APPENDIX

VOLUME I (Pages 1-268)

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

No. 79-1700

HAROLD WEISBERG,

Plaintiff-Appellant

v.

CLARENCE M. KELLEY, ET AL.,

Defendants-Appellees

On Appeal from the United States District Court for the District of Columbia, Hon. John Lewis Smith, Jr., Judge

---

James H. Lesar
910 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorney for Plaintiff-Appellant

TABLE OF CONTENTS

VOLUME I

VOLUME II

0090/1	78	0249		02	13	7	2	895	1				9014				78	0249

PLAINTIFFS | DEFENDANTS

HAROLD WEISBERG

~~[illegible]~~ Smith, J

1. CLARENCE M. KELLEY, Director Federal Bureau of Investigation
2. GRIFFIN BELL, Attorney General
3. U.S. DEPARTMENT OF JUSTICE

CAUSE

ATTORNEYS

James Hiram Lesar
[illegible]0 16th St., N.W.
[illegible]ite 600
Washington, D.C. 20006
223-5587

1. Emory J. Bailey
   Dept. of Justice
   Washington, D.C. 20530
   739-3664
2. -do-
3. -do-

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				JS-6	

1978		
Feb	13	COMPLAINT, appearance.
Feb	13	SUMMONS (5) and copies (5) of complt .issued. DA, #2 ser 2-15-78 deft #1 ser 2-13-78
Mar	15	ANSWER of defts to complaint; Exhibits (3); c/m 3-15-78. Appearanc of Emory John Bailey.
Mar	15	CALENDARED. CD/N.
Mar	16	ORDER setting status call 4-6-78 at 2:00 p.m. OBERDORFER,
Mar	31	MOTION by pltff. for summary judgment; statement of material fact P&A's; c/m 3-31-78.
Apr	07	REASSIGNMENT of case from Judge Oberdorfer to JudgeSmith.
Apr	13	MOTION by defts. for enlargement of time within which to file deft' opposition to pltfs. motion for summary judgment; attachment.
Apr	18	MEMORANDUM by defts in opposition to pltffs. motion for summary judgment; affidavit of Horace P. Beckwith; Exhibit A.
Apr	18	ORDER granting deft's. motion for enlargement of time to and including April 18, 1978 to answer pltff.'s motion for su judgment. (N). SMITH, J.
July	03	MOTION by defts. to dismiss or in the alternative motion for summa judgment; P&A; Exhibits 1,2,A and B.
Jul	14	NOTICE by defts. of filing of corrected page #1 to its previously filed motion to dismiss; attachment.
Jul	28	STIPULATION enlarging time to July 28, 1978 time within which plt may file opposition to deft's motion to dismiss or in the alternative for summary judgment. (N) SMITH, J
Jul	31	NOTICE of filing of correction by defts.
Aug	01	MOTION of pltff. for leave to file opposition to defts. motion fo summary judgment, time having expired;Exhibit (Oppositi
Aug	02	ORDER granting pltff's. motion for leave to file his opposition t defts. motion for summary judgment time having expired. (N). SMITH, J.
Aug	02	OPPOSITION of pltff. to defts. motion to dismiss or in the altern for summary judgment; statement of genuine issues; Exhibits A,B,C,D,E; affidavit of Harold Weisberg with Exhibits; affidavit of Harold Weisberg with exhibits.
Aug	16	NOTICE by pltff. to take deposition of Allen H. McCreight and Mr. Horace P. Beckwith.
Aug	29	MOTION of defts. for a protective order; memorandum; Exhibit 1.
Oct	5	NOTICE by pltff. to take deposition of Allen M. McCreight and Mr. P. Beckwith. see next page

PLAINTIFF	DEFENDANT	DOCKET NO. 78-0249
EISBERG	KELLEY, ET AL.	PAGE 1 OF ____ PAGES

DATE	NR.	PROCEEDINGS
1978		
Oct.	16	MOTION of defts for a protective order; memorandum; Exhibit 1.
Oct.	23	OPPOSITION by Pltff. to Defts' motion for a Protective Order.
Oct.	26	ORDER filed 10/25/78 granting defts' motion for Protective Order and the depositions of Messrs. McCreight & Beckwith not be taken. (N) SMITH,J.
Dec	01	HEARING on motion to return seized property begun; respited until 12-7-78 at 9:30 A.M. (Rep: I. Watson) GESELL, J.
Dec	15	NOTICE by defts. of filing of memorandum opinion; Memorandum Opinion.
1979		
Jan	10	MOTION of deft. to dismiss argued and taken under advisement. (Counsel to be notified at a later time) (Rep: Dawn Copeland) SMITH, J.
Jan	15	ORDER filed 1-12-79 directing defts. submit within 10 days an affidavit by the appropriate person regarding classification status under Executive Order 12065 of those documents at issue in this action previous classified pursuant to Executive Order 11652 and Further pltf. has to and including 5 days thereafter to reply to said submission. (N) SMITH, J.
Jan.	22	NOTICE of defts. of filing affidavit of Bradley B. Benson; attachment(affidavit of Bradley B. Benson)
Jan	26	MOTION by pltf. for extension of time.
Jan	30	~~MOTION of deft. for return of seized property continued un~~ ERROR
Feb	02	ORDER filed 2-1-79 granting pltf. motion for extension of time to and including 2-8-79 for responding to the affidavit of Bradley B. Benson. (N) SMITH, J.
Feb	09	MOTION by pltf. for further extension of time within which to respond to affidavit of Bradley B. Benson.
Feb	15	ORDER filed 2-12-79 denying pltfs. motion for further extenstion of time to respond to the affidavit of Bradley B. Benson. (N) SMITH, J.
Feb	16	OPINION filed 2-15-79. (N) SMITH, J.
	16	ORDER filed 2-15-79 granting defts. motion for summary judgment. (N) (See order for details) SMITH, J.

(SEE NEXT PAGE)

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(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR—3-7-78

PLAINTIFF	DEFENDANT	DOCKET NO. 78-0249
WEISBERG	KELLEY, et al.	PAGE 2 OF ____ PAGES

DATE	NR.	PROCEEDINGS
1979 Feb	26	MOTION by pltf. for reconsideration and clarification pursuant to Rules 52(b) and 59 of the Federal Rules of Civil Procedure; P&A's; Affidavit of Harold Weisberg with Exhibits 1 thru 27; Affidavit of Harold Weisberg with Exhibits (13); Affidavit of Harold Weisberg with Exhibits (5)
Mar.	12	MOTION of defts. for enlargement of time within which to file response to pltf. motion for reconsideration & clarification.
Mar	22	MOTION of pltff. to vacate Court's order of 10/25/78 and to set a schedule for discovery; memorandum of points and authorities; affidavit of James H. Lesar; Attachments A thru G.
Mar	22	MOTION by pltff. under Vaughn V. Rosen to require detailed justification, itemization and indexing; memorandum of points and authorities.
Mar	22	OPPOSITION of defts. to pltffs. motion for reconsideration and clarification.
Mar	26	REPLY of pltf. to defts. opposition to motion for reconsideration and clarificat
Mar	29	ORDER denying pltff's motion for reconsideration. (N) SMITH, J.
Apr	4	OPPOSITION by deft. to pltffs. motion for an order requiring defts. to submit a detailed index pursuant to Vaughn V. Rosen.
May	29	NOTICE of appeal by pltf. from order of 2-16-79 entered on 3-29-79 $5.00 paid and credited to U.S. copies mailed to Emory J. Bailey.
Jul	06	RECORD on appeal delivered to USCA; receipt acknowledged, USCA#79-1700.
Nov	15	TRANSCRIPT OF PROCEEDINGS; 01-10-79; pages 1-32; courts copy; Rep: Dawn Copeland
Nov	19	SUPPLEMENTAL record delivered to USCA; Receipt acknowledged 11/20/79. USCA#79-1700.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,
Route 12
Frederick, Maryland 21701
Phone: [301] 473-8186

Plaintiff,

v.

CLARENCE M. KELLEY, Director
Federal Bureau of Investigation
J. Edgar Hoover Building
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20535

GRIFFIN BELL, Attorney General
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

and

U.S. DEPARTMENT OF JUSTICE
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Defendants

OBERDORFER, J.

78- 0249

Civil Action No.

FEB 13 1978

COMPLAINT

Freedom of Information Act, 5 U.S.C. 552]

1. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561 [93rd Cong., 2d Sess.], and Public Law 94-409, 90 Stat. 1241 [94th Cong., 2d Sess.]

2. Plaintiff is HAROLD WEISBERG, an author residing at Route 12, Frederick, Maryland 21701.

3. Defendant CLARENCE M. KELLEY is Director of the Federal Bureau of Investigation, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20535. Defendant Kelley is responsible for seeing

5

that the Bureau of Investigation meets its obligations under the Freedom of Information Act.

4. Defendant GIFFIN BELL is Attorney General of the United States. In his official capacity defendant Bell is responsible for seeing that the Department of Justice meets its obligations under the Freedom of Information Act.

5. Defendant DEPARTMENT OF JUSTICE is an agency of the United States and is responsible for supervising the implementation of its regulations governing the FBI's processing of Freedom of Information Act requests.

6. On December 7, 1977 the Federal Bureau of Investigation made public a reported 40,001 pages of its Headquarters' records on the assassination of President John F. Kennedy. Subsequently, on January 18, 1978, a second batch of these records, reportedly totaling 58,754 pages, was also made public.

7. By letter dated December 6, 1977 to Mr. Allen H. McCreight, Chief, FOIA/PA Branch, Records Management Division, FBI, plaintiff requested:

> 1. All worksheets related to the processing of the records described in paragraph six above.
>
> 2. All other records related to the processing, review, and release of these records.
>
> 3. Any other records which indicated the content of FBI Headquarters records on the assassination of President Kennedy; and
>
> 4. Any separate list or inventory of FBI records on President Kennedy's assassination not yet released.

8. As of this date, plaintiff has received no response to his December 6, 1977 request. Accordingly, he is deemed to have exhausted his administrative remedies under the Freedom of Information Act.

WHEREFORE, plaintiff prays this honorable Court for the following relief:

1. That the defendants be enjoined from withholding the records plaintiff has requested;

2. That the Court award reasonable attorney fees and the costs of bringing this action; and

3. That the Court issue a written finding that the circumstances surrounding the withholding of the records requested by plaintiff raise questions as to whether agency personnel acted arbitrarily and capriciously with respect to such withholding.

JAMES HIRAM LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

DATED: February 13, 1978

FILED: MARCH 15, 1978

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

CLARENCE M. KELLEY, et al.

Defendants.

CIVIL ACTION

78-0249

ANSWER

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter inasmuch as no documents have been improperly withheld within the meaning of 5 U.S.C. §552(a)(4)(B).

SECOND DEFENSE

Defendants Clarence M. Kelley and Griffin Bell are not proper parties to this action.

THIRD DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

In answer to the numbered paragraphs of the Complaint, defendants admit, deny and aver as follows:

1. This paragraph contains plaintiff's characterization of this action and does not contain allegations of fact for which an answer is required, but insofar as an answer is deemed required it is denied.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph. Accordingly, they are denied.

3. Denied, except to admit that Clarence M. Kelley was formerly the Director of the Federal Bureau of Investigation.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied, except to admit that defendant Federal Bureau of Investigation received a letter from plaintiff dated December 6, 1977, a true and correct copy of which is attached hereto as Exhibit I, to which the Court is respectfully referred for a full and complete statement of the contents thereof.

8. This paragraph contains allegations of fact and a conclusion of law. Insofar as this paragraph contains allegations of fact they are admitted, and defendants further aver that letters dated February 21, 1978 and March 6, 1978, were sent to plaintiff. These letters are attached hereto as Exhibits 2 and 3, to which the Court is respectfully referred for a complete and accurate statement of the contents thereof. Insofar as this paragraph contains a conclusion of law, no answer is required, but insofar as an answer is deemed required, it is denied.

Any allegations not hereinbefore admitted or denied are denied.

Defendants deny that plaintiff is entitled to the relief sought in the Complaint or to any relief whatsoever.

WHEREFORE, defendants having fully answered, pray that the action be dismissed with prejudice and that defendants be granted their costs.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justice
Information and Privacy Section
Washington, D. C. 20530
Tel: 739-3664

Attorneys for defendants

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

Exhibit #2

FEB 21 1978

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

This acknowledges receipt of your letter dated January 19, 1978, concerning the letter you received from Special Agent McCreight dated January 18, 1978, and the fact that you have received no determination on your request to the Federal Bureau of Investigation dated December 6, 1977, seeking access to the Bureau's worksheets on the Kennedy assassination records.

As you know, this Office ordinarily responds to appeals based on a lack of a component response to a request with a letter that merely expresses our inability to conduct initial record reviews, indicates that we will monitor the processing of the initial request, and advises the requester of his right to seek judicial relief. In this case, however, I intend to proceed somewhat differently and to maintain your appeal as to the December 6 request in an open status. It has been assigned Number 8-0242 and I intend to hold the file personally. Even prior to the receipt of your letter of January 19, I had been discussing with the Bureau the matter of the possible release of its worksheets; that was in a general sense -- not just the Kennedy case -- and resulted from my testimony before the Abourezk Subcommittee late last year. At that time, former Deputy Attorney General Flaherty and I assured the Subcommittee that we would give serious attention to the problem of giving requesters more information, at the initial stage, about the nature and quantity of records to which access is denied. I have given this problem considerable attention over the past several months, in discussions with personnel from the F.B.I. and other components of the Department as well. Pending resolution of the matter, I intend personally to hold appeals involving "explanatory" records.

With respect to the actual Kennedy assassination worksheets, it may possibly turn out not to be necessary for me to act formally. The Bureau is still considering whether to put

Exhibit "I" Continued

"clean" copies of the final version of these items into the reading room and otherwise to make them available to interested persons. A final decision should be made by the Bureau in the relatively near future. In the event the decision is negative, I will then treat your letter of January 19 as an appeal on the merits and we will adjudicate on a formal basis the issue of access to the worksheets.

With respect to the excisions from the released Kennedy records, it should be obvious that this Office would also prefer to address any possible issues in the context of specific exemptions and specific documents. This might permit an efficacious appeals procedure to operate -- there is no way my staff and I could do a line-by-line review of all excisions from all of these tens of thousands of pages. Accordingly, pending resolution of the worksheets issue, I will treat your letter of January 19 as a protective appeal encompassing any Kennedy assassination records as to which you ultimately decide to appeal.

As indicated above, I do not anticipate that the decision on access to the Kennedy worksheets will be overly delayed. Should there be any interim developments, I will keep you advised.

Because this response is not a grant of access to the worksheets, I remind you that you have the right to seek judicial relief in the United States District Court for the judicial district in which you reside or have a principal place of business, or in the District of Columbia, which is where the worksheets you seek are located.

Sincerely,

Benjamin R. Civiletti
Acting Deputy Attorney General

By:
Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

CC: James Lesar, Esquire

Exhibit # 3

March 6, 1978

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

Reference is made to your letter dated December 6, 1977, in which you sought access to the Federal Bureau of Investigation's (FBI) inventory worksheets on the Kennedy Assassination records pursuant to the Freedom of Information-Privacy Acts.

We have a large volume of requests similar to yours. In view of this, some delay in making a final response to your request may be anticipated. Please be assured that we are making every effort to process your request promptly. Your patience and understanding of this unavoidable delay will be appreciated.

Your request has been assigned number 62,054 which you are requested to utilize in any correspondence with this Bureau regarding your request.

Sincerely yours,

Allen H. McKnight, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

FILED: MARCH 31, 1978

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, by and through his attorney, and moves the Court for summary judgment in his favor on the grounds that there are no genuine issues as to any material fact and plaintiff is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

In support of his motion, plaintiff submits herewith a statement of material facts as to which he contends there is no genuine issue and a memorandum of points and authorities.

Respectfully submitted,

James H. Lesar

JAMES HIRAM LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorney for Plaintiff

14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

In support of his motion for summary judgment and in conformity with Local Rule 1-9(h), plaintiff submits herewith a statement of material facts as to which he contends there is no genuine issue:

1. By letter dated December 6, 1977 to Mr. Allen H. McCreight, Chief, FOIA/PA Branch, Records Management Division, Federal Bureau of Investigation, plaintiff requested the following records:

> a. All worksheets related to the processing of the 98,754 pages of FBI Headquarters' records on the assassination of President John F. Kennedy made public on December 7, 1977 and January 18, 1978.
>
> b. All other records related to the processing, review, and release of the FBI's Headquarters' records on President Kennedy's assassination.
>
> c. Any other records which indicate the content of FBI Headquarters' records on the assassination of President Kennedy; and
>
> d. Any separate list or inventory of FBI records on President Kennedy's assassination not yet released.

2. The defendants have failed to claim that the records sought by plaintiff are protected from disclosure by one or more

of the nine specific exemptions to the Freedom of Information Act.

3. The records sought do not in fact fall within any of the nine specific exemptions to the Freedom of Information Act.

James H. Lesar

JAMES H. LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM OF POINTS AND AUTHORITIES

This suit arises under the Freedom of Information Act, 5 U.S.C. §552.

On December 7, 1977 and January 18, 1978, the Federal Bureau of Investigation made releases of its Headquarters' records on the assassination of President John F. Kennedy totaling a reported 98,755 pages. On December 6, 1977, plaintiff wrote to Mr. Allen H. McCreight, Chief of the Freedom of Information/Privacy Act Branch of the FBI's Records Management Division and requested four kinds of records:

> 1. All worksheets related to the processing of the records on the Kennedy assassination which were to be released.
>
> 2. All other records related to the processing, review, and release of the FBI Headquarters' files on the Kennedy assassination.
>
> 3. Any other records which indicated the content of FBI Headquarters records on the assassination of President Kennedy; and
>
> 4. Any separate list or inventory of FBI records on President Kennedy's assassination not yet released.

On February 13, 1978, no response to his December 6, 1977 request having been made, plaintiff filed suit.

Subsection (b) of the Freedom of Information Act creates nine exemptions from compelled disclosures. "These exemptions are explicitly made exclusive, 5 U.S.C. §552(c), and are plainly intended to set up concrete, workable standards for determining whether particular material may be withheld or must be disclosed." EPA v. Mink, 410 U.S. 73 (1973). As the Senate Committee stated in its report on the bill which became the original Freedom of Information Act:

> It is the purpose of the present bill . . . to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language . . . . S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965).

Where an agency refuses to disclose its records, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(3). Unless it can demonstrate entitlement to an exemption, the records sought must be disclosed.

In the instant case the defendants have not claimed entitlement to a specific exemption to the Act's compulsory disclosure requirements. Nor do the records sought fall within any of the Act's nine specific exemptions. It follows, therefore, that the defendants have not, and can not, meet their burden under the Act of justifying nondisclosure under one or more of the Act's nine exemptions. Accordingly, plaintiff is entitled to judgment as a matter of law.

JAMES H. LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorney for Plaintiff

4-18-78

FILED: APRIL 18, 1978

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 78-0249

CLARENCE M. KELLEY, et al.,

Defendants.

MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

STATEMENT

Defendants hereby submit their opposition to plaintiff's motion for Summary Judgment. This opposition is supported by defendants' statement of points and authorities, the affidavit of Horace P. Beckwith, Special Agent of the Federal Bureau of Investigation, presently assigned as a supervisor in the Freedom of Information - Privacy Acts Branch, Records Management Division at FBI Headquarters, and the record in this case.

Plaintiff brought this action pursuant to the Freedom of Information Act (5 U.S.C. §552 - FOIA), seeking the disclosure of the worksheets produced during the processing of the Kennedy assassination documents. Plaintiff requested these documents by letter dated December 6, 1977, addressed to Allen H. McCreight, Chief, Freedom of Information/Privacy Acts Branch, Records Management Division. (This letter is attached hereto as Answer Exhibit 1)

Plaintiff was notified by letter dated February 21, 1978 (Attached hereto as Exhibit 2), that release of the worksheets was being discussed. Furthermore, by letter dated March 6, 1978 (attached hereto as Exhibit 3), plaintiff's request was acknowledged.

Plaintiff now seeks summary judgment alleging that there are no genuine issues of fact due to the fact that defendants have not claimed that the information sought is exempt from mandatory disclosure under 5 U.S.C. §552(b). Addtionally, plaintiff alleges that the data sought is not exempt under the Freedom of Information Act.

On April 12, 1978, 2,581 pages were released to plaintiff pursuant to his request of December 6, 1977.

Defendants contend that portions of the material sought are exempt from mandatory disclosure under the Freedom of Information Act. The exemptions pursuant to which the material was withheld are set forth in the letter dated April 12, 1978, and the Affidavit of Horace P. Beckwith.

Plaintiff Is Not Entitled To
Summary Judgment As A Matter Of Law

To prevail on its motion for summary judgment, a party must demonstrate that there is an absence of any genuine issue of material fact, thus entitling it to judgment as a matter of law. Bloomgarden v. Coyer, 479 F.2d 201; 156 U.S. App. D.C. 109 (1973). Additionally, the party opposing summary judgment is entitled to all favorable inferences that may be reasonably drawn from the evidence in its attempt to prevent the granting of summary judgment. Semaan v. Mumford, 335 F.2d 704, 118 U.S. App. D.C. 282 (1964).

The summary judgment procedure is properly invoked when it eliminates useless litigation but not in those instances where a genuine issue of fact exists. Sartor v. Arkansas Natural Gas Corporation, 321 U.S. 620, 64 S. Ct. 724.

The plaintiff has failed to demonstrate that there is no genuine issue of fact. Plaintiff merely states that he made a request for documents and defendants have failed to assert that that material is exempted from disclosure. Plaintiff further asserts that the material is not exempted from mandatory disclosure.

On April 12, 1978, defendants released 2,581 pages of material, withholding only that material which is exempted from mandatory disclosure pursuant to the Freedom of Information Act. 1/ (The exemptions are set forth in the affidavit of Horace P. Beckwith). Therefore, the facts do not support plaintiff's motion for summary judgment, indeed the facts would appear to support defendants future motion for summary judgment.

