No. 78-2305

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JAMES H. LESAR,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE

ALICE DANIEL,
Assistant Attorney General.

CHARLES F. C. RUFF,
United States Attorney.

LEONARD SCHAITMAN,
LINDA JAN S. PACK,
Attorneys,
Civil Division, Room 3631,
Department of Justice,
Washington, D.C. 20530

INDEX

Citations

Statutes: Page

Miscellaneous:

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-2305

JAMES H. LESAR,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE

ISSUES PRESENTED*

This Freedom of Information Act case presentes the following issues on appeal:

1. Whether a remand of the Exemption 1 claim is required in light either of this Court's decision in Ray v. Turner, 190 U.S. App. D.C. 290, 587 F. 2d 1187 (1978) or the issuance of a new Executive Order on classification of documents (E.O. 12065).

2. Whether the documents withheld under Exemption 1 were properly classifiable and properly classified.

---

*This case has not previously been before this Court, having been heard only in the district court, whose decision is reported at 455 F. Supp. 921. There are no related cases pending in this Court.

3. Whether Exemption 2 authorized deletion of certain informant identification symbols from documents released to the appellant, where the disclosure of the symbols would aid in the identification of the informants and harm government interests, and where no legitimate public interest in disclosure of the symbols has been shown.

4. Whether Exemption 7(C) authorizes nondisclosure of the names of FBI personnel below the rank of section chief and of persons furnishing information to the FBI in an investigation.

5. Whether Exemption 7(C) authorizes nondisclosure of FBI investigative records where the release of such records would result in an unwarranted invasion of the privacy of third parties.

6. Whether, under Exemption 7(D), records of local police agencies are exempt from disclosure as "confidential source" data to avoid impairment of the cooperation of nonfederal law enforcement entities with the FBI.

STATEMENT

A. Nature of the Case

This Freedom on Information Act ("FOIA") case involves documents that were compiled or generated by two components of the Department of Justice during their 1975-1977 review of the FBI's investigations of Dr. Martin Luther King, Jr. and his assassination. In February, 1977, the 149-page final report on this review was released to the public, providing

a thorough synopsis and evaluation of the FBI's activities with regard to Dr. King. Plaintiff-appellant, having filed an FOIA request, was immediately given this detailed report and then, during the course of the administrative proceedings on his request, was also provided with most of the background materials generated during the review and retained in Departmental files as memoranda or as appendicies to the final report. However, relying on specific FOIA exemptions, the Department withheld from appellant all or part of certain memoranda and appendix materials, which are at issue in this litigation. These materials include classified information that affects national security (Exemption 1), informant identification numbers that appear in FBI files (Exemption 2), investigative records that involve personal privacy interests (Exemption 7(C)), and city police department records that were obtained from local officials in confidence (Exemption 7(D)). Appellant contested each of these claimed exemptions and argued that he, on behalf of his associate Harold Weisberg (a frequent FOIA litigant and professed expert on Dr. King), was being wrongfully denied access to the complete records on the FBI's treatment of Dr. King. The district court, Judge Gerhard A. Gesell presiding, conducted painstakingly thorough proceedings, during which the Department filed 14 affidavits, appellant filed 7 affidavits, two hearings were held, and one large group of documents (police records) was examined in camera. On the basis on this record, Judge Gesell issued a detailed opinion, ruling for the Department on every exemption claimed. Summary judgment was entered for the Department and this appeal followed.

B. Historical Background: The Review of the FBI Investigations

Between November, 1975 and February, 1977, at the direction of Attorney General Edward H. Levi, a thorough review of Justice Department and FBI files pertaining to Dr. King was conducted. The first phase of this review was handled by the Department's Civil Rights Division. A report was prepared by Robert A. Murphy, the head of the Division's Criminal Section ("Murphy Report") [1/] and was transmitted to the Attorney General along with a memorandum from J. Stanley Pottinger, the Assistant Attorney General for the Civil Rights Division ("Pottinger Memo"). [2/] After receiving this report, the Attorney General ordered a further review under the direction of the Department's Office of Professional Responsibility ("OPR"), headed by Michael E. Shaheen. An intradepartmental task force was created. On January 11, 1977, it submitted to the Attorney General its final report, titled "Report of the Justice Department Task Force to Review the FBI Martin Luther King, Jr. Security and Assassination Investigations." ("Task Force Report"). This 149-page Report was released to the public on February 18, 1977. The three voluminous appendices to the Report, which contained exhibits (Appendix A), [3/] Task Force working papers (Appendix B), [4/] and a compilation of

---

1/ The report, submitted on March 31, 1976, is at issue here, in that portions of it were deleted under Exemption 1 and 7(C) when it was released to appellant.

2/ This memorandum, dated April 9, 1976, was released to appellant with deletions pursuant to Exemptions 1 and 7(c).

3/ Appendix A is a compilation of eighteen exhibits and documents referred to in the Task Force Report.

4/ Appendix B consists of one three-ring notebook containing the Task Force's typewritten notes on interviews.

summaries of all documents reviewed by the Task Force (Appendix C),[5] were not made public, except that most of Appendix A was published together with the Report[6] The Task Force was disbanded upon submission of its Report. Its records are now in the custody of OPR.[7]

C. Appellant's FOIA Request

In his FOIA request dated February 7, 1977 (a week prior to the publication of the Task Force Report), appellant sought access to records relating to the Department's review of the FBI's files on Dr. King. He itemized six documents or categories of documents: (1) directives to Civil Rights Division, (2) report by Civil Rights Division, (3) Departmental press releases, (4) directives to OPR, (5) directives to Task Force, (6) report by OPR.[8] The Departmental components involved, the Civil

---

5/ Appendix C comprises 20 Volumes numbered I through XVII and XIX through XXI. Because of a numbering error, there is no volume XVIII. Volumes I through XI and XXI are a record of FBI documents. Some of these volumes (II, III, IV, V, XXI) are each in two parts: "M" or "Murkin" denotes the part containing documents regarding the FBI's investigation of Dr. King's murder; "S" or "Security" denotes the part containing materials relating to the security investigation of Dr. King. The remainder of Appendix C (volumes XII through XVII, XIX, XX) consists of non-Departmental documents that were examined by the Task Force: local police department records, court transcripts, James Earl Ray's notes to writer William B. Huie.

6/ Exhibit B to the Affidavit of Michael E. Shaheen, Jr., at ii-iii ("Shaheen Affidavit") (filed February 1, 1978). The three Appendices to the Report are at issue here, since the Department has withheld all or part of some portions pursuant to various FOIA exemptions.

7/ Shaheen Affidavit ¶¶ 1-4, 8.

8/ Freedom of Information Request, February 7, 1977 (attached to Complaint as Exh. 1; attached to Defendant's Motion for Summary Judgment as Exh. B).

Rights Division and the Office of Professional Responsibility, each responded to appellant's FOIA request in an expeditious and comprehensive manner.

1. The Civil Rights Division Documents

The first three paragraphs of appellant's request were focused on the Civil Rights Division, seeking access to intra-agency documents that directed the Division's review of the King assassination and that reported the review's findings to the Attorney General. 9/ In response to the first part of the request, one document was located: a memorandum issued by the Attorney General to the Civil Rights Division on November 26, 1976. After appropriate referral to the Office of the Attorney General, this memorandum was disclosed in its entirety as a discretionary release. Dougherty Affidavit, ¶¶ 4, 7-8, Exh. E.

In response to appellant's request for the Division's report to the Attorney General, the intra-agency document was identified as consisting of the April 9, 1976 Pottinger Memo with two attached staff memoranda dated March 31, 1976 (the

---

9/ In paragraph 3 of his request, appellant sought copies of press releases relating to the Civil Rights Division's review. This portion of the request was referred to the Department's Office of Public Information for appropriate processing. Affidavit of Salliann M. Dougherty ("Dougherty Affidavit") ¶ 3 (filed on February 1, 1978). By letter dated March 3, 1977, the Department's Director of Public Information furnished appellant copies of press releases and transcripts of press conferences and interviews in which Dr. King was mentioned. (App.).

Murphy Report). Each of these documents had been classified in its entirety on April 9, 1976, pursuant to Executive Order 11652.[10] Accordingly, appellant's request for access to these documents was denied in its entirety on the basis of Exemption (b)(1).[11] Subsequently, the classification of these three documents was reviewed on appeal and it was determined that certain portions (including the entirety of one of the March 31, 1976 memoranda) no longer required classification.[12] Accordingly, this material was declassified and released to appellant, subject only to excisions of certain names and other identifying data on privacy grounds.[13] Thus, one whole memorandum and most

---

10/ Affidavit of James P. Turner ("Turner Affidavit") ¶ 2 (filed on February 1, 1978); Dougherty Affidavit ¶ 5; Affidavit of Lewis L. Small ("Small Affidavit") ¶ 13 (attached to Defendant's Motion for Summary Judgment, filed on May 11, 1978).

11/ Dougherty Affidavit ¶ 8; Turner Affidavit ¶ 3. Additionally, it was determined that these three documents were exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(5) because of their character as intra-agency memoranda and in certain portions pursuant to 5 U.S.C. § 552(b)(7)(C) and (E) because such portions contain personal provacy information or reflect protected investigative techniques or procedures. Id. As is explained below, Exemption 7(C) continues to be applied to these documents.

