10/4/78

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff,	
v.	Civil Action No. 77-1997
CENTRAL INTELLIGENCE AGENCY et. al., Defendants.	

AFFIDAVIT

My name is Harold Weisberg. I reside at Route 12, Frederick, Md. I am the plaintiff in this case.

This is a continuation of my affidavit of October 9, 1978, in this instant cause.

77. Document 339 represents an entirely illegal and highly improper CIA domestic intelligence operation. I am among those spied on. My views on public issues, including on the CIA and FBI, were reported and subjected to official scrutiny and evaluation. (This is not included in the records provided. The CIA is not the only federal agency to engage in this particular domestic intelligence which was improper for all such agencies.)

78. Because this spying was entirely outside any authority the CIA has, I believe that no claim for exemption is justified. Mr. Owen claims (b)(3) as "identifying a staff employee." (Again there is no statement that this employee is not known as a CIA employee. Because this communication was to the FBI Director, it was probably from a known FBI official.)

79. While the letter signifying this claim appears at four points on the first page, there is no indication of any claim to exemption for the two largest areas of obliteration and withholding. The one at the bottom of the page does not entirely eliminate a stamp the last words of which are "BEHIND FILE."

80. There is an attachment of seven pages. On each there is a minimum of two withholdings to which no claim to exemption has been allocated. On the first page of the attachment there are also two other such withholdings

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for which no exemption claim is recorded in any form.

81. Some of these obliterations are located where classification stamps are ordinarily affixed. Obviously, the information was not subject to any kind of classification. Improper classification can explain these unexplained withholdings.

82. I have a clear recollection of that gathering at Georgetown University on the 10th anniversay of the assassination of President Kennedy. It was sponsored by Bernard Fensterwald and his Committee to Investigate Assassinations (CTIA). I had refused a number of requests to participate because I shun association with most of those connected with that function and share the beliefs of virtually none of them. I finally agreed to speak, as a favor to Mr. Fensterwald, who had handled an FOIA matter for me without fee, and at the urging of Mr. Lesar, who hoped an element of sanity could be injected and that some of the more extreme notions and speeches might be countered. I did attempt this, with enough effectiveness to be castigated by a group of the more radical of the irresponsibles as a CIA front. (I believe the fact that my speech was of this nature accounts for the alleged inability of the agencies that covered it to come up with any report or account of it in response to my Privacy Act requests or in this instant cause.)

83. Among the records relevant to my request that neither Mr. Gambino nor Mr. Owen nor anyone else has been able to retrieve - if their affirmations can be believed - are records that incorrectly connect me with the CTIA, including as its investigator. I know because these allegedly irretrievable records were provided to another requester. I was never connected with the CTIA in any way. I refused to join it. I tried to discourage its organization.

84. Among the obliterations on the first page of Document 339 for which no claim to exemption is recorded is the largest obliteration of them all, at the point where routing and filing is ordinarily posted. I believe that no claim to exemption is made in the Owen affidavit and index because this information discloses records and files that have not been searched. This is a common trick within my experience with such withholdings.

85. Here I am stating that this activity reported in the immediately preceding paragraphs was improper for the CIA; that it has relevant records; that

it knows it has these relevant records; and that, whether or not crossing the line into overt false swearing, it undertakes to deceive and misrepresent to this Court in order to withhold records of its illicit domestic intelligence activities.

86. Document 340 of November 28, 1975, coincides in date with my filing the complaint in C.A. 75-1996 seeking the Department of Justice's records relating to the King assassination and related records. At about this time the Senate's Church committee also was conducting investigations. If there is another time correlation for a CIA interest in these subjects, I am not aware of it.

87. This record is a memo from which the names and functions of the signatory and addressee are withheld. Claim of (b)(3) is asserted in the index as disclosing the names of staff employees and of "organizational components." There is no claim that the names or components are not known, even widely known.

88. There are seven withholdings on this page. The above claims are made with regard to three only. No claim at all is made for the other four withholdings. Once again some withholdings coincide in position with the place classification stamps are customarily placed. Almost none of the text is withheld. This makes it possible to state that no classification is or ever was justified.

89. Despite the claims of the CIA's affidavits that it is required by "national security" to withhold its cryptonyms and other such methods of reference, one is identified in this record. Operation Chaos is referred to as "the MHCHAOS program." This refutes the CIA's affidavits.

