

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

Civil Action No. 77-0692

U.S. DEPARTMENT OF JUSTICE,  
et al.,

Defendants.

---

DEFENDANT'S REPORT TO THE COURT

On July 17, 1978, plaintiff filed a Supplemental Memorandum To The Court,<sup>1/</sup> in which he unqualifiedly assailed the veracity of the affidavit of Hugh W. Stanton, Jr., District Attorney General in and for the Fifteenth Judicial Circuit for the State of Tennessee, which has been filed by defendant in this lawsuit. Plaintiff's serious allegations of impropriety were based upon his recent "discovery" of one particular seven-page Memphis Police Department investigative record which had been released to him in its entirety as part of Appendix B<sup>2/</sup> to the Department of Justice's Martin Luther King, Jr. Task Force Report. See Plaintiff's Memorandum To The Court at 2 and Attachment A thereto.

As was revealed in open Court on July 20, however, this particular investigative report absolutely is not part of

---

<sup>1/</sup> It should be noted that plaintiff forwarded this pleading to defendant by regular mail on Sunday, July 16; consequently, it was not received by defendant's counsel until late in the day on Wednesday, July 19, after plaintiff orally advised defendant's counsel of the pleading's existence.

<sup>2/</sup> The Memphis Police Department records withheld by defendant pursuant to Exemption 7(D) of the FOIA, on the other hand, are to be found exclusively within the Task Force Report's "Appendix C," Volumes XIII through XVII, inclusive.

the Memphis Police Department investigative records obtained by the Task Force by subpoena and maintained in confidence pursuant to 5 U.S.C. §552(b)(7)(D). Rather, as is evident upon the face of the private transmittal letter introduced by defendant at the July 20 hearing, this report was provided to Task Force Member James F. Walker in September of 1976<sup>3/</sup> by Mr. Frank C. Holloman, a former Director of Fire and Police for the city of Memphis, who apparently had retained a personal copy of the document upon his retirement six years earlier.<sup>4/</sup>

*of this  
one record  
only? DM  
p. 100000  
conjectures  
This document  
starts with  
DJ we get*

For the convenience of the Court, and for the further purpose of ensuring a complete and unambiguous record herein, this private transmittal letter as well as a document entitled "Memorandum of Telephone Interview of Frank Holloman" which immediately precedes the transmittal letter in "Appendix B,"<sup>5/</sup> are attached hereto as "Defendant's Report Exhibit A" and "Defendant's Report Exhibit B," respectively.

As regards the records maintained by defendant in Volumes XIII through XVII of "Appendix C" and withheld pursuant to 5 U.S.C. §552(b)(7)(D), defendant must at this time acknowledge the newly-discovered fact that one

3/ The Memphis Police Department records that are at issue in this lawsuit (i.e. withheld by defendant pursuant to 5 U.S.C. §552(b)(7)(D)) were obtained under subpoena on October 21, 1976, several weeks after the private transmittal of the document cited by plaintiff.

4/ Indeed, the initial sentence of the investigative report reveals that it was prepared at Mr. Holloman's specific request in 1968. See Attachment A to Plaintiff's Memorandum To The Court at ¶1.

5/ It should be emphasized that both the transmittal letter and the explanatory interview memorandum were disclosed to plaintiff as part of "Appendix B" and therefore were readily available to him upon his discovery of the investigative report prompting his mistaken supplemental pleading; in fact, the three documents appear in Appendix B (and as disclosed to plaintiff) directly adjacent to one another.

small segment of these records is not an appropriate part of these materials and were maintained as such heretofore only due to clerical inadvertance. Upon a review of these five volumes by defendant's counsel in preparation for their in camera submission, it was determined that a seventeen-page group of documents appearing at the conclusion of Volume XVII are not properly withheld pursuant to 5 U.S.C. §552(b)(7)(D) and must be disclosed in their entirety. Accordingly, these documents are as a group attached hereto, in the sequence in which they appear in Volume XVII, as "Defendant's Report Exhibit C."<sup>6/</sup>

Finally, defendant respectfully reiterates its position that the withheld Memphis Police Department records maintained in Volumes XIII through XVII of "Appendix C," as well as the twenty-nine pages of Atlanta Police Department Records similarly at issue,<sup>7/</sup> are properly withheld from disclosure under 5 U.S.C. §552(b)(7)(D). Defendant respectfully urges that, upon its in camera review of these records, the Court should make such a finding and accordingly align itself with recent precedent in this Circuit as well as others. See, e.g., McCloskey v. Department of Justice, Civil No. 77-470 (D.D.C., June 14,


<sup>6/</sup> It may be discerned that, as a classic example of the type of coincidental development which can make even the simplest of lawsuits (which this certainly is not) exasperating, the investigative report privately transmitted to the Task Force by former police official Frank C. Holloman (see note 4 supra and accompanying text) also appears within this seventeen-page segment of documents. See Defendant's Report Exhibit C at 2-9. It must be stressed, however, that this investigative report was not obtained by the Task Force under subpoena together with the Memphis Police Department records withheld by defendant pursuant to 5 U.S.C. §552(b)(7)(D). See, e.g., Defendant's Report Exhibit C at 1-2.

<sup>7/</sup> See Defendant's Notice Of Filing, dated July 21, 1978, at 2 n.2.

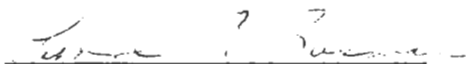
*Summa  
H. 101?*

1978) (slip opinion at 6) (attached hereto as "Defendant's Report Exhibit D"); Carroll v. Department of Justice, Civil No. 76-2038 (D.D.C., May 26, 1978) (slip opinion at 3) (attached hereto as "Defendant's Report Exhibit E").<sup>8/</sup>

Respectfully submitted,

  
BARBARA ALLEN BABCOCK  
Assistant Attorney General

EARL J. SILBERT  
United States Attorney

  
LYNNE K. ZUSMAN

Dated: July 21, 1978

  
DANIEL J. METCALFE

Attorneys, Department of Justice  
P.O. Box 7219  
Washington, D.C. 20044  
Tel: (202) 739-4544

Attorneys for Defendant.

<sup>8/</sup> See also Curry v. DEA, Civil No. 75-1416 (D.D.C., November 5, 1976) (slip opinion at 4) (attached to Defendant's Reply Memorandum In Support Of Its Motion For Summary Judgment as "Defendant's Exhibit J").

FRANK C. HOLLOMAN

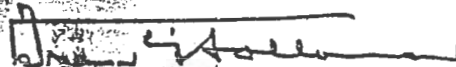
September 20, 1976

Mr. James F. Walker  
Attorney  
U. S. Department of Justice  
Safeway Building  
Room 856  
521 12th Street N.W.  
Washington, D. C. 20530

Dear Mr. Walker:

Pursuant to our telephonic conversation on the morning of September 17, 1976, I am enclosing a copy of a letter dated July 17, 1968, from Inspector G. B. Tines, Inspectional Bureau, Memphis Police Department, to Assistant Chief W. E. Routt entitled "Security and surveillance of Dr. Martin Luther King from time he arrived in Memphis on April 3, 1968, until he was assassinated on the evening of April 4, 1968" which, I hope, will be helpful to you in your investigation.

Sincerely,

  
Frank C. Holloman

FCH:GW  
Enclosure

744-72-662

36	SEP 23 1976
----	-------------

CERTIFIED 144091

SEP 23 1976

REGISTERED \_\_\_\_\_

DEFENDANT'S REPORT EXHIBIT A  
Civil Action No. 77-692

Memorandum of Telephone Interview of Frank Holloman

On September 15, 1976, the undersigned telephoned Mr. Frank Holloman, former Director of Fire and Police, Memphis, Tenn. I identified myself as a Department of Justice Attorney assigned to the Attorney General's Task Force investigating the FBI's investigation of the assassination of Dr. Martin Luther King, Jr., and stated that I would like to ask him some questions. Mr. Holloman said that he would cooperate in any way he could, and related the following information.