12/ At the same time, it was determined that certain portions of the two remaining documents required reclassification at another classification level. Dougherty Affidavit ¶¶ 10-11; Supplemental Affidavit of James P. Turner ("Supplemental Turner Affidavit") ¶ 3 (attached to Defendant's Motion for Summaru Judgment, filed on May 11, 1978.

13/ Dougherty Affidavit ¶¶ 10-14; Turner Affidavit ¶¶ 4-5; Supplemental Turner Affidavit ¶¶ 4-6.

of the contents of the two others were released; only material exempt from disclosure pursuant to 5 U.S.C. § 552(b)(1) or (b)(7)(C) was withheld.[14/]

2. The Office of Professional Responsibility Documents

The last three items in appellant's request sought access to records pertaining to OPR's "review of the King assassination."[15/] Two weeks after the request was submitted, appellant was provided with complete copies of the documents identified in items four and six (directives to OPR and Task Force Report);[16/] he was advised of the non-existence of any documents identified in item five (directives to Project Team).[17/] Some two weeks later, appellant amended his request to include "all appendix material" associated with

---

14/ It should be noted that the one March 31, 1976 memorandum which was declassified in its entirety was released without excisions because it contains no privacy information. Supplemental Turner Affidavit ¶ 6. The deletions made in the other two memoranda pursuant to Exemption 1 and 7(C) are shown in the expurgated copies of those documents filed in the district court as part of Exhibit A to Supplemental Turner Affidavit.

15/ Paragraph 6, of the request specified "[t]he 148 page report by the Office of Professional Responsibility on its review of the King assassination." As is explained in the Shaheen Affidavit there was no report by OPR; the review was in fact conducted and the report was prepared by an intra-departmental Task Force created by order of the Attorney General. The Task Force was disbanded when its report was submitted. Its records are now in OPR's custody. Shaheen Affidavit ¶¶ 1-4, 8.

16/ While appellant had specified the "report by the Office of Professional Responsibility," it was apparent that he actually was requesting the final report prepared by the Task Force. This was provided to appellant in the form in which it was released to the public. Parts of Appendix A, but none of Appendices B or C were included.

17/ Shaheen Affidavit ¶ 11; Letter to appellant dated February 23, 1977 (attached as Exh. D. to Defendant's Motion for Summary Judgment filed May 11, 1978).

the 149-page report provided him pursuant to item six of his original request.[18] In response to this new request for the appendices, OPR initially denied further releases in Appendix A (parts of which were published with the Report), released every page (some with minor deletions) in Appendix B, and withheld the Appendix C materials in their entirety.[19] On appellant's administrative appeal, the Department undertook substantial releases of previously-withheld materials in Appendices A and C and further reduced the limited excisions made in certain pages within Appendix B.[20] As a result, all three Appendices were disclosed except for those pages released in deleted form[21] and those few volumes or items still withheld in their entirety.[22] As the Index in the Shaheen Affidavit indicated, this material was withheld pursuant to FOIA Exemptions 1, 2, 6, 7(C), 7(D), and 7(E), and also pursuant to the Order entered by the federal district court for the District of Columbia on January 31, 1977 in the consolidated

---

18/ Appellant's letter dated March 10, 1977 (attached as Exh. E to Defendant's Motion for Summary Judgment filed May 11, 1978).

19/ See Shaheen Affidavit ¶ 13.

20/ Shaheen Affidavit ¶ 14.

21/ These deleted pages, showing the basis for each deletion, were filed in the district court on February 1, 1978, as Exhibit I to the Shaheen Affidavit. Additionally, Exhibit I was supplemented where necessary by Exhibit A to the Small Affidavit.

22/ E.g., Task Force Exhibits No. 17 and No. 18 in Appendix A; Volumes XIII through XVII of Appendix C (documents reviewed by the Task Force). See Shaheen Affidavit ¶ 15.

cases of Lee v. Kelley, (D. D.C., Civ. No. 76-1185) and Southern Christian Leadership Conference v. Kelley, (D. D.C., Civ. No. 76-1186). That Order required the FBI to deliver to the National Archives all tapes, transcripts, and logs resulting from FBI electronic surveillance of Dr. King and his associates between 1963 and 1968; the materials were to be sealed for fifty years, and not to be disclosed except by court order.[23/] The FBI complied with that Order and, thus, the Department concluded that it was not permitted to disclose the Appendix C volumes containing summaries of sealed surveillance materials reviewed by the Task Force.[24/]

23/ A copy of the Lee v. Kelley Order was filed in the court below as Exhibit A to the Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, filed on May 11, 1978 (App.).

24/ The FBI surveillance records were reviewed by the Task Force during the year before they were ordered sealed on January 31, 1977. The FBI's compilation of its surveillance records for deposit in the Archives pursuant to the Lee v. Kelley order was actually underway at the same time that the Task Force was preparing its Report for public release on February 18, 1977, and three divisions in the Department were responding to plaintiff-appellant's FOIA requests, dated February 7, 1977 and March 10, 1977. (See pages 5-9 , supra) The Department, which had the Task Force's papers in the files of the Office of Professional Responsibility, also considered itself bound by the Court Order against disclosure of Task Force materials reflecting the content of any King surveillance materials.

D. District Court Proceedings

Appellant filed his Complaint on April 21, 1977, while his administrative appeal was still pending, having been caught in a backlog of such FOIA appeals.[25/] The Department answered the Complaint on May 23, 1977 and requested a stay of proceedings in order to complete the administrative review of the partial denial of appellant's request. Judge Gesell granted the stay[26/] and the administrative appeal was completed with additional materials in the three Appendices being released to appellant.[27/] With the administrative procedure concluded, and in response to appellant's Vaughn v. Rosen motion,[27/] the Department on February 1, 1978, filed

---

25/ His FOIA request was dated February 7, 1977. His Complaint was filed on April 21, 1977. His administrative appeal was concluded on October 31, 1977. Copies of the letter from Deputy Assistant Attorney General Peter F. Flaherty to plaintiff-appellant informing him of the disposition of his appeal, were filed in the district court as Exhibit H to the Shaheen Affidavit and Exhibit H to the Daugherty Affidavit. (App.).

26/ By Order entered September 22, 1977.

27/ Shaheen Affidavit ¶ 14.

28/ Plaintiff-appellant on July 13, 1977, moved for a court order requiring the Department to provide a detailed itemization and index, with justification for nondisclosures, pursuant to Vaughn v. Rosen, 484 F. 2d 820 (C.A.D.C., 1973), cert. denied, 415 U.S. 977 (1974).

several detailed affidavits describing the documents at issue and explaining the treatment of appellant's FOIA request. 29/

29/ The Department filed a total of 14 affidavits in the district court as follows:

1. Michael E. Shaheen, Jr. (head of OPR and director of Task Force). Filed on May 18, 1977. Stated that Task Force Report and most of Appendix A were released to public. (App.)

2. Quinlan J. Shea, Jr. (Director of Department's Office of Privacy and Information Appeals). Filed on July 1, 1977, in support of Department's motion to stay proceedings. Described the backlog of FOIA administrative appeals. (App.).

3. Horace P. Beckwith (FBI Special Agent). Filed on December 1, 1977 in support of Department's opposition to the 30 day deadline requested by plaintiff-appellant in his Vaughn v. Rosen motion. Described 12 volumes of Appendix C whose contents were either classified or were being reviewed to be sealed in National Archives pursuant to Lee v. Kelley court order. (App.).

4. Michael E. Shaheen, Jr. (head of OPR and director of Task Force). Filed on February 1, 1978. Detailed index of OPR documents and justifications for withholdings, with attached copies of all documents released to plaintiff-appellant with deletions. (App.).

5. Williams N. Preusse (FBI Special Agent). Filed on February 1, 1978. Description of classified documents in Appendices to Task Force Report; later supplanted by Small Affidavit. (App.).

6. James P. Turner (First Deputy Assistant Attorney General for Civil Rights Division). Filed on February 1, 1978. Explained the classification and reclassification of documents in the Appendices. (App.).

7. Salliann M. Dougherty (Freedom of Information and Privacy Act Officer for Civil Rights Division). Filed on February 1, 1978. Explained the processing of plaintiff-appellant's FOIA request. (App.).

8. Lewis L. Small (FBI Special Agent). Filed May 11, 1978 in support of Motion for Summary Judgment. Detailed 38 page index of all classified materials withheld. (App.).

The Shaheen Affidavit (executed by the director of the Task

Footnote 29 continued:

9. James F. Walker (Supervisory Trial Attorney and member of the Task Force). Filed on May 10, 1978 in support of Motion for Summary Judgment. Stated that copies of Memphis police department records were obtained from state prosecutor by subpoena. (App.).

10. James P. Turner (First Deputy Assistant Attorney General for Civil Rights Division) (Supplemental Affidavit). Filed on May 11, 1978 in support of Motion for Summary Judgment. Described review and declassification of certain portions of documents. (App.).

11. Horace P. Beckwith (FBI Special Agent). Filed on May 22, 1978 in support of Motion for Summary Judgment. Stated that Atlanta police department records were furnished to FBI in confidence to assist FBI in investigation of Dr. King's assassination. (App.).

12. Lewis L. Small (FBI Special Agent) (Supplemental Affidavit). Filed on May 22, 1978 in support of Motion for Summary Judgment. Explained the markings used on classified and declassified documents. (App.).