90. The first paragraph of the memo withholds a single word or identification, without claim to exemption. That word states where records relevant in this instant cause are kept: "a review of other material available in (obliterated) shows ..." "Other material" here means not CHAOS, which the record states was not implemented until after the assassination.

91. One possible explanation for the withholdings from this record is in the words with which the third and last paragraph begins, "While there is a large number of documents available which mention King the vast majority are dated after his death ..." This is to say that "there is a large number of documents" that may well be included in my information request, the CIA withholds identification of a place to look for them and has not provided any proof that this place has been searched and that all relevant records have been provided in compliance

with my request.

92. Withholding the identification of the place at which these records will be found without any showing that the organizational identification is in any way secret and when all indications are that there is no secrecy makes the withholding, for which, I repeat, no exemption is claimed, particularly suspect in an FOIA case. From my experience with agencies like the CIA, which is that they all contrive reasons to withhold what is not exempt, this is especially suspect.

93. Suspicion attaches also to Document 342 and Mr. Owen's manner of describing it. Document 342 bears no date, no file identification, no source, no covering identification of any kind and there is no apparent reason for it to exist in its obviously incomplete form if it is a research list. It is headed, "LIST OF OVERT DOCUMENTS." It is not described as a list of research materials or of public source materials. It is not described as provided by the CIA's library. The use of the word "overt" strongly suggests there exists a list of research or biographical materials that are other than overt in origin and other documents that did not come from published sources. Mr. Owen's description does not diminish suspicion that there are other such documents. He says of this list that it "is a listing of material available on the open market." It is not. There is no 1978 "open market" on newspaper and magazine articles of a decade ago. At least one publication on the list closed down months before the first Owen affidavit was executed. Books of that period or earlier are no longer on the bookshelves. An inaccurate description, given the CIA's record in this and in other cases, likewise is cause for suspicion of knowing withholding.

94. Moreover, the newspaper clippings and similar materials listed indicate the need for there to have been covering records accounting for the means of obtaining them. Newspapers clipped are from coast to coast.

95. Document 340 states of most of the relevant records of that one component that "a vast majority are dated after his death" and that "there is a large number of documents." Yet the list that is Document 342 does not include a list of the books on the assassination and the books are, of course, "overt." They and their authors are included in my information request. The Document 342 list does not conform to what is stated in Document 340. There is, in fact, no

indication of interest in the assassination in Document 342. Such an interest, however, is reflected in the description of records provided in Document 340.

96. Studies and other documents that are not overt are not automatically exempt. They come from all sources, including classified records that are not always properly classified. My knowledge comes from having prepared such studies in the past as part of an intelligence assignment. I also classified documents automatically, without regard for standards of classification. I was never trained in classification. Instead, I was given a "Secret" classification stamp.

97. By their nature intelligence agencies have a proper interest in assassinations. They must study assassinations and those responsible for them as a means of understanding them and as a means of evolving possible defenses against them.

98. The assassination of Dr. King was followed by the most costly and most extensive violence in our history. From the records provided by the CIA, records that do not relate to the assassination itself, the CIA had reason to suspect foreign involvement in the King assassination. I have cited its domestic intelligence records alleging both Russian and Chinese Communist support of and control over Dr. King. When he was killed, suspicions of conspiracy and of foreign involvement were rampant. Whether or not limited to overt materials, it is inevitable that the CIA made some kind of study of the assassination, particularly with regard to the possibility of foreign involvement in it. There are other reasons to believe that one or more such studies were made by one or more of the CIA's known components. Given the political beliefs of some of those who headed these components, it is not improbable that there were studies directed at determining whether or not there was Communist influence or involvement in this assassination. However, the records provided contain no such study, no indication of one and no sign that the CIA ever sought to exercise or even considered exercising its responsibilities with regard to this assassination. It simply cannot be believed that at the very least there was not a proposal for such a study. But no record of any kind holding any such suggestion is provided. If the CIA has been truthful in this case, which I neither believe nor suggest, it has no records relating to the crime.

99. In recent years, with anything but full compliance, under FOIA the CIA has released an enormous volume of records relating to the assassination of President Kennedy. While no other assassination can be as important as that of a president, the vastness of these records and the conjectures and studies contained in them, some of very dubious quality and obvious political slant and purpose, strongly indicate that at the very least there was similar interest in the King assassination and related matters.

