

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

OCT 10 1978

.....
HAROLD WEISBERG,
Plaintiff,

JAMES F. DAVEY, Clerk

v.

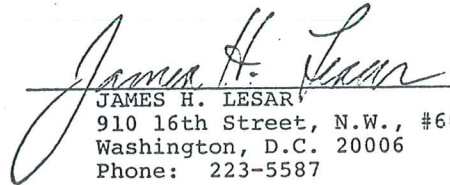
Civil Action No. 77-1997

CENTRAL INTELLIGENCE AGENCY,
ET AL.,

Defendants
.....

NOTICE OF FILING OF SUPPLEMENTAL AFFIDAVIT
OF PLAINTIFF HAROLD WEISBERG IN OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

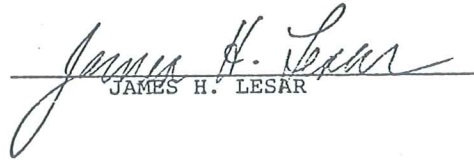
Comes now the plaintiff, Harold Weisberg, and gives notice of the filing of his attached supplemental affidavit in opposition to defendants' motion for summary judgment.


JAMES H. LESAR
910 16th Street, N.W., #600
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of October, 1978, mailed the foregoing Notice of Filing of Supplemental Affidavit of Plaintiff Harold Weisberg In Opposition to Defendants' Motion for Summary Judgment to Miss JoAnn Dolan, attorney, U.S. Department of Justice, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530.


JAMES H. LESAR

e

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,
Plaintiff,
V.
CENTRAL INTELLIGENCE AGENCY, et al.,
Defendants.
.....

Civil Action No. 77-1997

RECEIVED
OCT 10 1978

AFFIDAVIT

JAMES F. DAVEY, Clerk

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

1. I have read the October 3, 1978, affidavit of Robert W. Gambino which states that it is "intended to supplement and amplify remarks in my (his) affidavit of 26 May 1978." I have read his earlier affidavit and have examined the attachments to each.

2. I do not find that in either affidavit Mr. Gambino claims to make his affirmations on the basis of first-person knowledge. He also does not claim what is required, a law enforcement or a legitimate national security investigation.

3. I believe that in an organization as large as the CIA there are those who have personal knowledge if Mr. Gambino lacks such knowledge.

4. It is my extensive prior experience that the providing of affidavits by those who do not claim first-person knowledge is a standard means by which the executive agencies, particularly the investigative and intelligence agencies, provide untruthful affidavits. Many have been filed in my FOIA cases, which gives me personal knowledge. It is my experience that among those who work in the same office the one with personal knowledge does not provide an affidavit while a colleague not inhibited by personal knowledge provides an untruthful affidavit. Within my experience this has become one of the standard means of avoiding compliance with the Act; of making false representations; and of needlessly burdening the courts and requesters. It also inflates FOIA statistics that then are exploited as a means of not complying with the Act and of seeking the amending of the Act.

5. By act of Congress the CIA does not have any law enforcement purposes or responsibilities.

6. By act of Congress the CIA is precluded from domestic intelligence activities.

7. I have prior intelligence experience. I also have extensive experience in reading hundreds of thousands of pages of records obtained from the investigative and intelligence agencies. Based on this prior experience and subject-matter knowledge, I state that the records attached to this second Gambino affidavit relating to Dr. King are of a domestic intelligence nature.

8. Proof of this lies in addition in the total absence of any single CIA record relating to any checking of the alleged "Chicom" influence on and financing of Dr. King. While the providing of any such records, if they exist, would not establish a legitimate CIA national security investigation, which is essential to the claim to exemption, the absence of any such record clearly establishes that there was no foreign intelligence purpose, either.

9. From examination of the reprocessed records attached to this second Gambino affidavit, I believe I can perceive what he means by "supplement and amplify." Of the 18 documents identified with "S" numbers, Mr. Gambino eliminated all or part of their numbers in xeroxing. In addition, he has made skillful use of the Xerox machine to render the notations on two of these documents completely incomprehensible. In another case he has entirely eliminated the notation with the Xerox.

10. With regard to the first of these documents, S-11, Mr. Gambino avoids specifying his supplementation. It consists of restoring what had been withheld without justification. The final matter on this page does not appear on the first copy provided. There was no visible masking or other obliteration. There also was no claim to exemption exercised for it. Under "Subject" there has been partial restoration of what was originally withheld. An obliterated subject is "Southern Christian Leadership Conference 394-924." (Restoration is incomplete because Mr. Gambino did not go back to the original underlying record in providing this amplified and supplemented copy.)