The plaintiff's motion must be denied since plaintiff's conclusory statements viewed in light of the record fail to demonstrate the absence of a material issue of fact, entitling plaintiff to summary judgment. Bloomgarden v. Cover, supra.

* * * * *

Defendants have recently processed and released (April 12, 1978) all of the documents identifiable with plaintiff's request. Thus, defendants will move for summary judgment within the next thirty (30) days. The thirty (30) days is necessary in order that defendants might be afforded an

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1/ 5 U.S.C. §552(a)(6)(A)(i) empowers the agency to make initial determinations to withhold requested material in accordance with 5 U.S.C. §552(b).

opportunity to prepare proper affidavits. Additionally, the present workload of counsel's office is such that the motion cannot be prepared any earlier.

CONCLUSION

For the foregoing reasons plaintiff's motion for summary judgment should be denied.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justce
Washington, D. C. 20530
Tel: 202-739-4779

Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v. Civil Action Number 78-0249

CLARENCE M. KELLEY, et al.,

Defendants

AFFIDAVIT

I, Horace P. Beckwith, being duly sworn, depose and say as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned in a supervisory capacity to the Freedom of Information-Privacy Acts Branch, Records Management Division at FBI Headquarters. Pursuant to my official duties, I am familiar with the plaintiff's Freedom of Information Act (FOIA) request dated December 6, 1977, requesting records pertaining to the processing and release of records concerning the assassination of President John F. Kennedy (A true copy of this request is attached hereto as Exhibit A).

(2) In response to plaintiff's FOIA request of December 6, 1977, the FBI provided plaintiff, by letter dated April 12, 1978 (a true copy of which is attached hereto as Exhibit B), 2,581 pages of inventory worksheets utilized in the processing of files pertaining to the investigation of the assassination of President John F. Kennedy. Certain exemptions pursuant to the FOIA were utilized to withhold information from release and are as follows: Title 5, United States Code, Section 552 (b)(1), (b)(2), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

(3) The following are explanations which details the use of the above Freedom of Information Act exemptions:

(a) Classified Matters

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

(b) Internal Agency Rules and Practices

Title 5, United States Code, Section 552, (b)(2) allows for deletion of material relating solely to the internal rules and practices of an agency. This exemption has been asserted solely to remove informant file numbers. These file numbers are withheld to protect the FBI informant program and the FBI's administration of its informants. This exemption was used in the worksheets in the manner it was used in the original documents.

(c) Unwarranted Invasion of Personal Privacy

Title 5, United States Code, Section 552, (b)(7)(C) which exempts information the disclosure of which would constitute an unwarranted invasion of personal privacy has been asserted to protect names, background data, and other identifying information of third parties that appear on the inventory worksheets and were withheld in the original documents. This subsection was also utilized to excise names of Special Agents responsible for producing the inventory worksheets during the processing of the original documents. To release these names could cause public exposure or harassment of Special Agents and their families, which is unwarranted and would inevitably affect their ability to perform their responsibilities.

(d) Confidential Source Material

Title 5, United States Code, Section 552, (b)(7)(D) allows for the deletion of material that would disclose

the identity of a confidential source or reveal confidential information furnished only by the confidential source and not apparently known to the public. The exemption was cited in the inventory worksheets corresponding to the same information as excised in the original documents. In addition, this exemption has been utilized to remove symbol numbers of informants. These symbol numbers are used to cover the actual identity of the informant in the document, but still enable the FBI to determine his identity.

(e) Sensitive Techniques and Procedures

Title 5, United States Code, Section 552 (b)(7)(E) exempts from disclosure information which would reveal investigative techniques and procedures, thereby impairing their future effectiveness. These techniques and procedures were deleted in the worksheets in those instances where they were deleted in the original document.

(4) The release of these inventory worksheets is pursuant to plaintiff's request for records relevant to the processing and release of the original records. These worksheets represent the only documents available within the FBI which are responsive to plaintiff's request.

(5) The records provided plaintiff by the FBI's April 12, 1978 letter were provided without charge.

Horace P. Beckwith
HORACE P. BECKWITH
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and sworn to before me this 17th day of April, 1978.

Mildred M. Foster
Notary Public

My Commission expires My Commission Expires September 14, 1981.

FILED: JULY 3, 1978 7-3-78

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 78-0249

CLARENCE M. KELLEY, ET AL.,

Defendants.

DEFENDANTS' MOTION TO DISMISS
OR IN THE ALTERNATIVE MOTION
FOR SUMMARY JUDGMENT

Defendants, by and through counsel, hereby move the Court to dismiss this action or for summary judgment pursuant to Rules 12(b)(1) and (2) and 56 of the Federal Rules of Civil Procedure on the grounds that Clarence M. Kelley and Griffin Bell are not proper parties to this action and no documents have been improperly withheld within the meaning of 5 U.S.C. (a)(4)(B), and no genuine issue exists as to any material fact and defendants are entitled to judgment as a matter of law. In support of this motion, the Court is respectfully referred to the affidavit of David M. Lattin (dated April 28, 1978 and attached hereto as Exhibit 1), Special Agent (SA) of the Federal Bureau of Investigation (FBI), a supervisor in the Document Classification Review Unit in the Records Management Division at FBI Headquarters (FBIHQ), Washington, D.C., the affidavit of Horace P. Beckwith, (dated April 28, 1978 and attached hereto as Exhibit 2), Special Agent (SA) of the Federal Bureau of Investigation (FBI), assigned as a supervisor in the Freedom of Information-Privacy Acts Branch, Records Management Division at FBI Headquarters (FBIHQ), Washington, D.C., and

to defendants' Memorandum in Support of their Motion to Dismiss or, in the Alternative, Motion for Summary Judgment.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justice
10th & Pennsylvania, Ave., N.W.
Washington, D.C. 20530
Telephone 739-3423

Attorneys for Defendants.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 78-0249

CLARENCE M. KELLEY, ET AL.,

Defendants.
_____/

DEFENDANTS' MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS OR IN THE ALTERNATIVE
MOTION FOR SUMMARY JUDGMENT

Introduction

Plaintiff brought this action pursuant to the Freedom of Information Act (5 U.S.C. § 552 - sometimes hereinafter referrred to as FOIA), seeking the disclosure of the following documents regarding the Kennedy assassination:

> A copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept, as in the Office of Origin or other points as well as in Washington. If there are other records that indicate the content of these released records I am especially interested in them because they can be a guide to content. If there is a separate list of records not yet released I ask for a copy of it also or if an inventory was made, a copy of the inventory. 1/

Plaintiff requested this data by letter dated December 6, 1977, addressed to Allen H. McCreight, Chief, Freedom of Information/Privacy Acts Branch, Records Management Division. (A true and correct copy of this letter is attached to the affidavit of Horace P. Beckwith as Exhibit A.)

1/ It was determined that plaintiff was requesting the inventory worksheets since he had previously mentioned them and the information on the worksheets appeared to conform with the information requested by plaintiff.

Plaintiff was notified by letter dated February 21, 1978 (a true and correct copy of which is attached to defendants' opposition to plaintiff's motion for summary judgment as Exhibit 2) that release of the worksheets was being discussed. Additionally, by letter dated March 6, 1978, (a true and correct copy of which is attached to defendants' opposition to plaintiff's motion for summary judgment as Exhibit 3), plaintiff's request was acknowledged.

On April 12, 1978, 2,581 pages of worksheets were released to plaintiff pursuant to his request of December 6, 1977. Defendants contend that portions of the worksheets are exempt from mandatory disclosure under the FOIA. The exemptions utilized by defendants in deleting data are as follows: Title 5, United States Code, Section 552(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

Statutory Provisions

The relevant portions of the Freedom of Information Act, 5 U.S.C. § 552 are as follows:

> (b) This section does not apply to matters that are - - -
>
> (1)(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 Executive order;
>
> (2) related solely to the internal personnel rules and practices of an agency;
>
> (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . constitute an unwarranted invasion of personal privacy, (D) 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, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures. . . .

Defendants rely on Executive Order 11652 for the assertion of the (b)(1) exemption.

ARGUMENT

I. Defendants Have Properly Invoked Exemption One Of The Freedom Of Information Act To Withhold Classified Documents.

Exemption 1 of the Freedom of Information Act provides that the Act does not apply to matters that are:

> (1)(A) specifically authorized under criteria estbalished 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 Executive order.

Once it is established that particular information is specifically authorized to be kept secret in the interest of national defense or foreign policy and that that information is indeed classified pursuant to the provisions of an appropriate Executive order, the information is therefore exempt from mandatory disclosure under the FOIA.

Classification authority is derived from a series of Executive Orders, the most recent of which is Executive Order 11652. It sets forth the qualifications of officials empowered to and charged with the duty to classify documents.

The initial consideration is whether unauthorized disclosure could reasonably be expected to damage national security or foreign relations. Types of classified information protected against disclosure include intelligence operations, sources and methods, foreign relations matters affecting national security and classified information provided by foreign governments.

Special Agent David M. Lattin examined the inventory worksheets for classified data pursuant to Executive Order

11652 (Lattin Affidavit, para. 3). Special Agent Lattin found that the information warranted the "confidential" designation. (See Lattin Affidavit, para. 9.)

Exemption 1 of the FOIA quoted above, was intended by Congress to protect against harm to the national defense and foreign policy as determined by the Executive, in accordance with Executive Orders. At the same time as Congress amended the FOIA in 1974, it acknowledged that the revised Exemption 1 accords the Executive broad powers to protect material:

> However, the conferees recognized that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that Federal courts, in making de novo determinations in section 552(b)(1) cases under Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record. [93d Cong., 2d Sess., Senate Report No. 93-1200, Page 12 (The Conference Report)].

The Senate Report on the amendments also states that the standard of review encompassed by amended Exemption 1 "does not allow the court to substitute its judgment for that of the agency. . . . Only if the Court finds the withholding to be without a reasonable basis under the applicable Executive Order or statute may it order the documents released." (Senate Report No. 93-854, 93d Cong. 2d Sess., page 16). The Court should, of course, satisfy itself that this is so. In doing so, defendants suggest that the Court heed the counsel of the Fourth Circuit Court of Appeals:

> It is not to slight judges, lawyers or anyone else to suggest that any such disclosure [of classified information] carries with it serious risk that highly sensitive information may be compromised. . . . The national interest requires that the government withhold or delete unrelated items of sensitive information, as it did, in the absence of compelling necessity. It is enough, as we have said, that the particular item of information is classifiable and is shown to have been embodied in a classified

> document. This approach is consistent with the Freedom of Information Act which, we have noticed, provides the judge only with discretionary authority even to require production of the document for his in camera inspection; he may find the information both classified and classifiable on the basis of testimony or affidavits. [Alfred A. Knopf, Inc. v. Colby, 509 F.2d 1362, 1369 (4th Cir. 1975), cert. denied, 421 U.S. 992.]

See also, Weissman v. Central Intelligence Agency, et al., 565 F.2d 692 (D.C. Cir. 1977).

In short, if it is established that the subject matter of the litigation is classified in accordance with Executive Order 11652, the litigation is at an end.

Information Supplied By Foreign Police Agencies Must Remain Confidential.

Information supplied by foreign police agencies must remain classified. Most foreign police agencies do not officially acknowledge the existence or scope of their intelligence activities or their liaisons with intelligence-gathering agencies in the United States. If the United States unilaterally released official documents provided to us by foreign police agencies, relations between our government and foreign police agencies would be seriously strained. Moreover, such a release would sharply curtail or eliminate cooperation among foreign and American police agencies, thus seriously impairing the United States' police intelligence-gathering capabilities.

Similarly, it is crucial to protect against the disclosure of intelligence methods, particularly where the capability for gathering intelligence or the use of certain techniques is unknown to those who might employ counter-measures.

Finally, it is absolutely crucial that an intelligence or investigative agency stand firm on its promise of confidentiality to its sources. Any suggestion that the FBI would divulge the identities of individuals with whom they

maintain confidential relationships would have a severe impact on the intelligence-gathering investigatory capability of the United States. Furthermore, confidential sources would, in many cases, cease to cooperate with the FBI if their identities were revealed, and new sources would be difficult -- if not impossible -- to recruit. It is only through a pledge of extreme secrecy that the assistance of confidential sources can be enlisted in the first place, and it is only through the maintenance of strictest secrecy that their cooperation will continue.

The FBI affidavit shows that the documents in question are specifically authorized under Executive Order 11652 to be kept secret in the interest of national defense or foreign policy, and that the documents have been properly classified. The contested documents have been described sufficiently to show that they logically fall into the (b)(1) exemption, and that there is a reasonable basis under Executive Order 11652 for withholding them. Furthermore, there has been no showing of lack of good faith on the part of the FBI. The defendants have met their burden of showing that the withheld material is exempt from disclosure on the basis of current and proper classification.

II. Exemption 2 Has Been Properly Invoked To Protect Information Related Solely To The Internal Practies Of An Agency. 2/

The FBI has utilized the second exemption of the FOIA to withhold information related to FBI administrative practices regarding the handling of informants. The information withheld consists of the file and symbol numbers

2/ This exemption has been utilized in conjunction with exemption (b)(7)(D).

related to the informant program and the administration thereof. (See Beckwith Affidavit, para. (6)(b)). Release of the numbers could result in the disclosure of the identity of the informant (see Beckwith Affidavit, para. (6)(b)). In Department Of The Air Force v. Rose, 425 U.S. 352 (1976), the Supreme Court held that "Exemption 2 is not applicable to matters subject to . . . a genuine and significant public interest. . . ." and it quoted Vaughn v. Rosen, 523 F.2d 1136 (D.C. Cir. 1975) to the effect that:

> . . . the line sought to be drawn is one between minor or trivial matters and those more substantial matters which might be the subject of legitimate public interest. . . . Reinforcing this interpretation is 'the clear legislative intent [of FOIA] to assure public access to all governmental records whose disclosure would not harm significantly specific governmental interests.' [Department Of The Air Force v. Rose, supra at 365.]

See also, Cox v. Levi, 427 F. Supp. 833 (W.D. Mo. 1977), and Ott v. Levi, 419 F. Supp. 750 (E.D. Mo. 1976).

Employing the standards enunciated in Rose and Vaughn, it is clear that the public's interest in knowing the names of FBI informants is neither significant nor genuine when compared to the FBI's need to keep this information confidential. A confidential source whose identity becomes known is obviously of no further use to an investigatory agency. Furthermore, the source might be subjected to extreme forms of harassment, and the agency would no doubt experience great difficulty in recruiting other sources if its promises of confidentiality (whether implied or explicit) are not kept. For the above reasons, the numbers utilized by the FBI have been properly withheld pursuant to Exemption 2.

III. Defendants Have Properly Withheld Data Pursuant to 5 U.S.C. § 552 (b)(7)(C).

The Freedom of Information Act authorizes public access to a wide range of governmental records. However, Congress

has also determined that there are specific "types of information that the Executive Branch must have the option to keep confidential." (S. Rep. No. 813, 89th Congress, 1st Sess. 9 (1967)). The type of information that may be withheld is set forth in 5 U.S.C. § 552(b).

Subsection (b)(7)(C) of the Freedom of Information Act was enacted to protect from compelled disclosure "investigatory records compiled for law enforcement purposes . . . to the extent that the production of such records would . . . (C) constitute an unwarranted invasion of personal privacy." This exemption extends to investigatory records the (b)(6) exemption which applies to personal, medical and similar files.

The significant difference between the two exemptions is the deletion of the term "clearly" in (b)(7)(C). Thus, the deletion of the word "clearly" certainly reduces the Government's burden of proof under (b)(7)(C) as compared to (b)(6).

The material withheld pursuant to exemption (b)(7)(C), deletions of names, background data, other identifying information involving third parties have been made pursuant to (b)(7)(C) (see Beckwith Affidavit, para. (6)(c).) Additionally, the names of FBI agents have been deleted pursuant to (b)(7)(C) (see Beckwith Affidavit, para.(6)(c).)

It is evident that the inclusion of a person's name in an investigatory file, either as a source of information, as a third party who has been in some way connected with the person who was the object of the investigation, or as a third party who appears in the file for various other reasons, carries strong privacy implications. Indeed, dissemination of this file in an undeleted state is the type of dissemination Congress sought to control through exemption (b)(7))(C).

The purpose of the provision is to protect not only the "privacy" of the subject of the investigation but also the privacy of the individuals mentioned in the file (120 Cong. Rec. S. 9330, (May 20, 1974), remarks of Senator Hart).

One of the current cases which dealt with (b)(7)(C) is Congressional News Syndicate v. U. S. Department of Justice, et al., 438 F. Supp. 538 (D. D.C. 1977). The Court initially discussed the difference in emphasis between (b)(6) and (b)(7)(C), but went on to say that the two exemptions should be applied using a de novo balancing test, weighing the public's interest in disclosure against the individual privacy interest and the extent of invasion of that interest.

In Congressional News, supra, the Court found that the disclosure of the names and addresses of contributors to various 1970 Congressional campaigns, as part of the illegal Watergate fund-raising campaign, did not constitute an unwarranted invasion of privacy, but that disclosure of the records relating to the role of one individual in that campaign did constitute an unwarranted invasion. The Court distinguished the situations by indicating that any protection from disclosure political contributors may have had in the past has been eliminated by the 1972 Federal Corrupt Practices Act, which circumscribed the privacy interest of contributors to political election campaigns. The Court noted that the privacy interest of that single individual remained intact because his part in the fund-raising, if any, was not governed by the Corrupt Practices Act. Even if the individual engaged in allegedly criminal activity, the relevation of his name, absent indictment, would expose him to public embarrassment and ridicule and place him in the position of having to defend his conduct without benefit of a formal judicial proceeding.

The present situation before the Court is similar to that of the individual in Congressional News, supra. There is no pre-emptive act of Congress, rather there is information pertaining to individuals who came to the attention of the FBI and who were not the subject of the investigation. To expose the names or data concerning these individuals would constitute an unwarranted invasion of their privacy such as (b)(7)(C) was designed to avoid. Indeed, no legitimate public interest would be served in releasing this data, but, on the other hand, irreparable harm could be done to these individuals.

The names of the FBI agents who produced the worksheets have been withheld. To identify these agents could lead to harassment of these agents and their families which would inevitably affect their ability to perform their responsibilities. The public interest in disclosing these names does not outweigh the privacy interests of the agents. Ott v. Levi, 419 F. Supp. 750 (E.D. Md. 1976).

IV. The FBI Has Properly Asserted Exemption (b)(7)(D) To Protect The Identity Of Confidential Sources Or Information Furnished Only By A Confidential Source. 3/

Exemption (b)(7) of the FOIA provides that the disclosure provisions of the Act do not apply to:

> . . . investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would . . . (D) 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, confidential information furnished only by the confidential source. . . . (emphasis supplied)

3/ Exemption (b)(7)(D) is utilized in conjunction with exemption (b)(2) as regards the file and symbol numbers.

The two clauses of exemption 7(D) have two distinct effects: (1) investigatory records compiled for law enforcement purposes may be withheld to the extent that disclosure of such records would disclose the identity of a confidential source and additionally; (2) the actual confidential information furnished only by the confidential source, may be withheld even if it would not disclose the identity of the source if the record was 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.

Assurances of confidentiality need not be express as long as it is the mutual understanding of the sources and the FBI that the confidentiality of their relationship would be respected. The case law supports this view.

> Relying on the legislative history, the courts have decided a source is confidential if the information was provided under an expressed or implied pledge of confidentiality. Luzaich v. United States, 435 F. Supp. 31, 35 (D. Minn. 1977).

The Opinion in Church of Scientology v. Department of Justice, 410 F. Supp. 1297, 1302 (C.D. Calif., 1976), cited the legislative history approvingly,

> The substitution of the term "confidential source" . . . in section 552(b)(7)(D) is to make clear that an identity of a person other than a paid informer may be protected if the person provided information under an express assurance of confidentiality or in circumstances from which such an assurance can be reasonably inferred. (original emphasis)

Exemption 7(D) is a measure designed to safeguard an important source of information for federal law enforcement officials. Informants, private citizens, and local law enforcement officials would be reluctant to provide information to the FBI and other federal investigative agencies if

they believe that their identities or information which they supplied in confidence would be available under the FOIA. See, e.g., Evans v. Department of Transportation, 446 F.2d 821 (5th Cir. 1971), cert. denied, 405 U.S. 918.

> The Act clearly states that confidential information furnished by a confidential source compiled in the course of a criminal investigation is not to be revealed. Congress feared that revelation of even apparently innocuous information might inadvertently reveal the identity of confidential sources. Moreover, the Congress believed that potential sources would fear that disclosure of information would reveal their cooperation and that such sources would be discouraged from cooperating. Church of Scientology v. Department of Justice, supra, at 1302.

See also, Shaver v. Levi, 433 F. Supp. 438 (N.D. Ga. 1977). It is, therefore, imperative that a federal law enforcement agency be able to give assurances in all cases that the identity and information supplied by a confidential source will not be made public.

The Congressional debates relating to exemption 7(D) reveal that Congress intended the courts to defer to the FBI's designation of a source of investigative information as a confidential source. The meaning of exemption 7(D) was debated at length after the President vetoed the 1974 Amendments. Senator Hart, who introduced the amendment modifying exemption 7, spoke on this issue while attempting to persuade the Senate to override the veto. The Senator stated:

> One of the reasons given by the President for his veto is that the investigatory files amendment which I offered would hamper criminal law enforcement agencies in their efforts to protect confidential files. We made major changes in the conference to accommodate this concern. * * * The major change in conference was the provision which permits law enforcement agencies to withhold 'confidential information furnished only by a confidential source.' In other words, the agency not only can withhold information which would disclose the identity of a confidential source,

> but also can provide blanket protection for any information supplied by a confidential source. The President is therefore mistaken in his statement that the F.B.I. must prove the disclosure would reveal an informer's identity; all the F.B.I. has to do is to state that the information was furnished by a confidential source and it is exempt. 120 Cong. Rec. S. 19,812 (November 21, 1974) (emphasis added).