100. In this connection I note again that the CIA is still stonewalling my information requests for records relating to the assassination of President Kennedy. I believe it is pertinent at this juncture in this instant cause to note also that, while the CIA is failing to comply with my all-inclusive request, it simultaneously refuses to release records by subject or in response to my limited requests. I believe this bears on intent not to comply and a record of not complying.

101. Besides proper and defensive interest in any major political assassination, the CIA had an improper, offensive assassination interest. While the CIA does not admit having succeeded in any of its own efforts to assassinate foreign leaders, it does admit the effort. This was not nearly as secret as is popularly believed. I have known of its efforts to kill Fidel Castro since 1967. President Johnson is quoted as having referred to its "Murder, Incorporated" activities. The plain and simple truth is that successful assassinations require knowledge of assassinations. In turn, this means studies of them. No such records are provided, even indicated, in response to my information request.

102. The most readily available information of this character is that which exists within the United States. In the United States we had an unprecedented series of political assassinations. Equally unprecedented is the fact that within less than five years three of our major leaders were assassinated, including a President and a major presidential aspirant who was the President's brother.

103. From the first and continuously there have been suspicions of CIA involvement, accusations of CIA involvement and even official inquiries into the possibility of CIA involvement in these and other domestic political assassinations. Specifically, there were and continue to be many accusations of CIA involvement in the assassination of Dr. King. Within my own extensive personal

experience, from talk shows to campus appearances, this is a common question and accusation. The uninhibited Mark Lane, who thrives on such charges and is on the lecture circuit with them, repeatedly levels them against the CIA. On the other hand, I have deprecated these fictions. It simply is not possible that the CIA has no study or compilation of the charges against it by Mr. Lane and many others if only to be able to respond to them. It is not probable that the CIA does not have my efforts to debunk these charges against it available for its own uses. There was need. There have been not fewer than four Congressional investigations and the White House had to be satisfied.

104. No record even indicating the existence of any such documents or compilations has been provided. No affidavits of compliance are provided from a single person in the CIA whose responsibilities include these areas. No affidavits have been provided by any of the CIA components who had and have official interest in the subject matter of assassinations. This includes such components as those with counterintelligence functions and those with operational functions, also known as "Plans" and popularly as "dirty tricks."

105. Instead, we have the palpably false affidavits alleging that no other records can be located or retrieved without a document-by-document search of all the multitudinous records. Contrary to this claim, it is the CIA's proud boast that it has the world's finest filing and retrieval system.

106. In this connection I state I have not received any computer printout or the reports of the results of any computer printout or any indication computers were searched or consulted.

107. There is not even a record indicating an effort to learn what components might have relevant records or any directive for a search directed at any component.

108. The subject matter of this request is not that of an ordinary FOIA request. The subject matter is one that the Attorney General himself has determined is "historical." This alone requires greater diligence in searching, a less restrictive interpretation of exemptions and an effort at maximum possible disclosure. All are absent in this case.

109. The practice in this case is exactly the opposite of what is required by the Attorney General's determination. There is needless and unjustified

withholding, there are many generalities in making claims to withhold, there is an effort to intimidate the courts with these generalities and there is another official effort to misuse this case for political objectives that are inconsistent with and in fact are opposed to the purposes of the Act.

110. One of these generalities is that there is a need to withhold anything and everything received from a foreign government. In practice, this can be anything from a document to the idle gossip of a minor functionary over cocktails. The claim is not true.

111. One expression of this is in Mr. Owen's claimed need to withhold in regard to Document 276. Of this he alleges that "Because the information was received from a foreign government under an arrangement of confidentiality the document must be withheld in its entirety, to protect against disclosure of intelligence sources and the existence of liaison relationship pursuant to"(b)(3). (The same language is used with regard to Document 277, which was sent to the FBI. I do not recall receiving a document of this general description from the FBI in C.A. 75-1996.)

112. As the foregoing Paragraphs of this affidavit show, the same claim was made for pointless and unnecessary withholdings, like the names of a hotel, of cities and of airlines.

113. Conspicuously absent in this and similar claims to exemption is any proof. There is no evidence that there can be what the Act requires, that providing information "disclose" what is not known. There is nothing in Mr. Owen's broad and entirely unsupported allegation that is not well and widely known, nothing that has not been the known official relationship between friendly governments throughout man's long history. That there are liaison relationships is known. That governments assist and provide information to each other is known. What is not known - and what is not true - is that without any exception there is always "an arrangement of confidentiality." In my experience the identical fiction began to be claimed by the FBI when the CIA began to allege it, as a new and orchestrated means of circumventing the Act and with allegations intended to intimidate the courts. The courts, naturally enough, do not want to intrude into relations between governments or the essential functions of agencies or, most of all, what is claimed to be the need of "national security." Therefore,

the agencies make such claims wholesale, to frighten the courts by it, and to withhold.

