By accident Lil made an extra copy of a few of the preparations I sent JL for the King appeal. My file copy, which will be with the government's brief to which he is to respond, is 1 1/4 - 1 1/2" thick. I don't know whether this will be of any interest but instead of throwing away, will send.

Consultancy

In its brief the government is consistent with its long record before the district court in which it never once was truthful about the consultancy agreement. Its misrepresentations range from the incredinle through the ridiculous to the outrageous.

The proposal that the plaintiff, because of his unique subject-matter knowledge and experience (as defense investigator in the case of Ray v. Rose) act as the defendant's consultant in his suit against the defendant was made, not as the defendant represents, by Mrs. Lynne Zusman, who was at the time head of the Civil Division's FOIA litigation section, but by the second-in-command of the Division, the person the defendant states was authorized. It was made on successive Friday meetings and while opposed by me ~~was not rejected. But I had not accepted it, and that is what the defendant wanted me to do. So,~~ I did not reject it. I said I wanted to think about it more ~~further~~ but long after my counsel and I ~~had no more than~~ left the second meeting when, without consultation with us, ~~the defendant~~ Mrs. Zusman arranged for an ~~immediate~~ in chambers conference at the first possible moment. She did not tell us why. ~~for reasons never communicated to us, At~~ that conference I continued to resist accepting the consultancy until the judge ~~made~~ was from making me know ~~it clear~~ that she wanted me to. Reluctantly, under this pressure, I accepted ~~I then did accept~~ and began work on it immediately, first by conferring about it with Mrs. Zusman, the AUSA on the case John Dugan (in his office), Charles Mathews, of the FBI's Legal Counsel Division, and SA John Hartingh, also a lawyer, FOIA case supervisors, among those representing the defendant. Pursuant to defendant's instructions, that very night I ~~purched~~ purchased the tapes required for dictation as instructed and sent the bill, along with a letter, to the Civil Division.

The government's position now is that the man who made the proposal did not make it at all and that all of those who joined in it in chambers, having assured the judge that they were authorized to, were not only not authorized but I should have known that they were not authorized to. We are now also asked to believe that when the assurances of authorization were made to the court by Mrs Zusman I should have known that they were lies and that when the judge accepted those assurances and pressured me to accept the agreement the judge didn't know what she was doing and should have known better - and that I should also have known this, too.

During the time it took me to complete the consultancy

The Department, which has not prosecuted or disciplined in any way those it in effect (acted illegally and improperly, attorneys) and defrauded me, argues that there is no contract because "The officials with whom plaintiff and his attorney dealt were not authorized to enter into a consultancy agreement and their statements would have had to be ratified by an authorized official in the Department,"(Page 37) He in fact, as is unquestioned in the record, is the one who made the proposal to begin with.

There is absolutely no doubt that Mrs. Zusman did propose the agreement she stated she was authorized to seek. Yet the Department,

Conversely, It (also) has not charged me with attempted fraud in seeking payment. Or with perjury, because I stated (of what) under oath to the district court,

During the time it took to complete the counsultancy

While I was working on the consultancy,

When the defendant was representing that it was impossible to do anything more in this litigation until I filed my report, my counsel pointed out that it had requested this list, that it had been provided, and that the defendant had done nothing with this list. The court directed that the defendant respond. A month later a leggthy affidavit, with 52 exhibits - two inches thick in all - was mailed certified to me the Friday before a Monday calendar call, ~~return receipt requested~~, Ordinarily it would not have reached my home until after I had left to attend that calendar call but when it reached the post office just before it closed for the weekend, certified mail section of it attracted attention and I was phoned because the package was from the FBI. I drove into Frederick and picked it up. I examined the affidavit and attachments immediately and then began the preparation of an affidavit, working on it until the next afternoon, Sunday, when I spent several hours locating a notary. I hand delivered my affidavit and documents to counsel the next morning at the calendar call.

The defendant filed the affidavit of SA Horace P. Beckwith, FBI FOIPA case supervisor. It was falsely sworn and used phony documents as exhibits. When my counsel reported this to the court, with copies of the genuine documents and Beckwith's phonies, and reported in addition that the FBI was using as an affiant a man then an unindicted co-conspirator in the criminal case filed against former FBI Acting Director L. Patrick Gray, the court banished Beckwith.

That he swore falsely and also swore that phony records were genuine was not and could not be disputed. Yet the government claims there has been no showing of any bad faith in this litigation. (Brief, page_____)

That the "non-narrative list" was prepared and delivered and accepted and responded to (in the fashion set forth above) is in the case record and has never been disputed and cannot be disputed. This list itself is in the case record as an attachment to the Beckwith affidavit.

It is obvious that when a perfectly accurate and competent list was provided to the defendant it did not need a second list covering the same material. It also is obvious that when my communications indicated I was not preparing a list, if the defendant had wanted only that, the present claim, it would have immediately written me and so informed me. The fact is that the defendant is untruthful about this ex parte false claim and fabricated the claim that I was to prepare a list and nothing else.

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~~Throughout~~ I wrote the Civil Division often and in considerable detail, without once being told that the agreement did not exist and I should not continue working on it. ~~on the consultancy because there allegedly was no agreement.~~ My letters and progress reports - and I did provide progress reports and time estimates - were not ~~the the~~ clerks but to the second-in-charge of the Division and ~~the one~~ authorized to make the agreement, ~~according to the defendant~~, and to the head of the litigation unit.

All of the concotions to pretend that there was no agreement and all the untruthful representations about the agreement are after the fact, made when it came time to pay me. Meanwhile, in court and in personal meetings, the defendant kept insisting that nothing more could be done until I filed my consultancy report. At calendar call after calendar call, in the courtroom and outside it, this as the defendant's explanation for doing nothing at all for many months: it could do nothing until it received my report.

