Government, and the only way in which the Government can be compelled to meet that burden is by order of this Court pursuant to this motion.

Plaintiff has attached to this motion an affidavit which further supports the need for a Vaughn v. Rosen showing if he is to

be able to subject the Government's claims of exemption to a proper adversarial testing.

Respectfully submitted,


A handwritten signature in cursive script, reading "James H. Lesar", is written over a horizontal line. Below the line, the name and address are printed in a typewriter font.

JAMES H. LESAR
910 16th Street, N.W.
Washington, D.C. 20006

Attorney pro se

Exhibit 1

Civil Action No. 77-0692

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
JAMES H. LESAR,
Plaintiff,
v.
U.S. DEPARTMENT OF JUSTICE,
Defendant
.....

Civil Action No. 77-0692

AFFIDAVIT OF JAMES HIRAM LESAR

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

1. I am the plaintiff in the above-entitled cause of action. I reside at 1231 Fourth Street, S.W., Washington, D.C. 20024.
2. In June, 1970, the year after I graduated from the University of Wisconsin Law School, I came to Washington, D.C. to work as a volunteer for the Committee to Investigate Assassinations, an organization from which I later resigned because of disagreements about the way in which it was proceeding. Mr. Bernard Fensterwald, Jr. was the Executive Director of the Committee to Investigate Assassinations, and I served as its legal counsel.
3. In July or August, 1970, Mr. Fensterwald, who had become attorney for James Earl Ray earlier that year, began turning work on the Ray case over to me. For the next six years I did virtually all of the legal work on the various efforts to overturn Ray's conviction as the murderer of Dr. Martin Luther King, Jr.
4. My initial work on the Ray case was done in connection with Ray's Petition for Post-Conviction Relief. I did nearly all of the legal work done in connection with this Petition, except for court appearances. This Petition was filed in the Criminal Court

of Shelby County, Tennessee. After the trial court denied the petition, I did all the work connected with appeals of the decision to the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court except for the oral arguments.

5. On December 4, 1972 Ray filed a lengthy habeas corpus petition in the United States District Court for the Middle District of Tennessee. The petition and the Memorandum of Facts and Memorandum of Points and Authorities which accompanied it were more than 100 pages long. In preparing these documents, particularly the Memorandum of Facts, I relied heavily on the enormous factual knowledge of Mr. Harold Weisberg, who served as investigator for Ray's defense and who had extensively interviewed Ray. Several months of intensive research and writing went into the preparation of the habeas corpus petition and its supporting documents. This included lengthy supporting affidavits by Ray and members of his family, which were part of a couple of hundred pages of exhibits which were filed with the petition.

6. The District Court denied Ray's application for a writ of habeas corpus. Ray v. Rose, 373 F. Supp. 687 (M.D. Tenn. 1973). Ray then appealed the case to the United States Court of appeals for the Sixth. I did all the work on the appeal briefs. Mr. Fensterwald made the oral argument to the Sixth Circuit. The Sixth Circuit reversed the District Court and remanded the case to it with a mandate that it conduct "a full-scale judicial inquiry" into Ray's allegations. Ray v. Rose, 491 F. 2d 285, cert. den. 417 U.S. 936 (1974).

7. In October, 1974 the United States District Court for the Western District of Tennessee held an evidentiary hearing into Ray's allegations. This hearing lasted two weeks. The total record in the case consisted of some 1300 pages of testimony taken in open court and an additional 2,000-3,000 pages of depositions and exhibits.

8. The District Court denied Ray's petition for a writ of habeas corpus. Ray v. Rose, 392 F. Supp. 601 (W.D. Tenn. 1975). I again did all the legal work involved in trying to reverse this decision, including both the very lengthy brief submitted to the Sixth Circuit Court of Appeals and oral argument before it. The Sixth Circuit upheld the decision of the District Court. Ray v. Rose, 535 F. 2d 966 (C.A. 6, 1976). I was then ordered by the Sixth Circuit to prepare a petition for a writ of certiorari on Ray's behalf. I did so, but on December 13, 1976 the Supreme Court denied it.

