

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| HAROLD WEISBERG,                    | : |                          |
|                                     | : |                          |
| Plaintiff,                          | : |                          |
|                                     | : |                          |
| v.                                  | : | Civil Action No. 78-0249 |
|                                     | : |                          |
| CLARENCE M. KELLEY, <u>et al.</u> , | : |                          |
|                                     | : |                          |
| Defendants                          | : |                          |

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MEMORANDUM OF POINTS AND AUTHORITIES

By order dated October 25, 1978, this Court granted a motion for a protective order which defendants' made to prevent plaintiff from taking the depositions of FBI Special Agents Horace P. Beckwith and Allan H. McCreight. Thereafter, by order dated February 15, 1979, this Court granted summary judgment on behalf of defendants.

Subsequently, however, plaintiff filed a motion for reconsideration supported by three affidavits and numerous exhibits. Plaintiff's affidavits and exhibits make it quite plain that defendants' have filed untruthful, obfuscatory and misleading affidavits with this Court. For example, with respect to purportedly classified matters, the April 17, 1979 affidavit of Special Agent Horace P. Beckwith stated in its Paragraph (3)(a) that:

Title 5, United States Code, Section 552 (b)(1) exempts from disclosure information which is currently and properly classified pursuant to Executive Order 11652. This information contained in the inventory worksheets in the form of notations and short phrases is identical to information which is duly classified in the original documents. This information, if released, would identify foreign sources or sensitive procedures, thereby jeopardizing foreign policy and the national defense.

The Beckwith affidavit thus gives the clear impression that certain "notations and short phrases" on the worksheets had already been classified in that form, as well as in the underlying "original documents." However, if the affidavit of Bradley Benson, is correct, this impression is entirely false, since Benson swears that the information on the worksheets was not classified until April 27, 1978, ten days after the date of the Beckwith affidavit.

The April 28, 1978 affidavit of David M. Lattin asserts:

(9) The affiant has reviewed the worksheets and has determined that the proper classification has been assigned and that they have been appropriately marked in accordance with EO 11652 and Sections (4)(A) and 28 C.F.R. 17.40, et seq.

The Lattin affidavit is deliberately worded so as to give the false impression that the information on the worksheets was properly classified in accordance with the procedures specified in E.O. 11652. But E.O. 11652 requires that classified material be classified at the time of origination! The Benson affidavit makes it clear, however, that classification did not result until months after origination of the worksheets!

It is apparent that each of the affidavits submitted by the defendants in this case was deliberately worded so as to conceal relevant information from plaintiff and the Court and to mislead the Court. The defendants' affidavits did have that effect. In its Opinion of February 15, 1979, this Court asserted that: "Here the FBI affidavits show that the documents are classified according to the proper procedural criteria and that they are correctly withheld under both Executive Orders 11652 and 12065." (Opinion, p. 2)

As a result of its reliance on the truthfulness and "good faith" of the FBI affidavits, this Court now finds itself in the embarrassing position of having suppressed innocuous information already released--the initials "R.C.M.P.," standing for "Royal

Canadian Mounted Police"--under the guise that the national security of the United States will be jeopardized if this information is released to Weisberg.

It is evident from this example, as well as from the additional information which is found in the attached affidavit of James H. Lesar and its attachments, that plaintiff must be allowed to test the accuracy and veracity of the affiants used by the defendants. Not to permit plaintiff to undertake discovery after these affiants have been shown to have submitted false and misleading information to the Court would be to irremediably tarnish the integrity and independence of the Court and to prohibit plaintiff from exercising his only means of countering the corrupt practices of the FBI.

Respectfully submitted,



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

Attorney for Plaintiff



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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: :  
HAROLD WEISBERG, : :  
: :  
: :  
Plaintiff, : :  
: :  
v. : : Civil Action No. 78-0249  
: :  
: :  
CLARENCE M. KELLEY, et al., : :  
: :  
: :  
Defendants : :  
: :  
.....