The fabrication that I was hired as a consultant because of my unique knowledge and experience when ~~the government and~~ all those lawyers and FBI agents and legions of clerks to do no more than compile a list insults this court and its intelligence. It assumes that this court will credit any fabrication, as long as it comes from this defendant. It also is a very large lie because exactly that list had been provided (and ignored) and the Civil Division claimed it needed more from me, expansion and explanation, which did require much subject-matter knowledge.

The "non-narrative list" was prepared by a pre-law student at American University, based upon the identical communications I was to use and did use in the consultancy. Mrs. Zusman agreed to pay her and welched on that, too.

At no time, particularly not after I filed a written account of the time I had spent and what I had done, did anyone representing the defendant write or phone me to tell me not to continue because there allegedly was no agreement nor were my counsel or I told this on any of the many times we met with the defendant's representatives. It was entirely the opposite, pressure for me to complete my consultancy and report on it.

insert 5A

(It is Goble who earlier drafted the FBI policy statement ~~for the FBI~~ that because the FBI does not like me it does not have to respond to my FOIA requests and he stated that the Act itself provides for this.)

5-A

After I filed my report neither copy was not returned as unacceptable. It was retained by the defendant and contrary to the representarion that it was not used, it was used by the defendant. It consisted of exactly what it was supposed to consist.

I filed a lengthy affidavit stating the foregoing in much greater detail after the defendant filed its fabrications. My affidavit has not been disputed and, ~~of course,~~ I was not charged with swearing falsely or trying to defraud the government.

The FBIHQ MURKIN records were disclosed weekly, as they were processed. I reviewed them promptly. It became apparent immediately that the processing was a very bad job, that most of the withholdings were neither justified nor necessary. I informed the FBI immediately, both in writing andin person. Because from the worksheets I was able to indentify those who ~~proced~~ processed each avolume, I did. It finally came to the point where I absolutely refused to accept any records processed by FBI SA T.N. Goble, a lawyer, ~~Mxxxxxxxxxxxx~~ because he asserted spurious claims to exemption and withheld unjustifiably. He was removed, but the harm he had done was not ~~remedied~~ remedied. In addition to what I wrote the FBI, I made a few notes for my counsel having to do with noncompliances. Despite my having informed the FBI of the flaws in its processing, as, for example, withholding of the public domain under 7(C) ~~and~~ and (D) claims, it persisted in them. I offered it the indexed books on the subject. ~~xxxxxxxxxxxxxx~~ It did not accept them saying it had them and was using them. The latter was obviously untrue or the FBI was engaging in improper withholdings deliberately. I finally gave it and the Department a copy of the consolidated indexes of all the books and it never used this index, either.

5A → Insert 5A here

It is my letters to the FBI that the prelaw student was to use to prepare a short, chronological list of my complaints about withholdings. Most of her items were about three lines of typing, including identification of the communications

In finally accepting the consultancy, as I had indicated before then, I stated I could not possibly review 60,000 pages again and would have to limit myself to my letters to the FBI and any other pertinent information in my brief notes to my

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counsel. ~~XXXXXXXX~~ This was clearly understood, agreed to, and there was no question about it. Because no purpose was served in doing over again what the student had done, which the FBI's clerks could have done much more rapidly, it is obvious that I was expected to use my knowledge in explanations, which is what I did. I was as fully informative as I could be.

For all his knowledge and experience - he was approaching retirement -for all the information and assistance others in the FBI coudd provide, and for all his knowing what was obliterated on the records provided to me, Beckwith and the FBI were not able to fault the list, except by ~~the~~ swearing falsely and using phony documents, and I caught him at that. There was even less chance of faulting my much more detailed consultancy report, and this is where the defendant's problem is. That report established that at the very least ~~all those~~ The MURKIN records required reprocessing. This was later testified to on January 12, 1979 by the Departments director of ~~FOIPA~~ Quinlan J. Shea, Jr., FOIPA appeals when he testified as the defendant's own expert witness, after he examined his copy of my report and ~~had access to the processed materials and examined them~~ the FBI's copies of the records disclosed to me. When he had questions I answered them. I provided him with copies of records, those disclosed by the FBI and others. I took all the time required, without thought of payment for it, after the judge asked me to cooperate with him, and this was much time.

On cross examination Mr. Shea was asked about what was omitted on direct, the very extensive withholdings, particular ~~XXXXXXX~~ under 7(C) and (D) claims. He replied, "I want to thank you for asking that question, Mr. Lesar. I'm under oath. The answer to your question is I'd put them back in."(Transcript, page 30)

~~References~~ Statements in the government's brief relating to what I was supposed to do in the consultancy, aside from being untruthful, are inconsistent with each other. One of the referenes to ~~the~~ what I was supposed to do is, "for Mr. Weisberg to prepare a detailed, non-narrative list of the withholdings and exclusions in the MURKIN files released to Mr. Weisberg."(page 7, emphasis added) This is more or less repeated (on page 36), where it also is made to appear that I did not do what I was expected to do, as "defendant wanted a non-narrative list of the deletions

7 plaintiff was contesting."

plaintiff was contesting." (Why anything ta at all was required when I had already provided exactly this information on almost a weekly basis is never stated anywhere.) this is enlarged upon. On the same page, "defendant simply wanted plaintiff to specify what deletions he took issue with as he was required to do by an earlier stipulation. (The latter statement is entirely untrue. The stipulation pertained to the field office MURKIN records only and with regard to them, I was not "required" to do anything at all. The stipulation merely stated that I did not waive my rights to conplain about the processing of the field office records and that the FBI recognized my right to do that.)

Earlier, however, the brief states that I was to do more, to "specify the material he (I) wanted." (page 5) This clearly refers to ~~material~~ records not disclosed, not to excisions.