11. The Southern Christian Leadership Conference (SCLC) is a domestic religious organization, as it was at the 1965 time of this record. Mr.

Gambino does not state any legitimate basis for the CIA to interest itself in the SCLC or its leader, Dr. King. I believe the reason for this omission is the fact that there was and is no legitimate basis for the CIA to have any interest in the SCLC and its assassinated leader.

12. Former Director of Central Intelligence Richard Helms, who since has had a public career in Congressional testimony, stated when he addressed the newspaper publishers' association at about the time of these records, "Trust us. We do not target on Americans in the United States." Mr. Gambino's affidavit appears to be in the same spirit and of similar dedication, a traditional dedication of those whose secrets are potentially embarrassing.

13. Mr. Gambino does not states that he made or caused to be made any search of the CIA's files on the SCLC or of file No. 394-924 or related files. He does not state that to his knowledge anyone else has made such a search. Dr. King was the founder and leader of this religious organization. The CIA's SCLC file(s) contain records relating to Dr. King. No records from the CIA's SCLC files have been provided by Mr. Gambino or by any others in the CIA in this instant cause.

14. I believe failure to search and provide relevant records from the SCLC file(s) accounts for the original unjustified withholding and for Mr. Gambino's failure to acknowledge this in his second affidavit. It required comparison of both sets of attachments to perceive that Mr. Gambino had restored the material he originally and unjustifiably withheld from S-11.

15. Mr. Gambino does not state that he or any other CIA official is currently making any search for relevant records in file No. 394-924 or any related file or under the name of the SCLC. He also does not state that any such records are to be provided, although his affidavit is in support of a Motion for Summary Judgment.

16. Mr. Gambino does not provide any records indicating why Document S-11 was generated or any record indicating any reason to believe that the information sought and referred to in S-11 does or should exist in the CIA's files. S-11 refers to relevant files not searched by the signatory to S-11, whose name is obliterated. Neither Mr. Gambino nor anyone else attests to a search of those or any other files for relevant records.

17. Other records partially disclosed reflect a search for records of

activities directed against Dr. King as part of what the CIA termed "Operation Chaos." This improper and illegal CIA intrusion into domestic political activities, which is what Operation Chaos was, is not the only possible cause of the generation of such records, which are relevant in this instant cause. However, affidavits attesting to searches required of all components, whether under the Chaos or any other designation, are not provided.

18. Public disclosure of the Chaos identification bears heavily on the truthfulness of the CIA's affidavits claiming a need to withhold its various coded designations. There is no affidavit stating that any of these withheld designations is not already within the public domain.

19. There is no affidavit made of personal knowledge attesting to the fact that any of what is withheld is not within the public domain. I believe that information the CIA withholds is within the public domain. I also believe that those responsible for the withholding know they withhold what is within the public domain and thus are not those who execute affidavits alleging compliance. In an intelligence organization knowing what is public and what is secret is vital. It is essential in determining what can be made available in normal day-to-day Agency functioning.

20. I believe the foregoing Paragraphs raise substantial question of bad faith. As further evidence of bad faith, I cite the exemptions claimed in the Document Disposition Index attached to the Gambino affidavit of May 26 as requiring the withholding of the name and file number of Dr. King's SCLC. Mr. Gambino claimed three. He did not claim any one of the three in the language of the Act. Rather did he rephrase the Act.

21. His first claim is "information pertaining to intelligence sources and methods." A James Bond novel fits this revision of the Act. Obviously - and more so since the recent appeals court decisions in the Marks and Ray cases - all that "pertains to intelligence sources and methods" is not exempt. Much is within the public domain. Some is in the Old Testament.

22. Mr. Gambino's second claim is "information identifying a CIA staff employee." Under this claim, which is not applicable to the SCLC although Mr. Gambino made no distinction, the CIA can withhold the names of those known publicly as employees and by this means circumvent the Act. He could withhold

the names of those who testify publicly as representatives of the CIA before the Congress, those associated with or even convicted of crimes, those who appear in the name of the CIA on college campuses and those who have other public functions. (There actually is such a withholding in other records provided in this instant cause.)

23. Mr. Gambino's third claim for S-11 is "information the release of which would constitute a clearly unwarranted invasion of personal privacy." The only "privacy" involved in withholding the SCLC's name is that of the spooks who engaged in this highly improper conduct and law violation. There are no privacy considerations involved for the organization in the withholding of its name. Records of any kind of spooking of this organization of ministers of the gospel are not "personal and medical files and similar files," the language of (b)(6) which is claimed. I believe it is invoked because the language controlling the privacy exemption of (b)(7) is "investigatory records compiled for law enforcement purposes" and law enforcement is specifically outside the legislated authority of the CIA.