13. Hugh W. Stanton, Jr. (District Attorney General for Memphis, Tennessee). Filed on May 22, 1978 in support of Motion for Summary Judgment. Stated that Memphis police department records on the King assassination had been maintained in confidence and were provided to the Department in confidence. (App.).

14. Michael E. Shaheen, Jr. (head of OPR and director of Task Force) (Supplemental Affidavit). Filed on June 30, 1978 in a report to the court. Explained the review conducted of the surveillance materials initially withheld pursuant to the Lee v. Kelley Order and now released in part. (App.).

The plaintiff-appellant filed a total of 7 affidavits; Five of his own, (filed on July 12, 1977 (App.); November 10, 1977 (App.); May 23, 1978 (App.); June 2, 1978 (App.)); and two executed by Harold Weisberg, his client in numerous FOIA suits (filed on May 23 and June 5, 1978 (App.).

Force), provided a detailed explanation of the claimed FOIA exemptions and was accompanied by an extensive exhibit [30/] containing copies of all Appendix pages released with deletions. On each page, there appeared a marginal notation for each deletion, describing the material deleted and the reason for the deletion. Additional detailed affidavits were submitted in support of the Department's Motion for Summary Judgment, filed on May 11, 1978. [31/] Especially important were the Small Affidavit (containing a very thorough index of all of the classified materials being withheld) and the Walker, Beckwith, and Stanton Affidavits (explaining the manner of the Department's acquisition of Atlanta and Memphis police department records). A Cross Motion for Summary Judgment was filed on May 12, 1978 by plaintiff-appellant, who thereafter filed three detailed supporting affidavits (two of his own and one executed by Harold Weisberg, his client in numerous other FOIA actions).

A hearing on the cross motions for summary judgment was held on June 9, 1978. Judge Gesell was particularly concerned with the electronic surveillance materials withheld pursuant to the Lee v. Kelley judgment which had placed a fifty year seal on such records. The court indicated that

---

30/ Exhibit I to the Shaheen Affidavit is some 12 inches thick and contains copies of documents released to appellant with deletions.

31/ See note 29 , items 8-13, supra.

even though the Department's dissimination of these records was restricted by the Lee v. Kelley order, the surveillance materials might still be subject to release under the FOIA if an order to that effect were entered in this case. In response to the court's concern, the Department undertook a complete FOIA review of the surveillance materials and, on June 30, 1978, filed a Report to the Court supported by a supplemental affidavit of Michael E. Shaheen, Jr., the Task Force director. (App.). The affidavit explained that the majority of the surveillance materials were now not all being withheld under Exemption 7(C) because they were of such a personal nature that their disclosure would constitute an unwarranted invasion of the privacy of Dr. King's family and associates. Small portions of fifteen different pages, reciting the contents of certain non-personal conversations, were still being solely withheld pursuant to the Lee v. Kelley order because the order prohibited the disclosure of the "contents" of any conversations that were overheard by electronic surviellance.[32/] However, fifty-two new expurgated pages

---

32/ These conversations were mostly of a political nature as compared to the purely personal information being withheld under Exemption 7(C). The court ordered these pages released. (See pages 18,22, infra).

were disclosed to plaintiff-appellant and copies were filed with the court, showing the grounds for each deletion.

Another matter of particular concern to Judge Gesell at hearings (first on June 9 and then on July 20, 1978) was the Exemption 7(D) claim under which the Department declined to disclose certain Memphis and Atlanta police department investigative records which were reviewed by the Task Force. As was explained in the Walker, Beckwith, and Stanton affidavits, 33/ these records were furnished in confidence by Memphis and Atlanta officials and disclosure in a breach of that confidentiality would seriously hamper future cooperation of local police authorities with the FBI. The Department submitted all of these police records to the court on July 21, 1978, for an in camera inspection. 34/

33/ See note 29 , items 9, 11, 13, supra.

34/ Five volumes of Appendix C (Volumes XIII through XVII) were submitted to the court. These volumes contain some 400 pages of Memphis police records obtained by the Task Force from the state prosecutor through subpoena, and 29 pages of Atlanta police records obtained by the Task Force from the files of the Atlanta Field Office of the FBI, to whom the Atlanta police provided the information in cooperation with the FBI investigation of Dr. King's assassination.

One small segment of Appendix C documents (17 pages at the end of Volume XVII) was determined upon review by the Department's counsel not to be an appropriate part of the Memphis police department records to be withheld under Exemption 7(D). Accordingly, these 17 pages were disclosed to plaintiff-appellant, as stated in the Defendant's Report to the Court on July 21, 1978. Copies of the pages were attached to the Report as Exhibit C and the pages were labeled as "disclosed" in the volume submitted to the court for in camera inspection.

In addition, one other page in the middle of Volume XVII of Appendix C (a street map of part of Memphis) was not subject to Exemption 7(D) because it had been duplicated as Exhibit I in Appendix A and was released along with the Task Force Report.

After inspecting these documents and considering the lengthy affidavits and legal memoranda filed by the parties, the court entered summary judgment for the Department on July 31, 1978.[35/] In announcing this decision, Judge Gesell stated that he was

> impressed with the detailed nature of the affidavits submitted by both sides, the competence of Government counsel, and the apparent care with which the matter has been dealt with administratively.

(455 F. Supp. at 926; App.). The judge, in his Memorandum Opinion, set out the issues and their resolution according to the types of materials in dispute: (1) electronic surveillance records; (2) Memphis and Atlanta police records; (3) classified data; (4) informant symbol numbers; (5) privacy materials.

Regarding the electronic surveillance records, the court upheld the Department's (b)(7)(C) privacy exemption claim, rejecting plaintiff's argument that Exemption 7 was inapplicable. Plaintiff had asserted that the FBI's surveillance was not law enforcement and the records could not be shielded under FOIA because the everdropping was, itself, illegal. Judge Gesell held that the legality or illegality of the FBI's investigative technique "does not determine the applicability of this exemption". Moreover, the court pointed out, plaintiff himself had stated at oral argument that he had no interest

---

35/ The Memorandum Opinion was filed on July 28, 1978 (App.), and the Judgment itself on July 31, 1978 (App.).

in obtaining surveillance records on personal or sexual matters (the (b)(7)(C) materials); he wanted the nonpersonal or political materials. The court divided the nonpersonal surveillance materials into two categories. First, the records of nonpersonal conversations, withheld by the Department solely because of the terms of the Lee v. Kelley order,[36] were ordered released to plaintiff. Second, the expurgated pages of mostly nonpersonal materials were reviewed and the deletions were approved by the court, which concluded "that defendants have proceeded in good faith and deleted only materials within the [(b)(1), (b)(2), (b)(7)(C), (D), and (E)] exemptions claimed." (455 F. Supp. at 923-924).

Turning to the Memphis and Atlanta police records[37] which were reviewed by the Task Force and collected in

---

36/ See page 15 supra.

37/ The court accurately described these records as follows (455 F. Supp. at 924, App.):

> The Atlanta records detail various threats on the life of Dr. King by named individuals and tips or other information from Dr. King's entourage concerning threats or suspicious activity.
>
> The Memphis records are far more voluminous since they cover the immediate investigation of the killing and subsequent investigation of leads and suspects. These materials disclose police investigative techiniques in detail. Numerous persons were interviewed and always their name, address and other personal data are reported. The materials include informal reports or tips or inquiries as well as formal Q&A interrogatories of certain persons. Documentation is complete covering detailed surveys of the scene, the body, the presumed site from which the shot was fired, contemporaneous crusier dispatches, and reports summarizing activities. The investigation appears to have been thorough and conscientious.

Appendix C to the Report, Judge Gesell, after an in camera inspection, ruled that the Department had properly invoked Exemption 7(D) to withhold these materials from plaintiff. Assuming without deciding that these local police records were federal agency records for FOIA purposes, the court weighed policy considerations and public interests to conclude that these records should not be released. The court stated that:

> In support of the exemption it is strenuously contended that FBI cooperation with state and local law enforcing agencies will be seriously harmed if material from cooperating local police agencies is not treated as "confidential source" data. A b(7)(D) claim of exemption has frequently been sustained under comparable circumstances. See Nix v. United States, 572 F. 2d 998 (4th Cir. 1978); Church of Scientology v. United States Department of Justice, [__ F. 2d __ (9th Cir. 1979] 410 F. Supp. 1297 (C.D. Cal. 1976), and various unreported decisions cited by the Government. The exemption will be sustained here. The Court finds no substantial countervailing public interest in disclosure and notes that the bulk, if not all, of the material

> is of a nature that would bring it under other FOIA exemptions if processed sheet-by-sheet.
>
> Plaintiff desires to use discovery techniques in an attempt to substantiate his belief that the Memphis Police may have disclosed some or all of their records to others. Whatever the facts in this regard, the inquiry would be fruitless. The Court holds the public interest requiries that the FBI's cooperative arrangements with local police not be breached under FOIA compulsion where the cooperating agencies have objected and by affidavits continue to insist upon confidentiality. (455 F. Supp. at 924, App.).