~~What~~ is entirely inconsistent with limitation to a list is "so that he could give it (defendant) a more precise idea of his innumerable objections to the Department's release of information." ~~There is no apparent way in which this can be done in a "non-narrative list."~~

Moreover, this is what I had already done, on an almost weekly basis, as the FBIHQ MURKIN records were disclosed. There is no apparent way in which this can be done in a "non-narrative list" and if this were what was wanted, there was not reason not to use what I provided regularly, in writing, as the records were released. There also then was no reason to hire me as a consultant to do it all over again and pay me "generously," Mrs. Zusman's word to the court, for doing it all over again.

Likewise each and every allegation that I knew and should have known that there was no agreement is false.

"Plaintiff should have realized that further terms needed to be agreed upon before proceeding (sic) with the consultancy work," the representation of page 33, flies into the face of the fact that the defendant asked me to start work immediately and knew I did that very day and the fact that I kept the defendant informed of my progress regularly. The defendand knew I was working on the consultancy and never once told me not to. Moreover, when the judge accepted the assurance that I would be paid "generously," I had no reason to have any doubts at all. Nor did I when the judge did not at any point thereafter, on all the occasions The cpnsultancy was referred to, indicate that there was anything irregular in the agreement she had virtually forced me into as a means of speeding up the lawsuit. ✓S/A insert

Without actually stating that I did keep the defendant informed in letters (and in person and through counsel), the brief states that I, "in several of these letters, recognized that no agreement had been reached on at least two issues: duration and compensation for his consultancy work."(page 8)

One of these representations is false, the other is a distortion. The judge had left me without doubt that I should be the defendant's consultant and from that moment on I never questioed this or had doubt about it or reason to believe I should have any doubts. I know of no reason why I should have doubted that the judge knew what she was doing. It is true that the compensation was not initially specified, and it is true that I wrote to ask. But this is not at all the same as my having any reason to believe that there was not any agreement, particularly not because the defendant never once even suggested this and kept pressing me to finish up and provide my report. Also, before long the defendant offered a specific rate and I accept insert S/B it.

There are other unfaithful representations. One is that the defendant could not agree to "an unlimited number of hours of this work."(page 9) Mrs. Zusman's self-serving testimony, which even the district court did not believe was truthful, is quoted (at page 19) as having said The

Throughput this period, the defendant never even suggested that there was no agreement or that working out any details was a prerequisite. All defendant's representations were the ~~dmax~~ exact opposite, including pressures for me to complete ~~it.~~

The consultancy

The judge, on several occasions, in open court, stated explicitly that I would be paid and on one occasion specified the lowest rate she would be willing to consider.

there was no agreement because "what was lacking" included "the approximately(sic) number of hours for which Mr. Weisberg could reasonably expect to be compensated."

In another formulation (at page 33) "the parties never agreed upon the duration" of the consultancy, emphasized by making it a heading lower on the same page, "The Amount of Time on the Consultancy Was Never Agreed Upon." The text following adds an irrelevancy, there never having been any such question, "Defendant never consented to plaintiff's spending an unlimited number of hours on the alleged consultancy." (This is the only such use of "alleged.") And on the next page, "Defendant and plaintiff never agreed to the amount of time to be spent." And on the next page, "the amount of time involved in the consultancy need(ed) to be worked out."

Conspicuously, the experts in civil law in the Civil Division do not include any claim that they ever raised any such question or ever asked for any such information and were refused it, or even had any reason to believe that "an unlimited number of hours" was involved.

The nature of what I was to do made it impossible to provide an estimate at the outset. Until I collected and reviewed all the raw material, there was no basis for making any estimate or asking for one. These letters and notes did relate to some 60,000 pages of records and there were many pages of them. However, what is so studiously avoided and is in the case record is the fact that the very moment I reached the point at which I believed I could provide a reasonably dependable estimate, when I completed this initial review, without ever being asked I did provide a written estimate and it was 98 percent accurate when I completed the consultancy and filed the report.

The defendant raised no objections, asked no questions, did not respond after receiving this written estimate.

In addition, the defendant had virtually 100 percent of the raw material I was to use and thus was able to make a rough estimate of the time that would be involved. It never complained about the time that was required, either. It is probable that I actually spent more time because I have never had occasion to keep such records and

without doubt forgot to record some of the periods of time.

~~These arguments were all contrived after the fact and are inapplicable, untrue~~

The brief misrepresents the meaning of a statement by the court

~~The actual meaning of what the court stated,~~ "It is true that the consultancy agreement fell apart and that was unfortunate." (page 12) That the court did not mean there had not been any such agreement is clear by the court's subsequent statements. The court meant only that the Department was not living up to its end.

That in fact I had by this time completed my report and ~~was having it~~ it was being typed is ~~clear~~ entirely by ~~further~~ tricky language in the brief, "Two weeks later, in spite of these clear indications that the hoped-for agreement with plaintiff had 'fallen apart,' Mr. Lesar submitted two lengthy 'reports'" to ~~bich~~ both defendant's counsel and the director of appeals. That the defendant knew this and that it took 62 hours to type my two consultancy reports is acknowledged on page 14 ("...claimed compensable time of 204 hours and 53 minutes plus $50.31 in expenses" and and " secretarial expenses of for his wife amounting to 62 hours and 20 minutes." Emphasis added.) This is repeated (on page 35), "...reports which he submitted two weeks after the district court acknowledged that the consultancy had fallen apart." (The brief also misrepresents in stating that my counsel agreed with its interpretation of this language, which he never did.)

misrepresents

Even the brief cannot hide its and the defendant's deliberate misinterpretation of what the Ccourt had in mind. The brief states (page 13) that the court stated two months later "certainly ~~plin~~ plaintiff is entitled to a reasonable amount for the agreement they had with the Government for his consultancy activities." (page 13, emphasis added)

The court stated repeatedly that there had been an agreement and that if not paid voluntarily and sooner I would be paid at her order at the end of the lawsuit.