24. Other sweeping generalities and broad claims to exemption supported only by conclusory statements likewise raise questions of bad faith. One of these claims not corrected in the present Gambino or Owens affidavits is the alleged need to withhold the location of CIA stations on the ground that acknowledging their existence would be embarrassing for the host government and could lead to dire consequences. There are such public acknowledgments. One was in Greece where the security-careless CIA permitted its station chief to dwell in a CIA house publicly known to be the customary residence of the CIA's station chief. As a result, he was assassinated, a very public tragedy. There were no other consequences like those conjectured in the CIA's affidavits in this instant cause. Moreover, in the past, the CIA has disclosed the location of its stations. Such withholdings are not legitimate, are not necessary and serve only to hide what is embarrassing, to obfuscate and to deny the rights of the requester under the Act. They also serve to artificially inflate the cost of FOIA compliance and delay compliance.

25. There are the same questions of good faith and requester harassment in the arbitrary use of letters to represent exemptions claimed on the

replaced records. These letters in fact do not reflect the exemptions claimed. In Paragraph 3 of his second affidavit, Mr. Gambino states that "the letters correspond to the letters used in the Document Disposition Index to designate the different categories of information deleted." This is not even the same as claiming that the index or the letters designate the exemptions claimed. The index does not have a single list of letters designating specific exemptions claimed. More confusing still is the fact that with the various documents listed the same letters designated different "categories of information." Examination of the language used in the index shows that, along with the letters not being used consistently, there is significant variation in the language used to "designate" the same exemption. At one point it is claimed that the information "could" disclose an intelligence source, at another that it "would" disclose an intelligence source. (I believe that the CIA knows the difference and can state with certainty whether or not there would be a disclosure, the language of the Act.)

26. Using this arbitrary and inconsistent letter method was not easier for the CIA. It would have been easier to indicate the exemption claimed at the point of withholding. This is the practice in other agencies. Not using the identification of the exemption claimed and using a substitute letter is cumbersome for the requester. It is the equivalent of another Operation Chaos or Cointelpro operation. The requester also requires a large amount of desk or table space to examine and compare with each other and with the index and affidavits a number of documents. I do not have the space required. The alternative is a time-consuming comparison of many records, one or two at a time, with the same desk space required for the various affidavits and indices as well as their attached records. There is no need for this arbitrary procedure. There is need to state the exemption at the point it is claimed. The CIA's refusal to do this, meaning what is easiest and quickest for all parties, is a deliberate harassment and an intended deterrent to examination of its representations. The same unnecessary work is created for the Court in any careful checking it might do.

27. In Paragraph 25 I state that the Act does not include "could identify" with regard to the exemption claimed. The language, hinged to "law enforcement purpose," is "would ... disclose the identity of a confidential

source" or "confidential information furnished only by the confidential source." (emphasis added) Neither (b)(1) nor (b)(3), both of which the CIA also claims, employs its substitute language. In effect, the CIA is inventing a new exemption and attributing that, too, to its already over-extended charter.

28. Similarly, there is a dissertaton on what in his Paragraph 2 Mr. Gambino terms "categories of substance." Once again this is referenced to the Owen affidavit of May 25, 1978. That affidavit and its attachments are of about an inch of paper, not an easy source with which to consult and make comparisons. In all this circumlocution and indirection, Mr. Gambino again fails to state that there is a proper claim to exemption. Instead, he states his purpose is "to relate the rationale and related ... exemptions" with the Owen affidavit. His terminology of "categories" and "rationale" is less than an unequivocal statement that on personal knowledge he is affirming the suitability and applicability of the exemptions claimed in the Owen affidavit. A failure to make such an explicit statement leads to the belief that it cannot be made with honesty. Within my extensive experience, direct statements of claim to exemption are often enough not justified or false. It also is my experience that when equivocal statements like these are made the intent is to equivocate while appearing to be specific.

29. Within the past month I proved that an FBI FOIA agent swore falsely and provided copies of other than actual records involved to a court. With the question before that court one of compliance and when that court directed re-review of certain records, the sworn response still was not truthful. After I produced proof of the untruthfulness and noncompliance as well as the providing to another and later requester of what had been and remained denied to me, the response was further equivocation, false representations and the replacement of a document by one in which the same offense was committed all over again. As with S-11 in this instant cause, the substituted copy of the document also disclosed the prior withholding of what is not within any exemption. That withholding was made with the kind of circumlocutions cited in the preceding paragraph. And what I had already shown the court had been disclosed to a later requester remained withheld. Of course, there was no admission of improper withholding prior to or in the substituted document. ~~Similarly~~ ^{Similarly}, in his second affidavit Mr. Gambino fails to inform this Court that, for whatever reason, he had withheld the name of the SCLC

and its file number.