114. The most obvious and public proof of the falsity of such representations with respect to the King assassination is that these foreign governments went to some trouble to make public the fact that they provided full and complete cooperation. In some instances, they held press conferences to make the announcements of it. (The FBI sought to discourage such press conferences and what was said at them in order to be able to hog for itself more of the credit for capturing James Earl Ray although it had no more to do with that capture than has the garlic with the stew over which it is wafted.) Under these conditions there is no confidential intelligence source or method to protect. There remains a spurious and unsupported claim designed to mask improper and unjustified withholding, to make use of the Act prohibitively costly to requesters, and another effort to mislead and to intimidate the courts.

115. The FBI intermittently makes the identical claim with regard to both foreign and local police. It states it cannot furnish any information provided by these police agencies, alleging the same "understanding of confidentiality" and disastrous consequences if it did. The FBI has sworn to this in court and on that basis has prevailed in a case in which I am not the plaintiff. Before and after making these claims, the FBI gave me a very large number of copies of records it obtained from other police agencies. From the Memphis FBI files alone I have received at least several hundred pages of such records. The CIA is more careful than the FBI. The CIA pushes its false pretense to the hilt by withholding the names of hotels, cities, airlines and the like and claims "confidentiality" and the national security requires it.

116. It is obvious that, with a prosecution for a major and a horrendous crime in prospect, information provided by foreign governments, including their police, was directed at that prosecution. In fact, such information was used in the guilty-plea hearing of March 11, 1969. (There was no trial.) Ray was known to have been in Mexico, Canada, Portugal and England. Information and records received from all four countries was included in the narration of evidence at that hearing. Information from local police and their records were used in the same manner. Ray was known to have been in Los Angeles, Birmingham, Atlanta and

other cities. Information from the police of these cities is included in the narration of evidence. The Portuguese and British governments were providing witnesses for the expected trial, hardly an "arrangement of confidentiality." The passport work in the Ray case was done by the Canadian Mounties. The arrest was by Scotland Yard. There was a change of passport in Portugal. These are some of the publicized assistances by foreign governments and other police, all accompanied by records, that were not withheld. Several governments were providing police witnesses for the expected trial. Ray's fingerprint identification was based on Los Angeles fingerprint records. The Atlanta police made Ray's car available to the FBI. Without the public cooperation of all these domestic and foreign governments, there could not have been any trial in this most serious and costly of crimes. Any claim that all information provided to the government of the United States was "under an arrangement of confidentiality" and meant the "disclosure" of "intelligence sources" or "intelligence methods" is palpably and deliberately false.

117. That such representations are known to be false does not hinge on reason and common sense alone. It was stated at a recent FOIA symposium of the Federal Bar Association by Paul Figley, of the Department of Justice. Mr. Figley defends FOIA cases. He has been my adversary. With regard to such sweeping general claims as those recounted in the immediately preceding Paragraphs, he is quoted by The United States Law Week of September 19, 1978, as saying, "For example, a justification should never be as general as 'if this is disclosed we will never get this type of information again.'" Obviously, the Department does not practice its own preaching.

118. It is my experience that these generalities are alleged by the investigative and intelligence agencies in bad faith. One CIA example that comes to mind also represents an enormous drain on me, my limited resources and my time. In denying me two Warren Commission executive session transcripts, the CIA attested that it had to withhold all information relating to defectors in general and to a former KGB official, Yuri Nosenko, in particular. There was not even a pro forma claim that none of the withheld information was within the public domain. Thereafter, the CIA made the information it withheld from me available to a writer whose writing it did not dislike. It also rendered special

intelligence agency services for him, like name checks. It either waived or did not enforce secrecy oaths required of its retired personnel.

119. One of the claims made in general and specifically in connection with Nosenko is that the CIA's arrangements for defectors have to be secret and that, because the arrangements for Nosenko were to be a model for all defectors, they in particular had to be secret. Obviously, one way to attract defectors is not by secrecy but by widely known offers of large bribes and promises of a lavish life. On their face, these CIA assurances are not credible. However, the transcripts remain withheld after extensive and costly litigation which is not ended.