The brief states that defendant's counsel proposed to "arrange a meeting between Mr. Schaffer and plaintiff and his attorney" and that this "meeting took place as scheduled." (page 10) This is false.

There never was any such meeting. I subponaed Mr. Schaffer, he ducked the subpoena by having the marshal's told he was out of town when he wasn't, my counsel then notified him of the calendar call that morning and of the duces tecum provision, and Mr. Schaffer appeared in court without any of the records subpoenaed. It is conspicuous that he never suggested to the court that he or the defendant considered that there was no agreement. All he said is diametrically the opposite.

The claim that the defendant did not use my consultancy report is false and was known to be false when it was uttered and refuted in district court, with no effort made to rebut my refutation. The brief state (page page 33) that "the defendant did not use plaintiff's work and dervived no benefit from it." (page 16 and 33)

The brief acknowledges that the director of the appeals office accepted and kept a copy of each section of the consultancy report (on page 12). Tacitly the brief also admits that he made us of my consultancy reports (page 34) in stating, under the untruthful heading, "Defendant Did Not Receive Any Benefit From Plaintiff's Work," that "Mr. Shea acknowledged receiving and reviewing(sic) the reports." The brief here takes what I stated out of content to misrepresnt its meaning, "plaintiff himself as admitted in a previous affidavit that the defendant Civil Division and FBI did not use his report." (The actual quotation of my affidavit here does not say this. As quoted I stated that "After I provided my consultancy report, neither the Civil Division nor the FBI ever addressed it."(emphasis added) It also quotes that affidavit as stating that the Civil Division "ignore(d) my consultancy report and its specifications of noncompliance." (emphasis added)

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This is embellished upon with the addition of, "Since the defendant did not had even receive the work product it wanted (referring to the fabrication that only another provided "non-narrative list" was to have been ~~duplicated~~) and, in addition, did not make use of the 'report' it received, it is clear that defendant did not receive any benefit from plaintiff's work".(page 35)

The conclusion

~~The last paragraph~~ of Mr. Shea's direct testimony ~~for the defendant~~, as the defendant's expert witness, is, "And lastly, but not put there because it has been least, but really for emphasis, early on he made a promise to help me at any time I sought help it and as much as he possibly could Mr. Weisberg has kept that promise and I want to make that very clear on the record. He and I have communicated extensively and we have worked, I think, very well together on this." (~~Tr~~ Transcript, page23)

Mr. Shea did use my report, he did compare it with the FBI's unexcised copies of the records in question, and he did testify that the records required reprocessing.

In an effort to make me appear to be unreasonable part of one of my letters to Mr. Schaffer is wuoted without context (on page 13). I did accuse him of trying to defraud me and I did state that my work "brings to light what errant officials are unwilling to have ~~disclosed~~ known." He did defraud me and I can provide innumerable illustrations of "what errant officials are unwilling to have known" that I have "brought to light."

Bearing on the honesty of defendant's representations and quotations, in that letter I also reported that I nonetheless was continuing on the ~~consultancy~~ consultancy that Mr. Schaffer neither then nor at any other time told me not to do.

The Files of the FBI Divisions

The central records copy of the MURKIN files contained numerous notations of the removal of records that had not been returned when the file was processed. The notations included who and in what Division (often also what room) removed those records. The FBI took the position, without disputing that records were removed from the file and not returned, that because they are no division files there are no division files to search. But the ~~his~~ brief now admits that "the files of the General Investigative Division" were searched for another purpose (Page 25). This acknowledges that the divisions do have files and that at the least what was missing when the MURKIN file was processed should have been searched for in the divisions I identified.

Mootness, claims that disclosures were administrative, "substantially prevailed."

The defendant disputes the finding of the district court that "it had engaged in 'a deliberate effort to furstrate this requester/'" without reference to the basis for that finding (page 54), claims"that the Department was neither recalcitrant nor obdurate in itsopposition to plaintiff's claim and " had a 'reasonable basis in law'/ for all its actions in this case." It also disputes ~~this~~ the finding that "/ the Government stalled by claiming mootness" and pretends its constantly reiterated mootnes and related claims are limited to the April 15, 1975 potion of my request, which is not true (page 54) It represents that"the mootness claim, however, furnishes no basis to question the Department's good faith." (Page 56). It claims that and the end of / 1977 "it had no new substantive material left to give."(page 55) and that there was a "dearth of new material unearthed after 1977," this allegedly "attests to the correctness of the Department's position, based allegely on "repeated searches." (Page 55) ~~(~~; "post-1977 delay was caused not by the Department but by plaintiff" (page 55), the latter allegedly buttressed by a lengthy footnote of the motions on which I allegedly ~~prevail~~ did not prevail/ (pages 56 and n.4), At most

None of these representations is in accord with the unrefuted fact in the case record, which the brief ignores.

The first mootness claim was made at the very first calendar call. It also was claimed even before then in the defendant's disclosed internal records. By the first calendar call not a single record had been disclosed, yet mootness was claimed. The fact is, as the case record and the defendants' deposed representarives testified on deposition, that there still has not been a real search to comply with even the April 15 request and many of the items in the amendment of this request remain unsearched today, despite the defendant's contrary representations.

Throughout this litigation the defendant ~~has~~ claimed constantly to be ~~entirelx~~ entitled to summary judgement or dismissal because there was nothing left to disclose, only to be forced to make additional disclosures of the clearly pertinent information that had been withheld, a fact also misrepresented by the spurious claim

although the case ~~reundisputed~~ unrefuted case records reflects that I did in most instances obtain what I allegedly failed to get.

that additional disclosure was of the non-responsive or irrelevant.

Even the figures provided by the brief are not in accord with fact and there is constant fudging over of the defendant's original refusal to search field office files, even after it was promised in a letter by the Director. To end that particular stonewallimg is one of the reasons I agreed to the FBI's porposed stipulation, which it promptly nullified by violating its controlling provisions.