30. The practice of false representation and of withholding from me what it provided to another is also the CIA's record. It is undenied, as my earlier affidavit states, that this has been its practice. The practice is not limited to a single instance. And as I have already stated without refutation by the CIA, I still await compliance with requests going back to 1971.

31. These are only some of my prior experiences with indirect language and failure to make explicit claim to specific exemptions that cause what I state with regard to the CIA's equivocations in the immediately preceding paragraphs.

32. Paragraph 3 of Mr. Gambino's second affidavit appears to state that classification and declassification markings also are withheld. His supposed explanation appears more likely to be a means of deceiving the Court and defrauding me because none of the records for which "national security" claim is made bears indication of classification or declassification.

33. This may explain the lack of an affidavit attesting to the applicability of the exemption requiring that there be a legitimate national security investigation.

34. Paragraph 4 of Mr. Gambino's second affidavit also indulges in evasive language. To protect himself he is careful to specify "I was not present when the original stamp marking was imposed on the document." In stating no more than that the "document is clearly marked on its face with the stamped designation ..." Mr. Gambino does not establish compliance with the Executive Order. He does not state when or by whom classified. This avoidance is understandable if prior to request the records had not been classified. This also is not foreign to my experience, including experience on the identical subject matter. Mr. Gambino goes further and "assumes" the CIA's practice was followed, an assumption that is without justification and I believe fails to meet the requirement of establishing proper classification. Here he gets so vague that he fails to state that he is the one who "retrieved from CIA records" the documents in question. He does not even claim to have been present when this was done. He thus leaves wide open the interpretation that the records were classified after the request and prior to "retrieval." This underscores the need

for first-person affirmations, which Mr. Gambino's affidavit is not.

35. The strange inability of the CIA's Director of its Office of Security to be specific and unequivocal extends to his final Paragraph. In it he states "Two corrections are needed in the comments (sic) made in the Document Disposition Index attached to my affidavit of 26 May, 1978."

36. His "corrections" relate to his prior affidavit and its claims to exemption. Comparing the corrections with the prior copies indicates that "correction" is not an accurate description. What is accurate is that prior to the Marks and Ray decisions he could and did make false claims to this Court under oath. What he terms "comments" is actually the alleged justification for the exemptions he claimed.

37. Mr. Gambino now states "... Document S-11 should be changed to read 'a. information pertaining to intelligence methods (b)(3).'" In this he eliminates his three claims or "comments" and replaces all three with a single new one. He eliminates the national security and privacy claims. And where he had asserted (b)(3) to withhold the name of the CIA employee who signed the record, he still withholds that name and does not make a claim.

38. If by any chance Mr. Gambino means what he does not state, that he is replacing only his original "a." claim, then he fails to state how he could exercise national security claims and on that basis seek Summary Judgment in this instant cause. He also fails to state the basis for his withholding of the SCLC name and file number.

39. Mr. Gambino's second "correction" is "The comment regarding Document S-12 should be modified by deletion of paragraphs a and b." What Mr. Gambino treats so lightly includes two more "national security" claims and two more laws he was living up to. He eliminates "a. information which could identify an intelligence source (b)(1) and (b)(3). b. information pertaining to intelligence methods (b)(1) and (b)(3)." (emphasis added) The claims that remain are of identification of "a CIA staff employee" and of privacy.

40. Mr. Gambino's two versions of the four pages of S-12 as provided are identical with the exception of the addition of the letter "C" to the signature page and the letter "D" to the final page. By referring to the index with his May affidavit, it is determined that the four original claims to exemption all

relate to the "deleted portions" only. Without providing any additional information, he again eliminates two national security claims to (b)(1) and (b)(3). What remains is c., on the identification of a CIA employee, and d., privacy, (b)(6).

41. What appears to be the case is that what is withheld is the identification of the "King" expert who drafted this memorandum for the CIA staff employee whose name is not withheld. This is to say that the identification of the person who should have been consulted on compliance because he is still employed by the CIA, the person whose files also should be checked for compliance, is what is withheld under the claimed need to not disclose the name of an employee. In this connection I also note that there is no claim that the withheld name is not publicly known.

42. Mr. Gambino's generalized description of the totally withheld pages, as well as of the portion of a page withheld under privacy claim, does not provide information that enables a determination of whether or not they may be relevant in this instant cause. He does not even provide the title or subject of the document. He provides only part of a single inside page of it.