His home address is: 1567 Oakwood Drive, Memphis, Tenn. 38116 (telephone 901-346-4807). His office address is: Future Memphis, Inc., Suite 2909, 100 N. Main Bldg., Memphis, Tenn. 38103 (telephone 901-525-5395). Mr. Holloman said that he came to Memphis in August of 1959 and was the SAC of the Memphis FBI office until the Spring of 1960 when he stepped down and became a special agent because of health. He retired from the FBI in July of 1964. For about two years thereafter he was Director of Development at Memphis State University. In 1966 he became Executive Director of the Mid-South Medical Center Council for Comprehensive Health Planning. From January 1, 1968 until October 31, 1970, he was Director of Fire and Police for the City of Memphis.

As far as he can recall, Mr. Holloman said the Tactical units of the police department were organized in January or February of 1968 for the purpose of avoiding riots which other cities, such as Detroit, had experienced. After the Sanitation Workers Strike began, the units were used to escort garbage trucks in their efforts to pick up trash.

Mr. Holloman stated that Fire Station No. 2 on N. Main Street was used as a surveillance post in an effort to protect Dr. King. He said police officers had met Dr. King at the airport when he arrived in Memphis and offered him protection which he refused. Mr. Holloman believes Dr. King and his aides felt the police were attempting to spy on their activities in connection with the strike. Thus, he said, the police resorted to observing Dr. King and his group from the fire station. According to Mr. Holloman, this surveillance post had not been used before Dr. King arrived and refused protection. Mr. Holloman said a physical inspection of the general area was not made because the police did not know where Dr. King was planning to stay prior to his arrival.

DEFENDANT'S REPORT EXHIBIT B  
Civil Action No. 77-692

*These copies are the first I recall  
with the spiral binding visible  
at the left*

With respect to the removal of officer Edward Redditt from duty at the fire station surveillance post on the afternoon of April 4, 1968, Mr. Holloman stated that he was in a court hearing, relating to the injunction against further marches, until about 5:00pm. When he returned to his office he was advised that a threat had been made on officer Redditt's life. He does not remember whether Redditt was already in his office or whether he ordered him to come in at that time. Nevertheless, Holloman said he advised Redditt of the threat and ordered him to move his family into a motel under an assumed name. He does not know whether Redditt followed the orders. The information about the threat had been received by other officials, probably Chief of Police McDonald, while he was in court. Mr. Holloman said he does not know the source of the information, but recalls that it was from some government agency. After Dr. King was shot and the riots started he was busy restoring order to the city and the matter of the threat was out of his hands.

Mr. Holloman stated that he does not recall having any knowledge of the transfers of firemen Norvell Wallace and Floyd Newsom from fire station no. 2 on the day prior to Dr. King's assassination. He said he has since learned from questions asked him by newspaper people that they were transferred, but he had no knowledge of the transfers at the time.

In response to questions about informer coverage of the "Invaders", Mr. Holloman said that the only informer the Memphis police had was Marrell McCollough who had infiltrated the organization for the purpose of finding out what they were going to do.

Mr. Holloman indicated that he desired a copy of the memorandum of interview since he had read that the House of Representative was contemplating an investigation. He stated that he could possibly be interviewed by them and he would want to know what he had said to me. I advised Mr. Holloman that I did not think this would be a problem, but the request would have to be cleared with the Task Force Leader.

  
JAMES F. WALKER  
Attorney, Department of Justice

LEONARD T. LAFFERTY  
EXECUTIVE ASSISTANT

WILLIAM E. HAYNES  
JEWETT G. MILLER  
DON F. YOUNG  
EXECUTIVE ASSISTANTS

ASSISTANTS

DON A. DINO  
JOSEPH L. PATTERSON  
HARVEY HERRIN  
JOHN W. MERDITI  
JAMES C. HALL  
JAMES H. ALLEN  
THOMAS E. GRAVES  
T. E. CHAFFOLD  
LELAND J. MENABBE  
MICHAEL W. HUGHES  
ALAN E. GLENN  
JAMES W. HARRISON  
WILLIAM E. FRULLA  
HENRY P. WILLIAMS  
JOHN A. IRVINE  
W. FRED A. ALEY  
JERRY HARRIS  
RICHARD S. McPHEESE  
JAMES D. WILSON  
DAVID G. WADCO  
JOSEPH B. DAILEY  
WILLIAM H. TRAVIS  
THOMAS D. HENDERSON  
JAMES R. GIBTS, JR.  
WAYNE EDMONS  
KENNETH R. ROACH  
DON A. DRIVER  
J. C. McLIN  
JERRY T. STAUFFER  
A. J. ARCHIBALD  
DAN L. NEWSOM

MAJOR DIVISION  
DON D. STROTHER  
DIRECTOR  
1000 POLKBY AVENUE, SUITE 1002  
MEMPHIS, TENNESSEE 38103  
(901) 528-3181

JOHN L. CARLISLE  
E. L. HUTCHINSON, JR.  
GARROLL C. MANNON  
GEORGE A. WHITNEY  
JAMES D. ZACHARY  
CLYDE R. VERNON  
F. WARREN YOUNG  
GEORGE A. KING  
WM. DONALD HULTZ  
ROBT. S. McCULLOUGH  
DAVID N. McGRIFF  
BARRY H. MOORE  
CRIMINAL INVESTIGATORS  
(901) 528-3181

NON-SUPPORT DIVISION  
EARL E. FITZPATRICK  
DISTRICT ATTORNEY GENERAL  
(901) 528-3100

HUGH W. STANTON, JR.  
DISTRICT ATTORNEY GENERAL  
FIFTEENTH JUDICIAL CIRCUIT OF TENNESSEE  
COUNTY OF SHELBY

SHELBY COUNTY OFFICE BUILDING  
157 POPLAR AVENUE  
MEMPHIS, TENN. 38102  
PHONE (901) 528-3100



September 29, 1978

Mr. Fred G. Folsom  
Office of Professional Responsibility  
United States Department of Justice  
Washington, D.C.

RE: Request for Memphis Police Department  
Records, relating to the assignation of Dr. Martin Luther  
King, Jr.

Dear Mr. Folsom:

Your request concerning copies of certain documents re-  
lating to the above captioned matter has been forwarded  
to me by Attorney General Hugh Stanton.

The surveillance report that includes the information  
which has been previously been furnished Mr James Walker,  
of your office, is considered a part of the Homicide report.  
However, it is a separate report of its own, and consists  
of seven (7) pages. The overall Homicide investigative re-  
port is not that one might imagine, in as much as it con-  
sists of over five-hundred (500) pages of investigative  
work and is a very complete and thorough investigative  
report, compiled solely and under the direction of the Hom-  
icide Commander. This report does contain, and reflects  
that members of the Homicide Division did receive valu-  
able assistance from members of the Federal Bureau of  
Investigation. Further within this report mention is made  
in brief concerning the surveillance report, setting forth  
the information contained in said report.

DEFENDANT'S REPORT EXHIBIT C  
Civil Action No. 77-692




It has always been the policy of this office that no part of the file be released without a Court Order. However, in our endeavors to cooperate with your office, coupled with the fact that Mr. Walker has advised that members of your committee would not be returning to Memphis, an exception to this policy will be made, pertaining to the surveillance report, and a copy of same is herewith attached for your information.

As to the overall Homicide Investigative report, I would suggest that if your committee deems it necessary to obtain information from this report, that a member of your committee appear at this office, at an appointed time, wherein they would be allowed to review the Homicide investigative report.

Assuring you, as I have attempted to demonstrate to Mr. Walker of your office, that this office is willing to cooperate in every way possible.

Sincerely,

  
JOHN L. CARLISLE,  
CHIEF CRIMINAL INVESTIGATOR

JLC:rs  
encl-

MEMPHIS POLICE DEPARTMENT  
INSPECTORIAL BUREAU  
MEMPHIS, TENNESSEE

July 17, 1968

RE: Security and surveillance of Dr. Martin Luther King from time he arrived in Memphis on April 4, 1968, until he was assassinated on the evening of April 4, 1968.