120. The CIA's incredible abuse of Nosenko was not unknown to subject experts although the CIA pretended it was a national security secret. Its barbarous treatment of him was confirmed officially by the CIA this year when it sent an official representative, John Limond Hart, to testify to its tortures and unprecedented law violation before the House Select Committee on Assassinations. That appearance was televised from coast to coast. The treatment the CIA had sworn to a federal court was "model" turned out to be what its own witness described as the worst thing he knew about the CIA. He described CIA treatment of Nosenko as almost three years of subhuman solitary confinement broken by threats and interrogations, all without due process. CIA officials contemplated assassination and ruining the man's mind. "Model" indeed!

121. The CIA, which made false representations to deny Nosenko information to me, achieved a political objective in the sensation it staged by using the forum of the House investigation and coast-to-coast TV attention. In all of that sensation what received not a word of mention is the nitty-gritty: Nosenko's statements to the FBI that the accused Presidential assassin was suspected by the KGB of being an American agent-in-place or a "sleeper" agent. As former CIA Director Allen Dulles informed his fellow Warren Commission members, the USSR was not within the FBI's jurisdiction and was with the CIA's, so there was no suspicion of Oswald as an FBI operative in the USSR but there was the suspicion of a CIA connection.

122. A similar political objective was achieved by the FBI's withholding from me of information provided by Scotland Yard in the Ray case. The

same House committee, which has not earned a reputation for responsibility or accuracy, produced a surprise with which to confront and confound James Earl Ray. It was the transcript of a staff interview with retired Scotland Yard Inspector Alexander Eist. Eist alleged that he, wily and experienced man that he was, earned Ray's confidence and that after Ray warmed up to him, Ray confessed the crime. This fabrication also was broadcast on coast-to-coast TV.

123. I know Ray well, having been his investigator and having spent many days with him. Ray is opposite Eist's representation of him. I searched the records I received from the FBI in C.A. 75-1996. The FBI withheld the actual Scotland Yard reports, making the same claim as the CIA now does. However, I found several paraphrases. These include memoranda prepared in the highest FBI echelons and cables from the FBI's Legal Attache in London. They are explicit in stating that at no time did Ray trust or communicate with his warders, that he regarded them as spies for the police and FBI and that he would not even say anything of importance to his lawyer, who was appointed by the British government.

124. The political objective achieved by this ploy is the crediting of the official account of the assassination of Dr. King and of giving the appearance that the federal agencies had performed well in reaction to that crime.

125. However, the use and release of paraphrases rebuts the claim that all information received from foreign police or officials must be secret. The withholding of the reports that were intended for use in prosecution merely withheld proof of official misconduct. That by the fabricator Eist is not the only such offense. Records I have obtained leave little doubt about the immediate, continuing and unended violation of Constitutional rights. Rather than holding all the records provided by other police secret, the FBI's disclosures of these offenses - by other police, not the FBI - includes copies of Ray's defense mail provided to the FBI by the local sheriff, who gave it to the prosecutor for xeroxing before it was sent to Ray's lawyers or was given to Ray.

126. In its Eist and similar operations, which are no better than propaganda for the federal agencies which provided it with the records that save it from virtual bankruptcy, the House committee is not unwitting. It had not fewer than three ranking staff members in England for the Eist interview, of which I have the transcript. The chief investigator's travel vouchers show he was there

for two full weeks. The interview required perhaps an hour of this time. Eist had a public record of being charged with serious corruption. If the House committee learned this, it kept it secret. If it did not learn it, it was utterly irresponsible in airing the unchecked Eist allegations. Aside from avoiding the appearance of its own bankruptcy and of imputing the confession of guilt to the defenseless Ray, the only purpose served by this House committee irresponsibility is to pay back the agencies like the FBI and CIA, which provided it with information. (There is no record used by the House committee in its Ray hearing that I had not already obtained from the FBI under FOIA.)

127. For a requester to defend against such sweeping generalities requires more time than any but the wealthiest of requesters can find or justify and a subject knowledge that few requesters can have. At the very least, the allegation of such broad generalities constitutes what from my extensive personal experience is an intended misuse of FOIA to achieve other and political purposes. With me this also means that by these and similar devices my writing has been prevented by the time required for what I can only hope may be adequate response. Another objective is to waste an enormous amount of time and money on FOIA cases as a means of seeking amendment to the Act so that the agencies' dirty linen may stink unwashed in the closet, hidden from the cleansing light of sun that FOIA can be. Within my experience, none of the agencies is willing to cleanse itself and thereby strengthen itself.