43. The obvious inspiration for Mr. Gambino's euphemism is the appeals court's Ray and Marks decisions. There is no basis for believing that such baseless and extensive claim to the CIA's traditional "national security" could have been or was made by simple error. It likewise is impossible to believe any other "correction" can be attributed to no more than accident. In this connection I note the absence of any explanation by Mr. Gambino. This leads to the belief that there was a deliberate and sworn-to false statement on what at this point is material in this instant cause, the legitimacy of the claims to exemption. Based on these sworn-to representations, Summary Judgment was sought. This was after the cited decisions.

44. The appeals court's inspiration to euphemism, which also appears to have inspired new misstatements of fact, include the importance of in camera inspection. This appears to explain the mysterious reappearance of the SCLC name and number. (Mr. Gambino does not explain either the withholding or reappearance.) The determination of the legitimacy of other withholdings could require the knowledge of a subject expert or a master.

45. In all of this exploiting of words and elaborateness of presentation instead of simple straightforwardness, what is easily lost is the absence of what should be of interest to the CIA's Security Office whether or not there ever was any legitimacy in the projects represented in records that have not been withheld. One required no more than consultation with a Washington City Directory to identify an address connected to Dr. King. No such records are provided. There is no explanation of their absence. There is no description of any withheld material that could include the kinds of information of which this is only an example. The address in question is in Georgetown. Because I am unable to go to the Washington public library to consult the directory, I cannot state that it is the address of a prominent person. I can state, however, on the basis of extensive prior experience and on the basis of the examination of many thousands of pages of once withheld records that if the check of that address led the CIA to a prominent person it would be unwilling to disclose that its illicit domestic intelligence activities caused the creation of a file or files on any such person. (The FBI, for example, has "Do Not File" and "Dead" files. I have found as many as three of these kinds of files ordered created in a single record. I have found that the FBI establishes what it calls "New Dead Files." That the CIA has what are called "hard" and "soft" files by means of which it can avoid what it wants to avoid is public knowledge. It has been discussed frankly on nationwide TV by former CIA staff employees.)

46. Mr. Gambino's affidavit does not address the existing questions relating to compliance raised by my counsel and by me in my prior affidavit.

47. Having examined the "S" series of documents, I reaffirm that the records not withheld require that other and readily retrievable records exist.

48. This affidavit was drafted under great time pressures on a Sunday after I had found a notary to execute another and longer affidavit in another cause, also prepared under time pressures. I had to prepare this affidavit under these conditions because the Court limited us to five days for response and I am not able to drive the 50 miles that separate me from Washington and my counsel. At the calendar call of September 13, 1978, the Court initially did not grant us any time for response. This would have left these two CIA affidavits without any refutation, even without any questions raised about them. I therefore asked my

counsel to request time of the Court. The five days given us is hardly adequate under any circumstances because of the time required for any papers to reach me and for any affidavit I may draft to reach my counsel. I have not been able to take counsel with him while preparing this affidavit. The attachments to the CIA affidavits are numerous. Comparing them with each other is time-consuming because of the large number of excisions and the cumbersomeness built in by the CIA, as explained above. As this affidavit shows, preparing it has been necessary because neither the two sets of attachments nor the claims to exemption are identical. I believe that, unless I provide what information I can to the Court, the Court loses its independence, loses adversary benefit and can be misinformed and misled. In order to meet my obligations in this and other causes, I have been required to start each day since the September 13, 1978, calendar call in this instant cause early in the morning, usually about 4 o'clock or a few minutes thereafter. Despite the length of the day I work and the intensity of that work, it is not possible for me to make a complete comparison of these many attachments in the time allotted. I believe I should have had time for this and for a more carefully prepared affidavit. The time permitted has made any real revision of the initial draft impossible. Because of my age, which is 65, and the state of my health, which is impaired by serious circulatory impediments in both veins and arteries, these time pressures have imposed an additional burden upon me.

49. The first of the two Notices of Filing is dated October 3, when it was mailed to my counsel. After receiving it, he had to make copies and mail them to me. (Until recently the Department of Justice has mailed me duplicates to save this time.) At the same time he told me to expect the larger batch of papers that could not be mailed until after Robert E. Owen returned to his office on Friday, October 6. Although the Notice with the Owen affidavit states correctly that it was sent by Special Delivery on October 6, there is in fact no special delivery in rural areas. (I am not situated inside the city of Frederick.) When the Notice and affidavit did not reach me on Saturday, October 7, I arranged with the Frederick Post Office for its holiday weekend duty crew to phone me when the package reached the post office. Otherwise, I could not receive it before midmorning of Tuesday, October 10, the time of the next mail delivery, because of the holiday weekend. On Sunday morning the package did arrive and I did drive to

the Frederick Post Office and obtained it.