Mr. W. E. Routh, Asst. Chief  
Inspectorial Bureau  
Building

Dear Sir:

This report is being submitted as per request of Mr. Frank C. Holloway, Director of Fire and Police, for his information concerning the above captioned subject.

In the early morning of April 3, 1968, we received information that Dr. Martin Luther King, Jr., would arrive in Memphis from Atlanta, Georgia, on Flight No. 331, Eastern Airlines, arriving in Memphis at 10:15 A.M., Gate 17, Memphis Municipal Airport.

On receipt of this information I instructed Det. E. S. Redditt and Ptm. W. B. Richmond to go to the Municipal Airport to observe and report when Dr. King arrived and try to ascertain the location where he would be staying while in Memphis. They were also advised to keep a continuing surveillance on Dr. King, so as to know who all he came in contact with.

The reason for surveillance being ordered was because Dr. King was a controversial figure plus the fact he had, according to our information, been meeting with local black militants while in Memphis on prior visits.

A short time after instructing Det. Redditt and Ptm. Richmond to go to the airport, I was advised by Chief J. C. McDonald that Chief W. P. Huston was sending a detail of men to be with Dr. King for security measures.

On April 3, 1968, I received a copy of report written to Chief W. P. Huston by Inspector Don H. Smith, who was in charge of the security detail for Dr. King, along with Lts. William Schultz, George Kelly Davis and Det. Ronald B. Howell. These men were also assisted by Inspector J. S. Gagliano and Lts. Hanby and Tucker. Inspector Smith's report reads as follows:

April 3, 1968, 8:30 A.M., I was instructed by Chief W. P. Huston to go to the Metropolitan Airport along with a detail of men who will be listed below for security purposes for Dr. Martin Luther King, Jr., who was to arrive in this city aboard Flight 331, Eastern Airlines at 10:15 A.M.

With me on this detail were Lt. William Schultz of the Homicide Bureau, Lt. George Kelly Davis and Det. Ronald B. Howell, of the Vice and Narcotics Bureau. I arrived at the Metropolitan Airport at approximately 9:15 A.M., April 3, 1968, and proceeded immediately to Gate 17, where Flight 331 from Eastern Airlines was to deplane.

On our arrival at Gate 17 at the Metropolitan Airport there was no one at this gate and only two passengers crossed the hallway at Gate 13 waiting an outgoing flight. At approximately 9:15 A.M. on April 3, 1968, a white

Female reporter and white cameraman arrived at Gate 17. A very few minutes later Mrs. Thomas Matthews, colored female, arrived at Gate 17 and during the conversation with Lt. George Kelly Davis she stated that she had come to the airport to pick up Dr. King. Mrs. Matthews stated that they had not asked for police to be assigned to Dr. King.

Between 9:15 A.M. and 10:33 A.M., which is the time Flight 381 arrived (Eastern Airline) in Memphis, a crowd of approximately 50 to 70 people had congregated at Gate 17 and in the hallway between Gate 17 and Gate 13. Some of the people who had congregated at this location were outbound passengers, Eastern Airline flights, and did not come to that location to greet Dr. King. The majority of the people congregated there were from the news media. There were approximately 15 to 20 colored males and females who were not with the news media.

After Dr. King deplaned at 10:33 A.M. (his plane being late) he held a short press conference in the hallway near Gate 17 at the Metropolitan Airport. Our dispatcher was kept advised of the approximate number of people who were congregating at Gate 17 and he was also advised the exact time Dr. King deplaned, and that the crowd assembled was orderly.

Shortly after Dr. King's press conference, he started toward the main lobby of the airport terminal and while walking down the hallway, the writer approached Reverend James Lawson and after identifying himself, asked Reverend Lawson if he would tell us where they were going on leaving the airport. Reverend Lawson stated, "We have not fully made up our minds."

Dr. King got into a grey with a black vinyl top Buick Electra bearing Tennessee License JF-9735, which was parked on the upper driveway at the Metropolitan Airport. This car was driven by Mrs. Thomas Matthews and Dr. King was in the front seat with her. There were three colored males in the rear seat of this automobile. There was also a yellow Lincoln Continental with a black vinyl top bearing Tennessee License NT-0030, which was occupied by several male coloreds who left the airport along with the Buick carrying Dr. Martin Luther King. The dispatcher was advised of the description of the cars and the license numbers, and the above mentioned officers followed, keeping the dispatcher advised of our location and our final destination, which was the Lorraine Hotel located at 406 Mulberry, arriving there at approximately 11:20 A.M. After arriving at the Lorraine Hotel, another cruiser occupied by Inspector J. S. Gagliano, Lts. Hamby and Tucker, arrived at this location at my request to assist in securing the area where Dr. King was staying.

At approximately 12:05 P.M., April 3, 1968, Dr. King left the Lorraine Hotel in the same black over gray Buick bearing Tennessee License JP-9735, driven by Mrs. Thomas Matthews, and the above mentioned officers followed this car carrying Dr. King to 534 E. McLemore, the Centenary Methodist Church, where the officers in Cruiser John 1 secured the front entrance to the church off of McLemore and David 1 secured the rear entrance off Edith.

Dr. King, in the same automobile driven by the same person, left 534 E. McLemore at approximately 2:15 P.M. and was followed by a white Cadillac with a black vinyl top bearing Tennessee License KC-0708 driven by Solomon Jones and an unknown colored male sitting in the front seat with the driver. The above mentioned officers followed these two cars back to the Lorraine Hotel where the entrances were secured by the officers who remained on duty at that location approximately until 5:05 P.M. Dr. King arrived at the Lorraine Hotel on the last occasion at approximately 2:25 P.M.

During the time we were on duty at the entrances of this hotel between 2:00 P.M. and 5:05 P.M., the Federal Marshal and some of his deputies arrived at this location and Dr. King along with some of his aides were served with an injunction. Approximately 30 minutes after this injunction was served on Dr. King and his aides a meeting was held in room 307 of the Lorraine Hotel between Dr. King, his aides and several attorneys.

It is not known by the writer if there were detectives assigned to this detail after 5:05 P.M. when we were pulled off, but it should be noted that at no time did Dr. King or anyone else ask for police protection while I was on this detail.

This concluded Inspector Don H. Smith's report.

It was not until April 10, 1968, that I received a report concerning Inspector Joe Gagliano's participation in this detail, as well as those assigned with him, Lts. J. C. Hamby and Joe Tucker. This report was written to Chief W. P. Huston and reads as follows:

April 3, 1968, at approximately 11:15 A.M., the writer received instructions from you that I was to meet Inspector Don Smith at Butler and Mulberry and assist him on the above captioned detail. I arrived at this location with Lts. J. C. Hamby and Joe Tucker around 11:25 A.M. and was briefed by Inspector Don Smith.

We advised me that Dr. King had been driven to the Lorraine Motel in a black Electra (black vinyl top and gray colored bottom) bearing Tennessee License JP-9735. We instructed me to take Lts. Hamby and Tucker and secure the Butler Street exit and to stay with Dr. King whenever he left this location. In the meantime we were to keep him under observation as best we could. He also told me that although he had requested Dr. King's schedule, he had been refused same.

The three (3) of us secured the Butler Street exit and at approximately 12:05 P.M. Dr. King and party left in the black and gray Electra bearing Tennessee License JP-9735, being driven by a colored female whom I later learned to be Mrs. Thomas Matthews. They came out the Butler Street exit and proceeded east on Butler, south on Second to Calhoun, east on Calhoun to Third, south on Third to McLemore, and then east on McLemore to 504 E. McLemore, which is Reverend Lawson's church. During this entire time this car was secured by Inspector Smith and his men, who followed immediately behind their Buick and we followed Inspector Smith's car. At this location I told Inspector Smith that I believed that there was an exit at the rear of this church and he instructed me to check and if so, to secure same.