9. I estimate that from 1970 to date I have spent well in excess of 5,000 hours working on the James Earl Ray case. All of this work was done without remuneration and at considerable personal expense.

10. In April, 1975 I began representing Mr. Harold Weisberg in his efforts to obtain Department of Justice records pertaining to the assassination of Dr. King. This, too, has required an enormous investment of time. In connection with Weisberg v. Department of Justice, Civil Action No. 75-1996, the suit which I brought on behalf of Mr. Weisberg to obtain these documents, the Department has thus far produced more than 44,000 pages of its records on the King assassination.

11. Mr. Weisberg, who is without question the leading authority on Dr. King's assassination, has provided me with a personal copy of virtually all of the records he has obtained from the Department of Justice on the King assassination. I have read considerable portions of it. More importantly, Mr. Weisberg has made notes on all this records and provided me a copy of his notes. He has also selected the more important documents which should be brought to my attention and provided me with additional copies of them.

12. Even before Mr. Weisberg had obtained the FBI's Central Headquarters' "Murkin" ("Murder of King") file, which consists of approximately 20,000 pages, and gave me a complete copy of it, I had already accumulated some ten file cabinet drawers of materials pertaining to the assassination of Dr. King and the conviction of James Earl Ray as his assassin. I am intimately familiar with the contents of these voluminous materials on the King/Ray case. I am also familiar with the popular or commercial literature on the subject.

13. On July 14, 1977 this Court entered an Order staying my previous Vaughn v. Rosen motion until the Department of Justice completed its administrative review of my request. By letter dated October 31, 1977, the Office of Deputy Attorney General notified me of the determinations it had reached. (Exhibit 1-A) Among other things, this letter states that Volumes XIII through XVII of Appendix C to the Shaheen Report, which consist of Memphis Police Department documents, are to be withheld in their entirety because the information in them "is of a confidential nature and was provided in confidence." The Government claims that these Memphis Police Department records are exempt under 5 U.S.C. §552 (b) (7) (D).

14. The Memphis Police Department records in the possession of the Office of Professional Responsibility of the Department of Justice are part of Appendix C to the Shaheen Report. In February, 1977 the Department of Justice publicly released the Shaheen Report. Inasmuch as the Memphis Police Department documents are incorporated in the Shaheen Report as an appendix to it, and because some of the Memphis Police Department documents are referred to and used in the Shaheen Report itself, I contend that the Department has waived any claim to assert exemption (b) (7) (D) which it may have had for any of these documents which it obtained and incorporated in the appendix.

15. Even assuming that the incorporation of these documents in the Shaheen Report and the use of some of them in it do not constitute a waiver with respect to all of the Memphis Police Department records, few if any of them are likely to be properly withheld under Exemption (7) (D). There is very little information about the King assassination which is confidential. For example, the FBI has already made many Memphis Police Department documents in its files available to Mr. Harold Weisberg as the result of his suit, Civil Action No. 75-1996. As noted above, the Shaheen Report refers to and makes use of such documents. There is no basis for withholding any of these records. Provided with a Vaughn v. Rosen index to these volumes, I am certain that Mr. Weisberg and I will be able to demonstrate that many, if not all, of these documents cannot possibly be withheld under a claim of confidentiality.

16. My experience under the amended Freedom of Information Act is that the Government relies heavily on 5 U.S.C. §552(b) (7) (C) and (D) as justification for withholding information from the public. It is also my experience that these claims are largely spurious. For example, the Civil Rights Division of the Department of Justice recently made some documents available to Mr. Weisberg in connection with his requests. Certain information was excised from the documents on the grounds that it was exempt under (b) (7) (C) and (b) (7) (D). I selected one of the documents and in less than five minutes filled in 28 blanks in it. I did this on the basis of my knowledge of what is public information about the King assassination. All of the information excised from this document had been published in books and magazine articles which are contained in Department of Justice files on the King assassination. (See Exhibit 1-B)

