

Civil Action 77-1997, Government Reply Memorandum

Introduction, page 1

This seems to state pretty explicitly that the CIA does have the "seven exhaustive categories of records pertaining to James Earl Ray and Dr. Martin Luther King, Jr." asked for in the request. It says these records "are maintained by the defendant, Central Intelligence Agency (CIA)."

Page 2 begins with the allegation that the prior affidavits "fully identify and justify withholding of the documents at issue herein."

At best, this is a tricky formulation because the affidavits do not address some of the items of the request.

"The Savige Affidavit attests to the completeness of the search conducted of the CIA records in response to plaintiff's request ..."

Here they are particularly vulnerable because, whether or not Savige was involved as I think he was, earlier the CIA gave me some records that should have been provided in response to this request and they have not been provided in response to this request.

At the bottom of page 2, "62 classified referrals are not the subject matter of this lawsuit as the classifying authority is not a party to this action. (discussion below)"

This actually is not true because under the NSKID that controls referrals of classified documents the agency that has them in its files is required to respond and to regard the documents as its own if the agency to which referral is made has not responded within thirty days.

Page 3, top, "Defendants have established that all identifiable information located pursuant to a complete and exhaustive search of the CIA files has either been released to plaintiff, has been properly withheld pursuant to exemptions 1, 3, 6, 7c or 7d of the FOI, or properly referred or otherwise accounted for by the originating agency."

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This does not include some items of the request and therefore is not truthful. There is total noncompliance with some Items of the request.

page 3, bottom, "The Savige Affidavit (para. 5) states:

Based upon knowledge available to me in my official capacity, I believe all identifiable records have been retrieved from those CIA records systems that could conceivably contain responsive documents. ..."

This is not a first-person affidavit. It is not an affidavit or a statement made based on personal knowledge which would be by the person who made the search. The fact is that we have copies of CIA records that are called for by the complaint that have not been provided. I would move for the expunging of the Savige affidavit on this ground.

In connection with the allegation of thoroughness of the search, perhaps this is the time to make use of the record they accidentally gave me in which they disclose how they were able to lie to higher authority, the general counsel, by withholding from him proof of the existence of records not provided. I think it is pertinent at this point. I would be reluctant to disclose the contents of the entire document or to provide a copy of it, however.

Page 6, a little bit above the middle, "It is readily apparent that the subject of the Memorandum is not Dr. King or Mr. Ray but the plaintiff himself. It is therefore eminently reasonable that it would be indexed and filed by reference to plaintiff and therefore only retrievable through his name.^{8/}" The footnote is, "Second Gambino Affidavit, paragraph 2."

I do not recall the language of the Gambino affidavit but I think we should check it to see if the Gambino affidavit states and states on competent basis that the book FRAME-UP was not referenced to the King assassination or to James Earl Ray when both are in its title.

In connection with the argument that follows, I think it would be a good idea to check what they did retrieve and compare it with their representations that begin on page 6 that they do not retrieve information relating to King and Ray if it

is written by someone else, which is what their representation amounts to.

In this they ignore Item 2 of the request which reads, "All records pertaining to the assassination of Dr. Martin Luther King, Jr."

Then there is Item 5, "All collections of published material on the assassination of Dr. Martin Luther King, Jr.," which certainly includes the only book published in opposition to the official account.

"6. All analyses, commentaries, reports or investigations on or in any way pertaining to any published material on the assassination of Dr. Martin Luther King, jr., or the authors of said materials." This certainly includes FRAME-UP and me.

On the basis of these items of the complaint, it seems to me that all of their argument based on the Goland and Fonda cases could not be more immaterial. The records that are withheld are not peripheral. The records that are withheld are precisely those that are asked for.

Page 8, middle, I am criticized for my alleged "practice of withholding information from agencies and the courts that would facilitate the identification of information that he seeks." If my request is for reasonably identifiable documents, I have done all that the law requires of me. I think, however, that what I said before about attaching proof of deliberate CIA withholding here becomes particularly appropriate in view of what they quote me as having said, that they withhold until I provide proof that they are withholding and then they give me only what they think I can prove.

Here I would note that the CIA did not ask for any explanation or clarification of my request. I would also note that from its own representation that it had too much to copy for me it knows very clearly who wrote books and other articles having to do with the assassination. It never asked me to specify which authors. It didn't even offer me a selection of the authors. As I believe I noted, the list they provided avoided the books. At no point did they say they even consulted their library as best I recall. I don't think there is any change in or expansion of the request as is alleged on page 8.