After having secured the rear exit for about fifteen or twenty minutes, I noticed Gerald Fanion, male colored, enter the rear wing off Edith where he remained for approximately twenty or thirty minutes. When he came out, I motioned him over to our cruiser, at which time I requested that he try and determine for us what Dr. King's party's schedule was so that we could protect him. At this time Lt. Hamby told him, "We don't want anything to happen to you," and he answered, "I know what you mean," and he stated he would find out where they were going from here and would let us know. He went west on Edith on foot and returned a short time later, again entered the building, but never came back to inform us of Dr. King's party's intentions.

Around 2:15 P.M. we again followed Dr. King and his party west to Third Street off McLemore, then north on Third to the Hogue & Knott Super Market just north of Walker on Third where Dr. King and party parked briefly while

one of the male coloreds entered Motel X Knott and returned to their car. At this time Inspector Smith was able to get immediately behind Dr. King's car. Previously, there was a white 67 or 68 Cadillac bearing Tennessee license KC-6768, being driven by a male colored Solomon Jones, immediately behind Dr. King's car. We allowed this car to proceed between Inspector Smith's cruiser and ours. We went north on Third to Butler and west on Butler to the Lorraine Hotel, where we took up our same security stations.

We remained at this location until we were instructed by Inspector Don Smith that Chief J. C. Macdonald had ordered us to Headquarters at approximately 5:05 P.M., April 3, 1968. This was my only detail on Dr. Martin Luther King, Jr.

This concluded Inspector J. S. Gagliano's report.

The observations of Det. Redditt and Ptlm. Richmond on April 3, 1968, coincide with reports written by Inspector Smith and Inspector Gagliano, except go into more detail as to persons going to and from the Lorraine Motel-Motel complex while Dr. King was there, for they had an observation post in the rear of Engine House No. 4, located at Main and Butler overlooking the Lorraine Motel-Motel.

It should be noted at this point a remark made by Mrs. Thomas Matthews, as her name has been mentioned in the reports made by Inspectors Smith and Gagliano, and that is she stated, pointing her finger at Det. Redditt, "I am going to get you," or, "I am going to shock you." This is listed to show the attitude toward the police that some of Dr. King's associates had. It was also mentioned by Lt. Davis that Mrs. Thomas Matthews was the first colored person to arrive at Gate 17 at the airport and upon talking with her, trying to find out arrangements that had been made for Dr. King, she stated they had not invited any police and later she was overheard telling Dr. King that, "We are just not receiving any police protection," and Dr. King stated to Mrs. Matthews, "Well, as soon as I get time, I will see what I can do about it." It is believed that Mrs. Matthews and Dr. King did not know these remarks had been overheard by Lt. G. K. Davis.

Det. Redditt and Ptlm. Richmond left their observation post at 6:37 P.M., April 3, 1968, and went to the Mason Temple where Dr. King was to make an address to a mass meeting. On arrival at this location they were met by Reverend Malcomb Douglass Blackburn, MW, MO, residence 657 Woodlawn, who is Associate Minister at Clayborn Temple, and was quite active during the sanitation strike.

Reverend Blackburn called Det. Redditt aside and asked what he was trying to do to himself and when Redditt inquired as to what he meant, he stated that the word is out that you were over in the fire station near the Lorraine Motel spying with binoculars.

After Reverend Blackburn had talked to Det. Redditt, he then approached Ptlm. Richmond, shaking his hand, and stating that he wished he wasn't there, as this was the wrong place for him, because tension was already high enough.

The meeting at Clayborn Temple got under way at approximately 7:15 P.M., April 3, 1968, but Redditt and Richmond left at approximately 8:40 P.M. because they felt that Reverend James Lawson was going to make their presence known after remarks had been made concerning the shooting of Larry Payne, calling it cold blooded murder.

Page 5 - Security and surveillance of Dr. Martin Luther King.

I would like to make mention at this point that I have no idea as to why the security detail was removed from Dr. King after 5:05 P.M., April 3, 1968, as mentioned in Inspector J. S. Gagliano's report, as I was not conferred with concerning it. The surveillance detail, however, was again resumed at 10:30 A.M., April 4, 1968.

April 4, 1968, 10:30 A.M., Det. Redditt and Ptl. Richmond resumed their surveillance of the Lorraine Hotel-Motel complex, noting everything that went on concerning persons going to and from this location.

While at the observation post at Firehouse No. 4, Det. Redditt received a phone call from a woman who did not identify herself, stating, "You are doing your own black people wrong and we are going to do you wrong also."

During the time this surveillance was in progress Mr. Philip K. Manuel, who is with the U.S. Senate Investigating Committee for Senator McClellan, was in our office and he received a call to return a call to his office in Washington and in doing so, he was advised that a reliable informer of theirs in Mississippi had called advising them of a plan the Mississippi Freedom Democratic Party had made to kill the Negro Lieutenant here in Memphis and it was believed they could have been referring to Det. Redditt, for he had been in the thick of things since the beginning of the sanitation strike. Mr. Manuel was advised by his office that the plan had already been set in motion, but he could get no specific details because Mr. Jack Dross, his associate in Washington, had left the office without dictating a memo regarding this.

Mr. Manuel advised that his plane was to leave Memphis for Washington at 5:50 P.M. and that on arrival in his office the next morning, the particulars would be forwarded our office. NOTE: Information was received later from Mr. Manuel indicating that the Negro Lieutenant referred to was in Knoxville, Tennessee instead of Memphis.

Upon learning of this possible threat to Det. Redditt, he was pulled from the surveillance assignment and relieved of duty and sent home to be with his family and a police guard was set up at his home. Ptl. Richmond, however, remained on his post, continuing surveillance of the Lorraine Hotel-Motel.

Ptl. Richmond, while observing the motel, saw Dr. Martin Luther King at the time he was shot. He states that this was approximately 6:00 P.M. and at that time he heard a loud sound as if it were a shot and saw Dr. Martin Luther King fall back from the hand rail and put his hand up to his head. Upon observing this, he ran to the phone to report it, at which time he saw one of our tac units in front of the fire station, advising them that Dr. King had been shot, and at this time the dispatcher was made aware of what happened and all police units in the area began to converge on the scene.

At the time Dr. King was shot, there were two tac units and five cars in close proximity, which would give a minimum of 84 men in the area and a maximum of 52, as the tac units had anywhere from 12 to 16 men per unit and the cars had 4 men each assigned.

There was quite a lot of conversation at the Lorraine Hotel-Motel after police arrival as to how they got on the scene so fast, and it was even indicated that a policeman was responsible for the shooting. As a result of these remarks, I had Mr. Walter Iona Bailey, male Negro, who is the owner of the Lorraine Hotel-Motel, come to the Police Station on April 3, 1968, and

give a statement concerning our presence in the area, as he was keeping in close touch with him as to what was going on about Dr. King, and his associates.

In Mr. Bailey's statement he states that he knew that we were observing his place of business from the fire station located at Main and Butler and the only criticism he had heard of the police was they were wondering how the police got there so quick and he told the parties making the remarks that the police were watching from the fire house and that they were always over there.

On reviewing the reports after Dr. King's death that were written by Inspector Smith, Inspector Gagliano, Det. Redditt and T. L. Richmond, there were certain things that I felt needed clarifying, such as Reverend Blackburn's statement to Det. Redditt, that he knew that we were spying on the activities at the Lorraine Hotel and also from Mrs. Thomas Matthews, her statement that they had not asked for any police in connection with Dr. King's visit. Also, a memo that was written to Mr. Frank Holloman by Captain Sidney Cole and Lt. J. P. McMillan dated April 5, 1968, which stated they observed Reverend Lawson, Oscar Egan, J. Ciampa, Joe Paisley, Gerald Fanion and another male colored, whose identity was not obtained, in Mr. Holloman's office on his request and that this was at 1:10 A.M. and while in Mr. Holloman's office, Gerald Fanion made the statement that the strategy committee had considered asking for police protection for the Reverend Martin Luther King; however, had decided against it.