17. Government agencies routinely claim documents are exempt under provisions of the Freedom of Information Act which they know do not apply. As a memorandum which Mr. Weisberg has recently obtained explains: "Mr. Garfinkel [Legal Counsel for the General Services Administration] apparently feels that it is better legal procedure to give all possible reasons for withholding documents in the beginning, even if you withdraw one or more arguments on appeal, than to be in the position of having to produce an additional reason on appeal." (Exhibit 1-C) Even where government agencies know that material is disclosable they will withhold it simply to obstruct demands for other withheld information. (See Exhibit 1-D)

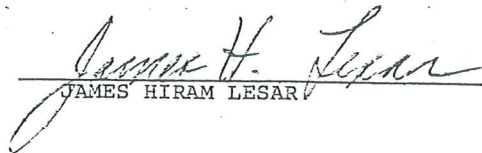
18. In 1973-1974 I represented Harold Weisberg in his suit for the transcript of the Warren Commission's executive session held on January 27, 1964. Weisberg v. General Services Administration, Civil Action No. 2052-73. When that suit was before this Court, the Government solemnly assured the Court that it was exempt under 5 U.S.C. §552(b)(1) and (b)(7). In fact, the Government submitted affidavits by Warren Commission General Counsel J. Lee Rankin and Archivist James B. Rhoads which swore that the transcript was classified pursuant to Executive Order 10501. This Court rejected that claim but then upheld the suppression of the transcript on Exemption 7 grounds as "an investigatory file compiled for law enforcement purposes."

19. Because the answers to interrogatories in that case established that no law enforcement official had ever seen the transcript, Weisberg planned to appeal the decision. Perhaps for the same reason, the GSA "declassified" the January 27 transcript and, ignoring its recently-won Exemption 7 victory, released it to Weisberg and the public.

20. Once public, the contents of the January 27 transcript demonstrated that there never had been any possible basis for clas-

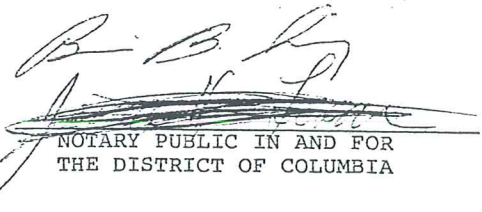
sifying it under Executive Order 10501 or any other Executive order. Its release also showed that the Government had spuriously invoked Exemption 7 and induced this Court to suppress it for reasons that the Government abandoned as soon as it confronted the realities of an appeal.

21. In order that I can properly test the Government's claims of exemptions in this case, a Vaughn v. Rosen showing with respect to all such claims is essential.


JAMES HIRAM LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 10th day of
November, 1977.


NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

My commission expires April 14, 1979.



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

OCT 31 1977

James H. Lesar, Esquire
1231 4th Street, S. W.
Washington, D. C. 20024

Dear Mr. Lesar:

You appealed from the actions of Deputy Assistant Attorney General James P. Turner and Counsel Michael E. Shaheen, Jr., on your request for access to specific records pertaining to the reviews by the Civil Rights Division and the Office of Professional Responsibility of the investigation by the F.B.I. of the assassination of Dr. Martin Luther King, Jr.

You will now be provided the two Civil Rights Division documents within the scope of your appeal, subject to certain limited excisions. Subsequent to Mr. Turner's action on your request, the Civil Rights Division declassified most of the information in these documents. The declassified information will now be made available to you directly by the Division, subject only to excisions of information the disclosure of which would constitute an unwarranted invasion of the privacy of certain third persons or of Dr. King's immediate family. 5 U.S.C. 552(b)(7)(C). The remaining classified information has been found by the Department Review Committee to warrant continued classification under sections 5(B)(2) and (3) of Executive Order 11652 and will continue to be withheld pursuant to 5 U.S.C. 552(b)(1).