On the third category of disputed records -- classified data -- Judge Gesell upheld the Department's exemption b(1) claim, holding that the meticulously detailed government affidavits demonstrated that the documents were correctly classified under the applicable Executive Order and, therefore, were exempt from disclosure. (455 F. Supp. at 925, App.) As the court pointed out, the materials were properly reviewed by authorized personnel at the time of plaintiff's FOIA request and, as a result, some materials were declassified and disclosed while others were reclassified or maintained as classified in order to protect both confidential intelligence sources and intelligence cooperation with foreign police authorities. Judge Gesell was unpersuaded by plaintiff's arguments (455 F. Supp. at 925, App.):

> Plaintiff points to instances in the past in which exemption claims made in other litigation in which he was involved proved unfounded in the light of other disclosures. However that may be, that contention is unpersuasive. The Court is satisfied that the exemption claimed here should be sustained. See Weissman v. CIA, 184 U.S. App. D.C. 117, 121-23, 565 F. 2d 692, 696-98 (1977).

> Plaintiff argues that proper procedures were not followed in that certain documents in the form of notes taken from classified documents in preparation of a Task Force study were not immediately classified and lay dormant, unclassified, until his FOIA request. This atypical slip-up does not undermine the claimed exemption. The working notes receive derivative protection. Plaintiff also notes the orginally classified documents now released were not so stamped but it is clear that they were originally so stamped and that the stamp was removed coincident with removal from classification. See Exec. Order No. 11652 §4(A), 6(B), 3 C.F.R. 678, 686 (1972).

The fourth type of disputed material -- informant symbol numbers -- had been withheld by the Department under Exemptions 2 and 7(D). Judge Gesell sustained the Exemption 2 claim, holding that "[t]here is no legitimate public interest in releasing these symbols and such release would aid identification of informers and significantly harm governmental interest. See Department of the Air Force v. Rose, 425 U.S. 352, 364 (1976)." (455 F. Supp. at 925, App.).

The fifth category of materials -- called by the court "privacy materials" -- consisted of items deleted on the pages released to plaintiff from the Appendices to the Task Force Report. These deletions (mostly of persons' names) were made under Exemption (b)(7)(C) to protect the privacy of individuals who supplied information in FBI investigations and of FBI personnel under the rank of section chief who worked in the King investigations. After examining the expurgated documents and the Department's detailed affidavits, Judge Gesell upheld the (b)(7)(C) claim, rejecting plaintiff's arguments and concluding that:

> there is no reason to question the bona fides of these deletions. Plaintiff,

> who has been a student of the King and Kennedy assassinations, claims that because he believes he can identify many of the names deleted, these names are in the public domain. This is fallacious. The fact that an expert can piece together identifying data does not make the identifications in question automatically part of the public domain.
>
> As to the non-name information deleted, there is no suggestion that its release would not infringe on the privacy of the persons involved. It is the Court's view that no amount of further discovery [demanded by plaintiff] will determine whether or not or to what extent any of these individuals will be injured by the release of privacy data. To initiate such an inquiry would in the nature of things destroy the privilege, for the inquiry cannot be made without revealing the withheld information. It is difficult, if not impossible, to anticipate all respects in which disclosure might damage reputations or lead to personal embarrassment and discomfort.
>
> The public interest in disclosure must, of course, be weighed. The Court, however, accepts the view that because of the contemporary character of the data, protection of FBI personnel and their informants is warranted. Those cooperating with law enforcement should not now pay the price of full disclosure of personal detail. (455 F. Supp. at 925, App.).

The court thus upheld this and all the other FOIA exemption claims made by the Department. The Department was ordered to disclose only one small group of documents it had withheld from the plaintiff: the 15 pages of nonpersonal conversations that were withheld not under an FOIA exemption but, instead, under the peculiar terms of the Lee v. Kelley Order which was properly overridden by the court here. Summary judement was entered for the Department, and plaintiff brought this appeal.

SUMMARY OF ARGUMENT

Appellant in this FOIA case has received the detailed Task Force Report and much of the background materials which he requested. However, his curiosity about the FBI's investigations of Dr. King has not been fully satisfied and he seeks access to every bit of information amassed in the Department's review of those investigations. To achieve this total access, he demands the reversal of the district court's rulings in the government's favor on Exemption 1 (classified materials), Exemption 2 (administrative symbols or markings), Exemption 7(C) (privacy matters in law enforcement investigative files) and Exemption 7(D) (materials obtained in confidence from non-federal law enforcement agencies). Appellant, however, has failed to present persuasive arguments for distrubing the court's careful and correct rulings on any of these issues. Thus, as we will explain in detail, the district court's decision should be affirmed.

As we will demonstrate in Point I, the Exemption 1 ruling is correct. The district court's proceedings fully satisfy this Court's standards as recently clarified in Ray v. Turner, 190 U.S. App. D.C. 290, 587 F. 2d 1187 (1978) and Hayden v. National Security Agency/Central Security Service _____ U.S. App. D.C. _____, 608 F. 2d 1381 (1979). The district court's de novo determination was based on several very thorough agency affidavits, the principal one of which contained a paragraph by paragraph or, at times, a line by line analysis of when and why the materials in question were classified for purposes of national security. Having given

the appropriate weight of these affidavits, and having examined the expurgated documents that showed the grounds for the excisions of information, the court in its discretion concluded that an in camera inspection was not needed and that the materials at issue were properly classified and classifiable under the applicable Executive Order. While a new Executive Order has been issued and important decisions on Exemption 1 have been entered by this Court during the pendancy of this appeal, the district court's ruling is still correct and should not be disturbed here.

In point II, we will show that Exemption 2 authorized the Department to delete from FBI investigative records the informant identification numbers that are used within the Bureau to refer to confidential sources in reports and files without permitting undue internal disclosure of the sources' actual identities. This clerical mechanism is a matter of internal administrative significance which has an obvious impact on government interests in obtaining and preserving confidential sources of information. But there is very little, if any, legitimate public interest in obtaining these symbols. Mere curiosity on the part of individuals does not constitute a public interest sufficient to warrant the release of this information. Thus, the district court was correct in upholding the Department's excision of these numbers.

In Part III, we will demonstrate that Exemption 7(C) was properly applied to the FBI surveillance records and investigative

files on Dr. King. The information deleted from these materials consists, in large part, of the names and identifying data of persons involved in the King investigations, such as informants and lower-level FBI personnel. Other information was excised because it was highly personal in nature and its disclosure could cause embarrassment as well as damage to the reputations of Dr. King's family and associates. All of these persons have privacy interests which outweigh the public interest in disclosure of their identities or personal information. The district court was, therefore, correct in upholding the deletions made by the Department.

Finally, we will show in Part IV that Exemption 7(D) was properly invoked by the Department in withholding investigative materials that were provided to federal authorities in confidence by non-federal law enforcement angencies. It is clear from the legislative history of the 1974 FOIA amendments and from recent court decisions that the term "confidential sources" in Exemption 7(D) includes state and local police departments, whose assistance is crucial in effective federal law enforcement, and whose cooperations cannot realistically be expected if federal agencies are unable to preserve the confidentiality of their shared information and methodology. The district court held that these materials from non-federal agencies are not subject to compelled disclosure.

In sum, the ruling by the district on each Exemption was correct and, therefore, the summary judgment in favor of the Department should be affirmed.

ARGUMENT

I

THE DISTRICT COURT'S DECISION ON THE EXEMPTION 1 ISSUE IS CORRECT UNDER THE CURRENT LAW AND THEREFORE A REMAND ON THIS ISSUE IS NOT WARRANTED, DESPITE THE DEVELOPMENTS IN THE LAW DURING THE PENDANCY OF THIS APPEAL.

At issue under Exemption 1[38/] are materials that, if released, would reveal the FBI's intelligence cooperation with foreign governmental agencies and the identities of FBI intelligence sources.[39/] In order to protect these national security operational sources, and not to preserve any secrecy about the nature or the extent of the FBI's security investigation of Dr. King, the Department classified and subsequently withheld certain information. The materials withheld are deletions from the Pittinger Memo and Murphy Report, the two Task Force exhibits withheld and the deletions

---

38/ Exemption 1 to the Freedom of Information Act, 5 U.S.C. 552(b)(1), as amended, provides that the Act

> does not apply to matters that are . . . (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such an Executive Order. . .

39/ The importance of preserving such sources of information was very recently recognized by the Supreme Court in Snepp v. United States (Sup. Ct. Nos. 78-1871, 79-265, decided February 19, 1980). There the Court, in a somewhat different context, stated that "[t]he Government has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." (Slip Op. at 3, n. 3).

made on other exhibits from Appendix A, and the deletions made on documents from twelve of the volumes in Appendix C. The district court ruled for the Department, holding that the Department had demonstrated these materials to have been properly classified and therefore not subject to compelled disclosure under the FOIA. As we will explain below, this ruling was clearly correct and should now be affirmed by this Court. 40/

40/ On Exemption 1 and, indeed, on all the other exemptions at issue here, appellant argues that summary judgment should not have been entered because his affidavits raised issues of material fact. (Brief 44-49) Appellant's argument fails in light of the established rule that an agency may establish its entitlement to FOIA exemptions by means of affidavits (EPA v. Mink, supra, 410 U.S. at 93-94) and that, once these affidavits are submitted, the plaintiff's mere conclusory statements unsupported by factual data do not raise a credible challenge or create a triable issue of material fact. Marks v. United States, 578 F. 2d 261 (C.A. 9, 1978) It should be noted that "[w]hile . . . the [party opposing a summary judgment motion] is entitled to all favorable inferences, he is not entitled to build a case on the gossamer threads of whimsey, speculation and conjecture." Hahn v. Sargent, 523 F. 2d 461, 467 (C.A. 1, 1975), cert. denied 425 U.S. 904 (1976) (quoting Manganaro v. Delaware Separator Co., 309 F. 2d 389, 393 (C.A. 1, 1972) Appellant's allegations of political vendettas and agency misconduct are simply not sufficient to cast the agency's detailed affidavits into real doubt or to pose genuine issues of material fact. Furthermore, appellant's argument that he should have been permitted to undertake discovery is unpersuasive. The district court properly exercised its broad discretion over discovery and declined to permit appellant to undertake inquiries which would, in themselves, endanger the privacy and national security interests being protected under the exemptions. Appellant makes no convincing showing of prejudice as a result of Judge Gesell's ruling on discovery. Sher v. DeHaven, 91 U.S. App. D.C. 257, 199 F. 2d 277 (1952), cert. denied 346 U.S. 817 (1953); 2A Barron & Holtzoff, Federal Practice and Procedure §657.