The defendant'd record with me is so incredibly perfect a record of never responding to a request without litigation compelling it that it was the subject of inquiry by the Senate's FOIA subcommittee and official Department and FBI testimony, including by the Civil Division and the FBI. Someone provided it with a list from the record in this litigation of some 25 comparatively simple requests, some for as little as a single record, other requiring by the search of a single small file, that were entirely ignored and remained ignored when the same information was later disclosed to another and later requester. These requests went back to January 1, 1969. The director of appeals testified that there was no way in which the FBI' behavior with me could be justified. Mr. Schaffer and Mrs. Zusman testified that all of this was terrible and they would do something about it. (This sworn assurance is no doubt the reason only one of those requests was subsequently voluntarily complied with, a year or more after the information was disclosed.) The FBI's FOIPA chief would give the committee no assurances of any compliance, and the FBI kept his unspoken word well by not complying with the remainder to this very day, even after formal the records in question were located in an internal investigation which disclosed that I had been lied to when the FBI told me it had no such records. As of today this FBI policy is unchanged. It has already porcessed for disclosure records it acknowledged in writing are within one of my requests, I requested them again, and I have not had any additional word. There are several such instances going back for months, without a single record being provided to me. long ago. They were administratively processed.

In this case the actual reason my requests were initially rejected by being totally ignored, as the FBI's internal records in the case record state, is that

The FBI decided that the FOIA entitles it to ignore the requests of those it does not like. This is literally what the undisputed case record reflects. There was no compliance at all until, again as the undisputed case record reflects, the defendant feared being "clobbered" by CBS-TV, which had duplicated part of my April 15, 1975 request. Even then, the Department's representative at a conference with the FBI counselled that my request first be rejected and then some legal excuse be dreamed up. (This, no doubt, is what the brief means when it refers to the Department's "reasonable basis in law." This or the FBI's position that because it did not like me FOIA did not require it even to reply to my requests.) insert 3A

While with a backlong an FOIA defendant can always claim that in time a request would be handled administratively, with me this is never true, as several judges have observed and as the case record in this case reflects. (leaves with out question) Even the disclosure allegedly in response to my amending of the April 15 request, allegedly an administrative disclosure but not even promised until it was compelled by the court, was entirely incomplete and the records pretendedly irrelevant or non-responsive were neither and were withheld deliberately. They include some of the most significant information disclosed in this litigation.

Even then all the claims in the brief are based on a proven fiction, that all pertinent records are filed under MURKIN. The brief both admits this unintendedly and glosses it over deliberately. Although its first "Questions presented" is "whether" there was "an adequate search of its King assassination files," (page 1) not all of which are Murkin - and my request does not mention and is not limited to MURKIN- it is stated (on page 25) that "(i)t has always been the FBI's position that any information about individuals relevant to the King assassination is contained in the Bureau's MURKIN files." (my items in clubs, objects and organizations)

Even if "about individuals" is not an intended invasion, the case record undisputedly proves this to be untrue. Examples are hiding the conspiracy investigation in bank robbery files and then pretending that nothing other than MURKIN is contained in ticklers when it was such a tickler that disclosed this; hiding records pertaining

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My 1969 requests pertaining to the King assassination and its investigation were ignored under the ~~false~~ false pretense that because the FBI did not like me FOIA did not apply but the court held otherwise. Based on what I had learned subsequent to filing them I rephrased them in specific terms and amended the complaint to include them, as the defendant has never denied and does not even address in its brief. (A later reason for complete nonresponsiveness was that Ray was still appealing ~~court~~ and there could be no disclosure without injury to his rights - when my counsel was Ray's counsel and I was his investigator.)

to electronic surveillances, which are part of specific items of the request pertaining to all surveillance, in the "66. Administrative Matters" files (and falsely pretending a search that disclosed nothing at all when the actual eavesdropping on two persons in that item are disclosed in the "bak robbery" file; filing the records pertaining to spying on the Ray defense in informant files, significiant records the disclsoure of which was not voluntary but was compelled; withholding the actual MURKIN inventories by filing them elsewhere, resisting their disclosure in a long suit and after it was compelled now claiming irrelevance; and even resisting, also for months and equally attributing all such delays to me, disclosure of the MURKIN abstracts, each and every one of which is a MURKIN record and is additionally within the request because it is, as the defendant admitted, an index and all indexes were requested.

Trying to get away with its own substitution for my actual request by limiting disclosure to MURKIN only does not represent the exhaustive searches claimed and in fact there were relatively few searches and then they were made only under compulsion.

Examination of the dates of disclosures and their content establishes that the representation of no significant disclosure after 1977 and that what was disclosed is irrelevant and non-responsive, and that I, not the defendant cause the delays, establishes the untruthfulness of all these representations.

Privacy

If the defendant had not entirely ignored what its own expert, Mr. Shea, testifed testified to as its witness and had not ignored all in the district court records reflecting inadequate search and disclosure there would be no basis for the allegations (page 25) that there are no"significant proceedings in the district court regarding" the records pertaining to J.C. Hardin and Raul Esquivel. The claim is that no search can be made absent a privacy waiver.

The FBI itself has disclosed that it has records pertaining to both men as well as pertinent records it has not disclosed. The first is a symbol FBI informer who was in touch with Ray just prior to the assassination and at a time when ostensibly nobody knew who or where Ray was. The second is a Louisiana State [illegible] trooper whose name is Raul, the name Ray gave for a preassassination Louisiana associate and whose phone number was in Ray'smpossession. The FBI also disclosed that Esquivel had civil rights charges filed against him.

No search has been made of FBI Atlanta records, which are within the stipulation, for other existing Hardin records, such as the informer contact reports the special agents are required to file after each informer contact, or for the information provided by the informer, on whom, at the very least, there is a 137 classification file at both FBIHQ and Atlanta.