O R D E R

Upon consideration of plaintiff's motion to vacate the Court's order of October 25, 1978, and to set a schedule for discovery, defendants' opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1979, hereby ORDERED, that the Court's order of October 25, 1978 granting Defendants' motion for a protective order and barring plaintiff from taking the depositions of FBI Special Agents McCreight and Beckwith be, and hereby is, VACATED; and it is hereby further ORDERED, that Plaintiff shall have \_\_\_\_\_ days within which to complete discovery in this case.

\_\_\_\_\_  
UNITED STATES DISTRICT COURT



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, :  
:  
Plaintiff, :  
:  
v. : Civil Action No. 78-0249  
:  
:  
CLARENCE M. KELLEY, et al., :  
:  
Defendants :  
:  
.....

AFFIDAVIT OF JAMES H. LESAR

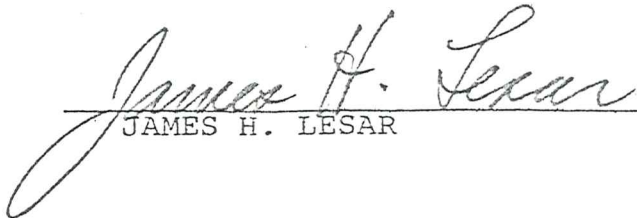
I, James H. Lesar, first having been duly sworn, depose and say as follows:

1. I represent the plaintiff, Mr. Harold Weisberg, in the above-entitled cause of action.
2. Mr. Weisberg recently provided me with copies of some documents he has obtained as a result of a FOIA request for records pertaining to a former FBI informant, Mr. Oliver Patterson.
3. In this case the FBI has excised certain information pertaining to informants on the grounds that it is exempt from disclosure under Exemption 2, which provides an exception for "matters that are "related solely to the internal personnel rules and practices of an agency." However, Attachment A, a copy of a signed agreement between Patterson and the FBI, contains Mr. Patterson's express declaration that: "I understand that I am not a Federal employee and will not represent myself as such." It is apparent from this and other records which Mr. Weisberg has obtained on Mr. Patterson that the FBI is in fact using Exemption 2 to conceal information pertaining to persons who are not FBI employees. (See Attachments A-E)

4. In this case the FBI has invoked Exemption 7(D) allegedly to withhold the identity of confidential sources and the information supplied by them. The FBI considers state and local law enforcement agencies as "confidential sources" and sometimes withholds records which the FBI has obtained from them on the grounds that they are exempt under 7(D). For instance, in Lesar v. Department of Justice, Civil Action No. 77-0692, the government withheld records of the Atlanta and Memphis police departments en masse on the grounds that they are exempt under 7(D), even though some of these records had been made public previously by the FBI itself. This Court has accepted the government's position on this issue by declaring in its Opinion that 7(D) protects against the disclosure of any source, "whether it be an individual, an agency or a commercial or institutional source." (Opinion, p. 4)

5. The FBI is not uniform in its treatment of the records of state and local law enforcement agencies in its possession. Sometimes it does release these records without invoking Exemption 7(D). For example, the FBI has recently released two reports of the Columbia, Missouri Police Department which pertain to Mr. Patterson's arrest for public drunkenness. (See Attachment F)

6. Recent news accounts report that FBI Director William H. Webster has acknowledged in testimony before the House Judiciary Subcommittee on Civil and Constitutional Rights that FBI agents used to list "phony informants" such as "the bartender, the taxi driver and everyone who said it looks like rain outside." (See Attachment G) This testimony gives rise to the possibility that the FBI's claims under Exemption 7(C) and/or 7(D) in this case might be based on "phony informants."

  
\_\_\_\_\_  
JAMES H. LESAR

WASHINGTON, D.C.

Subscribed and sworn to before me this 21st day of March,  
1979, by James H. Lesar.



*Judith A. Hartnett*  
NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

My commission expires July 31, 1979.