The FBI's very limited assertion of exemption 7(D) to protect from disclosure only the identities of confidential sources is fully justified under the Freedom of Information Act. Protection of confidential sources must be upheld in the interest of law enforcement as well as in the interests of the privacy and safety of the cooperating individuals.

The identity of confidential informants and the information supplied only by them has been withheld by the FBI pursuant to (b)(7)(D). (See Beckwith Affidavit, para. (6)(d).)

It is crucial that an investigative organization such as the FBI be able to obtain information from confidential sources. The ability to do this is predicated on the source's belief in and reliance on the agency's promise of absolute confidentiality. If this confidentiality is breached, the sources would "dry up", and information vital to the FBI's functions would be lost. The substance of the information supplied by a confidential source, as well as the source's identity, must be withheld since it might be possible to trace the identity of the source from the nature of the information supplied.

The legislative history of (b)(7)(D) indicates that it was meant to protect the identity of the source as well as information provided by the source which might reasonably lead to disclosure of the source's identity, 120 Cong. Rec. S-19,812 (November 21, 1974) (Remarks of Sen. Phillip Hart). The courts have also recognized the real danger that citizen cooperation with law enforcement or other agencies will end

if confidential sources are not protected. See, for example, Church of Scientology of California v. U.S. Department of Justice, 410 F. Supp. 1297, 1303 (C.D. Cal. 1976); Evans v. Department of Transportation, 446 F.2d 821 (5th Cir. 1971), cert. denied, 405 U.S. 918 (1972); and Wellman Industries, Inc. v. NLRB, 490 F.2d 427 (4th Cir. 1973).

Among the material exempt under (b)(7)(D) is information supplied by confidential commercial or institutional sources. The policy considerations for protecting the confidentiality of human sources under (7)(D) apply equally to commercial institutional sources. In both cases, the prime consideration is to ensure the uninterrupted flow of essential information from the source to the investigative agency. Therefore, the character of the source is immaterial so long as the information is given to the agency in exchange for either an expressed or implied promise of confidentiality.

In Church of Scientology of California v. U.S. Department of Justice, supra, the court grappled with the question of whether a law enforcement agency itself could be a confidential source within the meaning of 5 U.S.C. § 552(b)(7)(D). In holding that (b)(7)(D) is applicable to law enforcement agency sources (at 1303), the Court stated:

> A recognition of the overall purpose of the [1974] amendment [to the FOIA] and the political realities surrounding its passage make it unmistakably clear that the term source means source, not human source. [Id., at 1302.]

The Court went on to note that the purpose of (7)(D) is "to protect against disclosure of confidential information . . . provided by any confidential source." [Id. at 1303; emphasis added]. This would include a human source, a law enforcement agency source, or, presumably, a commercial or institutional source.

V. Exemption (b)(7)(E) Has Been Properly Asserted.

The FBI has used (b)(7)(E) to protect investigative techniques and procedures, not generally known, from disclosure. (See Beckwith Affidavit, para. (6)(e).)

In Ott v. Levi, 419 F. Supp. 750 (E.D. Mo. 1976), the Court held that FBI laboratory reports disclosing techniques used in arson investigations, not commonly known, "could place potential arsonists on notice of the law enforcement capabilities in this area and assist them in avoiding detection," and therefore, the reports were exempt under (7)(E).

If the techniques in question were made known to the public, their effectiveness would be destroyed because subjects of future FBI investigations would be able to circumvent them. Therefore, the deleted material is exempt under (b)(7)(E).

VI. This Action Must Be Dismissed As To Defendants Clarence M. Kelley And Griffin Bell As They Are Not Proper Parties To This Action.

Neither Clarence M. Kelley nor Griffin Bell in either their official on individual capacities is a proper defendant in this action. The FOIA grants jurisdiction to the Federal District Courts "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 551(a)(4)(B). Clarence M. Kelley and Griffin Bell are not agencies (see 5 U.S.C. § 551(e) and 5 U.S.C. § 551) within the meaning of the FOIA, and therefore are not proper parties to this action. See Lombardo v. Handler, 397 F. Supp. 792 (D. D.C. 1975), and Rocap v. Indiek, 539 F.2d 174 (D.C. Cir. 1976).

CONCLUSION

For the foregoing reasons, Defendants' Motion To Dismiss or in the Alternative Motion for Summary Judgment should be granted.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justice
10th & Pennsylvania, Ave., N.W.
Washington, D.C. 20530
Telephone 739-3423

Attorneys for Defendants.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v. Civil Action No. 78-0249

CLARENCE M. KELLEY, et al.,

Defendants

AFFIDAVIT

I, David M. Lattin, being duly sworn, depose and say as follows:

(1) I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI assigned in a supervisory capacity to the Document Classification Review Unit in the Records Management Division at the FBI Headquarters (FBIHQ), Washington, D. C.

(2) I have been authorized to classify FBI documents pursuant to Executive Order (EO) 11652, Section 2(A)(3) and 2(C), and 28 C.F.R. 17.23, et seq. My current assignment in classification matters involves a variety of duties including review of classified documents requested under the Freedom of Information Act (FOIA) and Privacy Act (PA) as to their suitability for continued classification, and when indicated, declassification of FBI documents.

(3) The documents referred to herein are inventory worksheets utilized in the processing of files pertaining to the investigation of the assassination of President John F. Kennedy. These worksheets are referred to in the affidavit of Special Agent Horace P. Beckwith which is being filed in this matter.

I have made a personal independent examination of these inventory worksheets and have personal knowledge of the

Exhibit #1

44

information set forth for which the exemption (b)(1) pursuant to Title 5, United States Code, Section 552 is claimed.

(4) My examination was conducted in strict adherence to the standards and criteria found in EO 11652. The classification level of "Confidential" as set forth in EO 11652 was relied upon exclusively by the affiant as set forth in the pertinent part in Section 1 as follows:

"(C) 'Confidential.' 'Confidential' refers to that national security information or material which requires protection. The test for assigning 'Confidential' classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security."

(5) The classifications of portions of these worksheets are exempt from automatic declassification as authorized by EO 11652. These exemption categories are described in Section 5(B) of EO 11652 as follows:

> "(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence."
>
> "(2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods."
>
> "(3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security."
>
> "(4) Classified information or material the disclosure of which would place a person in immediate jeopardy."

(6) Thirteen of the 19 items classified in the inventory worksheets are classified "Confidential" inasmuch as the items would reveal cooperation with foreign police agencies. These foreign police agencies specify that all cooperation they afford us should be held in strict confidence. Failure to honor confidential agreements established between the FBI and these foreign agencies can be expected to cause them to cease to provide cooperation. Loss of such cooperative arrangements would be a serious blow to the intelligence gathering abilities of the United States. Violating this confidentiality could damage our relations with the countries in which these foreign police agencies are located.

(7) Four of the items classified in the inventory worksheets are classified "Confidential" as they could identify an intelligence method. The intelligence method that could be revealed by disclosure of this classified material is a method that was directed at establishments of foreign governments within the United States.

The acknowledgement of the details of the intelligence method and operation referred to in these worksheets could lead to the disruption of foreign relations by stimulating diplomatic confrontations with certain foreign states, and thus could damage national security. While all sovereign nations are, of course, aware that they may be the targets or objects of clandestine intelligence methods and may even unofficially acknowledge this fact, no Government can ignore an official acknowledgement by another Government that specific intelligence operations have been conducted against it. Official acknowledgement of specific clandestine operatons not only creates an opportunity for foreign governments to claim that such operations constitute breaches of international obligations but may even mandate an appropriate reaction.

Acknowledgement could be perceived as a direct challenge to the sovereignty of that foreign state and make it incumbent for such state to answer the challenge by means of diplomatic protest or stronger measures. On the other hand, even where states are aware, both specifically and generally, that activity of this nature takes place, they retain the alternative of not responding, if not confronted with acknowledgement.

More generally, this intelligence method which remains in active use by the FBI today, must be protected in order to maximize the effectiveness of our national security investigations. Information concerning the patterns and practice of intelligence agencies and the methods by which they operate must be guarded since disclosure of such information can be of great assistance to those who seek to penetrate or damage United States intelligence operations, or to take countermeasures against them. Intelligence methods which are disclosed are demonstrably less effective in subsequent investigations, thereby reducing the intelligence capabilities of the FBI, while benefiting the hostile foreign governments and the internal elements who are the legitimate targets of national security investigations. At a minimum, a decline in the FBI's ability to collect information in national security investigations designed to detect internal threats to the Government, as well as the hostile activities of foreign countries within our borders, may reasonably be expected to cause damage to the national defense.

(8) Two of the items classified in the inventory worksheets were classified "Confidential" as the items would identify intelligence sources. Both of these sources are foreign nationals having contacts with foreign establishments or individuals in foreign countries. The need for the protection of such sources is evident.

At the very least, exposure of sources will end their particular usefulness for gathering further intelligence.

Confidential sources of intelligence information can be expected to furnish information only so long as they feel secure in the knowledge that they are protected from retribution or embarrassment by the pledge of confidentiality that surrounds the information transaction. It is only with pledges of extreme secrecy that the aid of such individuals can be enlisted in the first place, and it is only through confidence in the ability to maintain extreme secrecy that such individuals can be pursuaded to remain in place and act as informants over an extended period of time. Moreover, if sources cannot be given assurances that their involvement will be kept confidential, or if such assurances are not lived up to, intelligence sources will be difficult to find. Potential agents and informants will be discouraged and inhibited from becoming active providers of intelligence if the United States Government's records indicates a failure to protect sources. Any action on the Government's part which indicates that it may fail in any way to protect its intelligence sources lessens the confidence of such sources in this country's intelligence organizations. This loss of confidence reduces the capability to attract and hold new sources and this loss of capability, in turn, diminishes the United States Government's ability to collect needed intelligence.

These individuals, who have been willing to act as agents or informants for United States intelligence, are subject to retribution if and when they are exposed. This remains true to informants who are no longer active. For exposed sources residing abroad, the risk of the more serious forms of retaliation is particularly acute. Of course, disclosure of intelligence operations by the United States directed against any foreign establishment risks the damage to our foreign relations.

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

David M. Lattin

DAVID M. LATTIN
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and sworn to before me this 28th day of April, 1978.

Mildred M. Foster

Notary Public

My commission expires My Commission Expires September 14, 1981.

49

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v. Civil Action Number 78-0249

CLARENCE M. KELLEY, et al.,

Defendants

AFFIDAVIT

I, Horace P. Beckwith, being duly sworn, depose and say as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned in a supervisory capacity to the Freedom of Information-Privacy Acts Branch, Records Management Division at FBI Headquarters. Pursuant to my official duties, I am familiar with the plaintiff's Freedom of Information Act (FOIA) request dated December 6, 1977, requesting records pertaining to the processing and release of records concerning the assassination of President John F. Kennedy (A true copy of this request is attached hereto as Exhibit A).

(2) In response to plaintiff's FOIA request of December 6, 1977, the FBI provided plaintiff, by letter dated April 12, 1978 (a true copy of which is attached hereto as Exhibit B), 2,581 pages of inventory worksheets utilized in the processing of files pertaining to the investigation of the assassination of President John F. Kennedy. Certain exemptions pursuant to the FOIA were utilized to withhold information from release and are as follows: Title 5, United States Code, Section 552 (b)(1), (b)(2), (b)(7)(C),

Exhibit #2

(b)(7)(D) and (b)(7)(E).

(3) Inventory worksheets are used by FBI employees to provide certain descriptive data relating to each document processed and to provide the statutory exemption used to excise material from each document or, if necessary, to indicate the Federal agency to whom the document was referred. The worksheets are used to assist in a statistical analysis of the documents processed and to assist in locating a document in question after it is processed. However, the worksheets are primarily used by the FBI employee reviewing the documents prior to release. This reviewer checks all the documents processed and has the benefit of the worksheets to insure the proper exemptions were used for any excisions of material.

(4) The files pertaining to the assassination of President John F. Kenendy were processed by Special Agents of the FBI who were at FBI Headquarters during the summer and fall of 1977 on temporary assignment to assist in reducing the backlog of requests in FOIA matters. This temporary assignment of Special Agents from their investigative assignments to FOIA matters was called "Project Onslaught." Approximately thirty Special Agents assisted in various phases of the processing of the files pertaining to the assassination of President Kennedy. All of the Special Agents knew their efforts at processing documents would be reviewed and the inventory worksheets would be used to check the exemptions claimed. A few of the Special Agents not only listed the exemptions, but made an occassional explanatory note about the exemption. These few Special Agents were attempting to be of further assistance to the reviewer, however, they actually listed the information on the worksheets which was excised in the original document. Therefore, excisions had to be made from the worksheets before release to the plaintiff because the same material had been properly withheld from the original documents. Additionally, the names of the Special Agents responsible for the processing were deleted from the worksheets. See paragraph (6)(C) below.

(5) Of the 2581 pages of inventory worksheets released to plaintiff, there were deletions made on 125 pages or 4.8 percent of the pages. The remaining 95.2 percent of the pages were released in their entirety with no deletions and no exemptions claimed.

(6) The following are explanations which detail the use of the Freedom of Information Act exemptions:

(a) Classified Matters

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

(b) Internal Agency Rules and Practices

Title 5, United States Code, Section 552, (b)(2) allows for deletion of material relating solely to the internal rules and practices of an agency. This exemption has been asserted solely to remove informant file numbers and informant symbol numbers. These file numbers and symbol numbers are withheld to protect the FBI informant program and the FBI's administration of its informants. This material is protected not only with the (b)(2) exemption, but also under Title 5, United States Code, Section 552, (b)(7)(D) as material which will identify confidential sources. (See paragraph (d) below.

(c) Unwarranted Invasion of Personal Privacy

Title 5, United States Code, Section 552, (b)(7)(C) which exempts information the disclosure of which would constitute an unwarranted invasion of personal privacy has been asserted to protect names, background data, and other identifying information of third parties that appear on the inventory worksheets and were withheld in the original documents. This subsection was also utilized to excise names of Special Agents responsible for producing the inventory

worksheets during the processing of the original documents. To release these names could cause public exposure or harassment of Special Agents and their families, which is unwarranted and would inevitably affect their ability to perform their responsibilities. There appears to be no public need for the revelation of the names of those who processed the original documents.

The following are examples of information that was deleted pursuant to Section 552 (b)(7)(C) in the original processing of the files pertaining to the assassination of President Kennedy, therefore, notes on the worksheets with similar information were deleted. (1) References to a person's criminal background. (2) References to a person's medical background. (3) Psychological diagnosis of an individual. (4) Derogatory information about a third person. (5) The name of a correspondent was protected in underlying document due to his mental state. (6) Police Department identification numbers of individuals. (7) References to person's personal sex life.

(d) Confidential Source Material

Title 5, United States Code, Section 552, (b)(7)(D) allows for the deletion of material that would disclose the identity of a confidential source or reveal confidential information furnished only by the confidential source and not apparently known to the public. The exemption was cited in the inventory worksheets corresponding to the same information as excised in the original documents. In addition, this exemption has been utilized to remove symbol numbers of informants and the file numbers of informants. These symbol numbers and file numbers are used to cover the actual identity of the informant in the document, but still enable the FBI to determine his identity. These deletions are made to insure protection of the identity of sources.

(e) Sensitive Techniques and Procedures

Title 5, United States Code, Section 552 (b)(7)(E) exempts from disclosure information which would reveal investigative techniques and procedures, thereby impairing their future effectiveness. These techniques and procedures were

deleted in the worksheets in those instances where they were deleted in the original document.

The (b)(7)(E) exemption was claimed a total of seven times on the worksheets. It was used to protect two investigative techniques. Six times it was used to delete one such technique and once for another technique. The Special Agent who processed the original documents wrote the identity of the technique to assist the reviewer.

(7) The release of these inventory worksheets is pursuant to plaintiff's request for records relevant to the processing and release of the original records. These worksheets represent the only documents available within the FBI which are responsive to plaintiff's request.

(8) The records provided plaintiff by the FBI's April 12, 1978 letter were provided without charge.

(9) A true copy of the worksheets released to the plaintiff is attached hereto as Exhibit C.

Horace P. Beckwith
HORACE P. BECKWITH
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and sworn to before me this 28th day of April, 1978.

Mildred M. Foster
Notary Public

My Commission expires My Commission Expires September 14, 1981.

Mr. Allen M. McBreight, Chief FOIA/PA Branch
Records Management Division, FBI
Wash., D.C. 20535

Rt. 12, Frederick, Md. 21701
12/6/77

Dear Mr. McBreight,

Your letter of December2,1977 relating to the FBI's release of JFK assassination files came today. I regret that it requires further correspondence.

The first question I must raise, one I've raised more times than I can estimate, is why with all these reviews of JFK assassination records my many requests for precisely this public information remain without response. I have filed two dozen or more such FOIA requests. It is more than a year since your SA Howard testified in my C.A.75-1996 that the FBI had by then had three reviews of this material. It is more than a year since I testified to these requests that are entirely without any compliance since. The FBI's counsel, AUSA and staff, were present at my testimony and at SA Howard's. Various FBI FOIA personnel were present. You obtained the transcript of this testimony. I have since the time of the testimony repeated prior appeals. But to date there is the same - total - silence from the FBI and from you who sign yourself as in charge of the FBI's FOIA work.

The Act requires the production of records, not their generation. However, my PA and FOIA requests that should have yielded these records years ago also are without your compliance. My appeals of this are also without response. I therefore do not have all the records relevant to my FOIA and PA requests. I herewith repeat my requests under the Acts, intending by the repetition that you provide within the time limitations of the Acts all those records that relate to my requests. This means back to as I recall it 1968. I assume that this is your all-time record of non-compliance. Whether or not it is I want any and all such records of whatever source or nature, however generated and wherever filed or stored or described or classified by the FBI. I also solicit any explanation you would care to provide for this persisting non-compliance and the permeating disregard for the obligations imposed upon the Bureau and upon you personally by the Acts.

Aside from other and I believe obvious considerations it is a fact that some if not much or indeed all of what you are now making available should have been provided to me quite long ago. Not having complied with my requests and the Acts has, I believe, been hurtful to me and has constituted an interference with my right and ability to perform the work upon which I have for so long been engaged.

As you are aware long ago non-compliance with my requests was ordered and approved to the highest FBI levels, including the first Director. As you are also aware compliance is the present issue in my C.A.75-1996 and because of the FBI's non-compliance I am at this very moment forced to forego other work and do the work of the FBI with regard to compliance in that case. With this non-compliance being total with regard to JFK assassination records and a major factor in the 1996 case and for other reasons I believe the request in my second paragraph above constitutes justification under the Acts for expedited compliance and I do ask that of you. I want to be able to incorporate what you should provide in the memoranda I am being compelled to prepare for you and at your request in C.A.75-1996.

By the time of the date of your letter of December 2,1977, a letter I take it was sent to many and is a sort of form letter, your representations in it were untruthful. You had in fact made an exclusive release or more than 500 pages of these "forthcoming" records to Radio Station WBMS and the AP at least. You thereafter and prior to the date of your letter made duplicates available to others in the press. Whatever the circumstances of these releases it is a fact and to my personal knowledge is a fact that within this release there are records I began to ask the FBI for going back to about 1968. But your first paragraph refers to your "forthcoming release" and your second begins,"The first segment of these materials will be made available beginning at 9:30 a.m. December 7,1977, ..."

EXHIBIT A

55

Of course I am also troubled by your failure to notify me of your making these records available until the day prior to their availability. While I do not deceive you - I cannot use these records in your reading room - your unnecessary delay in this guaranteed that were it within my capabilities it would still be impossible for me because I have a medical appointment that precludes it.

Your fifth paragraph is also troubling. You say of these about 80,000 pages, "Materials to be released are copies from the raw investigative files of the FBI..." This is the same FBI that forced me to go all the way to the Supreme Court in a case in which I did not request "raw investigative files" by falsely-representing that I had asked for such raw files and that the release of any of them at any time and under any circumstances would utterly destroy the FBI or render it forever impotent.

When you follow this with "as they were compiled chronologically in our central records system during the investigation," I am further troubled, in general and as it relates to my own requests that remain without response. Most FBI records do not even reach your "central records system" at FBIHQ and there is no such limitation in any of my requests for JFK assassination records. This can mean, for example, that if I had all the 80,000 pages you are to release you might still not have complied with my requests.

Your concluding paragraph states that "No index of our FBI materials is available to cross-reference these materials to the public record." This is a semantical representation. The public record is only part of the records that are involved. The raw materials are often incorporated in other records, like Letterhead Memoranda and other reports. From my personal experience in FOIA cases I have learned that the FBI has a practise of noting on its field office raw materials what reports include that information. This should mean that through other than what you might describe as an index it is possible to correlate the raw materials with the other records into which parts are incorporated.

These records were processed under FOIA, I take it. This means that other records relevant to the processing were generated. These should include worksheets on which the records are listed and where exemptions are claimed the exemptions are noted. There are other records relevant to processing and review. I herewith ask for a copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept, as in the Office of Origin or other points as well as in Washington. If there are other records that indicate the content of these released records I am especially interested in them because they can be a guide to content. If there is a separate list of records not yet released I ask for a copy of it also or if an inventory was made, a copy of the inventory.

Sincerely,

Harold Weisberg

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 12, 1978

Mr. Harold Weisberg
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

Enclosed are 2,581 pages of inventory worksheets utilized in the processing of files pertaining to the investigation into the Assassination of President John F. Kennedy. These pages are releasable under the provisions of the Freedom of Information Act (FOIA), Title 5, United States Code, Section 552. The deletions made in this material are based on one or more of the following subsections of Section 552:

(b)(1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy;

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means;

EXHIBIT B

57

Mr. Harold Weisberg

(E) disclose investigative techniques and procedures, thereby impairing their future effectiveness.

Pursuant to the decision of the Deputy Attorney General, Office of Privacy and Information Appeals by letter dated March 31, 1978, to your attorney, James H. Lesar, no fee is being charged for the duplication of these documents.