Appellant demands that the decision be reversed or that the case be remanded to the district court for reconsideration of the Exemption 1 issue in light of two intervening occurances: this Court's decision in Ray v. Turner, 190 U.S. App. D.C. 290, 587 F. 2d 1187 (1978) and the President's issuance of a new Executive Order on national security classification of documents (E.O. 12065, 43 Fed. Reg. 28949). (Appellant's Brief 24-27) A remand for this purpose is not warranted, since the record demonstrates that the district court's decision is correct.

It is a well-established principle that an appellate court must apply the current law, rather than the law as it existed at the time of the district court's decision. Fusari v. Steinberg, 419 U.S. 379 (1975); Diffenderfer v. Central Baptist Church, 404 U.S. 412 (1972). It is also clear that, where necessary, the appellate court may remand a case for further proceedings if intervening changes in the law are such that the issues cannot be decided on the record and arguments presented. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 164-65 (1975). However, where the record is fully sufficient for a decision under the current law, the reviewing court need not remand, but should instead resolve the issues on appeal so as to conserve judicial resources. See Fusari v. Steinberg, supra, 419 U.S. at 387, n. 12; NLRB v. Sears, Roebuck & Co., supra, 421 U.S. at 164-65.

In the present case, no remand is warranted since the district court record on the Exemption 1 issue is very thorough and clearly supports our contention that the decision in the government's favor is correct even in light

of the subsequent developments in the law in this Court. The district court's de novo determination satisfies this Court's guidelines for Exemption 1 cases, as clarified in Ray v. Turner, supra, and, more recently in Hayden v. National Security Agency/Central Security Service, ___ U.S. App. D.C. ___, 608 F.2d 1381 (1979). Furthermore, the affidavits submitted by the Department demonstrate that, even if the new Executive Order were applicable, the materials in question would be properly classifiable and classified.

This Court has developed explicit standards for district court procedures in Exemption 1 cases. E.g. Weissman v. CIA, 184 U.S. App. D.C. 117, 565 F. 2d 692 (1977); Ray v. Turner, supra. These "guidelines for the exercise of judicial discretion" were most recently stated in Hayden v. NSA/CSS:

> (1) the trial court must make a de novo review of the agency's classification decision, with the burden on the agency to justify nondisclosure. (2) In conducting this review, the court is to give "substantial weight" to affidavits from the agency. (3) The court is to require the agency to create as full a public record as possible, concerning the nature of the documents and the justification for nondisclosure. (4) If step (3) does not create a sufficient basis for making a decision, the court may accept classified affidavits in camera, or it may inspect the documents in camera. This step is at the court's discretion. . . (5) The court should require release of reasonably segregable parts of documents that do not fall within FOIA exemptions.

___ U.S. App. D.C. ___, 608 F. 2d 1384 (footnotes omitted).

Hayden further held that a responsible de novo decision may be made based upon adequate agency affidavits:

> If the affidavits provide specific information sufficient to place the documents within the exemption category, if this information is not contradicted in the record, and if there is no evidence in the record of agency bad faith, then summary judgment is appropriate without in camera review of the documents. The sufficiency of the affidavits is not undermined by a mere allegation of agency misrepresentation or bad faith, nor by past agency misconduct in unrelated cases.

___ U.S. App. D.C. ___, 608 F.2d at 1387 (footnotes omitted). These standards are fully satisfied by the district court proceedings here. The court made its de novo determination after studying the Department's detailed explanatory affidavits, the plaintiff-appellant's challenging affidavits, and the expurgated documents. The court properly concluded that an in camera inspection of the excised materials was not warranted.

The affidavits submitted by the Department demonstrated with "reasonable specificity" why and how the materials had been classified under Executive Order 11652. Hayden v. NSA/CSC, supra, ___ U.S. App. D.C. ___, 608 F. 2d at 1387. The principal affidavit was that of Lewis L. Small, the FBI Special Agent who reviewed all the materials in question to determine which might be declassified for release under appellant's FOIA request. In this 38 page affidavit, Agent Small explained his paragraph by paragraph and sometimes line by line analysis of the classification of the documents, dealing with the Appendix A exhibits, then the Appendix C FBI investigative materials,

and finally the Pottinger and Murphy summaries of file information. He concluded that the materials being withheld from appellant had been properly classified as Top Secret, Secret, or Confidential because "their disclosure could reasonably be expected to cause damage to the national security" [41/] either by revealing the FBI's cooperation with foreign police agencies who specified that their materials be classified, [42/] or by revealing the identity of confidential intelligence sources. [43/] This painstaking analysis was not detailed enough to satisfy plaintiff-appellant, who filed affidavits asserting that the FBI was playing deceptive games such as the Government had allegedly played in other FOIA cases involving plaintiff and his associate Harold Weisberg. [44/] The district court, however, found the Department's affidavits fully sufficient, thereby anticipating this Court's Hayden holding that "[t]he sufficiency of the affidavits is not undermined by a mere allegation of agency misrepresentation or bad faith, nor by past agency misconduct in other unrelated cases." ___ U.S. App. D.C. at ___, 608 F. 2d at 1387. Having concluded that the affidavits provided a

---

41/ Small Affidavit ¶ 6.

42/ Id, ¶ 7(B).

43/ Three types of confidential sources were specified: "sources operating in contact with a foreign establishment within the United States; sources who are either foreign nationals or American citizens having contact with foreign establishments or individuals in foreign countries; and sources who have penetrated a domestic organization which is controlled in whole or in part by a foreign power, and which is the target of a national security investigation." Id. ¶ 7(A).

44/ See note 29 , supra.

sufficient basis for a "responsible de novo decision," the court, in its sound discretion, chose not to examine the excised materials in camera. This procedure and the consequent ruling for the Department are clearly correct under this Court's established standards. Hayden v. NSA/CSC, ___ U.S. App. D.C. at ___, 608 F. 2d at 1384, 1387.

The classification of these materials should not be invalidated, as appellant suggests, merely because a new Executive Order (E.O. 12065) had been issued. (Appellant's Brief 24-27). The Department's affidavits demonstrate that these materials were properly classifiable and classified under the Executive Order in force at the time. Therefore, as has been done in similar cases in the past where there had been an intervening issuance of a new and somewhat different Executive Order on classification of documents, the Court here should leave undisturbed the agency's determinations since they are based on showings of the requisite "reasonable basis for finding potential harm from disclosure." Hayden v. NSA/CSC, ___U.S. App. D.C. at ___, 608 F. 2d at 1387; [45/] EPA v. Mink, 410 U.S. 73, 81 n. 7, 84 n. 9 (1973). Even if this Court were to conclude that the new Executive Order must be applied to these materials classified under the old Order, it is apparent from the agency affidavits and the expurgated documents that the classification determinations here would satisfy the procedural and substantive

---

45/ In Hayden, as in the present case, the documents were classified and the district court decision was entered under E.O. 11652 (1972); but new E.O. 12065 (1978) was issued during the pendancy of the appeal. This Court entered a careful decision on the Exemption 1 issue employing the criteria of the old Executive Order. It was not necessary to remand the case or to invalidate the agency's classification determinations merely because of the new Executive Order.

requirements of the new as well as the old Executive Order.[46] Indeed, the new Order would provide even stronger support for the Department on two points of special concern to appellant. First, the matter of belated classification procedures[47] (found to be irregular but not necessarily fatal in classficiation under the old Order[48]) is clearly contemplated by the new Order, which sets express standards for delayed classification of new materials and, by clear implication, permits such processing of materials generated prior to this Order. E.O. 12065 § 1-606, 43 Fed. Reg. 28953. Second, the process of "derivative classification" relied upon by the FBI and the district court (455 F. Supp. at 925) but challenged by the appellant (Brief 32) is expressly approved by the new Executive Order. E.O. 12065 § 2, 43 Fed. Reg. 28953. Thus the Department was correct in classifying the "second generation" documents created by the Department officials who wrote reports to the Attorney General and by the Task Force when it reviewed and took notes on the FBI's file materials.[49] Considering these factors supporting the Department's determinations, it obviously should not be necessary for the Department to re-process all of

---

46/ The major differences between E.O. 11652 (1972) and E.O. 12065 (1978) are set out in "The FOIA National Security Exemption and the New Executive Order" by W. Fox and P. Weiss, 37 Fed. Bar J. 1 (Fall 1978).

47/ Appellant alleges that the classification of these documents is invalid because the process was undertaken some months after the Task Force materials were generated and after his FOIA request was filed. (Appellant's Brief 27-32).