File No. 170 <sup>(b)(2) 1A 40</sup>  
<sup>(b)(7)(D) ~~1A 9~~</sup>

Date Received 5/11/70

From OLIVER BLACK PATTERSON, JR.  
(NAME OF CONTRIBUTOR)

10350 OLD NEW HALLS FARM RD.  
(ADDRESS OF CONTRIBUTOR)

BLACK JACK, MO.  
(CITY AND STATE)

By SA S.F. JACOBSON  
(NAME OF SPECIAL AGENT)

To Be Returned  Yes  
 No

Receipt given  Yes  
 No

Description:

1 - STATEMENT OF  
COOPERATION OF  
O. B. PATTERSON

ATTACHMENT A

C. A. 78-0249

I, Oliver Block Patterson, have voluntarily agreed to cooperate with the Federal Bureau of Investigation in a matter affecting the security of the United States. I consider it a patriotic duty to so cooperate and agree to maintain this relationship in strict confidence. I understand that I am not a Federal employee and will not represent myself as such. I further agree not to make any disclosure or exploit in any way information which I may obtain or any activity in which I may engage on behalf of the Federal Bureau of Investigation, both while I am actively associated with the Federal Bureau of Investigation and thereafter, unless authorized to do so by the Bureau.

Oliver Patterson

WITNESSED:

Henry F. Jacobs, SA, FBI, ST. LOUIS, MO.  
5/11/70

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 12/12/08 BY 1254 WJ

(b)(2), (b)(7)(D)

File No. 170 - [redacted] 1A42

Date Received 1-31-78

From Oliver Patterson  
(NAME OF CONTRIBUTOR)

\_\_\_\_\_  
(ADDRESS OF CONTRIBUTOR)

\_\_\_\_\_  
(CITY AND STATE)

\_\_\_\_\_  
(NAME OF SPECIAL AGENT)

To Be Returned  Yes  No      Receipt Given  Yes  No

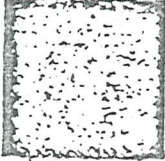
Description:

*Handwritten letter  
from Patterson dated  
1-28-78.*

ATTACHMENT B

C.A. 78-0249





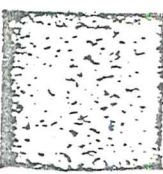
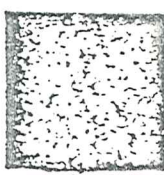
15  
32

SAINT LOUIS, MO 631  
2 PM  
30 JAN  
1978



ATT:  
JIM HABBERTY

F. B. I.  
P.O. 7251  
MAIN STATION  
ST. LOUIS, MISSOURI  
63177



ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 12/12/79 BY 1259 JG/

12350 Old Halls Ferry  
Florissant, Mo. 63033

January 28, 1978

Jim Haggerty -  
P.O. 7251  
St. Louis, Mo.

Dear Jim -

As per our conversation at the restaurant the other morning (1/27/78) I have kind of changed my mind about whether or not I would be willing to talk to anybody about anything I might know.

I really don't feel that I could add anything that would really be earthshaking and for the hassle that might be involved - newspapers - etc. I really don't think it would be worth it.

If I can be kept out of it, I would certainly appreciate it.

Thanks

Alan Patterson

355-1500



UNITED STATES GOVERNMENT

# Memorandum

TO : SAC, ST. LOUIS (170-[REDACTED]A) P <sup>(b)(2), (b)(7)(D)</sup> DATE: 11/12/70

FROM : SA STANLEY F. JACOBSEN

CI  SI  R (Prob)

PCI  PSI  R

SUBJECT: [REDACTED] <sup>(b)(2), (b)(7)(D)</sup>

|   |
|---|
| Dates of Contact  |
| 11/8/70   |
| File #s on which contacted (Use Titles when File #s not available or CI positive info.) |
| 91-5279   |
| 105-1564  |
|   |
|   |
|   |

Purpose and results of contact

NEGATIVE      Informant advised that in a conversation with J. B. STONER, the attorney for JOHN RAY, STONER indicated that he feels the U. S. Government has a very weak case against his client, JOHN RAY and that it is for this reason that the United States Attorney in St. Louis, Mo. had RAY indicted rather than go through the formality of a preliminary hearing.