128. Because the prosecutor does not prosecute himself, the extent to which the agencies go to frustrate and negate the Act and to harass requesters whose requests and work are not to the agencies liking is virtually beyond the belief of those who have not had my experiences.

129. It is a practical impossibility, even without severe time limitations, to address all the claims made in the Gambino and Owen affidavits. Seven exemption claims for a single record is not unusual. The Owen documents alone are numbered above 300. More claims to exemption than there are paragraphs in a partially-released record is an actuality. In some instances there are more claims to exemption than there are sentences in the partically disclosed records. The cited example of the cable dealing with morning newspapers illustrates this.

130. As the agencies know, they have prevailed by uninhibited false representation of generalities as a basis for withholding. An example of this is my C.A. 2301-70. In that case an FBI agent swore that if I were given the results of certain nonsecret tests performed on the ballistics-related evidence in the assassination of President Kennedy, the disasters that would befall the FBI ranged from the disintegration of its informant network to the ultimate crumbling of law enforcement. In the end, after all courts up to and including the Supreme Court were influenced by this threat, Congress amended the Act to preclude such claims. Despite this I face a similar situation in this instant cause.

131. I am alleging bad faith. I am alleging that there is no accident in this. I am including the CIA but I am not limiting the allegation of bad faith to it. My requests of the CIA remain without compliance since 1971.

132. I recall only one instance of reasonable and possibly complete compliance. (In that case I received copies of the conclusory affidavits the CIA was able to have considered only in camera. On the basis of those secret affidavits, the CIA prevailed. Having read these affidavits, I state that the only reason for keeping them secret and misrepresenting to a judge in order to keep them secret is because they could not withstand critical examination. The claims then made are the traditional "protection" of "sources" and "methods," like those advanced and not proven in this instant cause.)

133. I regard the CIA's affidavits in this instant cause as filed in bad faith and with the intent of wasting me while simultaneously creating a difficult and time-consuming problem for the courts.

134. These affidavits represent a new CIA device for frustrating the Act and avoiding compliance. They duplicate the FBI's method under the amended Act. Once the FBI is in court, it floods the court and me with many exaggerated and false claims, certain of immunity. This creates a no-lose situation in which there is no compliance to begin with, then limited compliance and then other and costly delays. There was, for example, little compliance in this instant cause until long after I filed a complaint. Then I was flooded with waves of spurious claims to exemption. In all of this, large sums and much time was wasted. Now the Congress is pressured with allegations of the costly and wasteful nature of the law that permits the people to know what their government is doing, the most

American of political concepts.

135. Coinciding with the pouring on me of these multitudinous CIA exemption claims in the Gambino and Owen affidavits, the FBI took a similar tack in a case that has been in court going on three years. In response to a directive of that court to reexamine certain specifics of noncompliance, the FBI filed a boilerplated 68-page affidavit with 52 attachments - without providing withheld information it had already provided to another, later requester. It also made false representations under oath to perpetuate withholding from me what was already released to another. When I provided proof that court spoke critically to the Department. The Department then filed a Motion to Strike in which false swearing is described as "immaterial" and misconduct is described as "upstanding." In all of this there is not even an allegation that I made any exaggerated, inaccurate or untruthful representation to that court. It all became a new obstruction, causing more delays. It extorted more of my limited time and resources. It further burdened that court. It perpetuated unjustified withholdings and noncompliance. To illustrate this further, I received about 20,000 pages of FBIHQ records in that case. The very first of these records withheld, names that were extensively publicized eight years earlier and had been narrated into the public domain at the Ray guilty-plea hearing. Those unjustified withholdings continue. No records without them have been provided in replacement in almost three years. I estimate that for every page of all the records I received there is at least one withholding of what is public knowledge.