With regard to footnote 12 on page 8, their representation that I expanded my request to include "materials on the life of Dr. King as well," I note that information they did provide, voluntarily from their own interpretation of my request, includes "materials on the life of Dr. King." These are the records having to do with their domestic intelligence operations.

There thus is no "reformulation" as argued on page 9 at the top.

Page 9, footnote 13, I don't know what the law says about these matters but I believe that the NSKID is pretty clear that "agency records" are "within the control of the defendants" if after 30 days a referral of a classified documents has not been acted upon. I see no citation of authority for saying they are not "agency records."

If I correctly understand what they are driving at on page 12, and especially in footnote 14, "Plaintiff therefore may have the opportunity to relitigate the denials of the documents in question herein," I think that one point we ought to make is that it took about two years for the CIA to process the referrals of the FBI if they have processed all of them. I think a second point, if you regard their point as not particularly persuasive, is that after all of this stalling with requests that are now almost ten years old it doesn't seem to be reasonable to say that I can have an opportunity to relitigate. The law is one that requires compliance within ten days except under unusual circumstances. I don't think ten years and ten days are synonymous and then saying, well, you can do it all over again.

On page 13 at the top where they say they have applied "the broadest interpretations offered to the description" provided, they rebut their earlier argument that they are entitled to take a narrow interpretation of the request having to do with other writers.

On page 14 I'm not going to try to make any legal argument, but it strikes me that, although I could be remembering the affidavits incorrectly and have not read the newest affidavits, they fail to say, in stating that documents were classified

pursuant to the Executive Order, that they were classified at the time of creation and that they bear the proper markings. We have long experience with ex post facto classification and this morning I read you an excerpt from the NSKIDs which says that if they were not classified properly they go into the General Declassification Schedule. So perhaps it would be good to see if any of these affidavits answer what you said about not having been properly classified or about providing the proof that they had been properly classified with partial copies of the documents.

I see that at the bottom of the page they address this, claiming you have no authority, and I read it to you this morning.

I'm no judge, but I think their language is tricky and evasive. I suggest that you read it very carefully to see if you can detect what I feel I sense, that they are vulnerable here.

I also don't see why they can't provide a couple of examples if they were classified properly. They merely say we have to presume it.

Page 17, footnote 18. They seemed to be uptight about what I think is a perfectly legitimate argument, that there has to be a disclosure or there has to be something secret to withhold. What they are really arguing is that they can misinterpret a statute to withhold the public domain. I see no other interpretation that can be placed upon their semantics, the word they use. § Their citation of Halkin above the footnoting on page 18 can hardly apply to James Earl Ray as they pretend it to because he had no known international communications. It can't apply to King because he's dead and can't say how many or which ones or to whom. In short, there is no possibility of disclosure in the sense of the Halkin decision. There thus is no possibility of harm to what the NSA claims.

On page 22 they quote from the Gesell transcript and quote incompletely and dishonestly. The judge misunderstood and thought that when you wanted to call me to ask me what I knew, he ignored the part whether or not it is public, what he knows is public in what you said, and when you corrected the judge, that also is omitted in their quotation of the transcript. However, I think that in connection with this

you ought to point out that her division had insisted upon using me as its consultant in my case against it on the very ground that I could do for it what the FBI could not. Now whether or not that is relevant in this particular case, I think that it will tend to tell the judge and his clerk something about the approach these people are taking and I think you should consider using it.

They say in the footnote "(Attached hereto in pertinent part as Exhibit L)." with regard to the Gesell transcript. These exhibits are not marked as you tell me the clerk requires them to be marked and I can't find this one. Perhaps I will as I go through them page by page but when they say "in pertinent part," I think we ought to be careful to be certain that they haven't excerpted it, retyped it and used inappropriate excerpts.

Page 24, IV, they lay claim to exemption 7, "provision b" and I don't remember their ever proving that 7 has requirements that are met, "compiled for law enforcement purposes..." Now maybe they have claimed a law enforcement purpose, but to the best of my knowledge the CIA lacks any. They do not cite lawful or legitimate national security case until they get down to (D) and I don't recall that there's any proof that they were engaged in a lawful national security intelligence investigation. I think that we ought to ask that they provide proof that their espionage on Dr. King in his personal life was a lawful national security intelligence investigation.