POSITIVE

STATISTIC

STONER also advised the informant that plans are to have RAY remain in jail rather than make bond because his trial will then be scheduled sooner. STONER also indicated that there was considerable time which passed after RAY's arrest before he was able to make a telephone call, and the defense may bring this to the attention of the court at the trial.

|   |          |
|---|----------|
| <input checked="" type="checkbox"/> Informant certified that he has furnished all information obtained by him since last contact. | Coverage |
|---|----------|

|               |  |
|---------------|--|
| PERSONAL DATA | Minutemen/NSRP <sup>(b)(2)</sup>   |
| No Change     | 170- <span style="background-color: black; color: black;">[REDACTED]</span> A-37 |

SEARCHED \_\_\_\_\_ INDEXED \_\_\_\_\_  
SERIALIZED \_\_\_\_\_  
NOV 12 1970  
FBI - SAINT LOUIS

<sup>(b)(2) (b)(7)(D)</sup>  
① 170-[REDACTED]A  
1 - 91-5279

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 12/11/78 BY 1259 JSP/llc

ATTACHMENT C      C.A. 78-0249



Cover Sheet for Informant Report or Material  
FD-306 (Rev. 9-30-69)

Date prepared

4/26/71

Date received

4/23/71

Received from (name or symbol number)

[Redacted]

(b)(2)  
(b)(7)(D)

Received by

SA STANLEY F. JACOBSON

Method of delivery (check appropriate blocks)

in person

by telephone

by mail

orally

recording device

written by Informant

If orally furnished and reduced to writing by Agent:

Date

Dictated \_\_\_\_\_ to \_\_\_\_\_

Transcribed \_\_\_\_\_

Authenticated by Informant \_\_\_\_\_

Date of Report

4/11/71

Date(s) of activity

4/11/71

Brief description of activity or material

Ch. [Redacted] - telephone  
[Redacted] [Redacted] [Redacted]

(b)(2), (b)(7)(D)  
File when original is located if not attached

[Redacted]

\* INDIVIDUALS DESIGNATED BY AN ASTERISK (\*) ONLY ATTENDED A MEETING AND DID NOT ACTIVELY PARTICIPATE IN VIOLENCE OR REVOLUTIONARY ACTIVITIES WERE NOT DISCUSSED.

Information recorded on a card index by \_\_\_\_\_ on date \_\_\_\_\_

Remarks:

(b)(2), (b)(7)(D)  
D-170- [Redacted] - 93  
1-105-1564 (USRP)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 12/11/74 BY 1259

01119

Block Stamp (b)(2) (b)(7)(D)

ATTACHMENT D

C.A. 78-0249

170- [Redacted] - 93

SEARCHED \_\_\_\_\_ INDEXED \_\_\_\_\_  
SERIALIZED \_\_\_\_\_  
APR 20 1971  
FBI - SAINT LOUIS

April 11, 1971  
St. Louis, Missouri

Tonight OLIVER PATTERSON called JERRY RAY in St. Louis at 645-4571 (JERRY RAY'S sister in Maplewood, Missouri). PATTERSON & RAY talked about the trial and PATTERSON told RAY that if RAY needed anything to get in touch with PATTERSON or if anything came up, for RAY to contact PATTERSON. Talked about the weather and the conversation ended

*f. h. h.*

File No. 170 - [redacted] A-1A36  
(b)(2), (b)(7)(D)

Date Received [redacted]

From [redacted] (b)(2), (b)(7)(D)  
(NAME OF CONTRIBUTOR)

[redacted]  
(ADDRESS OF CONTRIBUTOR)

[redacted]  
(CITY AND STATE)

By SA S.F. JACOBSEN  
(NAME OF SPECIAL AGENT)

To Be Returned  Yes  
 No

Receipt given  Yes  
 No

Description:

12 PHOTOGRAPHS  
TAKEN BY SL1495-R  
AT NSRP FICHEL,  
DENTONVILLE, ARK.,  
5/30/71

ATTACHMENT B

C. A. 78-00019



(b)(2) 1A39  
(b)(7)(D) ~~FE~~

File No. 170-

Date Received 2-20-70

From Kansas City  
(NAME OF CONTRIBUTOR)