These are major figures in the assassination investigation in all concepts otherf than the FBI's preconception and, as Mr. Shea both testified and found in reports to the court, such records should be disclosed. What I st ate above has been disclosed by the FBI, so their connections are in the public domain. If there is other information for which a privacy claim should be asserted, [illegible] it can be. But non-exempt records should be disclosed. The details about these men are in the case record and were ignored by the defendant. This may account for the language, "significant proceedings." The testimony of the defendant's own expert might be regarded by others as "significant," and he testified that such information ought be disclosed, that excessive privacy claims were a sserted to withhhold what should be disclosed.

PUBLIC INTEREST

The brief claims that no public interest is served by the disclosures of defendant's records in this litigation. It is represented (on page 38) that "(t)he district court has handsomely rewarded plaintiff for profoundly abusing the Freedom of Information Act for the last eight years" (explained elsewhere as by persisting and obtaining the disclosure of thousands of pages of records ~~falsely~~ described as ~~either~~ irrelevant and/or non-responsive, but responsive, relevant and significant; that "examination of the history of this litigation revelas reveals not only that plaintiff did not 'substantially prevail' in his lawsuit (in which more than 60,000 pages previously both withheld and refused were disclosed), but also has conferred no public benefit..."

These allegations are followed by,"and that the Department had a'reasonable basis in law' for all of its withholdings." This is refuted by the testimony of the defendant's own expert witness, head of its appeals office, who testified to the exact opposite on January 12, 1979 ~~as the defedant's own witness.)~~

It also is alleged (on page 2) that at the time I filed my first requests "the information requested was unavailable under the broad law enforcement exemption which was amended in 1974." The reason for rejecting my initial request was not the claim that the FBI was totally imune from the exemptions concerning which no lawsuit then had even been filed but on the FBI's own "Reasonable basis in law," stated by T.N.Goble and in the case record, that under FOIA the FBI does not have to respond to ~~in~~ FOIA requests from those it does not like.

Even if ~~it were assumed that~~ what the ~~the~~ undisputed case record ~~without question~~ establishes is not true with regard to me and my requests, were true, that in the course of time there would have been voluntary, administrative disclosure, the case record leaves it without question that only this litigation compelled the disclosure of about 20,000 pages that were withheld after compliance was claimed with disclosure of the FBIHQ MURKIN records only.

While it is not true that there would have been a voluntary administrative disclosure of MURKIN to me, and the FBI's internal records in the case record ~~state~~ the opposite, it is still a

fact that the defendant's baseless claim rests entirely on disclosure of the FBIHQ MURKIN file and it alone. Many thousands of pages of other and quite significant records were disclosed as a result of this litigation. Those on the "Invaders" and the "emphis sanitation workers strike, with all they disclose about the FBI's intrusion in ~~domestic~~ local, noncriminal activity; its intrusion into political and highly personal matters; its domestic espionage, by its own symbol informers and other sources as well as those of local police, are of exceptional significance and public interest and have been used in colleges and universities, by scholarly journals and have been the subject of collegiate honors papers. These were not volunatry disclosures. The are not filed in MURKIN, with which they are related, and withheld records whose disclosure was ~~compil~~ compelled relating to the FBI's penetration of the Ray defense and that symbol informer's political activities were the subject of four major, front-page articles in the St. Louis Post Dispatch, and were syndicated nationally. Aside from the major disclosures in the MURKIN records, which the FBI, from a long and consistent history, would never have disclosed to me voluntarily, and what these records reveal of the nature and content of the FBI's investigation and methods in that major case, ~~and its practises,~~ it is apparent that even within MURKIN the FBI resisted strongly and for months the disclosure of the largest and most important of all MURKIN records, the ~~MURKIN~~ abstracts. The truth about them, which is not in the brief, is that until this disclosure was compelled by the district court nobody had ever seen and nobody had even known ~~of~~ that the FBI had abstracts, a rough summary/index, of all FBIHQ main files. In ~~its~~ itself this is a disclosure of what is both new and significant for the public. The magnitude of the FBI's intensive operation against Dr. King was not disclosed until it was compelled in this litigation, again over prolonged resistance by the defendant. This is disclosed in the inventories of the field offices that include their MURKIN holdings. (This particular disclosure also includes how the FBI hides what ~~are~~ belongs in the main subject files so it can search without locating what is embarrasing while also being able to retrieve the embarrassing for its own purposes. This disclosure also reveals how the FBI can pretend to make a ~~short~~ thorough search while seeing to it that a thorough search is not made. It too received major public attention in the Jack Anderson column, reflecting the public interest in it.

ample reflection of [illegible] public interest

single

The FBI'd records disclosed in this litigation reveal that it did not set aside all the information I obtained for the HSCA and that it set aside for it only the FBIHQ MURKIN records. (The same FBI internal record also discloses that with regard to that committee's investigation of the assassination of President Kennedy the FBI did not provide it with what I had obtained in another lawsuit.) Because later the FBI would have been compelled to make the MURKIN disclosure to the HSCA, it cannot honesty allege that all its claimed cost in disclosure can be charged to me, as it does (on page 54). the expenditure of much public money. It is clearly a public benefit for a private citizen to compel the disclosure of what even the Congress, in the most costly investigation in its history, did not disclose, as it also is a major public benefit to bring to light what the Congress later did use.

After I compelled disclosure and before the work of the HSCA other writers, including CBS-TV, obtained and used copies of what I brought to light, and this also is a public benefit.

The extensiveness of FBI distribution of domestic intelligence among other agencies, including the military and involving perfectly legal activities by private citizens and organizations, even the extent of FBI cross-filing of such information, in as many as 150 different files, is important for the public to know and is a public benefit that even the HSCA did not disclose.