You have 30 days from receipt of this letter to appeal to the Deputy Attorney General from any denial contained herein. Appeals should be directed in writing to the Deputy Attorney General (Attention: Office of Privacy and Information Appeals), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

Allen H. McCreight, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

Enclosures (7)

FILED: AUGUST 2, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

This is a Freedom of Information Act lawsuit which plaintiff instituted in order to compel disclosure of:

1. All worksheets related to the processing of records released to the public on December 7, 1977 and January 18, 1978 from the FBI's Central Headquarters' files on the assassination of President John F. Kennedy;

2. All other records related to the processing, review, and release of these records;

3. Any other records which indicated the content of FBI Headquarters records on the assassination of President Kennedy; and,

4. Any separate list or inventory of FBI records on President Kennedy's assassination not yet released. (Complaint, ¶¶6-7_

On April 12, 1978, the FBI released 2,531 pages of worksheets to plaintiff. The FBI maintains that "[t]hese worksheets represent the only documents available within the FBI which are responsive to plaintiff's request." (Beckwith Affidavit, ¶7) Defendants also assert that all excisions of information from these worksheets are proper under the exceptions to the Freedom of Information Act.

59

For the reasons set forth below, plaintiff maintains that he has not been provided with all materials within the scope of his request and that defendants have not shown that they are entitled to the exemptions claimed for information excised from the worksheets. Accordingly, plaintiff opposes defendants' motion for summary judgment.

I. DEFENDANTS' HAVE NOT PROVIDED PLAINTIFF WITH ALL RECORDS RELATED TO THE PROCESSING, REVIEW, AND RELEASE OF THESE FBI CENTRAL HEADQUARTERS RECORDS ON THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

As noted above, defendants claim that the only FBI documents within the scope of plaintiff's request are the worksheets themselves. This, however, cannot be true. For example, by letter dated January 9, 1978, former FBI Director Clarence M. Kelley stated with respect to the FBI's Central Headquarters records on the JFK assassination: "We anticipate that additional sets of documents will be produced and placed in other research facilities, such as the Library of Congress, in the near future." (See Attachment A) Three days later Mr. Quinlan J. Shea, Jr., Director, Office of Information and Privacy Appeals, Office of the Deputy Attorney General, wrote that in recognition of the historical importance of these records, "Director Kelley, . . . on his own initiative, made arrangements for the released materials to be made available at a number of different public locations . . .." (Attachment B)

These representations were repeated in court in Weisberg v. Bell, et al., Civil Action No. 77-2155, in an unsuccesful effort to deny Mr. Weisberg a total waiver of search fees and copying costs. Unless these representations were untrue, the FBI should have records relating to the decision to place these documents in other locations, such as the Library of Congress, as well as records

reflecting those locations actually selected, the conditions under which the recipients got them, and the arrangements for their actual transmittal.

It is also obvious that the decision to place a set of these documents in the FBI reading room did not spring full-blown from the head of Director Kelley. Such a decision would not be made without discussions and memoranda on whether this project should be undertaken, as well as the mechanics and costs of doing it. In fact, one such document is the November 17, 1977 memorandum from A.J. Decker, to Mr. McDermott, which is submitted herewith as Attachment C. On its face it shows distribution to six persons in the FBI, not counting McDermott and Decker themselves. Its second paragraph reads:

> DETAILS: As you are aware the FOIPA Branch anticipates making available for public inspection and copying the files pertaining to the assassination of former President John F. Kennedy. The approximately 600 sections which comprise this investigation include the files relating to Lee Harvey Oswald, Jack Ruby, the assassination investigation itself and a file relating to our dealings with the Warren Commission.

It is apparent from this that a number of FBI personnel were already involved in the decision to process these records as of the date of this memorandum and that earlier memoranda relevant to it must have been created. It is equally obvious that some kind of inventory must have been made in order for Mr. Decker to estimate the number of sections and pages involved in the releases contemplated. Yet plaintiff has not been given such memoranda or any inventory. Nothwithstanding this, the affidavit of FBI Agent Beckwith even goes so far as to deny that there are any records responsive to plaintiff's request other than the worksheets themselves.

Plaintiff has not been provided with copies of any guidelines or instructions to those who processed these records. Yet the historical importance of these records and the untutored nature of Operation Onslaught personnel who were brought to Washington, D.C. to process them would seem to require such guidelines and instructions.

The Decker memorandum gives an estimate as to the cost of processing these records. Undoubtedly there are other memoranda and documents which report on the costs actually incurred in processing these records and which give a breakdown of these costs according to various categories.

The Decker memorandum also inciates that approximately 60 Freedom of Information Act requests "of various scope" had been received by the FBI. These requests and the administrative records generated in response to them are clearly within the scope of plaintiff's request for "all other records related to the processing, review, and release" of the FBI's Central Headquarters files on the JFK assassination. Any lists of such requests would also be within the scope of plaintiff's request. The Setember 16, 1976 testimony of FBI Special Agent John E. Howard in Weisberg v. Department of Justice, Civil Action No. 75-1996, states that such a list was compiled. (See Attachment D) Yet plaintiff has not been provided with any list of these requests, the requests themselves, or the administrative records created in response to or during the processing of such requests.

Finally, it is plaintiff's understanding that the FBI's Central Headquarters files on the JFK assassination were processed at least three times before they were released to the public on December 7, 1977 and January 18, 1978. This means that there must have been earlier versions of these worksheets which were later

revised. Plaintiff, however, has been given only one set of worksheets.

In National Cable Television, Inc. v. F.C.C., 156 U.S.App.D.C. 91, 94, 479 F. 2d 183, 186 (1973), the United States Court of Appeals for the District of Columbia stated:

> Summary judgment may be granted only if the moving party proves that no substantial and material facts are in dispute and that he is entitled to judgment as a matter of law. To prevail, the defending agency must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements.

In this case, defendants have failed to show that each document within the requested class has been produced. Before summary judgment can be granted, defendants must demonstrate the adequacy of their search. Exxon Corporation v. F.T.C., 384 F. Supp. 755, 760 (D.D.C. 1974). But the affidavits which defendants have submitted in support of their mostion for summary judgment do not describe the nature of any search made or claim that a thorough search was made. Moreover, it is apparent that if a thorough search for all materials responsive to plaintiff's request had been conducted, plaintiff would have been provided with a great number of additional records which he has not so far obtained.

II. DEFENDANTS HAVE NOT MET THEIR BURDEN OF SHOWING ENTITLEMENT TO EXEMPTION 1

Defendants claim that certain information has been excised from the worksheets provided plaintiff because it is exempt from disclosure under 5 U.S.C. §552(b)(1). Exemption 1 provides that the mandatory disclosure provisions of the Freedom of Information

Act to not apply to matters that are:

> (1)(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 Executive order;

In support of their claim that information which appeared on certain of the worksheets is exempt from disclosure under 5 U.S.C. §552(b)(1), defendants have submitted the affidavit of Special Agent David M. Lattin, which states:

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

The initial problem with Agent Lattin's affidavit is that it nowhere indicates that he has reviewed the actual FBI records from which the purportedly classified information on the worksheets was extracted and determined that these underlying documents are currently properly classified according to both the procedural and substantive provisions of Executive Order 11652. Yet it is obvious that if the underlying documents are not properly classified in accordance with the terms of that Executive order, then there is no basis for the classification on the worksheets of information derived from those documents.

By letter dated July 7, 1978, Mr. Quinlan J. Shea, Jr., Director, Office of Information and Privacy Appeals, advised plaintiff that his office had affirmed the excisions made on the worksheets. However, Mr. Shea's letter makes it clear that the review conducted by his office extended only to a determination that the excisions on the worksheets "were in fact necessary to be compatible with the excisions from the actual records." (See Exhibit 11 to Weisberg Affidavit of July 10, 1978, hereafter referred to as "First Weisberg Affidavit")

Mr. Shea's letter further states:

> The classified materials have been referred to the Department Review Committee for determination whether they warrant continued classification under Executive Order 11652. You will be notified if the Committee's final decision results in the declassification of any information.

Thus, the validity of the (b)(1) exemption which defendants have claimed for certain information appearing on the worksheets hinges upon two things: 1) whether the underlying records are at present properly classified according to Executive order; and 2) whether the Department Review Committee affirms the classified status of the actual records; or, more specifically, whether it affirms the classified status of the items of information contained in the underlying records which appear on the worksheets.

In view of this, plaintiff contends that the Court should hold in abeyance any judgment on the Exemption 1 claim until: a) plaintiff can undertake a limited amount of discovery; and b) the Department Review Committee acts upon the documents which have been referred to it.

Discovery is particularly necessary because the FBI has a long history of classifying information which is in fact already publicly known. For example, the First Weisberg Affidavit states that after Weisberg had been provided with unclassified copies of certain FBI records, the FBI first classified the same documents, then declassified them and sent them to him in expurgated form. (First Weisberg Affidavit, ¶66)

Exhibits 12A and 12B to the First Weisberg Affidavit provide a second illlustration of this. As Weisberg states in that affidavit:

> Exhibit 12A is the "SECRET" FBI copy of an FBI memorandum with three paragraphs deleted. Exhibit 12B is the identical, never classified memo without these excisions. * * * All the content of the two excised

> paragraphs except for two sentences was published by the Warren Commission. These two sentences, the first two on page two, became public domain more than a year ago. The only content of those two sentences then not already within the public domain is the reference to FBI agents. The Commission published one of these photographs twice, as two different exhibits. The fact of the tape recording has been within the public domain for from three to five years. All that could have been new when the content of this memo was released by the Secret Service is the FBI's negative identification. This, of course, is contrary to all earlier official representations, beginning with those made to the Commission by the agencies involved. (First Weisberg Affidavit, ¶106. Emphasis in original)

Special Agent Lattin's affidavit is also deficient in its failure to state that the purportedly classified information is not already public information. Nor does Agent Lattin state that he consulted with those sufficiently familiar with the subject matter to be able to state whether the material excised on Exemption 1 grounds is already public knowledge or remains secret. Such an inquiry is imperative, particularly in a historically important case such as this where most of the underlying records are now nearly fifteen years old.

For these reasons, plaintiff must be allowed to undertake discovery to determine whether the underlying documents are properly classified, whether information already public is being withheld under the guise that its "disclosure" would harm the national security, and what exactly is included within the phrases "intelligence source" and "intelligence method" as used by the FBI. For, example, is a newspaper clipping considered an intelligence source? Is the CIA considered by the FBI to be an intelligence source that qualifies for Exemption 1 protection? Until such questions are answered, summary judgment in favor of defendants is inappropriate.

III. THE PUBLIC INTEREST REQUIRES THAT THE INFORMATION WITHHELD UNDER EXEMPTION 2 BE DISCLOSED

Defendants have invoked Exemption 2 with respect to informant file numbers and informant symbol numbers. According to the affidavit of FBI Special Agent Horace Beckwith, this was done "to protect the FBI Informant program and the FBI's administration of informants." (Beckwith Affidavit, ¶6(b))

Exemption 2 excludes from the Freedom of Information Act's mandatory disclosure requirements matters that are: "related solely to the internal personnel rules and practices of an agency." The United States Supreme Court construed this provision in Department of the Air Force v. Rose, 425 U.S. 352 (1976), where it held that "Exemption 2 is not applicable to matters subject to . . . a genuine and significant public interest." In so holding, the Court quoted Vaughn v. Rosen, 173 U.S.Appp.D.C. 187, 523 F. 2d 1136 (1975) to the effect that:

> ". . . the Senate Report indicates that the line sought to be drawn is one between minor or trivial matters and those more substantial matters which might be the subject of legitimate public interest.
>
> * * *
>
> "Reinforcing this interpretation is 'the clear legislative intent [of FOIA] to assure public access to all governmental records whose disclosure would not significantly harm specific governmental interests.' [Soucie v. David, 145 U.S.App.D.C. 144, 157, 448 F. 2d 1067, 1080 (1971)]" Department of the Air Force v. Rose, supra, at 375.

Defendants cite this decision and assert that "it is clear that the public's interest in knowning the names of FBI informants is neither significant nor genuine when compared to the FBI's need to keep this information confidential." (Emphasis added. Defendant's Motion for Summary Judgment, p. 7) This, however, misses the point. Disclosing the symbol informant number does not reveal

the names or identities of informants. In fact, one presumes that informants are given symbol numbers in order to protect against disclosure of their names and identities. The harm which defendants cite is, therefore, not a real one.

On the other hand, there is a genuine and significant public interest to be served by disclosure of informant symbol numbers in an historically important case. Disclosure of informant symbol numbers permits one who is a subject expert to evaluate the information which was provided by the informant more accurately and effectively than he otherwise could.

For example, it is obviously important to know whether the information contained in several FBI reports on the same subject comes from a single informant or was supplied by two or more informants. Such information provides a means of ascertaining whether an informant has made consistent or contradictory reports and whether the informant's account is supported by information supplied by other informants or is contradicted by them. In turn, this provides a means of evaluating the actions taken or not taken by the FBI in response to information supplied by an informant. Unless the symbol informant numbers are divulged, there is no means of evaluating such considerations.

Still other uses to which informant symbol numbers can be put in evaluating information are set forth in Exhibit 3 to the First Weisberg Affidavit. (Exhibit 3 is an excerpt from another affidavit by Mr. Weisberg which was filed in the case of Lesar v. Department of Justice, Civil Action No. 77-0692)

Because disclosure of informant symbol numbers will not disclose names and identities of FBI informants and therefore cannot harm the Government's interests in this respect, the public interest in disclosure outweighs any countervailing considerations and requires that these numbers not be excised.

IV. RECORDS IN THIS CASE WERE NOT COMPILED FOR LAW ENFORCEMENT PURPOSES: THEREFORE, EXEMPTION 7 DOES NOT APPLY

Defendants have invoked various provisions of Exemption 7 as justification for excising certain information from the worksheets. Exemption 7 applies only to "investigatory records compiled for law enforcement purposes." But when President Kennedy was assassinated, it was not a federal crime to murder the President. FBI Director J. Edgar Hoover testified to this before the Warren Commission. (See First Weisberg Affidavit, ¶¶39-42, and Hearings Before the President's Commission on the Assassination of President Kennedy, Volume V, page 98)

The FBI having had no law enforcement purpose in conducting its investigation into the circumstances surrounding President Kennedy's assassination, it cannot now invoke Exemption 7 for the records it compiled as a result of that investigation.

V. ASSUMING, ARGUENDO, THAT RECORDS WERE COMPILED FOR LAW ENFORCEMENT PURPOSES, DEFENDANTS HAVE FAILED TO MEET THEIR BURDEN OF DEMONSTRATING ENTITLEMENT TO PROTECTION UNDER THE CITED PROVISIONS OF EXEMPTION 7

A. Exemption 7(C)

Defendants seek to prevent the disclosure of information on the grounds that it is protected by Exemption 7(C), which provides an exemption for investigatory records compiled for law enforcement purposes to the extent that their production would "constitute an unwarranted invasion of personal privacy."

For decades the FBI violated the privacy of thousands upon thousands of persons without the slighest concern for the illegality of its actions. These days, however, it piously invokes a concern for personal privacy to bar disclosure of information in its files.

In certain cases the FBI's love of Exemption C knows no bounds. It is abundantly invoked where the names of FBI agents who participated in illegal acts--or the names of their victims--would otherwise be disclosed. It is also used as a means of harrassing a FOIA plaintiff the FBI does not like. For decades the FBI has carried out a vendetta against this plaintiff. It is not surprising, therefore, that it has used the exemptions to the Freedom of Information Act in such a ludicrous manner that it becomes apparent that harrassment, not compliance with the Freedom of Information Act, is the name of the game. For example, in one of Mr. Weisberg's lawsuits, Weisberg v. Department of Justice, Civil Action No. 75-1996, the FBI extended its love of privacy to information appearing in the newspapers. Thus, it deleted the name of the FBI's fingerprint expert, George Bonebrake, from an article in the Memphis Commercial Appeal. (See Exhibit 5 to First Weisberg Affidavit)

In this case the defendants have excised the names of the FBI agents who produced the worksheets. There is absolutely no basis whatsoever for doing this. In another of plaintiff's lawsuits, Weisberg v. Department of Justice, Civil Action No. 75-1996, the names of the FBI agents who produced the worksheets were not excised. This enabled plaintiff to single out one agent whose processing of documents was especially bad. This agent was subsequently removed. (See First Weisberg Affidavit, ¶¶44-46) Now the FBI is suddenly asserting that it would be an unwarranted invasion of privacy for the FBI to reveal the names of those who processed the underlying documents and recorded their actions on the worksheets.

This disclosure of the names of FBI agents is obviously not an unwarranted invasion of privacy, particularly in an historically

important case. This is shown by the fact that: 1) the FBI has previously released the names of FBI agents who prepared worksheets during the processing of FOIA requests, and 2) the FBI has on occasion even gone so far as to release lists of FBI agents which include their home addresses and phone numbers. (See Exhibits 2 and 3 to Second Weisberg Affidavit)

Furthermore, there is reason to believe that not only the excision of the names of FBI agents but also the other deletions made under this guise are inconsistent with the privacy standard which the FBI has applied in other instances. For example, the FBI has released material concerning the sexual fantasies and acts of Marina Oswald, as well as hospital records pertaining to her pregnancy. (See First Weisberg Affidavit, ¶¶13-14, and Exhibit 1 to First Weisberg Affidavit) It has also released vicious fabrications about plaintiff and his wife to the public even after plaintiff had provided proof of the falsity of these records. (See First Weisberg Affidavit, ¶15)

These are not just isolated examples. An even more detailed accounting of the FBI's inconsistencies--and improper motivations--in invoking Exemption 7(C) is given in the excerpt from another Weisberg affidavit which is reproduced as Exhibit 8 to the First Weisberg Affidavit.

Finally, the affidavits submitted in support of defendants' motion for summary judgment are deficient in that they fail to state that the information excised under the Exemption 7(C) claim is known not to have been publicly revealed. The FBI and other components of the Justice Department are notorious for withholding under exemptions 7(C) and 7(D) information which is already known to be in the public domain. This is graphically illustrated by a single three-page document with 30 excisions, 29 of which were easily filled in upon the basis of publicly available information.

(See Attachment 5)

It is plaintiff's position that information cannot be excised pursuant to this provision if it is already in the public domain. Furthermore, plaintiff contends that defendants must supply an affidavit by a government official would know stating that the information is not public before the government can carry its burden of showing entitlement to this exemption. This the government has not done.

The law requires that when Exemption 7(C) is claimed the public interest in disclosure must be weighed against privacy considerations. Deering Milliken, Inc. v. Irving, 548 F. 2d 1131, 1136, n. 7 (4th Cir. 1977). The District of Columbia has held that for each document, an agency must show why an invasion would occur and how serious it would be. In addition, the use to which the requester is expected to put the information must be weighed in making this determination. Rural Housing Alliance v. U.S. Dpet. of Agriculture, 498 F. 2d 73 (D.C. Cir. 1974); Retail Credit Co. v. FTC, 1976-1 CCH Trade Cas ¶60727 (D.D.C. 1976).

The defendant has not provided sufficiently detailed information about the excisions grounded on its 7(C) claim for the Court to determine whether disclosure would in fact result in an unwarranted invasion of privacy in specific instances. Nor is there any information in the affidavits submitted by the defendants which show that they weighed the personal privacy interest against the public interest. Yet the Attorney General's Memorandum on the 1974 Amendments itself asserts:

> When the facts indicate an invasion of privacy under clause (C), but there is substantial uncertainty whether such invasion is "unwarrranted," a balancing process may be in order, in which the agency would consider whether the individual's rights are outweighed by the public's interest in having the material

> available. (Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act, p. 10)

The FBI has already taken the position that its investigation of President Kennedy's assassination is a case of great historical importance. In view of this, even without knowing the identities of those whose names have been withheld under 7(C), the balance would seem to be heavily in favor of public disclosure. Yet because the affidavits do not provide sufficient details on how this decision was arrived at, it may be necessary to undertake discovery on this issue.

B. Exemption 7(D)

Defendants have also invoked Exemption 7(D), which exempts from mandatory disclosure investigatory files compiled for law enforcement purposes to the extent that they:

> (D) 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, confidential information furnished only by the confidential source.

This provision places on defendants the burden of demonstrating that the withheld information is confidential and that there was an agency promise or implicit agreement to hold the matter in confidence. Rural Housing Alliance v. U.S. Dept. of Agriculture, 498 F. 2d 73 (D.C. Cir. 1974); Local 32 v. Irving, 91 LRRM 2513 (W.D. Wash. 1976). Defendants have not met this burden here. In fact, it is apparent that they cannot meet it. At the time the underlying records were compiled there was no such promise or agreement. This is evident from the fact that the Warren Commission itself published countless FBI records without any such excisions. There simply was no promise or agreement of confidentiality, implied or express.

Defendants have also claimed that Exemption 7(D) is applicable to information supplied by "confidential commercial or institutional sources." Plaintiff contends that this is an erroneous interpretation of Exemption 7(D). While it is clear that this provision does protect persons who provide information in confidence, it is extremely unlikely that Congress intended to use the term in a fashion which would expand its obvious meaning to include all law enforcement records provided by institutions, including state or local law enforcement agencies, to a federal agency.

The term "confidential source" is not defined in the Freedom of Information Act. However, the legislative history of the Act would seem to rule out the possibility that Congress intended it to create an institutional exemption such as the Department is claiming here. The Senate amendment to exemption 7 originally employed the term "informer" rather than "confidential source." In explaining the substitution of the latter phrase, the Joint Explanatory Statement of the Committee of the Conference stated:

> The substitution of the term "confidential source" in section 552(b)(7)(D) is to make clear that the identity of a person other than a paid informer may be protected if the person provided information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred. (Emphasis added) [Freedom of Information Act and Amendments of 1974 (P.L. 93-502), Source Book: Legislative History, Texts and Other Documents, Committee on Governmental Operations, U.S. House of Representatives; Committee on the Judiciciary, U.S. Senate, p. 320]

This makes it clear that Congress intended to broaden the term "informer," a term which is exclusively restricted to persons, to include persons other than paid informers. It obviously did not contemplate that the term would be expanded beyond human sources to include entire agencies or "commercial institutions." Other portions of the legislative history carry this same implication.