(ADDRESS OF CONTRIBUTOR)

(CITY AND STATE)

By mail  
(NAME OF SPECIAL AGENT)

To Be Returned  Yes  
 No

Receipt given  Yes  
 No

Description:

One copy each of  
Columbia Police Dept.  
Report # 43334 & 4334

ATTACHMENT F

C.A. 78-0249

4334

DEPARTMENT OF POLICE  
COLUMBIA, MISSOURI

File No. 161050  
(Not to be filled in)

Name Patterson Jr. Oliver Block Black Address 16 High Acres Dr. Olivette, Mo.  
last first middle

RECORD OF { ARREST   
SUMMONS

Offense warrant for assault Officer(s) [redacted]

Place 1027 South Park Dr. (b)(7)(c) Date 2-14-68 Time 8:15 PM

Desk Sgt [redacted] Date Committed 2-14-68 Summons: To Appear \_\_\_\_\_

Bond (amt.) \_\_\_\_\_ To Appear \_\_\_\_\_ Social Security No. \_\_\_\_\_

Occupation \_\_\_\_\_ Date and Place of birth 1-8-44

Race W Sex M Age 24 Hgt. 6' Wgt. 170 Hair Brown Eyes Blue Comp. hazel Build Heavy

Drivers' License No. \_\_\_\_\_ Make and Model of Car \_\_\_\_\_ Lic. No. \_\_\_\_\_

WITNESSES:  
Name \_\_\_\_\_ Address \_\_\_\_\_ Phone No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DETAILS (Report all facts in logical sequence) Complaint No. \_\_\_\_\_  
(If additional space is needed use Continuation Report)

The above named person was arrested for being drunk in public view and refused to give his name or any other information. When stopping above identification or service selective card was found. ~~subject~~ Columbia Police Dept. had a warrant for assault for subject for assault on one Alex Ester from County of Boone & signed by clerk of said Court. Warrant was taken back to city jail & this officer called subjects name & he answered to it & warrant was read to him.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/2/78 BY 125199 P/dh

Radio Message No. \_\_\_\_\_ To \_\_\_\_\_ Time \_\_\_\_\_

Court Disposition: Date 2/15/68 Fine \$ \_\_\_\_\_ Paid \_\_\_\_\_ Days \_\_\_\_\_

Stayed \_\_\_\_\_ Committed \_\_\_\_\_ Served \_\_\_\_\_ Pd. \$ \_\_\_\_\_ Released \_\_\_\_\_

Plea of Not Guilty \_\_\_\_\_ Hearing \_\_\_\_\_ Bond (amt) \_\_\_\_\_ Cont'd. \_\_\_\_\_

Other disposition TOTAL



Name Patterson, Al. C. Block Address 1400 Porter St. N.W.  
last first middle  
 Offense Drunk in public view Officer [redacted]  
 Place 1027 South Park Dr. Date 2-14-68 Time 8:15 PM  
 Desk Sgt. [redacted] Date Committed 2-14-68 Summons: To Appear \_\_\_\_\_  
 Bond (amt.) \_\_\_\_\_ To Appear \_\_\_\_\_ Social Security No. \_\_\_\_\_  
 Occupation \_\_\_\_\_ Date and Place of birth 1-8-44  
 Race W Sex M Age 24 Hgt. 5' Wgt. 210 Hair Brown Eyes Blue Comp. M.D. Build Heavy  
 Drivers' License No. \_\_\_\_\_ Make and Model of Car \_\_\_\_\_ Lic. No. \_\_\_\_\_

WITNESSES:

Name \_\_\_\_\_ Address \_\_\_\_\_ Phone No. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DETAILS (Report all facts in logical sequence) Complaint No. \_\_\_\_\_  
 (If additional space is needed use Continuation Report)

Officers received call from station that they had a person at 1400 Porter who had been asked to leave several times & that he refused to leave & had been drinking. Officer [redacted] turned & traveled south on Porter & the manager of apartment houses on South Park told officer that person walk down street was one who had been at 1400 Porter. This officer then proceeded along subject & as I approached could see subject stagger. Officer asked subject to get in patrol car which he did & when asked why & why at 1400 Porter he stated he had not been there. Subject eyes were bloodshot & breath smelled strongly of intoxicating liquor & his attitude was very illigient also was carrying beer in a brown sack. Subject was enjoined to 100 under arrest for being drunk in public view & brought to station by officer [redacted] & placed in City Jail.