The appendices to the "Report of the Department of Justice Task Force to Review the F.B.I. Martin Luther King, Jr., Security and Assassination Investigations" will also be made available to you, subject to certain excisions. The classified information in each appendix has been found by the Department Review Committee to warrant continued classification under sections 5(B)(2) and (3) of Executive Order 11652. This classified material will also continue to be withheld pursuant to 5 U.S.C. 552(b)(1).

Exhibits 8 and 11 of Appendix "A" will be released to you again, this time with fewer excisions. Exhibit 9 will be provided in its entirety and exhibit 12 will be released for the first time, subject to certain excisions. Minor excisions were



made in exhibits 7 and 12 to protect the personal privacy of other individuals against unwarranted invasion. 5 U.S.C. 552(b) (7) (C). The classified information in exhibits 8, 11, 12, 17 and 18 is being withheld on the basis of 5 U.S.C. 552(b) (1). Every page of Appendix "B" has already been released to you. Eight pages will be released to you again, however, with no excisions. The other pages of Appendix "B" were properly released with excisions of classified information or material which would cause an unwarranted invasion of the privacy of third persons. 5 U.S.C. 552(b) (1) and (7) (C). Names of Special Agents of the F.B.I. were also withheld. 5 U.S.C. 552(b) (7) (C).

Appendix "C" encompasses twenty volumes, fourteen of which will now be made available to you, in whole or in part. Volumes I through XI and XXI [there is no volume XVIII -- the index to Appendix "C" was incorrectly numbered] contain brief one or two sentence summaries of each F.B.I. and D.O.J. document reviewed by the Task Force. Certain material in Volume XXI which originated with the United States Information Agency is being referred to the Department of State for consideration and direct response to you. Volume VII and certain materials in Volumes I through VI, VIII through XI and XXI are being withheld to protect specific administrative markings which cannot be released to you without actual harm to the operational capability of the F.B.I., the names of Special Agents, the privacy of certain third persons against unwarranted invasions, and the identities of confidential sources. 5 U.S.C. 552(b) (2), (7) (C) and (7) (D).


Volume XII contains the letters and notes (142 pages) sent to William Bradford Huie by James Earl Ray. I have been advised that these documents are a matter of public record and that you already have a copy of each of them. Should you desire an additional copy, this Department will make them available at the rate of ten cents per page. Volumes XIX and XX are also a matter of public record, as they contain the transcripts of the testimony given by James Earl Ray, John L. Ray and Jerry W. Ray in the case of James Earl Ray v. James H. Rose, Warden, United States District Court for the Western District of Tennessee, Western Division, October 1974. If you desire copies, they can be obtained by writing to the Clerk of that Court. Should you prefer to have this Department furnish them to you, however, copies of these transcripts (574 pages) will be made available at the same rate of ten cents per page.

The Memphis Police Department documents comprise Volumes XIII through XVII. As the information is of a confidential nature and was provided in confidence, these volumes will continue to be withheld in their entirety. 5 U.S.C. 552(b) (7) (D).

Judicial review of my action on these administrative appeals is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where the records you seek are located.

Sincerely,

Peter F. Flaherty
Deputy Attorney General

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

JAMES H. LESAR
ATTORNEY AT LAW
910 SIXTEENTH STREET, N. W. SUITE 600
WASHINGTON, D. C. 20006
TELEPHONE (202) 223-5587

October 17, 1977

FREEDOM OF INFORMATION APPEAL

Mr. Giffin Bell
U.S. Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Bell:

I write in reference to a Freedom of Information request by my client, Mr. Harold Weisberg, for copies of Department of Justice records which pertain to the assassination of Dr. Martin Luther King, Jr. Mr. Weisberg's request is the subject of a Freedom of Information lawsuit now nearly two years old. (Civil Action No. 75-1996)

By his letter of September 20, 1977, a copy of which is attached hereto, Mr. James P. Turner, Deputy Assistant Attorney General, Civil Rights Division, has advised me that as a result of my administrative appeal to the Deputy Attorney General on behalf of my client, Mr. Harold Weisberg, the Civil Rights Division was directed to make a supplemental release to me of all material previously withheld, "except for certain minor excisions," which "identifies individuals who appear within the King assassination files, even though they clearly had no connection with the murder, or sources who furnished information in confidence."

