

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

Civil Action No. 77-692

DEPARTMENT OF JUSTICE,

Defendant.

DEFENDANT'S FINAL MEMORANDUM^{1/}

Late in the afternoon on Tuesday, July 25, 1978, plaintiff served upon defendant his second recent "Plaintiff's Memorandum To The Court," which had been filed with the Court earlier that day. Though time does not permit a more comprehensive response, defendant wishes to respond to plaintiff on the following five points:

1. Although one particular street map obtained by the Department of Justice's Martin Luther King, Jr. Task Force ("Task Force") under subpoena was published as an exhibit to the Task Force Report,^{2/} the two other exhibits which have been similarly cited by plaintiff (Exhibits 2 and 3 of "Appendix A") are clearly records which were obtained by the Task Force in the manner in which it obtained almost all of the records used in its work -- directly from the

^{1/} It may correctly be noted that the title of this pleading, although perhaps a betrayal of naive presumptuousness, is in fact more a reflection of defendant's weary optimism at this juncture of this lawsuit.

^{2/} See Defendant's Notice Of Filing, dated July 21, 1978, at 1 n.1; see also Task Force Report at 39.

files of the Federal Bureau of Investigation. ^{3/}

2. Plaintiff has at this late stage in the lawsuit quoted from a document released to him as part of "Appendix B" in one last attempt to disprove the confidentiality which surrounded the transmittal of Memphis Police Department documents in this case. See Plaintiff's [Second] Memorandum To The Court at 1 and Plaintiff's Exhibit 9. It is respectfully suggested, however, that the passage which plaintiff regards as so profound^{4/} is on its face nothing more than a reflection of a local law enforcement official's anticipatory equivocation concerning his potential insistence upon a subpoena in connection with the transmittal of important documents. What plaintiff blithely ignores in this connection is the fact that a subpoena such as we have in this case is just one formal mechanism by which confidentiality (which, indeed, is the real issue under Exemption 7(D)) can be assured. The existence of the subpoena in this case memorializes this assurance of confidentiality. Clearly, an indication that it may not have been agreed upon from the outset as the most appropriate transmittal mechanism simply cannot detract from that fact.

3/ It should be noted that these two exhibits are in no way referenced in the subpoena description of the Memphis Police Department Records. Most significantly, however, the Task Force Report textual references to these three exhibits make it clear that Exhibit 1 was obtained from the "State [sic] Attorney General," while Exhibits 2 and 3 were not. (In order that the record in this action may be complete, the pages pertinent to all three of these exhibits are attached hereto as "Defendant's Final Exhibit A," "Defendant's Final Exhibit B," and "Defendant's Final Exhibit C," respectively). Compare Defendant's Final Exhibit A with Defendant's Final Exhibits B and C.

In fact, the third exhibit is even identified in the Report with a Memphis Field Office FBI file. See Defendant's Final Exhibit C.

4/ The language seized upon by plaintiff is the following:

Mr. Stanton said he was not saying that he would not give us copies in the absence of a subpoena.

Plaintiff's Exhibit 9.


3. Although a member of District Attorney General Stanton's staff did forward a particular investigative report to the Task Force long in advance of the transmittal of Memphis Police Department records under subpoena,^{5/} it nevertheless remains a fact that this investigative report had "previously been furnished" to the Task Force by a third party, as is even reflected on the face of the transmittal letter cited to by plaintiff. See Plaintiff's Exhibit 10 (also pages 1-2 of Defendant's Report Exhibit C) at ¶2.

4. With regard to information withheld by defendant pursuant to Exemption 7(C) of the FOIA, plaintiff has advanced the curious dual notions that the Supplemental Affidavit Of Michael E. Shaheen, Jr. ("Supplemental Shaheen Affidavit") is somehow deficient and that "the information on Dr. King was [not] compiled for a law enforcement purpose." Plaintiff's [Second] Memorandum To The Court at 2. As regards the former notion, defendant can observe only that the Supplemental Shaheen Affidavit embodies the attestation of an appropriate official to defendant's careful determination that the information at issue is exempt from disclosure. See Supplemental Shaheen Affidavit at ¶5. As regards the latter notion, defendant is candidly at a loss to understand the motivation behind its articulation, unless plaintiff has inexplicably overlooked the fact that -- at the very least -- the investigative work of the Task Force, and its compilation of investigatory records, involved a quite specific law enforcement purpose.

^{5/} See Defendant's Report To The Court at 3 n.6.

5. Finally, defendant considers it appropriate at this juncture to emphasize the fact that it has endeavored in this lawsuit to be immediately and comprehensively responsive to all questions, irregularities or concerns raised by both plaintiff and the Court. In fact, defendant has in recent months maintained a "standing offer" to plaintiff that any aspect of this case would be personally investigated by defendant's counsel upon plaintiff's specific request, an offer which has been accepted and satisfactorily employed by plaintiff on more than one occasion. Defendant regrets only that plaintiff did not avail himself of this mechanism prior to the abrupt filing of his first recent memorandum to the Court.