But on pages 25 and 26 they allege a law enforcement purpose for Navy Intelligence Service.

Beginning here and continuing they go into such enormous detail on such trivialities of what's involved that I can't help but wonder what they're trying to hide.

On page 30, they do exploit your inability to file my correcting affidavit where I mentioned Briggs by mistake. However, they raise the question and rather than defending I think I would here be critical of them because the facts as I stated them in the affidavit are uncontested as they relate to the CIA. It does regularly withhold, regularly leak and give to other people what is denied to those who are not

known to be sycophants. The case of 2052 is a classic example and when courts are depending on affidavits, it seems to me that the credibility of those who execute the affidavits is very material.

They get carried away with this. They allege that we believe and say "that government officials are notoriously dishonest.^{35/}" Footnote 35 is "Weisberg Affidavit, paragraphs 1 and 34, Lesar Affidavit, paragraph 7 and Plaintiff's Opposition Brief, p. 6." Now there's a vast difference between attributing to us the belief that all government officials are notoriously dishonest and citing as proof that some are in support of it. You might want to use this to cite some illustrations from our experience, including the undisputed false swearing.

The Banner affidavit of July 10, 1978, which lacks an exhibit number in the copy I have. You may be interested in Banner's interpretation of the information we seek. At the end of paragraph 1 he refers to "collections of published material on the assassination or records pertaining to such materials."

I think it's a futility to address this affidavit.

However, in connection with this and with what follows, the Jones affidavit which also lacks an exhibit number in my copy, you might want to note the dates on which the CIA started this so-called compliance. Jones say that it wasn't until by letter of July 11, 1978, that the CIA referred to it, the International communications Agency. Banner places the date of May 19, 1978, on five more records from the CIA and they're supposed to have conducted all these searches they described as of such diligence and exhaustion. Then you have the NIS affidavit by William C. O'Reilly, also lacking an exhibit number. On page 2 he gives the date of May 11, 1978, for the CIA referral to it.

The Savige affidavit also lacks an exhibit number. He falls short of saying he executes his affidavit on the basis of first-person knowledge. He says, "Based upon my knowledge upon information made available to me in my official capacity and upon conclusions reached in accordance therewith."

His paragraph 5 makes him vulnerable when he apparently is going to be

talking about how thorough their search is and he says, "Based upon knowledge available to me in my official capacity, I believe all identifiable records have been retrieved from those CIA record systems that conceivably contain responsive documents." Well, all he has to do is search his own files to learn that this isn't true. He's already given me information that is responsive in the past in response to a different request that he withholds in this case and it certainly is utterly irrelevant to say that they would have to make a page by page review of all records in the CIA. For example, they know who wrote books and all they have to do is push buttons on who wrote books.

I find myself wondering about the repetition of this gross exaggeration where I think they'll be quite vulnerable. I don't think anybody can believe the allegation unless they know something about the judge we don't.

His argument in paragraph 6 about their concern for privacy is in sharp variance with their and the FBI's concern for my privacy. If I'm a public figure, James Earl Ray and Mrs. King are. They didn't ask for any signed release from me before they released what is defamatory of me through my writing. I'm sure they didn't with Mark Lane. I don't think that his conclusion of paragraph 6 is justified by the record but I can't be sure. He says that although I objected to the request for waivers they believed that I was going to provide them. They also claim that they deferred the search for that reason. Of course, they've proven this is a lie by having provided records to me along time ago. Even if they were mostly newspaper clippings, they searched for them.

I believe that you have him in an overt lie under oath at the end of paragraph 7 where he talks about their finally responding to me about the deposit. Now of course there's a history to this. They didn't do a thing about it until long after we filed suit. Then they did give me some options and they did talk about the other moneys that were owed them. They give a bobtailed account of this and conclude, "Plaintiff has not yet stated his decision on that matter."

This is utterly false. I told them that if they insisted I would pay them the \$1,435, reserving my right to collect it, that I wanted that not to get

involved in this case and to keep this \$500 separately. The fact is that they have not responded to my letter and I think on this you can really clobber them because it gets to exactly what Joanne Complained about in her Memorandum, that we think all government officials are dishonest, and yet she's trying to make honest ones out of liars.