Mr. Turner further advised that seven documents which had been referred to the Civil Rights Division because they originated with it were also being released, again with "only minor excisions of names and other identifying data . . . pursuant to 5 U.S.C. §552(b)(7)(C) and (b)(7)(D)."

In accordance with Mr. Turner's advice that I may appeal the deletions from the records provided me by writing to you within thirty days, I hereby appeal.

I also enclose a copy of one of the records which the Civil Rights Division has released, a three-page memorandum dated August 26, 1971 from Monica Gallagher to "File." I have filled in the missing blanks in this document. The names deleted are all public domain, having been written about extensively, including, for

example, in Gerold Frank's An American Death and Wayne Chastain's articles in Computers and People Magazine, both of which are possessed by the Department of Justice.

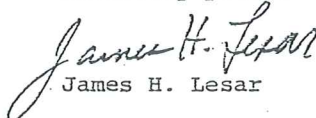
What I have done with the Gallagher memorandum could easily be done with the twenty-five other documents which were released with Mr. Turner's September 20 letter.

If the "analysts" who review Departmental records for public release will not abide your Freedom of Information guidelines, cannot use common sense, and do not resort to indices of books on the subject of such records, then perhaps it would be more economical, not to mention quicker, if you simply installed a WATS line to Mr. Weisberg so they could check to see which of their deletions are already in the public domain.

I hope that all the records released on September 20th will be restored to their pristine state, and quickly, lest I be compelled to ask for a court hearing so that Mr. Weisberg can demonstrate that the withholdings are unjustifiable by filling in the missing blanks.

Finally, I call your attention to the complaint which Mr. Weisberg and I have made to other Department of Justice officials, which is that the skimpy release of records by the Civil Rights Division obviously comes nowhere near to being in compliance with Mr. Weisberg's Freedom of Information Act requests for records pertaining to Dr. King's assassination.

Sincerely yours,


James H. Lesar

cc: Mr. John R. Dugan, AUSA
Judge June Green
Mrs. Lynne Zusman
Mr. Bill Schaffer

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : File

DATE: August 26, 1971

MC:soh

FROM : Monica Gallagher
Deputy Chief, Criminal Section
Civil Rights Division

DJ: 144-72-662

SUBJECT: Wayne Chastain, Jr.

On August 24, 1971, Mr. Queen and I met with Wayne Chastain, Jr., a reporter with the Memphis Press Scimitar, home address 810 Washington, Apartment 502, Memphis, Tennessee, telephone 901-525-6158; office telephone 526-2141. Mr. Chastain requested the meeting to furnish the following information, which he advised has mostly been previously furnished to the FBI in Memphis in 1969. At the conclusion of the interview I advised Mr. Chastain that we would carefully consider the information he furnished, together with other information available to us, and determine what if any further action would be appropriate.

A. Re Track Youngblood aka Terry
Brevitas - Youngblood, according to Chastain, is from the area of Alicea, Arkansas and has reputedly been engaged in illegal and/or questionable activities such as gunrunning. He is about 40 years old, has dark hair and eyes, and speaks some Spanish. He is a man of some wealth, drives a Cadillac, and likes "high living." He was a college roommate of WALTER RA FORD, a Memphis attorney.

Chastain is persuaded that there is considerable evidence that Youngblood was in Memphis April 3-5, 1968, and present in "Jim's Grill" opposite the

Lorraine Motel on the afternoon of April 4 shortly before the assassination. If this is true, Chastain believes further investigation of *Youngblood* is warranted since there is no apparent logical explanation for his presence in that neighborhood at that time.