On April 11, 1968, I talked to Mrs. Thomas Matthews at her place of business, the Eureka Barber Shop on Park Avenue, ph. 324-0247, and she stated the same as Lt. Davis had mentioned in their report. She said she made the remark about the police being at the airport, for they weren't there the time before, and that on this occasion, however, referring to April 3, 1968, she saw Lt. Davis, Inspector Smith, Det. Redditt and his partner, referring to T. L. Richmond. Mrs. Matthews was asked to come to my office and give a statement, which she agreed to do, but never appeared.

On April 22, 1968, a statement was obtained from Reverend Malcolm Douglas Blackburn to the effect that he had spoken with Det. Redditt at Mason Temple, but didn't remember the exact content of their conversation, but he told him that he had heard a remark or remark that he had been observing the Lorraine Hotel with binoculars from in or near the fire house. Reverend Blackburn also stated that he had no knowledge of whether anyone had asked for police protection for Dr. King while in Memphis on April 3 and 4, 1968.

With reference to the memo concerning Gerald Fanion's remarks to Mr. Holloman, a statement was obtained from Gerald Fanion on April 24, 1968, wherein he stated that on April 3, 1968, while at the Centenary Methodist Church on McLenore he saw Inspector Gagliano and another gentleman he did not know and that he spoke to Inspector Gagliano, but cannot remember all the contents of the conversation, but he does remember being asked about Dr. King's schedule. He went on to state that he did not "assume" the responsibility of getting the information of Dr. King's schedule as requested by Inspector Gagliano.

When asked the question if he had been present on any occasion during strategy meetings pertaining to Dr. King's visits to Memphis and particularly his visit of April 3, 1968, was there any discussion with reference to asking

Page 7 - Security and surveillance of Dr. Martin Luther King.


for police protection for Dr. King. Mr. Fendon answered by stating he had heard this mentioned prior to his first visit March 22, 1968, and went on to state that Dr. King's itinerary on both visits to Memphis were not discussed in strategy sessions where there would be general knowledge to a lot of people. He has heard it mentioned that police protection is not a request of Dr. King's staff. In other words, it is not a policy to ask for police protection.

Mr. Fendon also makes mention that he had heard Det. Redditt had been watching the Lorraine Hotel-Motel from the fire station and remembered hearing that he had been removed from the fire station prior to Dr. King's assassination.

In response to the remarks Mr. Fendon is supposed to have made in the presence of Mr. Holloman, he stated he cannot truthfully remember these remarks; however, he might have said this, that it had been mentioned.

All data mentioned in this report, such as copies of reports, statements, etc., will be made a part of the Dr. Martin Luther King, Jr., surveillance file of April 3 and 4, 1968, maintained in the Inspectional Bureau office.

Respectfully submitted,

  
G. W. Jones, Inspector  
Inspectional Bureau

GPR/ok



RETURN TO SENDER  
 REGISTERED MAIL  
 REGISTERED MAIL WITH RECEIPT  
 REGISTERED MAIL WITH RETURN RECEIPT  
 REGISTERED MAIL WITH RETURN RECEIPT AND CERTIFICATE OF DELIVERY  
 REGISTERED MAIL WITH RETURN RECEIPT AND CERTIFICATE OF DELIVERY AND INSURANCE  
 REGISTERED MAIL WITH RETURN RECEIPT AND CERTIFICATE OF DELIVERY AND INSURANCE AND POSTNET  
 REGISTERED MAIL WITH RETURN RECEIPT AND CERTIFICATE OF DELIVERY AND INSURANCE AND POSTNET AND TRACKING SERVICE

ADDRESSEE'S NAME AND ADDRESS (PRINT OR TYPE)  
 Mr. Fred C. Folsom  
 Office of Professional Resp.  
 U.S. Dept. of Justice  
 Washington, D.C.  
 REGISTERED NO. 422979 CERTIFIED NO. INSURED NO.

SIGNATURE OF ADDRESSEE OR AUTHORIZED AGENT  
 Addressee  Authorized agent

DATE OF DELIVERY POSTMARK  
 RECEIPT (complete by addressee)  
 UNABLE TO DELIVER REASON:

OFFICE OF  
ROBERT W. STANTON, JR.  
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION  
U. S. DEPARTMENT OF JUSTICE  
400 BOND STREET, BUREAU BUILDING  
MEMPHIS, TENN. 38103



Mr. Grace G. Johnson,  
Office of Professional Responsibility  
United States Department of Justice  
Washington, D.C. 20530

FORM 090-73  
1-15-76  
POSTAGE GUARANTEED

MAIL RECEIPT

Date 10/11/76

No. 485879 ( ) Registered (  ) Certified  
( ) Insured ( ) Messenger

From Memphis, TN State Tennessee

City Memphis State Tennessee  
to David L. Williams  
1000 ...

Rec'd. by \_\_\_\_\_ Date \_\_\_\_\_  
Miles \_\_\_\_\_

at responsibility  
to be of no less  
500

United States District Court  
FOR THE

WESTERN DISTRICT OF TENNESSEE

To Hugh Stanton, Attorney General in and for Tennessee's  
Fifteenth's Judicial District, or his designated  
representative\*

You are hereby commanded to appear in the United States District Court for the Western  
District of Tennessee at 1058 Federal Building in the city of  
Memphis on the 3th day of November 1976 at 9:30 o'clock A.M. to

testify before the Grand Jury and bring with you the books, papers, records and  
documents relating to the James Earl Ray case detailed on the  
attached list; in your possession or under your dominion or  
control, directly or indirectly, officially or otherwise.  
(See Attached)

\*Designated and Qualified Representative being defined for these pur-  
poses as a person specially designated for the purpose of producing  
the records called for herein, who is familiar with, and prepared to  
testify concerning these documents and their purposes and inter-  
relation in the conduct of your office's business and affairs.  
This subpoena is issued on application of the United States.

Thomas F. Turley, Jr.  
United States Attorney  
1058 Federal Building, Memphis  
(321-4231)

A. FRANKLIN

Date October 20, 1976

By *Ben M. [Signature]*  
Deputy Clerk

1. Strike the word "and bring with you" on the subpoena in to require the production of documents or tangible things in which case the testi-  
facts and things should be designated in the blank space provided for that purpose.

RETURN

Received this subpoena at MEMPHIS, TENN. on OCT. 21, 1976  
and on OCT. 21, 1976 at MEMPHIS, TENN. (inserted in the  
within named HUGH STANTON, ATTORNEY GENERAL  
by delivering a copy to H.M. and/or being the former the only situation each of them is  
allowed by law.

Date Oct. 21, 1976.

By *James F. [Signature]*

Service Fees  
Travel \$  
Services \$  
Total \$

\* Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States,  
or an officer or agency thereof, 28 USC 1825, or in behalf of a defendant who is financially unable to pay such costs  
(Rule 17(b), Federal Rules Criminal Procedure).

Grand Jury Subpoena  
Hugh W. Stanton, Jr.  
Page Two

1. Statements - State v. James Earl Ray  
pages 1400 to 1523.
2. Follow up Investigation of the Scene,  
pages 3258 to 3292. Also loose attach-  
ments contained in volume.
3. James Earl Ray Supplementals, Attorney  
General's copy, pages 1536 to 1772.
4. Supplementary Report, James Earl Ray,  
pages 1524 to 1525.
5. Items from Volume I of Memos and Letters  
from Citizens as follows:
  - a. Item No. 89, page 3179, re:  
telephone information regarding  
C.B. Radio operator following  
white dancing.
  - b. Item No. 94, page 3184, re:  
Information from William Howard  
Aubin regarding speaking white  
members.
  - c. Item No. 98, page 3205, re: Martin  
Luther King Investigation.
  - d. Item No. 100, page 3256, re: detail  
with Dr. Martin Luther King, Jr.,  
April 3, 1968.
6. Items from Volume II of Memos and Letters  
From citizens as follows:
  - a. Item No. 129, pages 3313 to 3316, re:  
Information concerning citizens band  
radio conversation.
  - b. Item No. 145, page 3333, re:  
Rev. Martin Luther King Murder

Grand Jury Subpoena  
Hugh W. Stanton, Jr.  
Page Three

c. Items Nos. 180 and 181, pages 3375  
and 3376, re: latent fingerprints.

d. Item No. 186, pages 3385 and 3386,  
re: Memo No. 145.