For example, Senator Kennedy, a prime sponsor of this Amendment, stated:

> [W]e also provided that there be no requirement to reveal not only the identity of a confidential source, but also any information obtained from him in a criminal investigation. (Emphasis added) [Source Book, p. 459]

The Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act also construes Exemption 7(D) this way. After quoting clause (D), the Attorney General states:

> The first part of this provision, concerning the identity of confidential sources, applies to any type of law enforcement investigatory record, civil or criminal. (Conf. Rept., p. 13) The term "confidential source" refers not only to paid informants but to any person who provides information "under an express assurance of confidentiality or in circumstances from which such an assurance could reasonably be inferred." Ibid. In most circumstances it would be proper to withhold the name, address, and other identifying information regarding a citizen who submits a complaint or report indicating a possible violation of law. Of course, a source can be confidential with respect to some items of information he provides, even if he furnishes other information on an open basis; the test for purposes of the provision, is whether he was a confidential source with respect to the particular information requested, not whether all connection between him and the agency is entirely unknown. (Emphasis added) [Attorney General's Memorandum on 1974 Amendments, p. 10]

Thus, the legislative history seems firmly against the interpretation of 7(D) advocated by defendants, as does the Attorney General's own construction of its meaning. Plaintiff contends, therefore, that summary judgment in favor of defendants on this aspect of its 7(D) claim must be denied.

Plaintiff further notes that the objection he has made to defendants 7(C) claim--that it has not been shown that the information being withheld is not already public knowledge--applies equally to the 7(D) claim.

C. Exemption 7(E)

Defendant also invokes Exemption 7(E) for certain excisions it has made. This provides an exemption for records which would "disclose investigative techniques and procedures."

The legislative history shows that this exemption is not intended to apply to matters which are already publicly known. The Conference Report expressly addressed this point in commenting on this provision:

> The conferees wish to make clear that the scope of this exception against disclosure of "investigative techniques and procedures" should not be interpreted to include routine techniques and procedures already well known to the public, such as ballistics tests, fingerprinting, and other scientific tests or commonly known techniques. [H.R. Conf. Rep. No. 93-1380, 93d Cong., 2d Sess. 12 (1974)]

The Beckwith Affidavit states only that this exemption has been claimed "to protect investigative techniques." It does not state that these techniques are not known to the public. As the Second Weisberg Affidavit asserts, one of these techniques, pretext, has been known for thousands of years. (See Second Weisberg Affidavit, ¶4) Accordingly, defendants have not met their burden of proof with respect to this claim either and their motion for summary judgment must be denied.

Respectfully submitted,

James H. Lesar

JAMES H. LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUBMIA

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

STATEMENT OF GENUINE ISSUES
PURSUANT TO LOCAL RULE 1-9(h)

Pursuant to Local Rule 1-9(h) plaintiff sets forth the genuine issues of material fact which he feels must be litigated. Incorporated herein by reference are the two affidavits of Harold Weisberg which are attached to plaintiff's Opposition to Defendants' Motion to Dismiss Or In The Alernative For Summary Judgment.

1. Whether defendants have produced all relevant records which are within the scope of plaintiff's request.

2. Whether the defendants have conducted a thorough search of all relevant files which might contain records within the scope of plaintiff's request.

3. Where information has been excised from worksheets on Exemption 1 grounds, are the records from which the withheld information was excised currently and properly classified pursuant to Executive Order?

4. Where information is withheld under any provision of Exemption 7, were the underlying records which contain this information compiled for a law enforcement purpose?

5. Whether the release of informant symbol numbers can or will result in the identification of informants.

6. Whether there is a public interest in the disclosure of informant symbol numbers.

7. Whether information has been excised under Exemptions 7(C), 7(D), and 7(E) which is already publicly known.

8. Whether information for which an exemption is claimed under 7(D) was provided as the result of an express promise or implied agreement of confidentiality.

9. Whether the public interest in the disclosure of the names of FBI agents outweighs any alleged claim of an unwarranted invasion of privacy.

10. Whether Exemption 7(C) has been applied selectively or consistently.

James H. Lesar

JAMES H. LESAR
910 Sixteenth Stree, N.W.
Washington, D.C. 20006

Attorney for Plaintiff

ATTACHMENT A

Civil Action No. 78-0249

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 9, 1978

James H. Lesar, Esq.
Suite 500
910 Sixteenth Street, N. W.
Washington, D. C. 20006

Dear Mr. Lesar:

Your letter of November 19, 1977, on behalf of your client, Mr. Harold Weisberg, to the Deputy Attorney General, has been forwarded to the Federal Bureau of Investigation (FBI) for reply. You make request for waiver of fees for Mr. Weisberg for duplication of documents in the FBI Headquarters (FBIHQ) file on the assassination of President John F. Kennedy.

For your information, more than 80,000 pages of raw FBIHQ files concerning this investigation have been prepared for public release under the Freedom of Information Act (FOIA). Moreover, as you are aware, 40,001 pages of our JFK Assassination investigation materials are already in the public domain. A copy of the entire JFK Assassination release, including our first-segment release of December 7, 1977, and a second-segment release scheduled for mid-January, 1978, will be maintained for public review in our Reading Room.

One set of these documents, the duplication of which requires many days of duplication machine time, in addition to the cost of paper, binders and other material, fills numerous file cabinets. Additionally, labor costs in the reproduction, review and assembly are substantial. The entire budgetary expenditure of the FBI, to date, in processing this single FOIA release of JFK Assassination investigation files, has exceeded $180,000.

James H. Lesar, Esq.

While we fully understand the public interest in these documents, we have taken into consideration the extraordinary volume of JFK Assassination file material, their availability to the public, and the material and manpower required to reproduce them. We have therefore concluded that the public interest would be best served by assertion of the duplication fees set by regulation rather than by waiver of these fees, and that additional copies reproduced at government expense should be made available to the general public, rather than individual requesters for their personal use. We anticipate that additional sets of documents will be produced and placed in other research facilities, such as the Library of Congress, in the near future.

The JFK Assassination investigation file material is being made available to other requesters on the same terms as are now available to Mr. Weisberg. In cases where these requesters for the total JFK Assassination investigation files have sought waiver of duplication fees, we have denied their requests for waiver for the same considerations and as a matter of general policy.

These file materials are available for Mr. Weisberg's review during business hours at our Reading Room located at FBIHQ, 10th and Pennsylvania Avenue, N. W., Washington, D. C.

You may of course, appeal my decision in this matter. Any appeals should be directed to the Deputy Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530, and should be clearly marked "Fee Waiver Appeal."

Sincerely yours,

Clarence M. Kelley
Director

ATTACHMENT B

Civil Action No. 78-0249

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

James H. Lesar, Esquire
Suite 500
910 Sixteenth Street, N. W.
Washington, D. C. 20006

JAN 12 [illegible]

Dear Mr. Lesar:

On November 19, 1977, on behalf of your client, Mr. Harold Weisberg, you wrote to former Deputy Attorney General Flaherty requesting a waiver of all fees that might be assessed as a result of your client's request for access to records of F.B.I. Headquarters pertaining to the assassination of President John F. Kennedy. That request was forwarded to Director Kelley for initial consideration and response to you. I have now been informed that Director Kelley has decided not to waive reproduction charges (as in the case of records pertaining to the assassination of Dr. Martin Luther King, Jr., no search fees were assessed), and that he has communicated his decision to you.

The release to the public of the second portion of the Bureau's files on the Kennedy assassination is scheduled to occur on Wednesday, January 18. I am aware of the legal action you have filed on behalf of Mr. Weisberg, seeking, inter alia, to enjoin that release, or, in the alternative, to obtain a complete fee waiver on his behalf. Although no formal appeal from Director Kelley's denial of the fee waiver request has been received by me, it is my judgment that the circumstances of this particular case are now such that both simple fairness and the interests of justice would be served by my independent consideration of the fee waiver request.

There are certain obvious parallels between Mr. Weisberg's efforts to obtain access to the Kennedy assassination records and those pertaining to the King assassination. In each case we are concerned with records pertaining to an event of great historical importance and substantial interest on the part of the general public. It is in recognition of this that Director Kelley did not assess search fees in either case and, on his own initiative, made arrangements for the released materials to be made available

at a number of different public locations, which I do not believe has been done with the King records. There are other similarities and distinctions between the two cases as well.

In acting on Mr. Weisberg's appeal from Director Kelley's refusal to grant any fee waiver as to the King records, I modified that decision and granted a partial waiver, in the amount of forty cents on the dollar. I was well aware of the fact that Mr. Weisberg has a commercial motive in seeking access to those records. In my view, this is ordinarily a more than sufficient reason to deny any fee waiver under the Freedom of Information Act. This statute is intended to ensure that the public is informed as to the workings of its Government, not that individuals can profit thereby. On the other hand, I felt that there was a sufficient counterbalancing public interest in that case to grant him the partial waiver. By examining your most recent complaint filed on behalf of Mr. Weisberg, I have become considerably more aware of just how blatantly commercial is the nature of what appears to be Mr. Weisberg's primary goal in seeking access to all of these records. By means of the content of the attachments to that complaint, however, as well as similar information from other sources, I am also somewhat more aware of the real, albeit limited, extent to which Mr. Weisberg does function in this area in support of the public interest.

On balance, I have concluded that the case for any fee waiver on behalf of Mr. Weisberg in the instant case is weaker than was true with the King records, but that the distinction does not warrant a difference in result. Accordingly, it is my decision that, to whatever extent Mr. Weisberg chooses to obtain copies of the Kennedy assassination records, he will be charged therefor at the rate of six cents per page, rather than ten cents.

Sincerely,

Benjamin R. Civiletti
Acting Deputy Attorney General

By: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

ATTACHMENT C

Civil Action 78-0249

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. McDermott

DATE: 11/17/77

FROM : A. J. Decker, Jr.

SUBJECT: COST IN PROCESSING THE JFK ASSASSINATION FILE FOR RELEASE UNDER THE FOIPA

PURPOSE: Purpose of this memorandum is to give you a rough and conservative figure as to the direct costs involved in processing the JFK Assassination files.

DETAILS: As you are aware the FOIPA Branch anticipates making available for public inspection and copying the files pertaining to the assassination of former President John F. Kennedy. The approximately 600 sections which comprise this investigation include the files relating to Lee Harvey Oswald, Jack Ruby, the assassination investigation itself and a file relating to our dealings with the Warren Commission.

In attempting to capture the costs involved in processing this investigation we have taken into consideration the Grade range and salaries of personnel who have been involved in processing this information, including personnel benefits, as well as the per diem expended for those Onslaught Agents who worked full time in processing this material. In addition, inasmuch as some 80,000 pages are involved in this matter, we have also taken into account the duplication charges, including machine rental. Based upon the above we conservatively estimate the costs involved up to the present time to be $187,643.89.

V-30 DE-57 62-109060-7845

The above figure, of course, does not include the additional processing that will be necessary as a result of the approximately 60 requests of various scope which we have received to date as well as the additional costs that will accrue as a result of the undoubtedly overwhelming public interest which we anticipate once publicity is generated concerning this release. Obviously these latter factors will cause a substantial increase in the costs associated with public disclosure of this investigation.

1 - Mr. Boynton
1 - Mr. Long
Atten: Mr. Groover
1 - Mr. McCreight
1 - Mr. Tierney
2 - Mr. Bresson
(Attention: Mr. Beckwith)

AHM:law (7)

CONTINUED - OVER

Rem U.S. Savings Bond Regulations on the Payroll

93

A. J. Decker, Jr., to Mr. McDermott memo
re: Cost in Processing the JFK Assassination File

It is interesting to note that in the legislative history accompanying amendment of the FOIA in 1974, the Congress estimated that the additional costs for implementation of this legislation would consist of $50,000 for the first year and $100,000 per year for the next succeeding 5 years for the entire Executive Branch.

RECOMMENDATION: None, for information.

APPROVED:

Director
Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.

Adm. Serv.
Crim. Inv.
Fin. & Pers.
Ident.
Intell.
Laboratory

Legal Coun.
Plan. & Ins.
Rec. Mgmt.
Spec. Inv.
Tech. Serv.
Training
Public Affs. Off.

94

ATTACHMENT D

Civil Action 78-0249

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
U. S. DEPARTMENT OF JUSTICE,	:	NO. 75-1996
Defendant.	:	

Washington, D. C.

Thursday, September 16, 1976

The above-entitled cause came on for hearing before THE HONORABLE JUNE L. GREEN, United States District Judge, at 10:30 a.m.

APPEARANCES:

JAMES HIRAM LESAR, ESQUIRE

For the Plaintiff

JOHN R. DUGAN, ESQUIRE, AUSA

For the Defendant

AFTERNOON SESSION

(1:30 p.m.)

Whereupon

JOHN E. HOWARD

resumed the witness stand, having been previously duly sworn, and was further examined and testified as follows:

CROSS-EXAMINATION (Resumed)

THE COURT: May I inquire at this time if they haven't gotten to Mr. Weisberg's case at this time, or have they?

THE WITNESS: I don't think they have, Your Honor. I am not that familiar with that case.

MR. DUGAN: Mr. John Cunningham, who is in the courtroom, would be able to give some testimony.

THE COURT: All right.

MR. LESAR: Excuse me just one second, Your Honor.

BY MR. LESAR:

Q Before we adjourned, we were reading from an affidavit of yours and I am trying to locate it. Just a second.

Now, in this affidavit on the search for request on the JFK assassination, you indicate that Mr. Fensterwald's request for those documents is one of sixteen such requests for documents relating in general to the FBI investigation of the assassination of John F. Kennedy, two of which were received prior to plaintiff's.

Now do you know that there were sixteen requests, no more, no less?

A At that time I knew exactly how many there were because I had a list of them.

Q You had a list?

A Yes.

Q Do you still have that list?

A No.

Q You don't have it? How did you obtain that list?

A By writing down the names of the requests as they came in and were assigned out to my team.

Q On each FOI request pertaining to documents on the assassination of President Kennedy?

A This is a specialized thing. There are so many requesters for the documents regarding the JFK assassination that a specialization is required. It is not just sixteen now. I believe it is up to 26.

Q Now, the date of your affidavit is April 16, 1976. How many of those sixteen requests were by my client?

A I don't know. I can't recall.

Q You don't recall? Do you recall any by my client?

A No, really, I just recall the requests more in the context of what they are for than who makes them. I don't recall who makes the request generally.

Q But you did have a list?

A Yes.

Q Did my client's name appear on that list?

A I assume so. He says he has a request for JFK material

Q Suppose I were to inform you that my client had filed more than sixteen requests pertaining to the JFK assassination files?

A Are you informing me so?

Q Yes.

A I don't think you are right.

THE COURT: Before that date?

MR. LESAR: Yes.

THE WITNESS: Yes. If he has I am not aware of them.

BY MR. LESAR:

Q It is my understanding that your unit specializes in processing those requests.

A No, my team.

Q Your team does.

A That is correct.

Q So that all such requests would have been routed to your team?

A From the time I started I started to specialize with them.

Q What was that time?

A I believe it was about three or four months after I came to headquarters.

Q Which was?

A September 2 is when I got here, of '75.

ATTACHMENT E

Civil Action 78-0249

JAMES H. LESAR
ATTORNEY AT LAW
910 SIXTEENTH STREET, N. W. SUITE 600
WASHINGTON, D. C. 20006
TELEPHONE (202) 223-5587

October 17, 1977

FREEDOM OF INFORMATION APPEAL

Mr. Giffin Bell
U.S. Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Bell:

I write in reference to a Freedom of Information request by my client, Mr. Harold Weisberg, for copies of Department of Justice records which pertain to the assassination of Dr. Martin Luther King, Jr. Mr. Weisberg's request is the subject of a Freedom of Information lawsuit now nearly two years old. (Civil Action No. 75-1996)

By his letter of September 20, 1977, a copy of which is attached hereto, Mr. James P. Turner, Deputy Assistant Attorney General, Civil Rights Division, has advised me that as a result of my administrative appeal to the Deputy Attorney General on behalf of my client, Mr. Harold Weisberg, the Civil Rights Division was directed to make a supplemental release to me of all material previously withheld, "except for certain minor excisions," which "identifies individuals who appear within the King assassination files, even though they clearly had no connection with the murder, or sources who furnished information in confidence."

Mr. Turner further advised that seven documents which had been referred to the Civil Rights Division because they originated with it were also being released, again with "only minor excisions of names and other identifying data . . . pursuant to 5 U.S.C. §552(b)(7)(C) and (b)(7)(D)."

In accordance with Mr. Turner's advice that I may appeal the deletions from the records provided me by writing to you within thirty days, I hereby appeal.

I also enclose a copy of one of the records which the Civil Rights Division has released, a three-page memorandum dated August 26, 1971 from Monica Gallagher to "File." I have filled in the missing blanks in this document. The names deleted are all public domain, having been written about extensively, including, for

example, in Gerold Frank's An American Death and Wayne Chastain's articles in Computers and People Magazine, both of which are possessed by the Department of Justice.

What I have done with the Gallagher memorandum could easily be done with the twenty-five other documents which were released with Mr. Turner's September 20 letter.

If the "analysts" who review Departmental records for public release will not abide your Freedom of Information guidelines, cannot use common sense, and do not resort to indices of books on the subject of such records, then perhaps it would be more economical, not to mention quicker, if you simply installed a WATS line to Mr. Weisberg so they could check to see which of their deletions are already in the public domain.

I hope that all the records released on September 20th will be restored to their pristine state, and quickly, lest I be compelled to ask for a court hearing so that Mr. Weisberg can demonstrate that the withholdings are unjustifiable by filling in the missing blanks.

Finally, I call your attention to the complaint which Mr. Weisberg and I have made to other Department of Justice officials, which is that the skimpy release of records by the Civil Rights Division obviously comes nowhere near to being in compliance with Mr. Weisberg's Freedom of Information Act requests for records pertaining to Dr. King's assassination.

Sincerely yours,

James H. Lesar

cc: Mr. John R. Dugan, AUSA
Judge June Green
Mrs. Lynne Zusman
Mr. Bill Schaffer

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : File DATE: August 26, 197

MG:sbh

FROM : Monica Gallagher DJ 144-72-662
Deputy Chief, Criminal Section
Civil Rights Division

SUBJECT: Wayne Chastain, Jr.

On August 24, 1971, Mr. Queen and I met with Wayne Chastain, Jr., a reporter with the Memphis Press Scimitar, home address 810 Washington, Apartment 502, Memphis, Tennessee, telephone 901-525-6158; office telephone 526-2141. Mr. Chastain requested the meeting to furnish the following information, which he advised has mostly been previously furnished to the FBI in Memphis in 1969. At the conclusion of the interview I advised Mr. Chastain that we would carefully consider the information he furnished, together with other information available to us, and determine what if any further action would be appropriate.

A. Re Jack Youngblood aka Tony Benevitas. Youngblood, according to Chastain, is from the area of Alleene, Arkansas and has reputedly been engaged in illegal and/or questionable activities such as gunrunning. He is about 40 years old, has dark hair and eyes, and speaks some Spanish. He is a man of some wealth, drives a cadillac, and likes "high living." He was a college roommate of Walter Bafford, a Memphis attorney.

Chastain is persuaded that there is considerable evidence that Youngblood was in Memphis April 3-5, 1968, and present in "Jim's Grill" opposite the

92

Lorraine Motel on the afternoon of April 4 shortly before the assassination. If this is true, Chastain believes further investigation of Youngblood is warranted since there is no apparent logical explanation for his presence in that neighborhood at that time.

The evidence that Youngblood was there is as follows:

1. Lloyd Jowels (Giles?), owner of Jim's Grill, remembers (according to Chastain who interviewed him) that on the day of the assassination at about 4:30 p.m. a man entered Jim's Grill and ordered sausage and eggs. This was sufficiently unusual as to be noteworthy because at that hour of the day most people come to Jim's to drink and the cooking grill is closed down. Also, this man was not of the working class "type" that frequents Jim's Grill. During the time the man was in Jim's he went three times to the telephone but never made a call. He left about 5:00 p.m.

On later being interviewed by the police about the presence of any suspicious individuals, Jowels described the sausage-and eggs man and was allegedly told to call the police if he returned. In fact the man returned for breakfast the next day (4/5) carrying a suitcase. Jowels called the police who picked him up as he left the cafe. (He again had ordered sausage and eggs!). Jowels was never asked by the police to identify this man. However, he later heard that the man was released by the police a short time after he was picked up, although other individuals were being held as suspects in the King matter.

Chastain said he exhibited to Jowels a "mug shot" of Youngblood and that Jowels positively identified him as the sausage-and-eggs man.

2. A former waitress at Jim's Grill, identity unknown to Chastain but allegedly known to [redacted] also remembers the man and could identify a photograph of Youngblood as the individual involved.

3. Walter Buford once said that Youngblood called him from Memphis the day before the King slaying, but according to Chastain he now denies that he can fix the date accurately. In approximately May 1968 Buford told Chastain that the last time Youngblood had been in Memphis was "about the time of the King assassination." When the question of Youngblood as a possible suspect was raised, Buford said, "Jack" is more liberal on the racial issue than I am."

B. Re: Beauvitas

A Memphis attorney named Russell X. Thompson told Chastain that he had been consulted by an individual who gave his name as Beauvitas, saying that was an alias. Beauvitas had allegedly been arrested in connection with the King slaying and released. He thought he would ultimately be charged and wanted Thompson to represent him. He took Thompson's telephone number and departed. Chastain exhibited to Thompson several photographs of Youngblood. With respect to the mug shot, Thompson said that was not the man; however, with respect to a newsclip photograph, Thompson could not be sure. Thompson allegedly told Chastain that he inferred from Beauvitas' speech that he spoke Spanish in addition to English.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

CLARENCE M. KELLEY, et al.,

Defendants.

Civil Action No. 78-0249

AFFIDAVIT

My name is Harold Weisberg, I reside at Route 12, Frederick, Md.