The evidence that *Youngblood* was there is as follows:

1. Lloyd Jewels (Giles?), owner of Jim's Grill, remembers (according to Chastain who interviewed him) that on the day of the assassination at about 4:30 p.m. a man entered Jim's Grill and ordered sausage and eggs. This was sufficiently unusual as to be noteworthy because at that hour of the day most people come to Jim's to drink and the cooking grill is closed down. Also, this man was not of the working class "type" that frequents Jim's Grill. During the time the man was in Jim's he went three times to the telephone but never made a call. He left about 5:00 p.m.

On later being interviewed by the police about the presence of any suspicious individuals, Jewels described the sausage-and eggs man and was allegedly told to call the police if he returned. In fact the man returned for breakfast the next day (4/5) carrying a suitcase. Jewels called the police who picked him up as he left the cafe. (He again had ordered sausage and eggs!). Jewels was never asked by the police to identify this man. However, he later heard that the man was released by the police a short time after he was picked up, although other individuals were being held as suspects in the King matter.

Chastain said he exhibited to Jewels a "mug shot" of Youngblood and that Jewels positively identified him as the sausage-and-eggs man.

2. A former waitress at Jin's Grill, identity unknown to Chastain but allegedly known to

also remembers the man and could identify a photograph of Youngblood as the individual involved.

3. Walter Buford once said that Youngblood called him from Memphis the day before the King slaying, but according to Chastain he now denies that he can fix the date accurately. In approximately May 1968, Buford told Chastain that the last time Youngblood had been in Memphis was "about the time of the King assassination." When the question of Youngblood as a possible suspect was raised, Buford said, "Jack" is more liberal on the racial issue than I am."

B. Re: Besavitas.

A Memphis attorney named Russell K. Thompson told Chastain that he had been consulted by an individual who gave his name as Besavitas, saying that was an alias. Besavitas had allegedly been arrested in connection with the King slaying and released. He thought he would ultimately be charged and wanted Thompson to represent him. He took Thompson's telephone number and departed. Chastain exhibited to Thompson several photographs of Youngblood. With respect to the mug shot, Thompson said that was not the man; however, with respect to a newspaper photograph, Thompson could not be sure. Thompson allegedly told Chastain that he inferred from Besavitas's speech that he spoke Spanish in addition to English.

| GENERAL SERVICES ADMINISTRATION ROUTING SLIP | | | | | | | | | | | |
|---|----|----|----|---|----|-----------------------|----|---|----------------------|----|-----|
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| 1. NNF | | | | | | | | | | | |
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| <input type="checkbox"/> AS REQUESTED | | | | <input type="checkbox"/> INITIALS | | | | <input type="checkbox"/> SEE ME | | | |
| <input type="checkbox"/> CONCURRENCE | | | | <input type="checkbox"/> NECESSARY ACTION | | | | <input type="checkbox"/> SIGNATURE | | | |
| <input type="checkbox"/> CORRECTION | | | | <input type="checkbox"/> NOTE AND RETURN | | | | <input type="checkbox"/> YOUR COMMENT | | | |
| <input type="checkbox"/> FILING | | | | <input type="checkbox"/> PER OUR CONVERSATION | | | | <input type="checkbox"/> YOUR INFORMATION | | | |
| <input type="checkbox"/> FULL REPORT | | | | <input type="checkbox"/> PER TELEPHONE CONVERSATION | | | | | | | |
| <input type="checkbox"/> ANSWER OR ACKNOWLEDGE ON OR BEFORE _____ | | | | | | | | | | | |
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| REMARKS | | | | | | | | | | | |
| <p>Do you have any inquiries about the last phrase of the last sentence in the Harfield memo?</p> <p style="text-align: right;">JBP</p> | | | | | | | | | | | |
| FROM | CO | R1 | R2 | R3 | R4 | R5 | R6 | R7 | R8 | R9 | R10 |
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INTRASERVICE MEMORANDUM AND ENDORSEMENT