48/ Pacheco v. FBI, 470 F. Supp. 1091, 1105 (D. P.R. 1979).

49/ The Pottinger Memo, the Murphy Report, and materials in Appendix C were "second generation" documents drawn from original source material.

these documents and for the district court to reconsider the Exemption 1 issue under the Executive Order merely because (as appellant points out) the new Order has made some changes in the classification process. 50/

In sum, the Department demonstrated that the materials withheld under Exemption 1 were properly classified and classifiable. The district court, proceeding in accordance with the standards set by this Court, correctly held that the materials were exempt from compulsive disclosure under the FOIA.

II

THE INFORMANT IDENTIFICATION SYMBOLS IN THE FBI's INVESTIGATIVE FILES WERE EXEMPT FROM DISCLOSURE UNDER EXEMPTION 2.

Exemption 2 of the FOIA provides that an agency need not disclose matters "related solely to [its] internal personnel rules and practices." 5 U.S.C. § 552(b)(2). The Supreme Court has held that "the general thrust of the exemption is simply to relieve agencies of the burden of assembling and maintaining for public inspection matter in which the public could not reasonably be expected to have an interest." The government may withhold

---

50/ Another matter which, according to appellant, requires a remand under E.O. 12065 is the fact that the Department's affidavits do not expressly state that the classifying officials performed the balancing of interests required under the new Order. E.O. 12065 § 3-303. While it is true that the affidavits do not explicitly recite a weighing of public interests and national security, such a consideration is implicit in the careful process of classification and review which the Department's affidavtis describe in detail. There would be little if any actual benefit in sending all these materials back for a classification review merely in order for the Department's classification officials to state explicity what they have already considered and expressed implicity.

materials "with merely internal significance . . . concern[ing] only routine matters. Department of Air Force v. Rose, 425 U.S. 352, 369-70 (1976). In an opinion cited with approval by the Supreme Court,[51/] this Court in Vaughn v. Rosen II held that Exemption 2 applies to routine "housekeeping" matters which relate solely to the agency and which are not the subject of a significant, legitimate public interest. Vaughn v. Rosen, 173 U.S. App. D.C. 187, 192-95, 523 F.2d 1136, 1141-43 (1975). More recently, this Court in Cox v. United States Department of Justice, ___ U.S. App. D.C. ___, 601 F.2d 1, 4-5 (1970), held that the exemption covers routine matters such as administrative directives on methods and strategy, but does not apply to "secret law" found in agency manuals that "purport to regulate activities among members of the public . . . [or] set standards to be followed by agency personnel in deciding whether to proceed against or to take action affecting members of the public." Accordingly, the court in Cox held that routine matters in the U.S. Marshall's Manual were covered by Exemption 2. The routine internal matters subject to Exemption 2 include, in the opinion of the Fourth Circuit, "how the FBI routes and labels its investigations, to whom its agents send reports of the investigations, and who does the typing of the reports." Nix v. United States, 572 F.2d 998, 1005 (C.A. 4, 1978). According to the Seventh Circuit, the "matters in which the public interest is minimal" and which clearly fall within Exemption 2 include the FBI's "administrative markings such as file numbers, initials, signature and mail routing stamps, and references to previous

---

51/ Department of Air Force v. Rose, supra, 425 U.S. at 365-66.

communications utilized to maintain control of an investigation." Maroscia v. Levi, 569 F. 2d 1000, 1002 (C.A. 7, 1977).

The materials at issue under Exemption 2 in the present case are the FBI informant identification numbers which were deleted from the Appendix C investigation records released to plaintiff-appellant.[52/] These symbol numbers are certainly not "secret law" affecting the public, but are merely a clerical mechanism for referring to confidential sources in reports and files without permitting undue internal disclosure of the sources' actual identities. Cox v. U.S. Department of Justice, supra. The numbers bear no substantive relation to the contents of the documents on which they appear, except that they indicate the sources who provided information.[53/] The district court upheld the Department's deletion of these symbols, finding that "[t]here is no legitimate public interest in releasing these symbols and such release would aid identification of informers and significantly harm governmental interests." (455 F. Supp. at 925, App.). The Court's ruling is obviously correct. The FBI's administrative system of identification symbols for maintaining and cross-referencing its investigative files in a confidential manner is a matter of internal significance, but is of little or no legitimate interest to the public. Mere curiosity on the part of individuals such as appellant or his associate Harold Weisberg[54/] does not constitute

---

52/ See Shaheen Affidavit at page 6, ¶12.

53/ These deletions were also justified by the Department on Exemption 7(D) grounds. The district court did not address this point.

54/ See Affidavits of appellant and Mr. Weisberg, describing their interest in obtaining the King records (App.).

legitimate public interest, especially where, as the court points out, the release of the symbols could result in the identification of these informants and consequent harm to the FBI's investigative capacities. 55/ The Department is not obliged to release the informant symbols in order to satisfy appellant's desire to amass every tidbit of information on the investigations of Dr. King. Furthermore, contrary to appellant's suggestion (Brief 49-50), the Department, having deleted its standard symbols, is not obliged to create a substitute set of symbols to insert on these released records for the convenience of appellant and Mr. Weisberg. This would be the very sort of "burden of assembling [materials] for public inspection" that Exemption 2 is designed to aleviate. Department of Air Force v. Rose, supra, 425 U.S. at 369.

In sum, the informant identification symbols were properly withheld under Exemption 2 because they are matters of internal administrative significance in which there is little or no legitimate public interest.

III

EXEMPTION 7(C) PERMITTED THE DEPARTMENT TO WITHHOLD INFORMATION THAT WOULD IDENTIFY PERSONS INVOLVED IN THE KING INVESTIGATIONS OR WOULD IMPINGE ON THE PRIVACY OF DR. KING'S FAMILY AND ASSOCIATES.

Exemption 7(C) of the FOIA permits an agency to withhold

> investigative records compiled for law enforcement purposes, but only to the extent that the production of such

---

55/ Although the district court did not address the issue, it is apparent that these symbols would be exempt from disclosure under 5 U.S.C. § 552(b)(7)(D), which sheilds the identities of confidential sources in criminal investigative records.

> records would . . . constitute an unwarranted invasion of personal privacy.

5 U.S.C. § 552(b)(7(C). At issue under the exemption here are deletions made by the Department in the Task Force's work papers derived from FBI's surveillance records and its files on the assassination and national security investigations on Dr. King. The excised materials consist, in large part, of names and information that would reveal the identities of persons involved in the King investigations, such an informants and lower-level FBI personnel. Other material was excised because it was highly personal in nature and its disclosure could cause embarrassment as well as damage to the reputations of third parties, including Dr. King's family and associates. 56/ The district court upheld the Department's action under Exemption 7(C), after having weighed the privacy interests of the persons involved against the public interest in disclosure. (455 F. Supp. at 925, App.). Appellant argues that these privacy materials were improperly withheld and that, in any event, one category of records (the FBI files on its security investigation of Dr. King) was not subject to Exemption 7 because these records were not "compiled for law enforcement purposes." (Brief 43-44). As we explain below, appellant is simply wrong in light of the decided cases.

A. The Task Force Records and FBI Records Were Compiled For Law Enforcement Purposes

The records actually at issue here are the Task Force's work papers, which synopsize and comment upon the FBI investigative

---

56/ Shaheen Affidavit pages 6-7, ¶ 4; Supplemental Turner Affidavit ¶¶ 4, 6.

records. There can be no question -- and, indeed, appellant does not even suggest -- that these Task Force papers lack a law enforcement purpose. The aim of the Task Force was to determine whether there had been any violations of law or improprieties in the FBI's actions regarding Dr. King. The thorough review of FBI records was an essential part of the Task Force's function, and the notes and papers generated during this review clearly served the Task Force's investigative purpose.

Rather than deal with the Task Force documents actually at issue, the appellant focuses his argument on the FBI records from which these documents were derived. Thus, on the basis of certain statements made by an FBI official in testimony before a Senate committee, 57/ appellant asserts that the FBI's national security investigation of Dr. King was "a personal and political vendetta" rather than an investigation conducted for law enforcement purposes. Pointing to the fact that no criminal charges were brought and speaking vaguely of "harrassment," appellant argues that these FBI records do not meet the threshold requirement for Exemption 7: compilation for law enforcement purposes. (Brief 43-44) While it is true that some FBI personnel (and some members of Congress) have expressed doubts about the propriety of the FBI's actions regarding Dr. King, these opinions do not alter the fact that the FBI conducted a national security investigation of Dr. King and his activities. Moreover, the lack of criminal charges against Dr. King

---

57/ Appellant refers to the testimony of Deputy Associate Director James B. Adams and cites the Church Report Book III, pages 83-84 (Senate Report No. 94-755, Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities).

or his associates does not vitiate the law enforcement purpose of the investigations which apparently did not reveal violations of national security laws giving rise to formal charges. The investigative files are certainly covered by Exemption 7.