The "tremenduous cost to the taxpayers" which the brief alleges this litigation was and describes as "only a public detriment," (page 54) comes largely from the FBI's stonewalling and refusing for months on end to make the searches and disclosures it was finally forced to make, its refusal to search to comply with the actual items of my request, and its excessive, unjustified and unnecessary withholdings from the disclosed records of what its own expert, Director of FOIPA appeals Shea, testified should not have been withheld and should be restored. It is not the compliance that accounts for the major costs, it is the noncompliances and what they necessitated.

Reprocessing and Exemptions claimed

There are ~~many~~ repeated allegations with regard to ~~the~~ reprocessing that are not in accord with fact. It is referred to as "a truly monumental and time-consuming task" (Page 27) with regard to the filed office records.

The claims made to exemption to withhold are ~~referred to~~ described as "valid" and ~~that~~ this allegedly was established by a Vaughn sampling (page 28) which actually established the exact opposite and resulted in the disclosure of what had been with held in the records sampled.

"Mamouth and repetitious" reprocessing is ~~referred to~~ alleged ~~(page 44)~~ (pages 41,48)

And it is alleged ~~that with regard to~~ my representation that "numerous exemptions, particularly ~~7(A)~~ 7(C) and 7 (D)" were ~~in~~ "improperly applied" ~~simply on the basis~~ rests only whose ~~of~~ my alleged "suspicions regarding the identities of individuals for ~~whom~~ protection the exemptions were claimed." (Page 30)

The extent to which the FBI withheld names improperly is reflected by the fact that it withheld them from even xeroxes of a newspaper stories.

With regard to these claims to exemption the ~~FBI~~ Department produced its own expert, Quinlan Shea, head of the appeals office to testify on January 12, 1978. ~~He~~ then testified - as the Department's witness - that the records required re-processing because there was excessive claim to exemption.

These excessive and unjustifiable withholdings were purposeful, not accidental. The ~~records~~ MURKIN records were disclosed to me weekly, as processed. I reviewed them promptly and immediately ~~and extensively~~ informed the FBI ~~when~~ that it was withholding the public domain and was what it held ~~names~~ already disclosed. It even withheld the contents of the phone book. In an effort to reduce these problems if not entirely eliminate them I offered my knowledge and files as a subject-matter expert and I offered ~~index~~ indexes to the books that had been published. All such offers were refused and the FBI persisted in making ~~these~~ withholdings that were not justifiable. ~~In the end~~ I ~~even had~~ do have a consolidated index of all the published books prepared and gave it to the FBI, but it ~~also~~ still refused to use it. Instead, having learned that

I informed it promptly of its errors when I received the disclosed records weekly, it made that impossible ~~by~~ by accumulating large quantities of records, thousands of pages, and then dumping them all on me too late for me to report any errors. It did the this even ~~if~~ when it was bound not to by the stipulation it sought and thus violated that stipulation from the first.

If the FBI had not processed the records incorrectly to begin with, there would not be any question of reprocessing. If it had not ignored all the complete, accurate information I provided, it would not have any such problems to face. If it had had any interest in correct processing, after I provided it ~~with all that I did~~ at the least it could have taken samples up with the appeals office rather than stalling everything until it had processed all the records improperly.

The FBI had the consolidated index to the published books before it processed any field office records, but it not only did not use the index, it even withheld names that it dislcosed in disclosing its copies of newspaper clippings.

What was searched

At the outset in this litigation I informed the FBI that it could not possibly comply with my requests by processing the MURKIN file only. Many of the Items ought not be filed in it, as the FBI never denied. Instead, it just ignored anything not in the MURKIN file and because it processed that entire file it made no real search.

The brief acknowledges the fact that the FBI took this position. It also pretends that all the Items of my request must be within the MURKIN file to be relevant, which is not true. In making this admission the brief also states what is not true and what was proven not to be true in this litigation.

It does state, "(I)t has always been the FBI's position that any information about individuals relevant to the King assassination is contained in the Bureau's MURKIN file."(Page 25)

As an example, the request includes all records of any kind pertaining to any kind of surveillance ever performed on any of the listed persons, all public figures at this time

This information is not and the FBI knows it is not in the MURKIN file and that some of it is not relevant to MURKIN in any event. But contrary to the FBI's claim, repeated in the brief after I corrected the FBI in the case record, the FBI does not file the tapes of electronic surveillances in the case main files. It hides them as "administrative matters" in its 66 classification files. It also does this with logs and other records pertaining to these surveillances.

Records of the physical and electronic surveillances of Jerry Ray, which were not in the MURKIN file, are hidden in a bank robery file, 91 classification. And rather than the ticklers merely duplicating what is in the main case file, which is claimed on page 26, none of those records were in the main case file. They were, however, in the Long tickler when I finally received what remained of it after it was gutted during this litigation.

Thus it is apparent that what the FBI now states to this court with regard to these matters is not only untrue, it was proven to be untrue in the case record in the court below.

This false pretense, that all the items of my request are contained in the MURKIN file -when the FBI knew very well that they are not and could not have been - is the major single cause of all the delays and noncompliances and their attendant costs in this litigation. They and the persisting misrepresentations necessary to preserve that fiction.

Spectro-NAA

(item 2)

My request seeks the results of the spectrographic and neutron activation analyses (NAA) pefformed ~~inxthexFBIxxinvestigati~~ by the FBI. Theb brief represents that thes remains nothing to be disclosed. In support it cites a Kilty affidavit and one of his depositions but deposition was not in this litigation.

Kilty was deposed in this litigation. With regard to what are sometimes referred to the NAA printouts, which he referred to as Polaroid records, he admitted that they exist and had not been provided. I asked for them. Department counsel took the position I had to request them again, even though they are the second item of the request and they were not provided. I appealed and received no response.

Prior to this Mr. Shea had talked to then FOIPA supervisor Horace Beckwith and he then told me that the FBI had agreed to release the film plates exposed in making spectrographic ~~these~~ examinations. That also has not happened, I appealed again and received no response.