136. After I had prepared a draft of this addendum to my affidavit of October 9, 1978, other evidence of CIA bad faith appeared in the next day's papers. This relates to my Nosenko requests with which the CIA and the FBI both refuse to comply. The CIA refuses to comply with my subsequent FOIA request for only the information it released to another whose writings favor the federal agencies. He is Edward J. Epstein. His book is Legend. Contrary to the CIA's representation that it is required to keep secret all its dealings with defectors, the new evidence of bad faith is in the published account of the fast, loose and CIA-subsidized life of Arkady Shevchenko. Until his defection, Shevchenko had been the highest-ranking Russian employee of the United Nations. Shevchenko gave up his $87,000 a year UN job and his family immediately after the appearance of

Epstein's book, which the FBI and CIA assisted. In his book Epstein blew an unnamed American UN spy whose description fits Shevchenko. This certainly is a novel way of "protecting" intelligence "sources and methods."

137. When Shevchenko came out of the cold, CIA connection was denied. Now it turns out that the CIA warmed his bed with a woman who cost $500 a night. The woman, who went public because she claimed to be afraid of CIA and FBI calls, said she received about $40,000 from Shevchenko in a few months. She quoted the FBI as telling her that "Arkady goes to a high official in the CIA. He in turn gives the money to Arkady who in turn gave the money to me." Not all of it, though. Shevchenko "maintained a checking account of about $50,000 in a bank" in Washington. The CIA's published "explanation" is that Shevchenko was only its consultant. When President Carter was asked about the matter at the same day's televised news conference, he quipped that he found the expenditures not in accord with his anti-inflation policies.

138. Nosenko received, despite his travail, about a quarter of a million dollars, plus a consultancy under which he receives a little less than $40,000 a year from the CIA.

139. Such profligacy with tax money is a more likely explanation of the CIA's continued withholding of essentially nonsecret information relating to defectors than any "national security" need.

140. Further bearing on the CIA's record of bad faith is the fact that, even after its disclosures to the House committee regarding Nosenko, which includes the declassification of records like its Inspector General's report on the entire affair, the CIA has not yet sent me a single page of any of its publicly disclosed records. It has put into the public domain what it had denied me and after putting what it denied me into the public domain it continues to deny me this information.

141. My examination of the Gambino and Owen records was perforce hasty and incomplete. It must remain as limited as I have stated it was because of time pressures. It is impossible for me to make an exact and careful comparison of the two sets of Owen records because that would extort even more time from other work that is important to me and from other cases in which I am victimized by similar extortions.

142. The intelligence and investigative agencies have continued the no-lose situation I report. It also is a no-win situation for the courts and requesters when bad faith and other misconduct, including false, exaggerated or other unfaithful representations are made with impunity in an effort to withhold and to obtain Summary Judgment.

143. I have much experience in FOIA cases, possibly more experience than any other private requester. I cannot remember a single case in which virtually the first government response was not to move for summary judgment. I cannot recall a single case in which there was compliance prior to the filing of Motion for Summary Judgment. I recall that in one case the Motion was granted on the Department of Justice's promise that photographs of certain evidence would be made for me. When the government finally got around to taking these photographs, it turned out that it had destroyed some of the evidence. In the aforementioned C.A. 75-1996, which is also for records relating to the assassination of Dr. King, after Motion for Summary Judgment was filed, I obtained about 50,000 pages of previously withheld records. C.A. 75-1996 is now almost three years old. There remains a vast number of unjustified withholdings from the records provided. Much relevant information remains withheld after I have proven its existence, its location and its relevance. Instead of providing belated compliance, the Department stonewalls and files false and misleading affidavits. When I prove this misconduct, without even trying to disprove it, which is impossible, the government has another stalling device, its Motion to Strike what is factually correct. There is no end to the devices for noncompliance contrived to delay, frustrate or prevent the exposure of what is embarrassing to the agencies involved. In itself, this negates the Act and nullifies the purpose of the Congress in the Act.

144. Once any court entertains a Motion for Summary Judgment while any material fact is in dispute, the requester has, for all practical purposes, been defeated and denied his rights. No matter what information he may thereafter receive, the cost to him is greater than the value can be. This is more true where the requester is of advanced years, as I am; is in imperfect health, as I am; is without independent means or resources, as I am; or is in a public rather than a personal role, as I also am in this instant cause. The cost in terms of other

information that may be obtained with the investment of no more time is another example of this truism. And, of course, once a court entertains a Motion for Summary Judgment, responding is only the beginning of the added time required of the requester and his counsel. No matter what happens thereafter, the agencies have succeeded in one of their objectives, which is to stall and inflate FOIA costs. If other political objectives also are served, that merely enriches the pot in which noncompliance simmers.

HAROLD WEISBERG

Before me this 14th day of October 1978 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982

NOTARY PUBLIC