Radio Message No. \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Court Disposition: Date 2/15/68 Fine \$ \_\_\_\_\_ Paid \_\_\_\_\_ Days \_\_\_\_\_  
 Stayed \_\_\_\_\_ Committed \_\_\_\_\_ Served \_\_\_\_\_ Pd. \$ \_\_\_\_\_ Released \_\_\_\_\_  
 Plea of Not Guilty \_\_\_\_\_ Hearing \_\_\_\_\_ Bond (amt.) \_\_\_\_\_ Cont'd. \_\_\_\_\_  
 Other disposition NOT STAYED

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 2/12/79 BY 1259 [signature]



# FBI Spurns Hill Audit on Informants

By Robert Pear

Washington Star Staff Writer

FBI Director William H. Webster has rebuffed an attempt by Congress to investigate the FBI's confidential informant program.

His action is the latest example of a recurrent problem — executive branch agencies refusing to let the General Accounting Office examine their files.

Because of such disputes, some members of Congress now favor giving subpoena powers or a judicially enforceable right of access to GAO, an investigative arm of Congress.

The GAO wanted to ask such questions as: How valuable are the FBI's informants? How does the FBI know there is a real person corresponding to each informant's name listed in the files? How does the FBI control money paid to informants? How does the FBI know its informants don't instigate or participate in crimes?

The GAO did not want to see the names of informants, agreeing that the FBI could delete the names from any records turned over to GAO auditors.

BUT WEBSTER feared that the perception of outsiders having access to the information could be as damaging as actual disclosure of informants' identities.

"My considered opinion is that the FBI cannot allow any informant review or audit which would lend the impression of any type of access to the information in informant files," Webster wrote to Comptroller General Elmer B. Staats, head of the GAO.

"The FBI must protect this confidential relationship to maintain credibility with those persons whose assistance is vital to our investigative mission," the FBI director said.

Webster, appearing before a congressional committee last week, called the informant "the single most important investigative tool available to law enforcement."

Negotiations for a GAO audit of the controversial informant program are at an "impasse," Staats said.

The audit was requested by the House Judiciary subcommittee on civil and constitutional rights, headed by Rep. Don Edwards, D-Calif.

AT ABOUT the same time, reports began to surface suggesting that FBI agents, under pressure from headquarters, had fabricated informants and pocketed cash payments earmarked for the nonexistent informants.

Webster acknowledged that FBI agents used to list "phony informants" such as "the bartender, the taxi driver and everyone who said it looks like rain outside."

But he said, "We've applied a professional ax to that type of informant collection." As a result, the number of informants has dropped dramatically — from 11,000 in 1976 to about 2,800.

Webster said there are about 1,000 informants in organized crime, 1,300 in general crimes and 42 in domestic security cases, compared with several thousand in the last category a few years ago.

Edwards, a former FBI agent, complained that Webster's refusal to cooperate with the General Accounting Office was seriously hindering Congress.

The congressman said he was particularly disturbed by recent allegations that the FBI, when it was supposed to be giving GAO investigators a random selection of records for a previous audit, had actually manipulated the files, suppressing those "that would really create problems for the FBI."

Staats and other GAO officials maintain that "our statutory authority clearly provides for us to have access to FBI files and documents." Edwards agrees. But FBI and Justice Department officials dispute the GAO's claim in some cases.

A 1976 agreement signed by Staats and former FBI Director Clarence Kelley gave the GAO regular access to FBI files for the first time. However, there were many limitations.

ATTACHMENT G

C. A. 78-0249