1. My prior experience includes that of investigative reporter, Senate investigator and intelligence analyst.

2. Defendants' Motion to Dismiss mailed to my counsel on July 3 did not reach me until July 8, 1978, when my wife and I were completing a lengthy affidavit in another case. The 10-day limit for response restricts the response I am able to make immediately.

3. I am further inhibited by my age, health and the amount of other and unique work I have undertaken and upon which, to the degree possible, I spend virtually all of my time.

4. I am 65 years old. In 1975 I suffered acute thrombophlebitis in both legs and thighs. By the time I was hospitalized the damage to the veins in these members was extensive, permanent and quite limiting. To deter further clotting and the possible serious consequences, I live on a high dosage of anti-coagulant. This requires that I be careful to avoid any injury, even minor bruising. A year ago an arterial obstruction known as a "subclavian steal" was diagnosed. This imposes further limitations upon me, including physical limitations. Both conditions are serious. Coping with these conditions requires much time. I wear one kind of special venous supports during the waking hours and another variety when I go to bed. Both kinds extend from my toes to my torso. I am not permitted to rest by taking a nap in the stronger supports I wear during my waking hours. The time and nuisance of putting them on and taking them off in changing them, as a practical matter, precludes my resting by napping when I grow weary or sleepy and thus results in further

working inefficiency. Taking proper care of these supports further reduces the time in which I can work. Since Friday, June 30, 1978, there has been another medical intrusion into the time I can work. Therapy recommended by my doctor has me walking as vigorously and as often as is practical. Because of the combination of very hot and sticky weather in the period preceding June 30 and the tight-fitting character of these supports, I developed a fungus infection in my toes. While in and of itself the fungus infection presents no special jeopardy, my doctor has warned me that if there is a secondary infection, given the severe restriction of circulation, it could lead to amputations. Caring for the feet and medicating them, as instructed by my doctor, now consumes more of my working time. I also am not permitted to keep my legs dependent for any length of time unless I am walking or moving around. If I stand for as little as 15 minutes, I come close to losing consciousness. On my doctor's instructions when I sit I have my legs elevated. I have had to construct a special means of being able to use the typewriter because of this. I am also required to interrupt what I do at my desk about every 20 minutes and more around. This interruption intrudes into concentration. From all the circumstances it is no longer wise for me to drive the 50 or more miles from my home to Washington and for some years I have not done so because it keeps my legs down for too long. When others cannot provide transportation permitting me to keep my legs up, I use the bus where this is possible. Bus transportation is poor. A few minutes in Washington requires about nine and a half hours from the time I leave home until I return. This means that my conferences with counsel now are rarely in person.

5. I have read Defendants' Motion to Dismiss and the attached affidavits. I desire to make more extensive response than is possible within the present time limits. In part, this is because they constitute an extensive effort to misinform and mislead this Court.

6. I have had considerable experience with the Freedom of Information Act (FOIA), largely but not exclusively with regard to information on the assassinations of President Kennedy and Dr. Martin Luther King., Jr., and their official investigations. With regard to both I have a unique expertise, as evaluated by the Department of Justice itself. In C.A. 75-1996, which relates

to information about the King assassination, the Department prevailed upon that Court to have me serve as the Department's consultant, on the Department's representation that I could provide it with information it could not obtain from the FBI. In C.A. 75-226, the Department responded to my proving that an FBI FOIA agent had sworn falsely in these words: "In a sense, plaintiff could make such claims ad infinitum since he is perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I."

7. This tribute by non sequitur also represents what distinguishes me and my work from those who are often on TV and in news stories with wild and attention-getting charges. Neither my thoughts nor my work pursue whodunits. I do not live an effort to be a detective story. I devote myself to a study of the functioning and nonfunctioning of our basis institutions in time of great stress.

8. I regard these assassinations as the most subversive of crimes because, particularly with a President, they nullify an entire system of society and of self-government. I also regard governmental failures under such circumstances as another form of jeopardy to the viability of our society. Within my extensive personal experience the widespread popular dissatisfaction with the official solutions to these crimes and with the failure of the institutions of government to satisfy the people is the cause of great if not the greatest disenchantment with government. I find this particularly true of young people, who are then led not to have faith in government and not to want to participate in it or in our system of self-government.

9. Exposure of official error or wrongdoing, in and of itself, is not my purpose. It never has been. Rather do I seek to make possible learning from and rectification of error. Perfection is a state of neither humans nor governments. By recognizing, acknowledging and rectifying errors I believe government is strengthened and earns popular support, as President Kennedy did in assuming full responsibility for the Bay of Pigs fiasco.

10. Although establishing an archive of my records had always been in my mind and prior to illness I had agreed to do so, after I became ill I formalized this arrangement. I have begun the deposit of my records in a public

university archive under a competent historian and the preeminent bibliographer in the field of my work. Most of the records I now obtain are for this purpose, not for my own use in writing or in any personal use. These records will be available to scholars outside of government control or influence.

11. The records I seek in this instant cause will be of value in this archive and in future uses. I therefore desire that they be as complete and as honest as possible. While these records also have value as a means of establishing compliance or noncompliance with other FOIA requests, they also are not for my use in writing.

12. I need no expositions from those of personal involvement in the matter before this Court on the legitimacy that can attach to privacy concerns In this regard, where there is a real privacy issue, I differ from those who have filed the Department's affidavits and those who have executed them in being genuine in this concern and in not sitting in judgment on myself. I have waived all privacy questions as they relate to me in this archive and I have divorced myself from all determinations where they relate to others.

13. As an example of the utter spuriousness of official representations to this Court by the Department with regard to its allegedly great worries about protecting privacy, I attach Exhibit 1, one of the records the processing of which is reflected in the worksheet in question. As the court can see, other than by an X-rated photograph, there is little more the Department could have done to destroy the privacy of the widow of accused assassin Lee Harvey Oswald. Her sexual dreams and acts are not withheld from public scrutiny. Her wonder about medications to stifle her natural longings are now in the FBI's public reading room. Her comments about the married man with whom she slept - after the federal government delivered her into his keeping - have not been bruited around the world only because the press had more genuine concern for real matters of privacy than those who make such false pretenses to this Court on these matters.

14. Page after page of FBI records relating to Mrs. Oswald's second pregnancy are readily available, although they are relevant to nothing in the investigation. Countless pages relating to allegations of homosexuality also are readily available. Where these have any relevance, it is limited to the credibility and prejudices of those making the allegations that the FBI compiled

with care. Where I have published such records, after the FBI made them available, I, not the FBI, removed all identifications to avoid doing harm to these people. Many pages of FBI records relating to alleged psychiatric conditions and medical treatment and hospitalization for them have been made available by the FBI without expurgation. This also is true of records relating to contracting venereal disease. None were relevant in the investigations. Where the FBI did not like these people, where they held political views not approved by the FBI or where, as in the case with the widow Oswald, they spoke of the FBI in a manner the FBI did not like, the FBI displayed no interest in their privacy.

15. The Department, which does not like me or my exposures of it and its FBI, has done much the same with me, except that with me defamations in its public reading room did not suffice. It gave the President of the United States the most vicious fabrications about my wife and me, such as that we annually celebrated the Russian revolution. It gave the identical vicious falsehoods to a Senate committee. In both instances this coincided with the interests of the White House and the Senate in the subject-matter of my work. It did the same with Attorneys General, their deputies and with other officials. When in 1977 I again sought all the records on me so I could file a response under the Privacy Act (PA), I received no response, even though my PA request was an old and long-ignored one. When my lawyer wrote the Attorney General requesting that I be put in a position to exercise my PA rights prior to any public release of this and other FBI fabrications and defamations, there was no response. Eight months after the beginning of these releases there still is no response from those who profess to this Court such deep feeling over citizens' rights to privacy. I learned of the public disclosure of these infamies about me when I received phone calls from the press about them. The FBI and the Department manipulated and "interpreted" FOIA to use it as a means of defamation, although long in advance of this I had provided written proofs of the falsity of its fabrications. Instead of complying with the Act, the FBI combined with those who receive the Attorney General's mail to violate the Privacy Act and deny me my rights under it for transparent political purposes.

16. One of the FBI agents who provides an affidavit is in the position of the biblical maiden who, entrusted with the keeping of the family vineyards,

her own vineyard did not keep. SA Horace P. Beckwith is a publicly reported unindicted co-conspirator in the case of the former high officials of the FBI, including its former Acting Director. The charge is of committing such offenses, not of preventing them. There thus is, at the very least, the appearance of a lack of complete freedom and independence on his part. With this record I believe he should not be processing the FBI's records, which include records of such offenses and involve fellow FBI personnel who committed them. I also believe he ought not be providing affidavits in FOIA cases. I am personally familiar with his affidavits and their lack of fidelity. When he provides unfaithful affidavits for those who also prosecute, he is immune. He cannot be said to be impartial or even dependable. (More relating to SA Beckwith follows, Paragraphs 28 ff. and 59 ff.)

17. Except as another cheap effort to mislead and prejudice the Court, there also is no need for any exposition about an alleged hazard to FBI informers. There is no such hazard and no such question before this Court, as there is no genuine question of privacy. However, no reporter or former reporter or investigator has to be told about the reality of some need for confidentiality. I have my own confidential sources. I have been told what some of these FBI people say about me behind my back, how they wonder at what they describe as my persistence, and the extent to which they have inquired into the private lives of those who have been associated with me. I have not disclosed my sources even to my counsel.

18. So the Court can understand that mine and not the FBI's are truthful representations, I attach Exhibit 2 with regard to the fidelity of SA Beckwith's affirmations and Exhibit 3 with regard to the faithfulness of the Department's representations relating to the alleged practice of never disclosing the identities of any of its (or other police) informers. I use this means because the affidavit from which Exhibits 2 and 3 come was filed long before the affidavits in this instant cause were filed and because no refutation of my affidavit has been filed by the FBI or the Department.

19. The importance of worksheets in obtaining compliance in FOIA matters is clear in Exhibit 2, as is SA Beckwith's untruthfulness. In C.A. 75-1996 I was given a crooked set of worksheets, misrepresenting even the number of pages in the record in question. In C.A. 77-0692 SA Beckwith provided one of his nonfirst-

person affidavits in which he sought to mislead that Court with regard to the identical records. In and of itself this raises the most substantial questions about any exclusions from the worksheets and about those who have affidavits for all seasons and needs, without attesting to personal knowledge.

20. Neither SA Beckwith nor SA David M. Lattin attests to having made the searches or having done the processing of the records reflected in these worksheets. The Department has not represented that those of first-person knowledge are not available to execute affidavits. Within my extensive personal experience using those who do not have personal knowledge instead of those who have personal knowledge to execute affidavits is a common means of misleading and deceiving the courts in FOIA matters.

21. With regard to making the identification of Informer Morris Davis known, complete with his symbol identification, which was not withheld from me, the FBI was really seeking a political objective apparent to a subject expert and an FBI watcher. The irresponsibles of that House committee turned Informer Davis over to Mark Lane, a notorious and also irresponsible commercializer who at that very moment was commercializing a potboiling book.

22. Contrary to what the FBI represents in this instant matter, it has disclosed the identification of other informers and of "confidential sources" where those who processed the records were not subject experts and could visualize the attaining of FBI political objectives by the releases.

23. There is no question before this Court of disclosing the identities of confidential informers or sources. I have read the FBI's FOIA worksheets covering the processing of many thousands of pages of FBI records. I have yet to see the first such disclosure in any of them. No other records have been provided in this instant cause, only worksheets.

24. Neither now nor ever have I sought the identity of any FBI informer. The opposite is true. When the FBI inadvertently disclosed the identity of an informer and I knew it had deposited those records in its reading room and thus made them accessible, I notified the FBI so it could correct that record and protect that informer.

25. This leads to what in its bobtailed recounting of the history of this case the Department totally ignored. I did file an appeal from the withholding. This Motion to Dismiss was filed before I received a response to my

appeal. My appeal does not include the identification of any informer or of any genuinely confidential source.

26. The theory under which the Department dragged allegations of FBI Laboratory secrets into this instant causse is obscure if it exists at all. There is no relevance. Nothing of this nature is within my request. The Department's allegations with regard to Laboratory secrets are spurious.

27. I have had personal experience with FBI Laboratory records. The case that was instrumental in the 1974 amending of the FOIA investigatory file exemption is my case. It was originally C.A. 2301-70. When it was refiled as the first case under the amended Act, as C.A. 75-226, the FBI made not a single claim - ever - to any secrecy. In fact, where in the earlier case it represented my request for the results of nonsecret tests as a request for its "raw material," which was not true, and from this forecast the complete ruin of its informer system if not the Bureau itself, in the second case, when I sought to eliminate its this FBI-created nightmare and specified that I did not seek/"raw material," most of the records the FBI provided voluntarily were "raw material." Further bearing on the spuriousness of the Department's present representations to this Court is the fact that the FBI publishes such information, especially for the use of local police forces. It is available to anyone, including professional criminals, at the Government Printing Office. My copy of the 1975 revision cost $2.00. I attach the cover and the table of contents as Exhibit 4. Quite aside from the fact that no secret or arcane sciences are involved in this instant cause, the table of contents discloses that most of this FBI handbook is devoted to that which the Department represents to this Court is somehow secret and must remain secret.

28. All of this and more irrelevancy like it appears to be designed to mislead and to prejudice this Court. In this it is consistent with my long FOIA experience with the FBI. It obscures what my requests are actually for, as in Paragraph 27. Only by inference at two different points is it possible to determine from the Motion for Summary Judgment, the Memorandum in Support and the attached affidavits that my request is for more than worksheets. There is no discussion of this in the briefings. There is a quotation from my letter of request and a deliberate misinterpretation of it in the relevant footnote,

both on the first page of the Memorandum in Support. My request, quite clearly, is for more than the worksheets. It is for "any and all records relating to the processing and release ... whatever the form or origin ... wherever they may be kept." The only specific reference to this that I recall is in the affidavit of SA Beckwith. He states in Paragraph (7) that my request is for "records relevant to the processing and release of the original records," and then and there attests that "These worksheets represent the only documents available within the FBI which are responsive to plaintiff's request."

29. SA Beckwith here uses no ifs, ands or buts. There is no qualification like "of which I know" or "that I have been able to locate." He states unequivocally that there are no other records within my request. I state unequivocally that this is a false sworn statement. I state also that if SA Beckwith was competent to execute this affidavit, he knew he was swearing falsely in this representation.

30. In the beginning of this affidavit I stated my belief and the nature of my work as they relate to the functioning of the basic institutions of our society. One of our most basic institutions, one of the three parts of government, is the judiciary. If the courts are to function in the manner envisioned in the Constitution, they must enjoy the independence granted them by the Constitution. When the executive branch misrepresents to the courts, when it executes and provides false affidavits and obtains their acceptance by the courts, I believe the Constitutional independence of the judiciary is endangered.

31. I would be entirely unfaithful to my work, work that has taken the past fourteen years of my life, work in which I persist without funding and with serious health problems, if I did not raise these questions of misrepresentation and false swearing before this Court. I have not done this work under the conditions of my life and I have not come to this point in my life to shun confrontation on the issue of false swearing to this Court or to accept official false swearing in unseemly silence.

32. It is understanding that perjury is false swearing to what is material. It is my belief that what is now material before this Court is compliance. The latter belief is based upon the fact that the Motion to Dismiss

represents that I have been provided with all relevant records. SA Beckwith's statement in his Paragraph (7) quoted above, that there are no relevant FBI records with which I have not been provided, is the sole basis for this basic and material representation.

33. I reiterate, in SA Beckwith's own words, there are FBI "records relevant to the processing and release of the original records" that have not been provided to me.

34. Although it is obvious that in the processing and release of about 100,000 pages of FBI records relating to the assassination of a President there must be many other records that are clearly within my request because they relate to processing and release, I do not make this affirmation on what is obvious or on any kind of conjecture or surmise. I make this statement on the basis of records, including but not limited to FBI records, within my personal possession.

35. Having repeated SA Beckwith's affirmation and my sworn statement in direct opposition to his, I state my belief that SA Beckwith has committed the crime of perjury before this Court and that I have not.

36. To the degree possible for me when I am not a lawyer and it is impossible for me to visit with my lawyer or revise this affidavit within the time I have, I address what I believe to be other questions of material fact before this Court and representations relating to them or avoided about them by the Department and the FBI.

37. The Department claims exemptions (b)(7)(C)(D) and(E) to withhold information from the worksheets, copies of which it has provided.

38. Exemption 7 begins, "investigatory files compiled for law enforcement purposes," thus requiring that all exemptions under it has been "compiled for law enforcement purposes." There is a further requirement in (D), not consistent with the representations made to this Court by the Department. The exemption on disclosure of a confidential source is limited to "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."

39. The Department's briefings and affidavits do not state that

there was, with regard to the records I seek, an FBI "law enforcement purpose" or an FBI "criminal investigation" or an FBI "lawful national security intelligence investigation."

40. This is not oversight. There has been no offer of proof on the question of meeting the standards of Exemption 7 because the proof is to the contrary. The FBI was not engaged in any of these kinds of investigations with regard to the assassination of President Kennedy.

41. The FBI provided investigative services for the Presidential Commission, which is explicit in stating in its Report (at XIV) that it had no law enforcement purposes. Director J. Edgar Hoover was a witness before the Commission. He then volunteered the truthful description of the nature of the FBI's work. I quote without excision from his testimony in Volume 5, page 98, beginning with the question asked him by Commission Chief Counsel J. Lee Rankin:

> Mr. FANKIN. You have provided many things to us in assisting the Commission in connection with this investigation and I assume, at least in a general way, you are familiar with the investigation of the assassination of President Kennedy, is that correct?
>
> Mr. HOOVER. That is correct. When President Johnson returned to Washington he communicated with me within the first 24 hours, and asked the Bureau to pick up the investigation of the assassination because as you are aware, there is no Federal jurisdiction for such an investigation. It is not a Federal crime to kill or attack the President or the Vice President or any of the continuity of officers who would succeed to the Presidency.
>
> However, the President has a right to request the Bureau to make special investigations, and in this instance he asked that this investigation be made. I immediately assigned a special force headed by the special agent in charge at Dallas, Tex., to initiate the investigation, and to get all details and facts concerning it, which we obtained and then prepared a report which we submitted to the Attorney General for transmission to the President.

42. It cannot be alleged that the FBI was part of law enforcement by local authorities. Lee Harvey Oswald was killed less than 48 hours after his arrest. There was no trial. No other person was accused. Had this not been the case the public complaint of then Dallas Chief of Police Jesse Curry is that the FBI took evidence from him but did not help him. With regard to Jack Ruby, not only did the FBI not assist in that prosecution, it withheld relevant records from the District Attorney, whom I know. When I learned this, I provided him with some copies of FBI records not provided to him by the FBI.

43. It is represented by the Department that cooperation of foreign police agencies must be kept secret as a condition of further cooperation and

that information received from these foreign agencies is never made public. These representations are not truthful. This is not merely because the existence of Interpol is not secret. It is untruthful because I have copies of records with which the FBI conveyed to a local prosecutor for use in a prosecution and in public information the FBI received from foreign police agencies. The actuality, from countless FBI records I have and have read, is that this is a subterfuge by means of which the FBI seeks to hog the credit for the work of other police agencies. This is conspicuous in the records relating to the investigation of the assassination of Dr. King. These records reflect that the FBI even undertook to limit the credit these other agencies would take in public for the work they, not the FBI, actually did. The false passport James Earl Ray obtained in Canada was spotted by the Royal Canadian Mounted Police, not the FBI. (When its Memphis Field Office urged FBIHQ to ask the Mounties to conduct this investigation, FBIHQ actually rejected that recommendation.) James Earl Ray was arrested in England because of his own blundering. British police, not the FBI, made the arrest. However, there is no possibility that there can be the "disclosure" and the catalogue of horrors conjectured by the Department from the kind of information included in the worksheets. In fact, precisely this kind of information was not withheld from the many worksheets provided to me in C.A. 75-1996, worksheets that cover what the FBI estimated at 20,000 pages of FBIHQ records.

44. It is represented that the names of those agents who processed the records and compiled the worksheets have to be withheld to prevent their harassment. In context, this means by me. In context or out, it is false. Their names were not withheld from the many worksheets relating to the King assassination records and there was no allegation of harassment.

45. I do not know whether anyone else has requested these worksheets. The Department does not state that anyone else has. The Department and the FBI are well aware that I have never phoned any FBI agent or other employee, never engaged in anything that can be described as any kind of improper activity, and have met with such agents only on their invitation.

46. The reality, from my personal experience, is that these names are

withheld to prevent my being able to pinpoint those whose violations of the letter and the spirit of the Act are more persisting and more serious. I did do this in C.A. 75-1996. I stated that if one agent named Goble was not removed I would not examine another record he processed and would present the entire issue to that court. I did this in writing. That agent was removed. The FBI promised to reprocess all those records, although it then did not do this.

47. In C.A. 75-1996 I entered into the record a letter written to a friend of mine by FBI Director Clarence Kelley in which Director Kelley stated that it was FBI policy not to withhold FBI names in historical cases. The Attorney General has found this to be an historical case. The Attorney General's policy statement of May 5, 1977, states the same policy.

48. The practice of not withholding names began with Director Hoover and the Warren Commission. This also pertains to the claimed need to withhold the names of those other than paid informants who provide information to the FBI.

49. The Warren Commission published an estimated 10,000,000 words of evidence. To a very large degree this consisted of entirely unexpurgated FBI reports printed in facsimile. Furthermore, Director Hoover stated that all records possible were to be released. This also was the stated policy of the White House and the Attorney General. No FBI names were withheld, no names of those who gave information to the FBI were withheld from what the Commission published or what was available at the National Archives.

50. I cannot estimate how many thousands of pages of FBI records I have obtained from the National Archives but I can and I do state that until the 1974 amendments to the Act I cannot recall a single excision in any FBI records made available to me by the National Archives.