Respectfully submitted,


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Dated: July 26, 1978

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Defendant's Final Memorandum, with exhibits, was served upon plaintiff pro se by deposit of a copy thereof in the United States mail, first class mail, postage prepaid, addressed to James H. Lesar, Esq., 910 16th Street, N.W. Washington, D.C., 20006, on this 26th day of July, 1978.


DANIEL J. METCALFE

These units were organized for the purpose of avoiding riots which other cities, such as Detroit, had experienced (Interview of Frank Holloman, former Director of Fire and Police for the City of Memphis, September 15, 1976, App. B). Documents obtained from the State's Attorney General (Item 9 from MPD Miscellaneous Records) show that on the evening of April 4, 1968, at the time Dr. King was shot, there were nine tactical units in service at various locations as follows:

<u>Tact Unit No.</u>	<u>Street Locations</u>
6	Thomas and North Parkway
8	Jackson and Watkins
99	Chelsea and Watkins
10	Main and Butler
11	Georgia and Orleans
12	Trigg and Latham
13	Bellevue and Effie
17	Union and Bellevue
18	Fourth and Gayoso

In addition to the tactical units, the documents obtained from the State's Attorney General show that there were ten regular police cars (with 3 to 4 men per car) in the general area of the Lorraine Motel. These cars were at the following locations at the time Dr. King was shot:

<u>Location</u>	<u>Car No.</u>	<u>Street Locations</u>
224		Main and Beale
228		Third and Poplar
232		Fourth and Butler
230		Union and Front
236		Third and Belz
245		Second and Gayoso
247		Crump and Barton
365		Lamar and Bellevue
367		Poplar and Cleveland
369		Linden and East

The map (Part of Item 9 from MPD Miscellaneous

Records, see App. A, Ex. 1) shows that Tact Units 10 and 18 were within a radius of one mile of the crime scene (200 block of Mulberry Street) at the time of the shooting; and Tact Units 6, 11 and 12 were within a radius of two miles of the scene. Tact Units 7, 14, 15 and 16 were located outside the boundaries of the map and are not shown. Cars number 224, 230, 232, 245 and 247 were within a radius of one mile of the scene and cars number 228 and 369 were within a radius of two miles. However, cars number 236, 365 and 367 were outside the boundaries of the map.

Particular emphasis is given to Tact Unit 10 and the activities of its men, as this unit was located at Fire Station No. 2 (S. Main and Butler) at the time of the

locations in the fire station drinking coffee, making telephone calls, etc. Patrolman Richmond, who was manning the surveillance post in the rear of the station, yelled throughout the station that Dr. King had been shot. The members of the tact unit, some of whom had heard the shot, all ran out the north side of the fire station and then east toward the rear of the fire station and the Lorraine Motel. (See diagram of crime scene, App. A. Ex. 2).

Patrolman Douglass, who had remained in the lead car to monitor the radio, heard the shot when it was fired. He immediately got out of the car and ran toward the rear of the fire station with the other men. After Patrolman Douglass realized what had happened, he returned to the lead car, along with Patrolman Wright, and radioed the dispatcher that Dr. King had been shot. Douglass and Wright then drove the lead car south on S. Main to E. Butler, east on E. Butler to Mulberry and north on Mulberry to the entrance of the Lorraine Motel. Douglass and Wright later drove the car, accompanied by one or two other unidentified officers, north on Mulberry to Huling, west on Huling to S. Main and south on S. Main to the front of the buildings located just north of the fire station. */

*/ There are conflicts in the statements of Douglass, Wright and Ghormley. Douglass stated that Ghormley and other unidentified officers got in the car with him at the fire station and they drove to the Lorraine Motel. According to Wright's version, he and Douglass left the fire station together and picked up one or two other unidentified officers at the Lorraine Motel. On the other hand, Ghormley claims he turned around at the concrete wall at the rear of the fire station and ran to the front of the station and then north on S. Main Street.

B. The FBI Investigation Of The Assassination

1. The Department of Justice Response and FBI Performance

a. The Murder. At approximately 6:00 p.m. on April 4, 1968, Dr. Martin Luther King, Jr., was standing on the balcony outside of his room at the Lorraine Motel in Memphis, Tennessee. Moments later, Dr. King was shot by a high power rifle and then rushed to St. Joseph's Hospital. At 7:05 p.m. he was pronounced dead. The cause of death was a bullet wound which tore the major neck blood vessels and severed the spinal cord at the root of the neck (Memphis 44-1987 Sub sec. 1-13, and see autopsy report, App. A, Ex. 3).

b. Top Priority Investigation Ordered. The Memphis Police Department was immediately aware of the King assault and promptly notified the FBI Memphis Field Office headed by SAC Robert G. Jensen. SAC Jensen telephonically relayed the information to Washington where Director Hoover and Attorney General Clark were informed. The Memphis Field Office was directed on the evening of April 4, 1968 to immediately conduct a full investigation of the matter as a possible violation of 18 U.S.C. 241, the civil rights conspiracy statute (HQ 44-38861-109).