The applicability of Exemption 7 in these circumstances has been carefully and clearly analyzed by the First Circuit in Irons v. Bell, 596 F. 2d 468 (1979), which involved FBI records generated by alleged harrassment and illegal surveillance of certain political groups. Id. at 470. After examining the case law and the policies and legislative history of the FOIA, the court expressly held that "when the flaw in the law enforcement purpose of an FBI investigative record, allegedly compiled with a view toward enforcement of internal security laws, is the total lack of any likelihood of enforcement, the record is nevertheless 'compiled for law enforcement purposes' and Exemption 7 will apply. . ." Id. at 476.[58/] The Irons court reasoned that denying Exemption 7 status to investigations by a wholly law enforcement agency, such as the FBI, where the investigation in question had at least colorable legality, would subvert the purpose of the exemption.[59/] It would force release of private and confidential information about third parties. It would cost society the cooperation of those who give the FBI

58/ The Irons holding was recently followed by the Ninth Circuit in Church of Scientology of California v. United States Department of the Army, 607 F. 2d 1282, 1292 (1979) (petition for rehearing pending).

59/ The Irons court has more recently held that Exemption 7 covers all the FBI's files on a particular law enforcement investigation, even the records of illegal electronic surveillance. Providence Journal Co. v. FBI, 602 F.2d 1010 (C.A. 1, 1979) (petition for cert. pending, Sup. Ct. No. 79-673). This supports the district court's ruling in the present case that "[i]llegality or legality [of the surveillance] does not determine the applicability of this exemption." (455 F. Supp. at 924, App.).

information under assurances of confidentiality in investigations whose eventual outcome or validity the informants could not discern. Also, it would place a new heavy burden upon district courts to second or third guess the investigative judgment of FBI Special Agents; the courts would be forced to use hindsight to distinguish investigative blind alleys from investigations illegal at their inceptions. Id. at 474. The First Circuit explained further:

> The character of the materials excluded under Exemption 7 at least suggests that "law enforcement purpose" is as much a description of the type of agency the exemption is aimed at as it is a condition on the use of the exemption by agencies having administrative as well as civil enforcement duties. We see strong policy reasons supporting this reading of "law enforcement purpose" which would, assuming other conditions [in § 552(b)(7)] are met, extend the exemption to all investigative files of a criminal law enforcement agency. First, if the unjustified nature of an FBI investigation makes Exemption 7 inapplicable material may be released even though it "constitutes an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7(C). Such a result would harm innocent individuals who had no way to test the legality of an FBI investigation. Moreover, given the nature of the files involved in this case, we have little doubt that numerous unwarranted accusations that invade personal privacy would be revealed if the exemption were not available.

Id. at 474 (emphasis added). The Irons reasoning is consistent with this Court's decision in Weissman v. CIA, 184 U.S. App. D.C. 117, 565 F. 2d 692 (1977), which is relied upon by appellant (Brief 43-44). In Weissman, the CIA was not permitted to invoke Exemption 7 for files on background security checks that were performed by the Agency without either law enforcement authority or power to

conduct such domestic investigations. The Court concluded that there could be no legitimate law enforcement purpose in an inherently illegal investigation. 184 U.S. App. D.C. at 120, 565 F. 2d at 695. However, where (as here) the agency does have authority to conduct the investigation and where there is, at least initially, a legitimate purpose for the investigation, Weissman would not strip away the Exemption 7 protection from the agency's records. Furthermore, it is clear from this Court's decisions that regardless of whether a "prosecution or other such method of law enforcement was undertaken or pending, the files remained exempt from disclosure" because "[t]he focus [is] on 'how and under what circumstances the files were compiled . . . .'" Rural Housing Alliance v. United States Dept. of Agriculture, 162 U.S. App. D.C. 122, 128, 498 F.2d 73, 79-80 (1974), quoting Weisberg v. United States Dept. of Justice, 160 U.S. App. D.C. 71, 489 F.2d 1195 (1973) (en banc), cert. denied, 416 U.S. 933 (1974). Thus, it is apparent that the FBI records at issue here are entitled to Exemption 7 protection since they were compiled for law enforcement purposes. 60/

60/ See also Center for Nat. Pol. Rev. on Race & Urb. Is. v. Weinberger, 163 U.S. App. D.C. 368, 502 F.2d 370 (1974); Aspin v. Department of Defense, 160 U.S. App. D.C. 231, 491 F.2d 24 (1973); Evans v. Department of Transportation, 446 F.2d 821 (C.A. 5, 1971), cert. denied, 405 U.S. 918 (1972); Forrester v. United States Dept. of Labor, 433 F. Supp. 987 (S.D. N.Y. 1977); Koch v. Department of Justice, 376 F. Supp. 313 (D. D.C. 1974).

B. Names, Identifying Data and Personal Information Were Properly Excised From the Investigative Records Under Exemption 7(C).

Analysis under Exemption 7(C), as under Exemption 6, [61/] requires "a balancing of 'the individual's privacy interest in nondisclosure against the public interest in disclosure.'" Columbia Packing Co. v. United States Department of Agriculture, 563 F. 2d 495, 498 (C.A. 1, 1977); Maroscia v. Levi, supra. However, the courts have recognized that the less demanding standard in Exemption 7(C) "suggests that greater weight should be given to the claim of privacy when exemption 7(C) is invoked." Deering Milliken, Inc. v. Irving, 548 F. 2d 1131, 1136 n. 7 (C.A. 4, 1977); Tax Reform Research Group v. I.R.S., 419 F. Supp. 415, 419-20 (D. D.C. 1976). Moreover, Exemption 7(C), like Exemption 6, is "phrased broadly to protect individual from a wide range of embarrassing disclosures." Rural Housing Alliance v. United States Department of Argriculture, supra, 162 U.S. App. D.C. at 126, 498 F. 2d at 77.

Under this balancing of interests analysis, courts have held that Exemption 7(C) covers the very kind of material at issue here: embarrassing or possibly damaging personal information about individuals mentioned in the records; names or identifying data of persons involved in the investigations, as informants or

---

61/ Exemption 6, 5 U.S.C. § 552(b)(6), protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The Supreme Court has established a balancing of interests analysis for this exemption. Department of Air Force v. Rose, supra 425 U.S. at 372-73.

as FBI employees. There is no doubt that individuals whose private, often highly personal activities are reported in government files should not be exposed to "unwarranted accusations" or harm to their reputations through the release of this information under an FOIA request. Irons v. Bell, supra, 596 F. 2d at 474. See also Wine Hobby U.S.A., Inc. v. I.R.S., 502 F. 2d 133 (C.A. 3, 1974). It is equally well established that the identities of persons contacted in an investigation are properly

> withheld in order not only to protect those citizens who voluntarily provide law enforcement agencies with information, but also to insure that such persons remain willing to provide such information in the future. Furthermore, references to third parties may be properly deleted to protect their privacy and to minimize the public exposure or possible harrassment of those persons mentioned in the files. Their claim to privacy under Exemption 7(C) outweighs the minimal public interest which would be served by release of their names.

Maroscia v. Levi, supra, 569 F. 2d at 1002; Varona Pacheco v. FBI, 456 F. Supp. 1024, 1030-31 (D. P.R. 1978). Police officers and FBI agents are surely entitled to the same protection of their privacy, as the Fourth Circuit has explained:

> One who serves his state or nation as a career public servant is not thereby stripped or every vestige of personal privacy, even with respect to the discharge of his official duties. Public identification of any of these individuals could conceivably subject them to harrassment and annoyance in the conduct of their official duties and in their private lives.

Nix v. United States, supra, 572 F. 2d at 1006. See also Maroscia v. Levi, supra, 569 F. 2d at 1002; Pacheco v. FBI, supra, 470 F. Supp. at 1099.

In light of these decisions, it is apparent that the district court here was correct in upholding the Department's Exemption 7(C) deletions of the identities of informants and FBI personnel (below the rank of section chief) and excisions of personal information which could embarrass or even damage the reputations of third parties.

IV

EXEMPTION 7(D) AUTHORIZES THE NONDISCLOSURE OF INFORMATION FURNISHED TO FEDERAL OFFICIALS IN CONFIDENCE BY NON-FEDERAL LAW ENFORCEMENT AGENCIES.

Exemption 7(D) of the FOIA, 5 U.S.C. § 552(b)(7), exempts from mandatory disclosure

> investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, furnished only by the confidential source. . . .

At issue under this Exemption here are Atlanta and Memphis Police Department records which were furnished to the FBI and the Task Force in confidence during the FBI investigation of Dr. King's murder and the subsequent review of the FBI's files on

Dr. King.[62] The Department considers these materials to be "confidential source" data and therefore refused to disclose them to plaintiff-appellant because the breach of confidentiality could lead to the "drying up" of one of the FBI's most important sources of information: the nonfederal law enforcement agencies.[63]

62/ The Department also invoked Exemption 7(D) in deleting the names of confidential sources from Task Force notes summarizing various FBI documents. Appellant does not effectively challenge these deletions. He merely asserts that because he has examined a few of these FBI documents that were recently released by the House Select Committee on Assassinations, he is convinced that there was no proper law enforcement purpose for the FBI investigations. He also asserts that these materials show no privacy interests at stake. (Brief 48). Appellant is in error. As we explained in Point III A, the Task Force review and the FBI investigations of Dr. King were for law enforcement purposes within the meaning of the FOIA, even though no violations of law were charged. In addition, as we explained in Point III B, the persons who cooperated in those investigations do have a protected interest in their personal privacy. Furthermore, the Exemption 7(D) "confidential source" privilege for these records has not been waived by the Department. The submission of agency documents to a Congressional committee for use during its official proceedings cannot properly be considered a waiver of the agency's entitlement to protection of the confidentiality of its sources. Murphy v. Department of the Army, ___U.S.App.D.C.___, ___F.2d___ (No. 78-1258, decided Dec. 21, 1979); Aspin v. Department of Defense, 160 U.S.App.D.C. 231, 491 F.2d 24 (1973). Finally, the disclosures by the House Committee are obviously matters outside the district court record and therefore do not warrant the disturbance of Judge Gesell's rulings, which were based on careful proceedings and a thorough record. As this Court has recognized in another FOIA case, "an appellate court has no fact-finding function" and should not delve into alleged new evidence or altered circumstances. Those matters should be taken to the district court under Rule 60(b). Goland v. Central Intelligence Agency, ___U.S.App.D.C.___, 607 F.2d 339, 371 (1979) (on Petition for Rehearing).