51. In an appreciable number of instances it cannot even be alleged, as it is now represented by those who neither have nor claim to have personal knowledge, that there was any "implied" confidentiality. Many FBI reports begin by stating that the FBI agents informed those they questioned that anything the FBI agents were told could be used against those making the statements. There was no "implied" confidentiality. When it was promised or asked, the FBI's records so state. Present representation of an "implied" confidentiality" are

an invention for withholding what may not be withheld under the Act.

52. There is what I believe, from my knowledge of the subject and from long personal FOIA experience, a conscious effort by the Department to confuse between the worksheets and the underlying documents. The underlying documents are not the subject of my information request that is before this Court. As part of this effort, which is really an effort to withhold what can be embarrassing to the FBI and to obstruct my work, the FBI now actually discloses what it claims it must not disclose.

53. In this connection and as introduction to it I also state that there is no representation by the Department, no FBI affidavit in which it is stated that what is withheld is not within the public domain. My experience with the FBI's withholding of what is within the public domain extends to its withholding what I published years earlier and what was in the phone book. I mean this literally - that the FBI withheld exactly the same information as the phone book and I published. The FBI did not respond in any manner after I sent it facsimiles of proof that this information was within the public domain. From my personal experience this is a not uncommon FBI practice. It is true of hundreds of names of persons but it is not limited to names.

54. It is common FBI practice to withhold from records it releases what is contained in its own news clippings files. When informed of this it then refuses to release what it knows is within the public domain. To be able to pretend that it had no knowledge of what is within the public domain and to actually withhold what is within the public domain in C.A. 75-1996, it refused my offer of a consolidated index of the published books on the King assassination and an index to the transcripts of two weeks of evidentiary hearing. When it could no longer pretend that it had not withheld what was within the public domain, as I had proven to it regularly throughout its processing of records in C.A. 75-1996, the FBI then claimed that to rectify its "error" would be too costly. It continues to withhold what is within the public domsin.

55. The one exception I recall from thousands of instances of this kind of deliberate withholding of the public domain is attached as Exhibit 5. After I ridiculed the FBI in court its withholding - 10 times in a single published news account - the name of a special agent who spoke at a public gathering,

the FBI replaced this one piece of paper from among thousands on which it practiced such knowingly improper withholdings. (This also relates to why the FBI now withholds from the worksheets the names of its agents who process the records and compile these worksheets. In this instance I specified the name to that court.)

56. In this instant cause the FBI is without honest possibility of making a claim of not being able to know what is within the public domain relating to any information about the assassination of President Kennedy. Robert P. Gemberling was supervising agent in charge of the compilation of all records in the Dallas FBI office, its Office of Origin. After Mr. Gemberling retired the FBI rehired him as a consultant on Kennedy assassination matters. The FBI has an in-house subject expert from whom it has not provided any affidavit in this instant cause.

57. Mr. Gemberling is in a position to state what techniques or procedures were used by the FBI and whether or not they are publicly known to have been used.

58. I believe that the absence of any kind of affidavit from Mr. Gemberling and the substitution of one by SA Beckwith raise substantial questions of good faith as well as of due diligence.

59. In seeking to justify the claim to (b)(7)(E), SAs Lattin and Beckwith do not dare state that "these techniques and procedures" are not known to have been used or are in any way secret.

60. I have never seen an FOIA worksheet on which such information was ever included. It would be an exceptional case. There is no place on the form for such information. Yet in Paragraph (6) SA Beckwith voluntarily discloses the use, in the context of SA Lattin's affidavit, current use, of only two such techniques against foreign governments by the FBI.

61. It is within the public domain that more than two such techniques were used in the overall investigation. Two of the more obvious ones are electronic and mail surveillances. The FBI distinguishes between the different kinds of electronic surveillances, meaning that there can be more than one technique so designated. (In fact, it spirited a record relating to one - against a foreign government - out of Washington after I filed a request for it. This matter is

not at issue in this instant cause but I do have proof of this statement. The need to use this attempted memory hole special "technique" is that the information was leaked into the public domain claim.) Here also Exhibit 1 is in point.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10 day of July 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1-82

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

ADDENDUM TO AFFIDAVIT OF HAROLD WEISBERG IN C.A. 78-0249

62. In these two affidavits the FBI has told targeted foreign governments how to determine which special techniques the FBI now has in use against them. All these governments need to know is what techniques were used in the JFK assassination investigation. If they believe these FBI affidavits and have or can obtain this knowledge, they can now be more effective in their own protective efforts.

63. Whether or not foreign governments believe these portions of these FBI affidavits, I believe this Court should not credit any part of them because they are careful and deliberate misrepresentations designed to mislead and prejudice if not also to frighten this Court over nonexisting dangers to national security. In addition to what I have already stated in this regard, in what follows I provide additional evidence.

64. On the nonexisting national security question the affidavit of SA Lattin begins with an illustration of careful and deliberate effort to mislead the Court. SA Lattin accredits himself only as an expert on classification (Paragraphs 1 and 2). He next implies (Paragraph 3) that the worksheets are themselves classified. He then states "(4) My examination was conducted in strict adherence to the standards and criteria found in EO 11652," fortifying the impression that the worksheets themselves are classified, particularly because what immediately precedes this is "I have made a personal independent examination of these inventory worksheets ..."

65. Actually, the worksheets are <u>not</u> classified. And in all this sworn circumlocution, which really refers to the underlying documents, SA Lattin does not at any point state that the underlying documents were actually properly classified under the provisions of E.O. 11652.

66. It is my prior experience with the FBI that in practice it ignored the provisions of E.O. 11652. In June 1978, after these FBI affidavits were executed, I received from the same FOIA Unit of the FBI records it claimed had been declassified for me. In fact, those records had been provided to me <u>earlier</u> and <u>bore no indication of classification</u>. They were classified for the first time <u>after</u> being provided to me, then declassified, then given to me in declassified, expurgated form in which what had been released earlier was withheld under

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a (b)(1) claim. I provided the FBI FOIA Unit with the information it had withheld under the (b)(1) claim. Weeks have passed. The FBI FOIA Unit has been totally silent on this.

67. SA Lattin continues, "(5) The classification of portions of these worksheets ..." and follows with four quotations from E.O. 11652, each beginning "Classified information ..." None of these is appropriate to the worksheets. They may be appropriate to the underlying documents. If so, that is irrelevant in this instant cause. The worksheets are not "furnished by foreign governments," are not "pertaining to cryptography ...;" do not relate to "disclosing a system, plan, installation, project or specific foreign relations matter ...;" and "would not place a person in immediate jeopardy."

68. Attached as Exhibit 6 is the first of these worksheets to refer to a (b)(1) claim. The sheet itself is not classified. The identification of the record is not withheld. And none of these conjectured disasters has befallen the FBI.

69. In all of this the FBI's expert on classification who proclaims living with E.O. 11652 ignores the violation of it with these worksheets. Exhibit 7 is the worksheet relevant to Serial 281. The worksheet of July 1977 notes "B-1 REFERRAL." Lined through but visible is the fact that the referral was to the CIA. Under the controlling directive of the National Security Council, 30 days after a classified record is referred, if the agency to which referral is made has not acted, it then becomes the responsibility of the referring agency to act as though the referred record were its own record. A year, not a month, has passed and the FBI was and remains in violation of E.O. 11652 on this and on compliance on this. (The FBI assured another court of compliance with regard to the underlying documents on January 16, 1978, without acting on this and other referrals.)

70. Paragraph (6) refers to underlying documents again and states there is withholding "inasmuch as the items would reveal cooperation with foreign police." Whether or not such cooperation is a classifiable item, and it certainly is anything but secret and unknown, the fact is that until now the FBI has provided me with countless worksheets indicating that the source of records was a foreign police agency.

71. Because of the withholding it is not possible to state which "foreign nationals having contacts with foreign establishments or individuals in foreign countries" SA Lattin refers to. I can and I do state that the FBI has all along made such disclosures. Examples that come to mind without a search of my files are the KGB defector, Yuri Nosenko, and in Mexico alone two men named Alvarado Ugarte and Guiterrez Valencia. Most recently, in the FBI's propaganda efforts and in dealing with writers it regards as favorable to the FBI, there was disclosure of one of its more important Russian sources of this nature, known by the code name "Fedora." Others like him were blown in the same operation, a backfired publicity effort. The actuality is other than SA Lattin represents.

72. Throughout the affidavit SA Lattin, by careful language, suggests that all he states is applicable to the worksheets but he does not state this and in fact it is not true.

73. All of SA Lattin's affidavit is stated in terms of the opening caveat, "unauthorized disclosure" (top of page 2). But at no point does SA Lattin state that any actual "disclosure" is involved. Disclosure requires that what is not known be made known. There is no statement by SA Lattin that what is withheld from the worksheets is unknown, not in fact part of the public domain. SA Lattin does not even state that he has any way of knowing what is within the public domain.

74. Relevant to this is what is typical of SA Beckwith's affidavits. SA Beckwith has provided affidavits I have read in three cases. In none of these affidavits has he made any claim to first-person knowledge. He swears to what is not factual, as shown by Exhibit 2. He also misinforms courts by underinforming them, by withholding what is relevant of which he does know. He does not state to this Court what he does know in Paragraph 3 of his affidavit, where he misrepresents how "Inventory worksheets are used." He limits this to the FBI, thereby seriously underinforming the Court. The importance of these worksheets that is relevant is how they are used <u>outside</u> the FBI. They are the only means anyone else has of knowing what exemptions may be claimed and what records are withheld. To a subject expert they also disclose entire files the FBI has not searched.

76. Last year I was told by the FBI that I am the first requester ever to receive any FBI worksheets. If this is true, all other requesters had no way

of knowing what the FBI withheld, what exemptions were claimed or even if they received all the pages of any record. (Here also Exhibit 2 is relevant. It discloses the crooked count I received on a worksheet, with more than two dozen pages being withheld by means of a false entry on that worksheet.)

77. I state "may be claimed" in Paragraph 74 rather than "is claimed" because where more than a single exemption is claimed for any record the requester did not know which of the claimed exemptions was intended to apply to any particular page or record. I have received FBI records of more than a hundred pages with blanket claim to more than one exemption. I believe this represents deliberate stonewalling and a deliberate effort to make appeals more cumbersome and to overload the appeals machinery. It requires appeal and review of the entire lengthy record rather than of individual pages. I have such appeals that have not been acted upon in more than a year.

78. Although the FBI is supposed to have agreed to the Department practice of indicating the exemption claimed in the margin at the point of withholding/as of this June the FBI was not doing that with me in a large number of instances. (This also bears on the requester's need to know which analyst processed those records, now withheld from the worksheets.)

79. Where SA Beckwith's affidavit is not untruthful it is unfaithful, it underinforms and thus misleads, and it is conclusory.

80. Half of his affidavit is his Paragraph (6). At no point does it hold an unequivocal statement that he is referring to the specific content of the worksheets. Rather does he provide a general dissertation on "the use of Freedom of Information Act exemptions" to which all that follows relates.

81. Illustrative is his (b)(1) conclusory statement it requires careful reading to understand is referenced to the "original documents" rather than the worksheets: "This information, if disclosed, would identify foreign sources or sensitive procedures, thereby jeopardizing foreign policy and the national defense. See affidavit of SA David M. Lattin." SA Beckwith does not even indicate what numbered paragraph of SA Lattin's affidavit. This is not surprising considering that there is no such proof in the affidavit of SA Lattin. In any event, this kind of information is not needed on worksheets and within my experience is not included on them. However, the foreign sources of information, as

for example the Royal Canadian Mounted Police, has not been withheld from me on worksheets I have received prior to this set of worksheets.

82. In this connection SAs Beckwith and Lattin fail to inform the Court of FBI practice prior to this set of worksheets. The underlying documents are of about a decade and a half in the past and on a subject designated by the Attorney General as "historical." This requires different and more stringent standards for withholding. Under Departmental regulations after ten years a review of classified records is required. None of this relevant information is provided in these affidavits. There is no evidence of the classification review having been made.

83. The foregoing Paragraphs represent what is the fact with regard to all such representations in SA Beckwith's affidavit. The claim to (b)(2) is related to the underlying records, not the worksheets. But as it relates to the underlying records it is not true, as is illustrated by Exhibit 3 above, relating to Informer Morris Davis. The FBI has disclosed the names of informers other than Morris Davis and the symbolic representations of informers. This kind of information, in any event, has no place on worksheets and in my extensive prior experience has not been placed on the worksheets.

84. The foregoing Paragraph and earlier portions of this affidavit, especially Exhibit 1, refute SA Beckwith's representations with regard to the privacy claim (Paragraph (6)(c).) With regard to SA Beckwith's claimed need to withhold the names of FBI agents, addressed in foregoing paragraphs and shown not to have been prior FBI practice with hundreds of pages of worksheets, he states what he has not qualified himself to state: "There appears to be no public need for the revelation of the names of those who processed the original documents."

85. SA Beckwith could with as much justification have stated, "There appears to be no public need for the revelation of the names of unindicted co-conspirators." The prior illustration exemplified by my demanding and obtaining the removal of SA Goble from FOIA processing represents such a public need. In worksheets I received two months after SA Beckwith executed this affidavit there is such a need and I am handicapped in obtaining rectification of error by the withholding of these names. There is a public need for the Act to be complied with. There is a public need for public information to be made available, the

purpose of the Act. Withholding the names of agents is not necessary to protect them from fancied dangers. It serves only to make improper withholding more difficult to rectify and to perpetuate in FOIA analyst roles those who withhold more zealously.

86. The last paragraph of SA Beckwith's subsection (c) provides seven categories of privacy information he represents the FBI must withhold. While this is the kind of information I have never found on any worksheet and has no place on any worksheets, I state without equivocation that the FBI has in fact provided me with each and every kind of privacy information SA Beckwith represents is always withheld. These are "references to a person's criminal background," (often and after execution of this affidavit provided to me); "medical background and psychological diagnosis," both often provided; "derogatory information about a third person" (commonly provided beginning with the first FBI records I ever obtained and as with some of the others included in what the Warren Commission published with the FBI's assent); "... due to his mental state" (often not withheld, particularly not where the person was not liked by the FBI); "police department identification numbers of individual"; and "references to a person's personal sex life."

87. SA Beckwith's is the only affidavit provided in this instant cause in support of withholding based on privacy claims. The Memorandum (at page 8) claims that "the inclusion of a person's name ... either as a source of information as a third party ... (or) for various other reasons, carries strong privacy implications. Indeed, dissemination of this file in an undeleted state is the type of dissemination Congress sought to control." The Memorandum adds that "to expose the names of individuals" would "constitute an unwarranted invasion of their privacy ... no legitimate public interest would be served" and "irreparable harm could be done to these individuals."

88. As general statements, related to the underlying documents rather than the worksheets in rare instances some of this can be true. None is related to any specific claim to exemption for any identified record. All these representations are in sharp contradiction to extensive FBI practice that is within my personal experience and is represented in records I obtained from the FBI.

89. There is an obvious public interest in knowing who provided what

information relating to the most horrible of crimes, the assassination of a President. There is obvious public interest in an evaluation of the alleged evidence being possible by subject experts and by the public.

90. Once again there is no showing that the names are not within the public domain and in connection with the same or similar information. Many thousands of such FBI records are already within the public domain by having been published in facsimile without any excisions by the Warren Commission and by being available without excisions at the National Archives. Neither of these relevant factors is mentioned in the Memorandum or in SA Beckwith's affidavit. In addition, a very large number of these persons went public on their own initiative and are reported in a vast number of news and magazine articles and countless books. Moreover, the Attorney General's policy statement of May 5, 1977, on this exemption requires that except in rare instances these names not be withheld.

91. While there is no doubt that in some instances withholding to protect privacy is necessary, my extensive personal experience of the past is that most of these claims are spurious and are to serve ends other than those of the Act. (These names do not apply to worksheets.) I addressed the spuriousness of such claims in an affidavit I provided for C.A. 77-0692, in which SA Beckwith also provided an affidavit for the Department. Because my affidavit was not refuted and to the best of my knowledge has not been mentioned by the Department I illustrate what actual FBI practice has been with regard to privacy by attaching as Exhibit 8 pages 9 and 10 of my affidavit in C.A. 77-0692. I believe it is apparent from this exhibit that the FBI's present representations relating to its devotion to protecting privacy are contrary to its practice, particularly with regard to persons it does not like, whose views it and its agents disagree with and who are black. This is in sharp contrast with its new-found need to withhold the names of white FOIA processing agents on the nonexisting need to protect them from harassment and prevent reduction in their efficiency.

92. The kinds of withholdings SA Beckwith refers to in (d) is of information that has no place on worksheets, like "symbol numbers" and "file numbers of informants." However, as stated above and reflected in Exhibit 3, this is not undeviating FBI practice.

93. Withholdings that are actually at issue, rather than the irrelevant

ones addressed by the Department and the FBI, represent an abrupt change in FBI policy. I have been able to identify the time of the change in FOIA policy by examining the last 5,000 pages of FBI records I received under C.A. 78-0322. Processing of them was to have begun in early April. I received them on June 28. It is during the processing of these records that changes in practice become apparent. This includes the withholding of FBI names in the later records where the names are not withheld in those processed earlier from this one large file.

94. Coinciding with this is a press campaign and appeals to the Congress for "relief" from the burdens of FOIA and representations about the costs of FOIA. It is apparent to me that the FBI and the Department intend to use this instant cause in these endeavors, as my prior experience enabled me to identify such efforts in the past.

95. In fact, for a long period of time I have been endeavoring to inform the Department of the enormous waste of time and money in the FBI's handling of FOIA requests. One of my experience can identify these misuses of the Act to create false time and cost statistics. (The reality is that in my C.A. 77-2155 the FBI and the Department were unable to inform that court of the actual cost of making a copy of any one of the records covered by these work-sheets. The reason is a false emphasis on unreal and inflated costs.) In the last records I received, those referred to in Paragraph 93 and at other points in this affidavit, there is the attribution to FOIA costs of inquiry that clearly was not made under FOIA. In C.A. 75-1996 I put into the record an instance of a request stated not to have been under FOIA. This citizen's letter to the FBI was not only processed under and attributed to FOIA - an automatic appeal was entered under FOIA appeals. Even more incredible is the fact that while I was suing for some of the information provided to that citizen and having information withheld from me, that citizen was provided with the information withheld from me in a case in court.

96. As I have stated, I have long experience with the FBI in FOIA matters. From this experience I believe it now seeks to misuse this instant cause and the prejudice against the subject matter of the underlying records that exists in the press and in the Congress for purposes that are not within the Act and are contrary to the intent and the language of the Act. I believe that the

FBI and the Department, as in the past, seek through me to rewrite the exemptions to the Act to be able to withhold information that is embarrassing to the Department and to the FBI. To do this there are the above-cited and other misrepresentations and misstatements to this Court.

97. By now, from its own representations, the FBI has processed an exceedingly large number of FOIA requests and a fantastic number of pages of public information. In this instant cause it alleges that now it must withhold the names of FOIA processing agents to protect them and their families from harassment. I note the total absence of a single instance of this despite the enormous number of FOIA requests processed and the large number of agents involved in this processing. The claim is conjectural, conclusory, baseless and quite opposite the popular image of the derring-do fearlessness of the FBI and its heroic agents.

98. As an illustration of the liberty the FBI takes with this Court in other of its representations in this instant cause, I use its claims with regard to special investigative techniques it alleges the need to "protect" so their "future usefulness" will not be impaired. This also relates to the genuineness of the allegations with regard to "privacy" and the FBI's dedication to preserving privacy rights.

99. Exhibit 9 is a record relating to one such technique, wiretapping, provided to me in C.A. 75-1996. The date of this record, from the third highest FBI official to the second highest, is significant. It is the very day James Earl Ray entered a guilty plea. Aside from the attempted defamation of the widow of Dr. King and his successor as leader of his organization, there is significance in this record not immediately apparent to a nonsubject expert. This wiretap was after Dr. King was killed. What is not generally known is that prior to his death authorization for such wiretapping was not renewed. An FBI effort to obtain permission prior to Dr. King's death was not approved. Nonetheless, as Exhibit 9 shows, the FBI did engage in this wiretapping. Within my experience it is to hide what held this potential for embarrassment (in this instance apparently not known to the processing agent) that information is often withheld under spurious claim to exemption. In this instance use of such a technique and FBI illegal practices with regard to such a technique were both disclosed as

part of the effort to defame Mrs. King.

100. The foregoing is true with respect to the techniques of "black bag" jobs (breaking and entering) and "bugging" (microphone surveillance) in other records I have received. In prior cases such records have been released to me without any claimed need to "protect" a technique lest its future effectiveness be destroyed. Attached as Exhibit 10 are some such records as I used them in C.A. 75-1996. I use these copies because with regard to this and other selections from my prior affidavits there has been no denial from the FBI or the Department. The teletype from FBIHQ in Exhibit 10 directs what can be done only by a breaking and entering, the examination of records without a subpoena.

101. After this affidavit was prepared, I received two relevant communications in the mail of July 10, 1978. The first, dated July 7, reports the Deputy Attorney General's action on my appeal. (Exhibit 11) The second, from Paul L. Hoch, of Berkeley, California, provides me with several examples of frivolous FBI claims to "national security" exemption with regard to the underlying records. (Exhibits 12A and 12B, 13A and 13B)

102. The July 7 action on appeal by Mr. Shea confirms my prior statement that the appeals machinery is limited to determining only that the excisions in the worksheets are "compatible with the excisions made from the actual records," the underlying records. Thus the review does not address substance. It does not and cannot determine whether the excisions are in fact either justified or necessary.

103. Mr. Shea also states that "The classified materials have been referred to the Department (classification) Review Committee for determination whether they warrant continued classification under Executive Order 11652."

104. Each of these matters reflects the fact that the rest of the Department is largely the captive of the FBI in FOIA matters. If review shows the excisions in the worksheets to be "compatible" with the excisions in the original documents, then the review process in this instant cause in this respect is completed. Whether or not the withholding is justified, even reasonable, is not reviewed. The review authority is limited to the FBI's representations. This also is true of the classification review committee. Neither reviewing authority has any independent source or knowledge. The FBI has each in the

position of rubber stamping its withholding of what is within the public domain.