50. I have been as diligent as I could be on the chance that my wife can retype this draft, that I can find a notary on the holiday and that my counsel, who on Sunday night had car trouble, can drive here from Washington on the holiday and return to Washington with an executed affidavit in his possession. I will work until the last possible moment, but I cannot make this affidavit complete, cannot possibly include the complete comparison necessary between the two sets of attachments to the two Owen affidavits and cannot possibly compare and analyze all the claims to exemption.

51. Having seen this new Owen affidavit, I state that his and the second Gambino affidavit are a new kind of CIA FOIA boilerplate in that they are almost identical.

52. I also state that Mr. Owen has unexplained "correction" to make in the document index with his May 25, 1978, affidavit; that he, like Mr. Gambino, also abandons prior claim to national security exemption; and that he, too, makes similar and unsupported conclusory statements. This is to say that after attempting to obtain Summary Judgment by sworn representations that are not accurate and after the Marks and Kay decisions, in fear of in camera inspection as well as of the court of appeals, he has withdrawn some of his apparently false representations.

53. What follows is limited to and is based upon the little instinctive and hit-and-miss spot checking that is now possible of the different sets of Owen papers and the exemption claims made for them.

54. The concluding statement in the Owen affidavit (page 3) is that "The purpose of the supplementary comments is to make a more specific description of the application of the various exemptions cited for withholding the document." This is not a truthful or even an accurate statement in that some of the representations are false and eliminating a national security claim is hardly described as "to make a more specific application of the various exemptions cited."

55. One abandonment of national security claim is on page 4 of the index, relating to Document 263. Here Mr. Owen is deceptive in describing his memory-holing of the national security claim as mere "amending."

56. His "amended" claim to exemption reads, "a. information

pertaining to intelligence methods (b)(3) and". In his original index Mr. Owen claimed "a. information pertaining to intelligence methods (b)(1) and (b)(3) and" (emphasis added). As is apparent, Mr. Owen jettisons his original national security claim and fails to state this to the Court while seeking to hide it in the mass of his long-delayed attachments. (Because this document is withheld in its entirety, I am not able to provide further information. However, I doubt that in either this or the number of other entirely withheld records there is nothing at all that is reasonably segregable.)

57. My statements in earlier Paragraphs with regard to the awkwardness and cumbersomeness of the arbitrary use of letters instead of citing the exemption claimed at the point of withholding also apply to the Owen use of the identical system.

58. In the new copy of Document 255, which is made less clear by re-xeroxing the first-set copy after the letters were added, the letter "C" claim to exemption is made for the signatory. This is a memo from the St. Louis Domestic Contact Service of the CIA to the Director, Domestic Contact Service at CIA Headquarters. In the first Owen index (page 11) c. reads "information identifying CIA staff employees (b)(3)."

59. The Domestic Contact Service of the CIA is overt, not covert. Its employees meet regularly and publicly with people they interview. Its offices and their addresses are listed in the phone books of the various cities. The names of these employees are not and cannot be secret. Their function requires that they be known. Some are quite well and very publicly known as representatives of the CIA's Domestic Contact Service. Rather than interfering with their function, this assists it because it identifies people to them and attracts people to them. In turn, this enables them to obtain more of the information it is their function to obtain. This claim to (b)(3) is baseless, spurious, harassing and I believe contemptuous.

60. What I state in the preceding Paragraph regarding Document 255 also applies to Document 256, which is similar.

61. Document 267 is a brief cable. The text of the reporting in it reads, "19 APR BOTH (letter B superimposed on obliteration) MORNING PAPERS CARRIED PAGE 1 WIRE SERVICE PHOTOS OF FBI WANTED POSTER." The claim in the first Owen

document index for b. (page 15) is "information confirming the existence of a CIA station in a named city abroad (b)(1) and (b)(3)." In all aspects this is as phony as a three-dollar bill.