63/ Appellant has argued that the confidentiality of these materials has been waived. By means of an affidavit of his associate Harold Weisberg, appellant asserted that these materials have not been kept confidential by state officials and that their contents have become part of the public domain

(footnote continued)

The district court, after its in camera inspection of these Appendix C materials,[63] held that the Department had properly invoked Exemption 7(D).[64] On the basis of one statement in the legislative history, appellant now argues that the district court erred on the 7(D) issue, since the term "confidential source" means only a "person" and not a nonhuman source such as a police department. (Brief 41-42). Appellant's argument is unpersuasive in light of recent court decisions and the purpose and legislative history of Exemption 7(D).

62/ (continued) because he can piece together the information in these records from news leaks, court proceedings, and other FOIA suits. (Brief 45-46) Mr. Weisberg's conclusory assertions are not sufficient to pose a triable issue of fact, in light of the Department's affidavits from the state prosecutor and an FBI Special Agent. But even if Mr. Weisberg's allegations are correct, they do not show a waiver of confidentiality on the part of the Department. A "leak" by the source does not alter the assurances of confidentiality under which the information is held in agency files. See Gulf & Western Industries, Inc. v. United States, ___ U.S.App.D.C. ___, ___ F.2d ___ (No. 79-1646, decided Nov. 6, 1979); Continental Oil Co. v. F.P.C., 519 F.2d 31 (C.A. 5, 1975); Cf. Cooper v. Department of the Navy, 594 F.2d 484 (C.A. 5, 1979) ("leak" through agency in violation of regulations). Furthermore, as Judge Gesell concluded, the contents of these confidential records cannot logically or accurately be said to be in the public domain merely because an expert like Mr. Weisberg can utilize information from a wide variety of sources to draw conclusions about what could appear in these records. (455 F. Supp. at 925, App.).

63/ On the basis of this inspection, the court in its Opinion gave an accurate general description of the contents of the police department records. See note 37 supra. (455 F. Supp. at 924, App.).

64/ The district court declined to rule on whether the Memphis and Atlanta records had become Department of Justice records for FOIA purposes. (455 F. Supp. at 924, App.).

Three courts of appeals have interpreted (b)(7)(D) "confidential source" to include non-federal law enforcement agencies: the Ninth Circuit in Church of Scientology of California v. United States Department of Justice, ("Ch. of Sci. v. D.O.J.") ____F. 2d ____(No. 762506, decided November 8, 1979, petition for rehearing denied); the Fourth Circuit in Nix v. United States, supra; and the Seventh Circuit in Terkel v. Kelly, 599 F. 2d 214 (1979).[65/] The Ninth Circuit's recent decision in Ch. of Sci. v. D.O.J. provides a careful and correct analysis of the exemption. Stating that "the statutory language is clear and unambigious if we give the words of the 7(D) exemption their ordinary meaning," the court nevertheless undertook a painstaking review of the legislative history of the 1974 revision of Exemption 7 in order to dispell the appellant's suggestion that interpreting "confidential source" to include non-federal law enforcement agencies would be contrary to the policy of the FOIA and the intent of Congress in enacting the exemption. (Slip Op. at 702) The court pointed out that the scope or definition of the term "confidential course" was not expressly discussed in the legislative proceedings (Id. at 703), but the debates and reports on the proposed new exemption and its amendment made it "clear that the congressional intent was to broaden the scope [of the term] to include sources of confidential information other than informers."

65/ See also these district court decisions: Pacheco v. FBI, supra; Smith v. Flaherty, 465 F. Supp. 815 (M.D. Penn. 1978); Varona Pacheco v. FBI, supra. Contra Ferguson v. Kelley, 448 F. Supp. 919 (N.D. Ill. 1978), supp. opinion 448 F. Supp. 919, on motion for reconsideration 455 F. Supp. 324.

(Id. at 705) [66] It was apparent from the statements of both opponents and proponents of the exemption that "Congress was concerned that law enforcement agencies should not be faced with a 'drying up' of their sources of information or have their criminal investigative work be seriously impaired." (Id. at 706) [67] Thus, the court concluded that in restructuring and tightening Exemption 7, so as to make more information available to the public, Congress intended to maintain the exemption's protection of confidential sources and their information, both of which are crucial to effective law enforcement efforts. This Congressional purpose would be frustrated if the term "confidential sources" were not given its plain meaning: the non-federal agencies could simply refuse to cooperate in federal law enforcement efforts if the federal authorities were unable to assure them that their

---

66/ The court considered the very portion of legislative history on which appellant here places his sole reliance (Brief 41-42), and concluded that "confidential source" was not limited to human beings. The court stated that

> [t]he use of the word "person" in [the Conference Report] appears to be similar to the use of any collective noun. The word "person" in legal terminology is perceived as a general word which normally includes in its scope a variety of entities other than human beings. See e.g. 1 U.S.C. § 1. Had the Conference Report affirmatively stated that the term "confidential source" was limited to or applies only to persons, we would agree with appellant's position herein. (Slip Op. 705)

67/ The court cited pages 381, 391-92, 451, 468, 473, 476, of "Freedom of Information Act and Amendments of 1974 (P.L. 93-502) Source Book: Legislative History Texts and Other Documents," Joint Committee Print 94th Cong., 1st Sess. ("Sourcebook").

information and methods would be held in confidence. (Id. at 706-07) Furthermore, the court concluded that its interpretation of "confidential sources" would not conflict with the FOIA general policy "in favor of disclosure," since Congress, by enacting section 552(b), had clearly determined that there are exceptions to the general rule for "types of information that the Executive Branch must have the option to keep confidential." (Id. at 707, quoting Department of Air Force v. Rose, supra, 425 U.S. at 361 and EPA v. Mink, supra, 410 U.S. at 79-80). Finally, the court pointed out that interpreting "confidential sources" to mean only human beings would "impose. . . a form over substance rule" that would lead to absurd results:

> Any inanimate entity, such as a corporation or a foreign law enforcement agency, must act through a human intermediary. If we now interpret "source" as limited only to human sources, there would be an absurd difference between saying that a federal agency received sought-after information from an agent, Mr. X, of a foreign law enforcement agency under an expressed or understood assurance of confidentiality and saying that the agency had received the information from the foreign law enforcement agency under the same assurance of confidentiality.

(Slip Op. at 708). Based on this careful analysis of the legislative history, and the purpose and language of the FOIA, the Ninth Circuit held that Exemption 7(D) permits an agency to withhold as confidential source data the information received from non-federal law enforcement agencies under assurance of confidentiality.

This well reasoned interpretation should be adopted by this Court to affirm the district court's decision. An affirmance would effectuate the legislative intent in Exemption 7(D) and would be consistent with the general FOIA policy of disclosure. An affirmance would also avoid damage to federal law enforcement efforts, since the record demonstrates that the materials at issue here were provided to the Department in confidence and that such cooperation by non-federal agencies would almost certainly be hampered if confidentiality could not be assured. 68/ The district court was correct in holding that the materials qualify for Exemption 7(D) protection, and the holding should be upheld in this appeal.

CONCLUSION

For the reasons explained in detail above, the district court's decision should be affirmed.

Respectfully submitted,

ALICE DANIEL,
Assistant Attorney General,

CHARLES F. C. RUFF,
United States Attorney,

LEONARD SCHAITMAN,
LINDA JAN S. PACK,
Attorneys,
Civil Division, Room 3631
Department of Justice,
Washington, D.C. 20530.

68/ See Walker Affidavit, Beckwith Affidavit, Stanton Affidavit. (Note 29 supra, items 9, 11, 13).

Privacy Waiver - withhold names - New evidence again
Selective 7D claims - disclosed hundred of pages
Selective Leaking - Frank, Posner, Bynum in Shaw
15 all King tapes not personal + personal not otherwise/purpose
(Larson also dead)
16 FBI disclosed info + 411 + portland grand stands to me in 1996
also Shelby cty sheriff
18-19 - Some disclosed to me, survey, some summary, some inv. rpts
+ paraphrasing of rpts

31 accepting small # is to accept the legit in any of the Cointelpro against King as a legit "national Security" mo.
36 Informant numbers do not identify informant. They are not "purely administrative" because, in historical uses, they permit evaluation of uncorroborated information. The relevance of the number of an informant known to fabricate, like Morris Davis in this case, provides a proper caution in which there is a genuine public interest. The files are not maintained in a confidential manner by the informant's symbol number. There are special + separate file numbers for this in which the informant number is not used. Our interest is not "mere curiosity" 37, is untrue
38 Identities of persons involved in investigation + name FBI agents are disclosed in 75-1996
Remember HSCA
39 Adams #2 man in FBI + Department itself describe campaign as reprehensible
42 FBI has no authority for any King bugging + specifically offended the FBI's authorization to tap his phone