In paragraph 9 He actually says that we should anticipate that the only place that they would have a reference to a book on the King assassination is in the office of Security and that their file search shows that no other component had any interest in it. This is incredible. The Office of Security? Not any other component? Then he adds that we should have given him the names of the authors of the books. It's not possible that their library does not have these books. He claims that we should have given him the names but he doesn't write and say that he needs the names and it's been over a year. He then pretends that we were asking for copies of the books, begging the question that if he had any doubt about who wrote books his own library could tell him and then all he had to do was punch cards. A telephone call or two telephone calls would have taken less time than writing us a letter.

Besides this, the records the CIA itself released show that they in fact did make careful, if angled, analyses of books on political assassinations. We have every reason to assume they knew exactly what we were talking about from the records they themselves released having to do with critics of the Warren Commission.

On this, why don't you give them a copy of the CTIA record in the versions they gave to Bud which has no excisions and the version they gave to me which excises everything except my name.

Their paragraph 12, not in the sense of their making a correction, I think addresses whether they have been practicing good faith. He says that Wilson's affidavit of May 26, 1978, contained incorrect information having to do with referrals to the FBI. He is careful not to say when they first made their referrals to the FBI. He gives the date only of other referrals which did not reach the FBI until July 10 of this year. Now this is a 1977 case.

Their letters to Tip O'Neill beginning in 1978 are identified as Exhibit L. Now I think you can have some fun with these by taking my FOI requests and showing how many of them have been complied with, meaning by the CIA. I think virtually none are complied with; maybe the Olsen one is, and these go back to 1971. They haven't even finished acting on the appeal in the 1971 Privacy Act case.

But what they do in an attachment of the names and titles of people who deny records in the number of instances is disclose what they allege they dare not disclose, the names and titles of their employees, and also part of the organizational structure. Here under "Title" they do disclose organizational structure. What this means is that they interpret the law selectively, and in fact I think they disclose names that they have earlier withheld from me. For example, in the stuff about the Zapruder film that I used in the reprint of PHOTOGRAPHIC WHITEWASH, I think it was the director of the National Photographic Interpretation Center whose name is obliterated. Here it is given as John L. Hicks.

In this part of Exhibit L, every page of which I examined if I haven't read them, there is no quotation from the transcript that JoAnn refers to in the Memorandum.

The Gambino affidavit at the end of paragraph 1 says that in the Office of Security they searched all references "which were reasonably identifiable as possible repositories of information responsive to plaintiff's request..." Well, this is the office that came up with the earlier report on me and my book on the King assassination and they managed not to come up with that. Maybe he addresses it later.

Jim, I find that Gambino appears to be quite evasive. He fails to state that this is the only relevant record that they found in their search on me and I think I would ask about that. I'm sure they have other records in the Office of Security.

The Connolly affidavit gives us the first time the CIA made any referral to the Army Intelligence and Security Command as 5 January 1978, which was long after

the filing of the suit and much longer after the filing of the request.

Where he refers to his letter of July 12, which he describes as more recently and attaches the letter in the record that he sent, you should look at the record he sent to see what they had excised originally. What was excised originally is in the public domain. "Pursuant exhaustive check of Canadian passport files by X staff and RCMP full details available FBI headquarters Washington."

In paragraph 2 he seems to admit that they had used 7(E) and changed their minds and refers to Exhibit A of his affidavit. There is no such record in Exhibit A. But it seems to me that once they claimed E there is no basis for changing their mind unless it was an utterly frivolous decision. This is not a reference to nine other documents referred to in paragraph 3.

In paragraph 3 he says the second referral from the CIA was not until January 5, 1978, in a case that was filed in court in 1977.

In paragraph 4 he says there was still a third referral from the CIA on May 11, 1978, when they forwarded seven additional documents.

In paragraph 5 he says there was another referral February 3, 1978, of three pages.

He concludes at the bottom of page 3 by saying that there had been "consultations with the other agencies involved and, as a result, they are releasing all the information "relevant to plaintiff's request except for the names of third parties..." At the end he cites this to Exhibit G.

I can only wonder with whom he consulted for Exhibit G when he withholds from Exhibit G what I am reasonably certain the FBI released in 1996 having to do with those who sell what is described as pornography. In connection with the second record, which refers to the "local swingers" newsletter they are so concerned about third parties that the FBI disclosed the name of Patricia Anderson to whom Ray had written.