7. Items from Envelope Enclosures as follows:

a. Item No. 1 re: Homicide Report.

b. Item No. 9, re: Inventory of Evidence.

c. Item No. 13 re: return of message to  
Memphis.

and 3570, re: latent finger prints.

4d. Item No. 138, pages 3385 and 3386,  
re: Memo No. 149.

7. Items from Envelopes Exhibited as follows:

4. Item No. 1 re: Homicide Report.

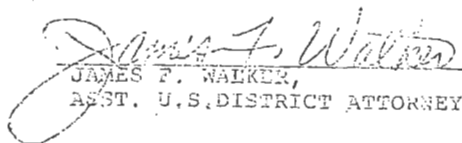
5. Item No. 9, re: Location of Tact Units.

6d. Item No. 15 re: return of Mustang to  
Memphis.

In answer to the attached subpoena, Barry H. Moore, Criminal Investigator, having been designated by the District Attorney General for the Fifteenth Judicial Circuit of the State of Tennessee, appeared at the office of the Federal District Attorney General in Memphis, Tennessee, and produced the documents set forth in the subpoena.

The Office of the District Attorney General for the Fifteenth Judicial Circuit of Tennessee has complied with the attached subpoena and I have received, into my custody, seven copies of all documents listed within this subpoena.

This the 21st. day of October, 1976

  
JAMES F. WALKER,  
ASST. U.S. DISTRICT ATTORNEY GENERAL

Memorandum Narrative to Expenditure of the  
Physical Evidence in Case of State of  
Kentucky v. James Earl Ray

On July 6, 1976, pursuant to an order issued by Judge William H. Williams of the Shelby County Criminal Court, team members Tolson and Walker inspected the physical evidence in the case against Ray.

The evidence is in the custody of the Clerk of the Shelby County Criminal Court and is inventoried in the attached lists dated March 12, 1969, titled "Evidence Not Offered through Witnesses and by Stipulation", and March 13, 1969, titled "Evidence in Ray Case." All of the evidence listed in the March 12th and March 13th lists was examined by Tolson and Walker, except the evidence contained in cardboard boxes numbers 2 and 4 on the March 13th inventory. The evidence not examined primarily consisted of the defendant's clothing, hair and fibers slides, and laundry tags. These items were not considered relevant to the inquiry.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

VINCENT F. McCLOSKEY

v.

Civil Action 77-470

UNITED STATES DEPARTMENT  
OF JUSTICE, et al.

FILED

JUN 14 1978

MEMORANDUM AND ORDER

JAMES E. DAVIEY, Clerk

I

Plaintiff is serving a life sentence in the United States Penitentiary, Leavenworth, Kansas, having been convicted of first degree murder, assault and conspiracy. The convictions arise out of the attempted robbery of a United States Mail truck in 1973. This suit is brought pursuant to the Freedom of Information Act, 5 U.S.C. §552 (FOIA), seeking access to all information pertaining to plaintiff in the possession of the Department of Justice,<sup>1/</sup> and the United States Postal Service.

<sup>1/</sup> By Order dated December 7, 1977 we granted the Motions to Dismiss of Harold R. Tyler, Deputy Attorney General and the Federal Bureau of Investigation (FBI) on the ground that neither was an "agency" under 5 U.S.C. §551. Plaintiff then alleged that a delay in the delivery of defendants' motions to dismiss had precluded him from filing his opposition thereto and accordingly asked that we reconsider our order. We have acceded to plaintiff's request in light of the opposition he has now filed. Though there is authority to the effect that the FBI is an "agency" within the meaning of 5 U.S.C. §551, See Hamlin v. Kelley, 433 F. Supp 180, 181 (N.D. Ill. 1977), where, as here, plaintiff's request for documents to the Department of Justice subsumes those made to the dismissed defendants, we continue to find their inclusion in this suit unnecessary.

DEFENDANT'S REPORT EXHIBIT D  
Civil Action No. 77-692

Currently before the Court are discovery and Vaughn Motions<sup>2/</sup> filed by plaintiff, defendants' Motions for Summary Judgment and plaintiff's Opposition thereto. We consider here the Motion for Summary Judgment submitted by defendant, Department of Justice (hereinafter defendant).

II

Plaintiff submitted his initial FOIA request to defendant on July 16, 1975. In processing this request, defendant ultimately determined that fifty-seven (57) documents were within the scope of plaintiff's request. Fourteen (14) of the documents have been provided to plaintiff. Defendant has withheld the remaining forty-three (43) documents in whole or in part, relying on various FOIA exemptions included in 5 U.S.C. §552(b).

In asserting the exemptions defendant relies on the affidavit of E. Ross Buckley, attorney in charge of the Freedom of Information Privacy Act Unit of the Criminal Division of the Department of Justice. The affidavit is attached to defendants' motion for summary judgment. Exhibit 11 attached to the Buckley affidavit consists of a detailed description of each document withheld, the specific exemption(s) claimed for withholding it, and an explanation of how each claimed exemption relates to a given document for which it is asserted. An even more detailed explanation is included at pages 5-8 of the affidavit. We view this affidavit as a satisfactory

<sup>2/</sup> See Vaughn v. Rosen, 157 U.S. App. D.C. 340, 484 F.2d 820 (1973), cert. denied 415 U.S. 977 (1974).

response to plaintiff's second Vaughn Motion<sup>3/</sup> and accordingly move to consider the appropriateness of the exemptions defendant has claimed in withholding the forty-three documents at issue.

A. Documents 1 - 15

These documents are duplicates of documents placed under seal on June 19, 1973 by order of the United States District Court for the District of New Jersey in Misc. No. 39-73 pursuant to 18 U.S.C. §2518(8). They are also the same documents sought by plaintiff in Carroll v. Department of Justice, C.A. 76-2038 (D.D.C.) and, as in that case, defendant here asserts 5 U.S.C. §552(b)(3) (exemption 3) as its basis for withholding them. In denying access to these documents the Court in Carroll noted:

<sup>3/</sup> Vaughn supra 484 F.2d at 826-828; See Mead Data Central v. Dept. of Air Force, 566 F.2d 242, 250-251 (D.C. Cir. 1977). Plaintiff, in addition to challenging the sufficiency of the itemization and indexing contained in the Buckley affidavit, also alleges that defendant has wilfully omitted from the affidavit additional documents in its possession which pertain to him. However plaintiff has provided no evidence to support his allegations of bad faith, and absent such evidence there is no need for defendant to submit additional information on the documents it is retaining. Cf. Weissman v. CIA, 565 F.2d 692, 697 (D.C. Cir. 1977). Plaintiff suggests that such evidence could be obtained if defendant were required to comply with his requests for the production of documents and for admissions. Assuming plaintiff's allegations of defendant's intentional omission of documents from the Buckley affidavit to be true, there is no reason to believe it would reveal through discovery what it has intentionally omitted in processing plaintiff's FOIA request. In any event, we find plaintiff's request for the production of documents consists either of documents which are the subject of this suit or of documents not relevant to this action and accordingly not properly discoverable. See Carroll v. Department of Justice, C.A. 76-2038 (D.D.C., Order of February 8, 1978); Rule 26(b)(1), F.R. Civ. P. Similarly, to the extent that plaintiff's request for admissions involves activities surrounding various criminal investigations, they too are beyond the scope of plaintiff's request and are not relevant to the subject matter of this action. Id.