62. There is no way in which not withholding the name of the city in which the two morning papers are published would identify that city with the source of the cable, even assuming that what I regard as ridiculous were truthful, that there is a need to hide the source of the cable. There likewise is no way in which not withholding the name of the city would "confirm the existence of a CIA station" there. Aside from this, the "confirming" claim is spurious, as indicated in my statements relating to the Gambino affidavit. CIA stations are well known, are not secret, the names of a large percentage of their employees are published in diplomatic directories, and these known CIA station employees work with and have social intercourse with host government employees and officials. The Greece case cited above illustrates the utter spuriousness of this new claim in a new effort to circumvent the Act and harass requesters and the courts. I add more of the publicly available detail relating to several of the many other proofs of this spuriousness. Two well-known cases relate to David Phillips and E. Howard Hunt. Both have written books. Phillips states that his book was cleared by the CIA. It is the kind of book the CIA likes. Mr. Phillips abandoned his successful CIA career when he was its Western Hemisphere chief. He had been Mexico City station chief. He abandoned his rising CIA star at the time of the Watergate scandals when he undertook what he calls the defense of the CIA. His book, countless public appearances, including a number on coast-to-coast TV, and his organization of an association of former intelligence personnel, all are part of this defense. (Mr. Phillips did not respond when I wrote him to inquire about joining his association.) With CIA approval he states publicly and frequently, as he does in his CIA-approved book, that there is a CIA station in Mexico City and that he was its chief. (With CIA approval he also "confirms" the existence of other CIA stations.) The existence of the Mexico City CIA station has been "confirmed" to countless newspapers, to writers, with formal CIA and court approval in at least one other book, and to Congressional committees for their public uses. Mr. Hunt more than "confirmed" the existence of the Montevideo, Uruguay, CIA station to the Uruguayan government, to the knowledge

of CIA Headquarters. When he was the CIA's Montevideo station chief and a friend of the president of the country and of other government figures, he undertook to bribe the president for the CIA with American helicopters. None of the fictional intelligence catastrophes conjectured by the CIA as excuse for such withholdings has come to pass in these countries, either. Nor has it on the many occasions throughout the entire world when, by means similar to those in the foregoing illustrations and others more formal and more official, the existence of CIA stations was "confirmed" to the host governments. Southeast Asia cases have been publicized extensively, particularly in what was disclosed by officials in connection with the Diem assassination.

63. The statements in the preceding paragraph apply to the other Documents in which there is similar withholding under the same frivolous claim to exemption.

64. The additional book referred to in Paragraph 62 is The CIA and the Cult of Intelligence, by two former intelligence officers, Victor Marchetti and John D. Marks. This book does more than establish the baselessness of current CIA claims of need not to "confirm" the existence of any CIA station. The book also is unique because of the CIA's exercise of prior restraint and censorship. The CIA's deletions that were made permanent were sanctioned by a federal district court. Those not approved by that court and included in the book are set off in bold-faced type. Years ago - and with both CIA and court approval - on pages 268 and 269 this book confirmed the existence of the CIA's Mexico City station. The CIA is aware of this. Its false representations to the contrary in this instant cause therefore are not described adequately when they are called spurious.

65. This is true also of the false claim of a need not to "disclose" descriptions or titles of organizational components. All of this is known to all other intelligence agencies, including potential enemy intelligence agencies, and over the years have been made public by the CIA itself. This is a mendacity, as is apparent on examination of the index to the CIA-approved Marchetti-Marks book. It has five pages of index devoted to the CIA. Throughout it and the book CIA components are fully identified.

66. Document 267 also establishes the deliberateness of the CIA's

stalling in the limited compliance accomplished after all this time as well as the CIA's intent to apply severe time pressures which preclude my making complete or even adequate response to its false representations. The first copy of Document 267 was provided to me as an attachment to the May 25, 1978, Owen affidavit. Yet on its face Document 267 is marked as "APPROVED FOR RELEASE Date 10 Feb 1978." This is to say that after its release was approved providing it was delayed for an additional three and a half months under a 10-day law. (Documents 255 and 256, cited above, also were approved for release in February and also were not provided until after the Owen May 25, 1978, affidavit was filed. Other records were approved for release on even earlier dates and also were withheld until May 25, 1978.)

67. Document 224 is the first listed in the Owen index. As a sample of the good faith he displays, I cite a single one of the numerous excisions for which he makes a total of seven lettered claims to exemption, for the names of two cities. With all else except the reporting of "amazing resemblance" to Mr. Ray excised, there follows "(obliterated) departed (obliterated) for Houston on PanAm flight evening 8 April (obliterated)." To withhold the names of these cities Mr. Owen claims his exemptions identified by letters a. through d. He claims he must withhold because it came "from a foreign intelligence source;" is "information which could identify an intelligence source;" is "information pertaining to intelligence methods;" and once again is "information confirming the existence of a CIA installation in a named foreign country," All of this verbiage is cited to (b)(1) and (b)(3). No other explanation is provided.

68. While this CIA concern for the names of cities is new within my extensive experience with mind-boggling contrivances for arbitrary, capricious and, except for harassment, utterly pointless withholdings under claims ranging up to and including "national security," it is not unique within this Owen affidavit and currently it is paralleled by the FBI. This is one of the reasons I believe these two agencies have combined in their efforts to violate the Act and seek its amending.