These plates do exist, are within the request and have not been provided.

The brief conjectures that a second set of entirely undescribed records were provided allegedly because I "had apparently lost" the earlier set. This is not true. I have preserved every record provided exactly as I receive it, as the defendant knows and the case record reflects. When I use any record I make a copy and preserve the original exactly where and as I received it.

The Stipulation and the Consultanny

Of all the ~~mis~~ official misrepresentations in this officially-stonewalled litigation none has been more effective in stonewalling and in frustrating compliance ~~with the items of my request~~ that the Stipulation and the Consultancy agreement. Both are again misrepresented in the government's brief.

The Stipulation.

~~The~~ Basic to the defendant's claim that all required searches were made is this untruthful ~~alle~~ statement in the brief, " . . . entered into a stipulation spelling out the Department's search obligations." (page 5) No matter how often the defendant was corrected on this, including by the district court, it is one of the most persisting misrepresentations, used repeatedly ~~to~~ as a justification for not making the required searches. The stipulation does not address searches or the Department's search obligations."

The stipulation was ~~offered~~ proposed by the FBI as a means of avoiding a Vaughn indexing of the MURKIN records. I agreed to waive this index if the FBI provided the ~~MURKIN~~ assassination investigation records of seven filed offies under certain specified and agreed-to conditions. Nothing else was involved. No other component ~~was~~ involved, no other searches were waived, and there are no other provisions. I waived absolutely nothing except this ~~Murkin~~ Vaughn indexing, and that only conditional upon the FBI's ~~adherence to~~ compliance with all the other provisions. It violated them from the outset, persisted in violating them through all the processing of those field office records, and because they were violated the court did order a sample Vaughn index, ~~which~~ This would not have been required if the FBI had not broken the provisions of the stipulation it sought and drafted, ~~not it~~.

Because the FBI, after claiming complete compliance, searched a few other files later, it claimes (page 24) that ("(I)t thus complied with the plaintiff's requests and with the August, 1977 stipulation." If it violated the stipulation, as it did, ~~and~~ as the court held it did and as it has yet to deny it did, it could not "comply" with that Stipulation which in any event has no such provision and again is misused to

allege that the FBI has met its search obligation when it has not.

The stipulation is stretched still farthur (on page 26) to pretend that the stipulation (which it nullified) obviates its need to "reprocess records processed from FBI field offices pursuant to the ...stipulation..." The brief adds that I "must be aware" that reprocessing "nullifies a provision of the stipulation that states: (d)uplicates of documents already processed at headquarters will not be processed or listed on the worksheets." Aside from the fact that the FBI nullified the stipulation at the outset and contemporaneously it has yet to check to determine whether any withheld field office document is actually duplicated in the existing FBIHQ MURKIN file. Many headquarters MURKIN records are missing and not accounted for. In a concurrent case where the FBI also did not check to ascertain that headquarters still had and had processed documents provided by a single field office, more than 3,000 pages were found not to exist at headquarters and were not provided. Thereafter the FBI was compelled to provide these missing pages. Moreover, the defendant's own expert witness, head of its own appeals office, testified that the records require reprocessing because exemptions were claimed when they should not have been claimed, and in a report to the court he stated that non-duplicate field office records were withheld as duplicates. The brief's footnote ignores all of this and represents that only documents with "administrative markings" were withheld. The appeals office checked, found out this is not true, and stated that the nonduplicates should be provided from the field office files. This has not been done (6) and the stipulation cannot be claimed to cover any other of the withholdings detected by the appeals office. The stipulation also does not minimize any other improper withholdings.

Tne brief is both truthful and utruthful with respect to what was to have been produced under the stipulation by the field offices. ("...called for records only of the assassination investigation (the MURKIN files)," page 45.)

It is correct that the field offices were to have processed the records of "the assassination investigation," to cover which the FBI used its code word MURKIN. I raised the question whether this did not include the records on the Ray family that

are included in my request, and the FBI assured me not only that it would but that t he use of this code word was required for the field offices to know what records they were to send to FBIHQ for processing. It turned out that the FBI deceived me when it could no longer withhold the Long tickler. The Long tickler established the existence of other "assassination investigation" files in some field offices, pertinent records filed other than under MURKIN. One example is the "bank robbery" files on the Rays, the conspiracy part of the assassination investigation.

All the foregoing is undenied in the case record, which includes samples of the bank robbery records to reflect pertinence.

So, while it is true that under the stipulation the only field office records required to be provided related to "the assassination investigation," as the governments brief states, it is not true that all "the assassination investigation" records were filed under MURKIN!

Examples of outside-MURKIN filings of records pertinent to the assassination investigation that were later disclosed, thereby establishing still other violations and nullifications of the stipulation, include those on the police and FBI spies, Harrell McCullough and Oliver Patterson and the Memphis files on the Invaders and the sanitation workers strike.

In a memorandum that was withheld from me under spurious claim to exemption and then disclosed to another requester, a memorandum he did not long survive, the appeals office director informed the FBI with regard to this litigation that records are pertinent by their content, not by how the FBI has them filed, and that when they can be located by a reasonable search, they are required to be processed.

Although the brief concedes that under court order other information was disclosed, the defendant claims that in its interpretation this information was "of slight and peripheral significance."(Page 46) It is by no means either slight or peripheral to disclose how the FBI hides main-file subject matter records outside the main subject file, one of those disclosures, and that it uses "66. Administrative Matters" files to hide records pertaining to and tapes of its electronic surveillances, which are an item of the request still not properly searched and for the most part not searched at all.

Throughout this litigation, every time the existence of pertinent and withheld records was established the defendant claimed that the stipulation covered them. In no case was this true. The defendant has tried to strecth the stipulation it nullified to include almost anything not in Fort Know.