Exemption 3 allows an agency to withhold materials 'specifically exempted from disclosure by statute' provided that the statute meets one of the requirements of the exemption. Section 2518(8) of Title 18 meets the requirement of exemption (b)(3)(A) in that it 'requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.' Once a district judge orders that the materials concerning a wiretap be sealed pursuant to §2518(8), the FBI has absolutely no discretion concerning disclosure of materials. Thus, 18 U.S.C. §2518(8) meets the standards of 5 U.S.C. §552(b)(3) and the sealed materials were properly withheld. See American Jewish Congress v. Kreps, No. 76-1559 at 8 (D.C. Cir. March 15, 1978). Carroll supra, Memorandum Opinion filed May 26, 1978 at 2-3 (Memo).

We concur in this analysis. Accordingly we find that these documents were properly withheld.

B. Documents 16 - 24

The Buckley affidavit (¶9a) indicates that documents numbered 16 - 24 consist almost entirely of information contained in the sealed documents numbered 1 through 15, that the small amount of information not contained in the sealed documents is not segregable, and accordingly that, as with documents 1 - 15 nondisclosure is warranted pursuant to exemption (b)(3). Defendant further asserts inter alia that documents 16-22 and document 24 are exempt under 5 U.S.C. §552(b)(5) in that they include (1) draft materials relating to grand jury proceedings and a criminal prosecution and are therefore protected as attorney's work product prepared in anticipation of litigation<sup>4/</sup>

<sup>4/</sup> NLRB v. Sears, 421 U.S. 132, 154-155 (1975); Mead Data Central v. Dept. of Air Force, 566 F.2d 242, 252 (1977) (MDC-I).

or (2) that they are "advisory opinions and recommendations . . . by which government policy is formulated."<sup>5/</sup> In addition, document 23, a one page memorandum from an Assistant Attorney General to the Acting Director of the FBI, is claimed to be exempt pursuant to 5 U.S.C. §552(b)(7)(C) (exemption (b)(7)(C))<sup>6/</sup> in that it contains the names of individuals suspected of criminal wrongdoing. Again, these documents are identical to those sought by plaintiff in Carroll, supra and for the reasons expressed therein we similarly find that they were properly withheld. Carroll, supra Memo at 4-5.

C. Documents 25 - 26

These two documents relate to a federal grand jury proceeding in the District of New Jersey entitled United States v. Thomas J. Carroll. Both documents were withheld pursuant to exemption (b)(3) in that disclosure is precluded by F.R. Crim. P. 6(e) which permits disclosure of matters occurring before the grand jury only (1) to government attorneys in the performance of their duties or (2) "when so directed by the Court preliminary to or in connection with a judicial proceeding or when permitted by the Court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment

<sup>5/</sup> MDC-I supra, 566 F.2d at 256.

<sup>6/</sup> This provision exempts investigatory records compiled for law enforcement purposes which if released would "constitute an unwarranted invasion of personal privacy."

because of matters occurring before the grand jury." These documents are also the same as those found by the Court in Carroll, supra Memo at 4-5 to have been properly withheld. Again, we concur in that result.

D. Document 27

This document consists of 90 pages of transcript of a New Jersey state grand jury proceeding and was furnished by state authorities with an expectation of confidentiality. Accordingly defendant asserts 5 U.S.C. §552(b) (7) (D) (exemption (b) (7) (D)) as authority for nondisclosure. Exemption (b) (7) (D) excludes from disclosure investigatory records compiled for law enforcement purposes which would "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 . . . confidential information furnished only by the confidential source."

In interpreting the term "confidential source" the Court in Church of Scientology v. Dept. of Justice, 410 F. Supp 1297, 1303 (C.D. Calif, 1976) held that "[the intent of exemption (b) (7) (D)] to protect against disclosure of confidential information extends to material provided by any confidential source including law enforcement agencies." (emphasis supplied). We concur in this interpretation, and accordingly find that document 27 was properly withheld on the ground that it was provided by a confidential source with the expectation of confidentiality.<sup>7/</sup>

<sup>7/</sup> The Court in Carroll, supra Memo at 6 made a similar determination with respect to this document.

E. Documents 28 - 35

Defendant represents that these documents relate to an authorization to seek immunity for an individual in connection with the criminal investigation of another individual, that the authorization has not been used, and the individual has not yet been prosecuted. Nondisclosure has been predicated on (1) the "deliberative process" portion of exemption (b) (5), MDC-I, supra 566 F.2d at 254 in that the documents reflect the Government's strategy in an as yet unprosecuted case and, (2) 5 U.S.C. §552(b) (7) (A) which exempts investigatory records compiled for law enforcement purposes the revelation of which would interfere with enforcement proceedings. Documents 28-35 are also said to contain the name of an individual suspected of criminal wrongdoing and accordingly nondisclosure is claimed under exemption (b) (7) (C).<sup>8/</sup>

We find the exemptions asserted by defendant with respect to documents 28 - 35 properly support their nondisclosure.

F. Documents 36 - 42

Documents 36 - 42 relate to authorizations which granted immunity to five individuals as part of the prosecution of plaintiff for his participation in the 1973 mail truck robbery. With the exception of such items as FBI numbers, social security numbers and other personal information concerning individuals other than plaintiff, these documents have been disclosed. We find that defendant properly relied on exemptions (b) (7) (C) and (D) in deleting information which either would constitute an unwarranted invasion of personal privacy or would disclose the identity of a confidential source.<sup>9/</sup>

<sup>8/</sup> See note 6 supra.

<sup>9/</sup> The documents were found to have been properly withheld. Carroll supra. Memo at 6. (Documents 36-42)

G. Document 43

With the exception of FBI identification numbers of individuals other than plaintiff, this document has been released to plaintiff. These deletions were properly made pursuant to exemption (b) (7) (C). Carroll, supra Memo at 6. (Department of Justice Document No. 36).

III

In view of the foregoing, defendant Department of Justice's Motion for Summary Judgment should be, and the same hereby is granted.

It is so ORDERED this 14<sup>th</sup> day of June, 1978.

---

footnote 9 continued

29-35 in Carroll).



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THOMAS JOSEPH CARROLL,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE, et al.,

Defendants.

Civil Action No. 77-2096

FILED

MEMORANDUM OPINION

This matter comes before the court on the Federal Bureau of Investigation's and the Department of Justice's motions for summary judgment. The plaintiff in this Freedom of Information Act suit, 5 U.S.C. § 552, appears to be presently in possession of the United States Patent, Design, Trademark, and Copyright Office's records which concern information in the defendant's files concerning his participation in the hijacking of a rail truck and the homicide of a Postal Service guard and other cases. The FBI's motion will be denied first.

The FBI has eight "main files" concerning investigations involving the plaintiff and 18 additional documents that contain references to the plaintiff. Approximately 431 pages of documents have been released by the FBI to the plaintiff on three separate occasions. The FBI claims exemptions 1, 2, 3, 7(C), 7(D), 7(E), and 7(F), 5 U.S.C. §§ 552(b)(1), (2), (3), (7)(C), (7)(D), (7)(E), (7)(F), in withholding other documents requested by the plaintiff and in making deletions from released materials. In asserting these exemptions the FBI relies on the affidavit of Special Agent John F. Loome, Jr. attached to its motion for summary judgment. The affidavit reveals that the FBI has in fact withheld materials classified pursuant to Executive Order 11652 that are exempt

DEFENDANT'S REPORT EXHIBIT E  
Civil Action No. 77-692

from disclosure under 5 U.S.C. § 552(b)(1).