SUBJECT OR TRANSACTION

Correspondence with Mr. Harold Weisberg

| FROM | TO | DATE AND MESSAGE |
|------|---------|--|
| NNF | NN N | <p>3-6-73. I did have misgivings about the last phrase of the last sentence in the Garfinkel memo, particularly in light of his statement in the second paragraph that "several complex legal questions," including the question of whether working papers or drafts etc. are in fact records for the purposes of the Act, "need not be examined until such time as there is an administrative appeal from their denial." This seems to contradict the last sentence in which he goes beyond our initial draft and deliberately injects this issue by including the reference to "working papers which are not records for the purposes of the Freedom of Information Act."</p> |
| | | <p>I informed Mark Eckhoff and Marion Johnson of my misgivings when I sent the file down for their comments. Mr. Johnson, as a lawyer, then discussed the matter with Mr. Garfinkel and their conversation is summarized on the attached routing slip. Mr. Garfinkel apparently feels that it is better legal procedure to give all possible reasons for withholding documents in the beginning, even if you withdraw one or more arguments on appeal, than to be in the position of having to produce an additional reason on appeal. Perhaps it would be desirable to get a policy decision from the Justice Department through its Freedom of Information Committee as to whether such "working papers" should be released and this can be done if Mr. Weisberg appeals the denial.</p> |
| | | <p>It is my understanding that certain working papers among the Warren Commission records have been made available to Weisberg, presumably as "records." The material currently at issue appears to</p> |

(Over)

| FROM | TO | DATE AND MESSAGE (Continuation) |
|-------------|----|---|
| | | comprise NARS administrative records. |
| | | <i>Jane F. Smith</i> |
| | | JANE F. SMITH |
| | | Director |
| | | Civil Archives Division |
| | | Attachment |
| <i>NN N</i> | | <i>3/6/73</i> Recommend appeal of <i>Johnson's</i> latest draft - <i>TK</i> |
| | | <i>3-7-73</i> |
| | | <i>Okay</i> |
| | | <i>[Signature]</i> |

INSTRUCTIONS FOR FURTHER CONTINUATION - If a series of messages on one subject requires more than one page, front and back, continue it on additional sheets, consecutively numbered. Arrange all such sheets with page one on top and staple them together. Begin a new series for messages written after a different type of document is added to the dossier.

November 15, 1968

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Correspondence with Harold Weisberg, Coq d'Or Press, Route 8,
Frederick, Maryland 21701

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The transcript of the executive session of January 27, 1964, of the Warren Commission requested by Mr. Harold Weisberg in the attached letter was reviewed by GSA, the CIA, and the Department of Justice. Mr. Martin Richman of the Office of Legal Counsel of the Department recommended that the entire transcript be withheld from research, and we have withheld it.

As Mr. Weisberg says, there are certain quotations, presumably taken from a copy of the transcript in Congressman Ford's possession, that are published in Portrait of the Assassin (New York: Simon and Schuster, 1965) by Gerald R. Ford and John R. Stiles (pages 19-25). Some material is deleted from the quotations without any indication of the deletions, and there are other variances from the text of the transcript. The quoted material does not consist of a continuous passage, but of various passages chosen from different pages. Only one complete page (page 158) of the transcript is included in the quoted material. We feel that to tell Mr. Weisberg this, or to supply him with a copy of the page that has been completely published, would encourage him to increase his demands for additional material from the transcript and from other withheld records.

JAMES B. RHOADS
Archivist of the United States

cc: Official File - NRD ✓
Reading File - NNDC

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MMJohnson/mc NNDC 69-89
Ext. 23171 11/15/68

NRD MMJ NN _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ORDER

Upon consideration of plaintiff's Motion under Vaughn v. Rosen, and the entire record herein, it is by the Court this _____ day of _____, 1977 hereby

ORDERED, that plaintiff's Motion Under Vaughn v. Rosen To Require Detailed Justification, Itemization and Indexing be and hereby is granted, and it is further

ORDERED, that defendant deliver to this Court and to plaintiff, within 30 days of the date of this order, a detailed justification for any allegations that the requested documents, or portions thereof, are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552, including an itemization and index which correlates specific statements in such justification with actual portions of the requested documents.

UNITED STATES DISTRICT JUDGE