69. In my C.A. 75-1996, after more than a year, the FBI still withholds the name of the William Len Hotel in Memphis, notwithstanding the FBI's earlier disclosure of the name of this hotel in the same file. "Privacy" was claimed.

70. Mr. Owen also has a city concern in Document 247. Like most of the other documents, it has the appearance of a slice of well-ventilated Swiss cheese. Of these many excisions I cite that of the city, "... (obliterated) who formerly worked in (obliterated) ..." This is not the only city name withholding in this document. Not to withhold the names of these cities, Mr. Owen claims, "would constitute a clearly unwarranted invasion of personal privacy (b)(6)."

71. Relating to Document 248, Mr. Owen claims for the withholding that follows "a. information received from a foreign intelligence service (b)(1) and (b)(3)." Document 248 is a routing slip bearing several notes. One reads: "Please prepare a transmittal CSCI to the FBI explaining the deals of the acquisition of this (obliterated)." While I do not know what is obliterated, by sense and by space, "memorandum" fits. So also does "photograph." Incredibly enough, after withholding Documents 249 and 250 in their entirety, Mr. Owen not only provides Document 251 - he also attaches it to Document 248. Document 251 is a "memorandum" to the FBI, as it states it is. It also refers to a photograph. Reference to either a memo or a photo could be the cited withholding from Document 248. Only four claims to exemption were made with regard to Document 248, but Mr. Owen recovered himself quickly by making seven exemption claims each for Nos. 249 and 250 and he was able to sustain his higher level of exemption claiming for the memo to the FBI, Document 251. He makes seven claims for its withholdings. In all cases, there is the CIA's patriotic concern for "national security." In all cases it is the first exemption claimed.

72. Document 284, which was approved for release on February 9, is another memo to the FBI. In its six claims to exemption (b)(1) and (b)(6) are included in five different descriptions. With this one Mr. Owen joined the FBI in withholding the name of a hotel and improved on the FBI by claiming more than privacy (b)(6) for the name of the hotel. He also claimed it is "information which would identify an intelligence source" and thereby pose serious threat to the national security. The nation was saved in this manner: "... saw the Subject at the desk of the (obliterated) hotel." In this Mr. Owen was not unaware of his obligations to protect foreign cities for once again he withheld a name alleging this is required by the identical claims to exemption: "... en route to (obliterated)." With other cities he has no less concern: "... that he had

recently arrived in (obliterated) from (obliterated) via (obliterated) on (obliterated) Airlines." (While there are other instances in this document, I believe the foregoing suffices to establish Mr. Owen's and the CIA's regard for "national security" under FOIA.

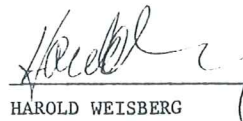
73. While I was skimming the records provided with the second Owen affidavit for the purpose of checking his count (I was not provided with a copy of Document 252, which is not among those he lists as deleted in toto), I came across some completely unidentified records that bear no document number and are not attached to any other record. They come between Nos. 311 and 312. The absence of the number of pages provided in any record makes any attempt at identification at best conjectural.

74. The first record is of seven pages the total original content of which is obliterated. A few marginal notes remain. There is claim to whatever may have been represented by the initials used instead of exemption identification that is not provided. The nature of these pages is indicative of domestic intelligence, a pursuit supposedly denied to the CIA by statute. Headings are for somebody's biographic data, addresses, foreign travel (nine entries to February 1968), contacts, and organizational associations. The last is by far the largest item. The subjects of my request, of course, are Dr. King and James Earl Ray. At the time of these travels Mr. Ray had been safely if impermanently in the Missouri State Penitentiary. Then there is a page identified as "Source Key," of which nine are withheld except for their dates.

75. What is even more interesting is a single page that, from the internal evidence, is not a xerox of the actual original page. The addressee and signatory are both obliterated. At precisely that time there was great official concern over Dr. King's scheduled Poor People's March on Washington. The entire text of this unidentified record reads, "This summary is based on FBI reports and agency reports all of which are filed in (obliterated, "E" superimposed.)"

76. No records have been provided to me in this instant cause that are identifiable as "filed in (obliterated, "E" superimposed.)" However, I believe that, whatever this component in, its records should be searched for compliance. If there were no relevance to my information request, there would be no purpose in providing this record. The nature of the expurgation bears heavily on the

claims made for such withholdings and it is common within my experience: they lead to unsearched and withheld files and records.


HAROLD WEISBERG

Before me this 9TH 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 7-1-82


NOTARY PUBLIC