The FBI utilizes exemption 2 "to delete FBI symbol numbers used to characterize confidential sources and informants, and words and statements used to designate the internal transmittal of one document." Exemption 2 allows the withholding of material "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. § 552(b)(2). The FBI's reliance on (b)(2) to delete administrative markings appears misplaced. The Bureau is not sure these markings could identify sources protected by exemption 7(D) or classified material that is exempt under (b)(1). The Bureau also contends that exemption 2 was only used where it was necessary to prevent harm to the FBI's investigative function. If this is the case, the FBI should rely on exemptions 1, 7(D), and 7(E) rather than exemption 2 which only relates to personnel rules and practices. The deletions at issue here do not involve routine matters such as parking, lunchrooms, and sick leave that are covered by (b)(2). See Vaughn v. Rosen, 523 F.2d 1160, 1163-43 (D.C. Cir. 1975); Fonda v. CIA, 434 F. Supp. 498, 502 (D.D.C. 1977). Therefore, the court will order the FBI to review the documents where the (b)(2) exemption was invoked to determine whether another exemption applies or the deleted material should be released.

The FBI properly asserts exemption 3 to withhold an affidavit and wiretap material that were sealed by an order of the United States District Court for the District of New Jersey pursuant to 18 U.S.C. § 2318(8). Exemption 3 allows an agency to withhold materials "specifically exempted from disclosure by statute" provided that the statute meets one of the requirements of the exemption. Section 2318(8) of Title 18 meets the requirement of exemption (b)(3)(A) in that it "requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue." Case 4

District Judge orders that the materials concerning a wiretap sealed pursuant to § 851(b), the FBI has absolutely no discretion concerning disclosure of the materials. Thus, 5 U.S.C. § 552(b)(8) meets the standards of 5 U.S.C. § 552(b)(3) and the sealed materials were properly withheld. See American Jewish Congress v. Krass, No. 75-1849, at 3 (D.C. Cir. March 15, 1973). The FBI should release, however, the case number in which the order was entered by the District Court for the District of New Jersey sealing the materials.

Exemption 7(C) allows an agency to withhold "investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would ... constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). The affidavit filed by the FBI indicates that this exemption was properly utilized to withhold from disclosure: 1) the identities of and information about individuals mentioned in documents concerning the plaintiff; 2) the names of FBI agents and employees; and 3) the names of local law enforcement officers.

Exemption 7(D) permits the deletion from investigatory records of material that would:

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...

5 U.S.C. § 552(b)(7)(D). The Bureau has invoked this exemption to withhold the identity of and information supplied by confidential sources. The FBI properly utilized this exemption to withhold material when there were express or implied assurances of confidentiality given to the sources. Among those receiving protection were: 1) ordinary citizens; 2) officials of local law enforcement agencies; and 3) established informants who report to the FBI on a regular basis. The affidavit supplied by the FBI indicates that exemption 7(D) was properly invoked to protect confidential sources and information.

Finally, the FBI has deleted and withheld information pursuant to exemptions 7(D) and (F), which provide that investigatory records compiled for law enforcement purposes need not be disclosed where production would "disclose investigative techniques and procedures or endanger the life or physical safety of law enforcement personnel." 5 U.S.C. § 552(b)(7)(E)(F). The affidavit provided by the Bureau indicates that material that would reveal specialized investigative techniques has been properly withheld. The affidavit also shows that the FBI properly deleted the names of FBI Special Agents and other law enforcement personnel in order to protect their lives and physical safety. Therefore, the FBI's motion for summary judgment will be granted except as to those documents where the (b)(2) exemption was invoked. The FBI will be ordered to review the documents that were withheld and the deletions pursuant to exemption 2 to determine whether the materials are exempt under 5 U.S.C. § 552(b)(1), (7)(D), or (7)(E). If the materials are not protected by those exemptions, they should be disclosed.

In its motion for summary judgment, the Department of Justice relies on exemptions 3, 5, 7(A), 7(C), 7(D), and 7(E) in withholding 36 documents in whole or part. The Department's utilization of exemption 3 is similar to the FBI's. The Department has properly withheld materials sealed pursuant to a court order under 18 U.S.C. § 2518(8)(b). The Department also has not disclosed materials that are identical or nearly identical to materials under seal - i.e. drafts and summaries of documents submitted concerning the wiretaps that are now under seal. These documents were properly withheld and to the extent that they are not identical to sealed documents, the affidavits indicate that the material is not reasonably segregable. The Justice Department

also has properly relied on exemption 5 to withhold grand jury material that may not be disclosed under Federal Rules of Criminal Procedure 6(e).

Exemption 5 allows an agency to withhold:

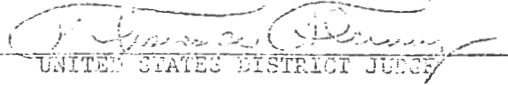
inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency ...

5 U.S.C. § 552(b)(3). The Justice Department asserts this exemption in refusing to disclose: 1) draft materials relating to grand jury proceedings and a criminal prosecution that are protected as attorney work product; and 2) predecisional recommendations and opinions that summarize and analyze wiretap applications. These materials also were properly withheld. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 154 (1975); Head Data Central, Inc. v. Department of the Air Force, 566 F.2d 242, 252-55 (D.C. Cir. 1977).

Document 28 indexed by the Department is an Organized Crime and Racketeering computer printout "profile" of the plaintiff. The Justice Department refuses to disclose the profile and relies on exemptions 7(A), (C), (D), and (E) in support of its refusal. The Department's refusal is proper because release of the material would: 1) interfere with enforcement proceedings, which is covered by exemption 7(A); 2) constitute an unwarranted invasion of personal privacy as to individuals named in the profile, which is covered by exemption 7(C); 3) disclose the identity of confidential sources and confidential information, which is covered by exemption 7(D); and 4) reveal computer techniques that are investigative techniques covered by exemption 7(E). The Justice Department official's affidavit fully sets out the nature of the information withheld and the basis for the claimed exemptions. See Buckley Affidavit at 7-11. Therefore, the court will uphold the Department's refusal to disclose.

The Department also relies on exemption 7(C) to withhold documents and portions of documents that are investigatory records where disclosure would "constitute an unwarranted invasion of personal privacy." The Justice Department properly invoked this exemption to withhold documents that: 1) indicate possible criminal activity by individuals other than the plaintiff; and 2) contain personal information, such as social security numbers, of individuals other than the plaintiff. Thus, the Department's refusal to disclose will be upheld.

Finally, the Department cites exemption 7(D) in support of its refusal to reveal confidential sources and confidential information supplied by confidential sources. This exemption has been utilized to withhold: 1) the identity of confidential informants; 2) a transcript of a state grand jury proceeding that was furnished by state authorities with an expectation of confidentiality; 3) information provided by a confidential source in document 26; and 4) the identities of two institutions that provided information on the basis of implied assurances of confidentiality and information that would reveal their identities. The affidavit supplied by the Department indicates that this exemption was properly applied to withhold the information described above. Therefore, in accordance with the discussion above the Department of Justice's motion for summary judgment will be granted.

  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES JOSEPH CARROLL,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE, et al.,

Defendants.

Civil Action No. 76-2020

FILED

JUDGMENT

JAMES F. DAVIS, Clerk

In accordance with the Memorandum Opinion filed with this  
Judgment, it is, by this court, this 26<sup>th</sup> day of June  
1976,

ORDERED, ADJUDGED and DECREED that the defendant FBI's motion  
for summary judgment be, and the same hereby is, granted except  
as to the information withheld pursuant to exemption (B)(2)  
and the case number in which an order was entered sealing wiretaps  
materials and with respect to the information withheld pursuant  
to (b)(3); the FBI shall review the data to determine whether it  
should be disclosed or withheld pursuant to another exemption, within  
15 days; and it is further

ORDERED, ADJUDGED and DECREED that the Department of Justice's  
motion for summary judgment be, and the same hereby is, granted  
in its entirety; and it is further

ORDERED that another status call in this case shall be held  
on the 9<sup>th</sup> day of September, 1976 at 9:15 a.m.

*James F. Davis*  
UNITED STATES DISTRICT COURT