105. The two examples I received from Mr. Hoch reflect this with "before" and "after" samples of several of the FBI's "national security" claims with regard to the underlying JFK assassination records.

106. Exhibit 12A is the "SECRET" FBI copy of an FBI memorandum with three paragraphs deleted. Exhibit 12B is the identical, never classified memo without these excisions. (Notations identified "PLH" were added by Mr. Hoch.) All the content of the excised three paragraphs except for two sentences was published by the Warren Commission. These two sentences, the first two on page two, became public domain more than a year ago. The only content of those two sentences then not already within the public domain is the reference to FBI agents. The Commission published one of these photographs twice, as two different exhibits. The fact of the tape recording has been within the public domain for from three to five years. All that could have been new when the content of this memo was released by the Secret Service is the FBI's negative identification. This, of course, is contrary to all earlier official representations, beginning with those made to the Commission by the agencies involved.

107. Knowing none of this and finding the traditional references to the most "extremely sensitive" sources (made public by the Warren Commission), the Depart ment's classification review committee might be persuaded that "an extremely sensitive source" and a "highly confidential source of this Bureau" (paragraph 2, page 2) require (b)(1) protection. If the classification review committee so determines, it will be preserving the unjustified "secret" classification of what is within the public domain and has received the most extensive coast-to-coast print-press and electronic press attention.

108. I do not violate "national security" in informing the Court that the "highly confidential source of this Bureau" is the Central Intelligence Agency. The CIA itself made this public several years ago.

109. There likewise is no genuine issue of "national security" in my informing the Court of the yearning by the intelligence agencies to withhold what the FBI still has classified as "secret." The official story of the CIA is that it destroyed this tape recording by reusing it prior to the assassination of President Kennedy. If this were true, there would be no way the FBI agents

could have listened to that October tape recording after the President was killed in November 1963.

110. Exhibit 13A is the excised copy of the intercepted change of address card Lee Harvey Oswald sent to the Communist newspaper, The Worker. The basic facts were made public domain by the Warren Commission. Exhibit 13B is the unexcised card. (D-21 is an FBI identification. Notations identified "PLH" are by Mr. Hoch.) Here again "national security" lies in the public domain.

111. These are not exceptional instances, as my prior paragraphs reflect and as could be established by many more illustrations.

112. If by any remote chance there is an FBI agent who does not know that such mail was being intercepted and that the interception is public knowledge, even the subject of testimony before a Senate committee, I believe good faith and minimal diligence required some effort to determine whether or not what is clearly marked as having been given to the Warren Commission and having been transferred to the National Archives under the Executive Order of October 31, 1966, was within the public domain. (The "D-21" reflects this.)

113. I have more information that is relevant to FBI efforts to hide what is embarrassing by improper classification of the record that is Exhibit 12A. From prior experience I believe that if I disclose this information now possibility of further FBI disclosure will be reduced. For now I state that the FBI has and withholds other relevant information. In part, this is by improper classification of a nature that almost certainly will deceive and mislead the Department's classification review committee, if the withheld information ever reaches it. I state also that the FBI has taken steps to reduce the possibility of that record reaching this committee.

114. Other relevant public knowledge that the classification review committee and the Court may not possess is that the intelligence agencies represented to the Warren Commission that the CIA, by clandestine means, obtained photographs of Lee Harvey Oswald and a tape recording of a phone call he made when he approached the Cuban and Russian embassies in Mexico City almost two months before President Kennedy was killed. Immediately after the assassination an FBI agent in Mexico City flew the photographs and the tape to Dallas. Earlier other FBI agents had interviewed Oswald. His face and voice were known to the

FBI. The withheld part of Exhibit 12A reflects that these FBI agents made negative identification. This negative identification was incorporated in a letter Director Hoover wrote the Secret Service on November 23, 1963. The Secret Service has made a copy of this letter available and I have it. The problem all of this makes for the FBI comes from its predetermination of a no-conspiracy assassination, a predetermination reflected in its first report and fixed upon the Commission. (The report is identified as "CD1." See Paragraph 41 above.) If there were someone other than the real Lee Harvey Oswald representing himself as Lee Harvey Oswald so long before the assassination and in association with the Russian and Cuban embassies, there is a strong suggestion of either a conspiracy or of someone setting Oswald up. There is further potential of embarrassment for the FBI because in this supposedly definitive five-volume report the President ordered of it prior to creation of the Warren Commission the FBI withheld all mention of the foregoing information.

115. From extensive personal experience and from personal examinations of many thousands of FBI records, I state that the first law of the FBI is "don't embarrass the Bureau," not 5 U.S.C. 552.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10 day of July 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 11-1-82

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

COMMUNICATIONS SECTION

MAR 9 1964

C.A. 78-0249
EXHIBIT 1

TELETYPE

FBI WASH DC

FBI DALLAS

7-38 PM CST URGENT 3-9-64 LJH

TO DIRECTOR 105-82,555

FROM DALLAS 100-10,461 4-P.

LEE HARVEY OSWALD, AKA - IS - R - CUBA.
INTERNAL SECURITY
RE FIGUR OF MARINA OSWALD.

ON MARCH EIGHT, SIXTYFOUR, [redacted] ADVISED AS FOLLOWS:

WILLIAM A. MC KENZIE CONTACTED MARINA AND WARNED HER NOT TO LET ANYONE IN HER HOUSE THAT SHE DOES NOT KNOW.

MRS. FORD CONTACTED MARINA REQUESTING MARINA CALL HER WHEN ROBERT OSWALD LEFT SO SHE COULD COME OVER.

MARINA CONTACTED MRS. FORD AND ADVISED TWO REPORTERS CAME BY BUT SHE WOULD NOT OPEN DOOR AND TOLD THEM TO CONTACT MC KENZIE. MARINA SAID SHE SAW MARTIN IN HER DREAMS LAST NIGHT AND ASKED MRS. FORD TO CHECK ON MEDICATION TO HELP CONTROL SEXUAL DESIRE. SHE SAID IF MARTIN HAD NOT BEEN STERILIZED SHE COULD NEVER HAVE BEEN INTIMATE WITH HIM. MARINA SAID MARTIN IS A STRONG MALE SPECIMEN AND THAT IS WHY SHE WAS ATTRACTED TO HIM. SHE DESCRIBED LEE HARVEY OSWALD AS A WEAKER MALE SPECIMEN WITH A WEAKER NERVOUS SYSTEM. MARINA SAID SHE WAS ASHAMED OF HER HUSBAND. MARINA ASKED MRS. FORD IF SHE THOUGHT GEORGE DE MOHRENSCHILDT WAS ANDROGENOUS PERSON. MRS. FORD SAID SHE HAD NEVER HEARD HOW GEORGE WAS IN BED

END PAGE ONE

79 MAR 18 1964

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21 FEB 20 1978

124

MARINA MENTIONED WANDA MARTIN AND THAT WANDA MUST HAVE KNOWN SOMETHING WAS GOING ON. MARINA SAID MARTIN ACTS NOW AS IF EVERY THING WAS A LIE. MRS. FORD SAID THAT IF DECLAN FORD BECOMES MARINA-S MANAGER DECLAN CANNOT USE MC KENZIE AS A PERSONAL ATTORNEY. MARINA SAID SHE EXPECTS ROBERT OSWALD SHORTLY AND WILL PROBABLY GO TO THE CEMETERY TODAY.

LATER MARINA CONTACTED MRS. FORD STATING ROBERT AND FAMILY HAD JUST LEFT. MARINA REPEATED WHAT ROBERT OSWALD TOLD HER ABOUT NEW INFORMATION THAT HAD JUST COME OUT THAT LEE HARVEY OSWALD HAD BEEN SEEN DRINKING COCA COLA TEN MINUTES AFTER THE SHOTS WERE FIRED THAT KILLED PRESIDENT. MARINA EXPRESSED DOUBT THAT OSWALD COULD HAVE BEEN THAT CALM. MARINA ALSO MENTIONED THAT SOMEONE HAD SEEN A MAN RUN ACROSS THE YARD OF THE BUILDING. MARINA SAID THAT ROBERT IS A RELATIVE AND SOMEHOW WANTS TO CLEAR HIS BROTHER. MARINA SAID IT IS HARD TO BELIEVE THAT IT WAS NOT LEE WHO COMMITTED THE CRIME AND SHE WILL NOT TRY TO EXONERATE HIM, QUOTE "IF HE IS GUILTY, HE IS GUILTY" UNQUOTE. MRS. FORD SAID SHE BELIEVES THE GOVERNMENT IS TRYING TO FIND THE TRUTH OF THE MATTER AND MARINA AGREED. MRS. FORD SAID DECLAN FORD THOUGHT THERE WAS MORE THAN ONE PERSON DOING THE SHOOTING AND THOUGHT THERE WERE TWO. MARINA SAID SHE DOUBTED LEE HAD AN ACCOMPLICE. MRS. FORD WARNED MARINA NOT TO PUT HERSELF IN THE POSITION OF LEE-S MOTHER, MARGUERITE OSWALD, AS TO LEE-S INNOCENCE. MARINA SAID SHE WOULD LIKE TO FIX LEE-S GRAVE WITH FERN AND FLOWERS LATER.

END PAGE TWO

PAGE THREE

MARINA SAID SHE FEELS LEE DID IT /SHOT THE PRESIDENT / AND FURTHER THAT HE TOOK A SHOT AT WALKER AND FURTHER SHOOTING ON HIS PART COULD HAVE BEEN EXPECTED. SHE SAID SHE FEELS THIS AS HE CAME TO SEE HER ON THURSDAY EVEN THOUGH SHE DID NOT SEE HIM TAKE THE RIFLE AT THAT TIME. MARINA THEN SAID SHE FELT SURE LEE DID THE SHOOTING BUT WONDERED IF SOMEONE ELSE WAS SHOOTING ALSO. SHE THEN SAID BULLETS SHOULD HAVE BEEN DIFFERENT IF THERE WAS MORE THAN ONE. MARINA SAID THAT QUOTE THE BOY UNQUOTE CLAIMED LEE HAD A PACKAGE BUT SHE DID NOT SEE LEE CARRYING A PACKAGE WHEN HE CAME TO SEE HER/ ON THURSDAY / . SHE SAID HE WAS ALWAYS IN VIEW AND COULD NOT MAKE THE PACKAGE DURING THE TIME HE WAS AT THE PAINE RESIDENCE. SHE AGAIN EXPRESSED DOUBT WONDERING WHY LEE CAME TO SEE HER ON THURSDAY. MARINA SAID SHE THINKS LEE WANTED TO DO IT BUT PERHAPS THERE WAS SOMEONE ELSE IN ADDITION TO HIM. SHE THEN SAID SHE IS SURE THE BULLETS WILL BE COMPARED. DURING CONVERSATION MRS. FORD AND MARINA BOTH SAID QUOTE ONLY GOD KNOWS UNQUOTE AND STATED THAT IF RUBY HAD NOT SHOT LEE, PERHAPS LEE WOULD HAVE TOLD THE STORY.

LATER MRS. FORD CONTACTED MARINA AND INDICATED SHE THINKS ROBERT OSWALD PROBABLY TOLD MARINA ABOUT THE THINGS THEY MENTIONED BEFORE AS ROBERT IS NOW SYMPATHIZING WITH HIS MOTHER. MARINA SAID ABSOLUTELY NOT AS ROBERT TOLD HER THAT MARGUERITE OSWALD WOULD LIKE TO SEE HER BUT THAT SHE SHOULD NOT MEET WITH MRS. OSWALD UNDER ANY CIRCUMSTANCES. MARINA SAID ROBERT CLAIMS HIS MOTHER IS CRAZY. MARINA SAID ROBERT WAS LEE-S BROTHER AND WOULD BE HAPPY TO FIND SOME INFORMATION IN DEFENSE OF LEE AND AS HIS WIFE SHE WOULD

END PAGE THREE

126

PAGE FOUR

LIKE THIS TOO. MARINA SAID SHE FEELS SURE ROBERT WOULD NOT GIVE HER ADDRESS TO MARGUERITE OSWALD.

PHYSICAL SURVEILLANCE WAS DISCONTINUED AT TEN AM ON MARCH NINE, SIXTYFOUR.

[redacted] ADVISED ON MARCH EIGHT, SIXTYFOUR, HE WAS UNABLE TO OBTAIN ANY PERTINENT INFORMATION.

INFORMANT COVERAGE CONTINUING.

END

NHK

FBI WASH DC

CC MR. SULLIVAN

127

C.A. 78-0249
EXHIBIT 2

91. I have copies of many thousands of pages of FBI records that have always been readily available at the National Archives. I have not seen a single one of these records that was made available on the orders of Director Hoover that eliminated the name of a single source or any one that withheld the symbol of an informant. It was not until after the enactment of FOIA, much more after the 1974 amendments became effective, that I began to receive FBI records with these kinds of withholdings.

92. Until after the Act was amended I do not recall the withholding of a single FBI name. Then it became general practice. I also do not know of a single report of any harm befalling any of the many hundreds of FBI agents whose names were not withheld.

93. Another form of source withholding in this instant cause is misrepresented by the Department in affidavits and by counsel. What is sought is the withholding of what can provide independent assessment of the OPR report and the disclosure of evidence that can tend to undermine, if not in fact disprove, the official explanation of the King assassination. This particular source is police reports, from Atlanta and from Memphis. In neither case is there any Departmental evidence showing that the content of the reports is not public domain. In fact, some of the content of what is withheld together with some of the actual pages of what is withheld was disclosed to me by the FBI in C.A. 75-1996. There is little likelihood that any substantial information in the Memphis police reports is not public knowledge, largely because it was made public by Memphis authorities.

94. From extensive prior experience with FBI avoidance of first-person affidavits and from prior personal experience with SA Horace P. Beckwith in FOIA matters, my attention was immediately attracted to his providing of an affidavit attesting to a search in this instant cause that he did not make. In the past it has been my consistent experience with the FBI that one of its means of withholding what might otherwise not be withheld is by the tactic of having an agent without personal knowledge execute the affidavit attesting to the search. My prior experience in all cases is that careful checking of nonfirst-person affidavits shows they represent what would be false swearing if executed by one of firsthand knowledge.

95. My attention to SA Beckwith's affidavit was further attracted by typical FBI semantics commonly used to provide a cover for secondhand and dubious statements to justify withholding under (b)(7)(D). In SA Beckwith's affidavit one formulation is, "I specifically requested a review of the material furnished the

FBI by the Atlanta, Georgia, Police Department. I was informed that 29 pages were received ... These documents are included in the FBI file on the assassination of Dr. King and are specifically located in Atlanta file number 44-2336, Serial 1215." (Paragraph 2, emphasis added) Mr. Beckwith does not state that he knows what "material" was "furnished" by the Atlanta police department. If he was "informed that 29 pages were received," he does not state that no more than 29 pages were furnished.

97. My attention was further attracted to these formulations because, as SA Beckwith should have known, these records should also be "specifically located" in my own files as a result of C.A. 75-1996 and under stipulations sought by the FBI in that case. These stipulations required that I be provided with copies of all nonexempt FBI Atlanta field office MURKIN records not already provided from FBIHQ files. SA Beckwith provided a nonfirst-person affidavit regarding compliance with these stipulations.

98. Still without claim to first-person knowledge, SA Beckwith states, "I was informed" that "the police department transmitted these documents to the FBI in confidence for investigative assistance during the investigation of Dr. King's assassination." (Paragraph 2)

99. The language of footnote 17 (Memorandum, page 12, citing footnote 21 of the Motion, page 17), together with the avoidance of any description of the content of these 29 pages, led me to make the careful check that was possible in this case. While I do not have most of the records withheld from Mr. Lesar in this instant cause, what SA Beckwith refers to clearly is required to have been provided to me in C.A. 75-1996.

100. My first discovery is that "the" King assassination file in Atlanta is not 44-2336. It is 44-2386. While this might be attributed to human error, SA Beckwith's other misstatements are not easily explained as human error.

101. Serial 1215 is in Volume 9 of the Atlanta FBI records. The FOIA processing worksheets for Serial 1215 and a check of the Serial itself, both provided to me in C.A. 75-1996, do not reflect that this Serial is of the 29 pages, although it is. These worksheets also represent that no part of Serial 1215 was withheld from me.

102. It also is apparent to me from checking my own files that SA Beckwith could have provided a different and a first-person affidavit relating to the Atlanta police department records from his own personal knowledge of FOIA procedures of the

FBI and from his personal involvement in C.A. 75-1996. All field office records provided to me in C.A. 75-1996 were sent to FBIHQ where they were processed. FBIHQ has copies of what it processed for me. The records I cite in the immediately following paragraphs are all records that exist within SA Beckwith's FOIA unit. They are not only as he and the Motion and the Memorandum represent, in the Atlanta Field Office.

103. "Not Recorded" Atlanta Serial of which two copies were sent to FBIHQ is particularly relevant. The copy attached as Exhibit 12 was provided to me under the stipulations in C.A. 75-1996. This August 4, 1976, "Airtel" from the SAC, Atlanta, to FBIHQ reports the providing of copies of all volumes of its MURKIN file only, "namely Atlanta 44-2386," to members of the OPR task force. It enclosed "five copies of an LHM plus one xerox of 29 pages of material" from the Atlanta police. "During this review," the Atlanta SAC reported, "Task Force Member James Walker ... requested a Xerox copy of two serials in this file, namely 44-2386-1214 and 1215, which consisted of 29 pages of material ... relative to people who in the past had threatened the life of MARTIN LUTHER KING. A Xerox copy of this material was furnished to Mr. WALKER." (Other records relevant to the King assassination are not included in MURKIN.)

104. The Letterhead Memorandum attached to this "Airtel" reflects only a limited Task Force inquiry in Atlanta. It does not reflect a serious effort by the Task Force to meet the obligations seemingly imposed upon it by the Attorney General. This can provide motive for some of the withholdings in this instant cause. Atlanta was one of the areas of most active investigation in the King assassination because of the presence of James Earl Ray in that city and because he abandoned an automobile there. Atlanta also is the city in which Dr. King lived and where his office and church were located.

105. The 29 pages are of <u>two</u> Serials, not the <u>single</u> Serial represented by SA Beckwith.

106. The worksheets are a list of the records provided together with all claims to any exemptions. The relevant worksheet page is attached as Exhibit 13. It shows that each of these Serials, as provided to me, is of but a single page and that each of the Serials was provided to me without <u>any</u> withholding. The obliterated entry under "Exemptions used" after Serial 1215 may indicate that at one point a claim to exemption had been made. This is borne out by markings I see on Serial 1215. These markings indicate that prior to review all the names, together with all the

information following them were obliterated. Serial 1215, as provided to me rather than as described by SA Beckwith, is attached as Exhibit 14. Serial 1214 as provided to me and as described in the worksheet is attached as Exhibit 15. Serial 1212 (attached as Exhibit 16) establishes the origin of Serial 1215 and provides identification of the person who signed it. (The worksheets do not account for Serial 1213. It was not provided to me.)

107. Whatever explains the factual inaccuracy in SA Beckwith's affidavit it is beyond question that:

> 29 pages of Atlanta police records are involved; the OPR had copies of these records as well as of any notes Mr. Walker may have made; after searches in both Atlanta and FBIHQ, although several sets of duplicate copies of these 29 pages are in the FBI's files at both places, not 29 but 2 pages only were provided to me; and the FBI, despite the stipulations and its assurances to the court in C.A. 75-1996, withheld 27 of these 29 pages and then provided a worksheet falsely representing that between them Serials 1214 and 1215 total only two pages rather than 29.

108. These facts raise substantial questions of FBI honesty and of FBI intentions relating to compliance and noncompliance.

109. Serials 1214 and 1215 as provided to me <u>are</u> information furnished by the Atlanta police. Serial 1212 establishes the identification of the police sergeant who signed Serial 1215. This is <u>precisely</u> the information represented in the Memorandum and the attached affidavits as requiring withholding from Mr. Lesar, yet it was <u>not</u> withheld from me. Mr. Metcalfe's representations (at page 14) are:

> "... <u>release of this information would seriously inhibit the FBI's relationship with its confidential sources and with other law enforcement personnel.</u>" (Emphasis in original)
>
> "Accordingly, defendant respectfully urges that the Court should allow defendant to <u>preserve the confidentiality of these local law enforcement records</u>.[17]" (Emphasis added)

110. If Mr. Metcalfe was led into these representations to this Court by his trust in what he was told by the FBI, they nonetheless are representations the falsity of which was known to the FBI when it misled Mr. Metcalfe, if it misled him.

111. The plain and simple truth is that this is not the only case in which the FBI has provided me with information from local police. It knows better than its representations on this matter. The Depart ment also knows better because the Department was involved in the release of other such records from other local police. These other local police records relate to the King assassination, to the assassination of President Kennedy and to ancillary investigations in both cases. The FBI reading room, the National Archives and the Library of Congress all make publicly available records provided by local police.

112. Specifically with regard to Serial 1215 and generally with regard to

similar records of local police, the "confidentiality" alleged by the Department does not exist. SA Beckwith's representation (at page 2), "provided in confidence with the clear understanding that the FBI would insure their confidentiality," is not a truthful representation. Both quotations represent what within my FOIA experience is a new effort to withhold what under the 1974 amendments to the Act should not be withheld. This is not to state that there never is any such confidentiality. It is to state that in this particular instance and many others like it there is not and there never was the confidentiality represented to this Court.

113. Mr. Metcalfe and SA Beckwith both were involved in my C.A. 75-1996, together with a number of other FBI agents and Civil Division lawyers. In C.A. 75-1996 I was provided with hundreds of pages of local police reports. I waa also provided with many pages of records from other local authorities, like prisons, depart ments of corrections and sheriffs. The FBI's stipulations in C.A. 75-1996 provided for giving me hundreds of pages of Memphis Police Department records.

114. Examination of Serial 1215 as provided to me also bears heavily on the fidelity of representations made to this Court in this instant cause on privacy. All those whose names are provided are alleged to have threatened Dr. King. This is also true of many other pages of FBI records provided to me.

115. The May 10, 1978, affidavit of James F. Walker makes no reference to these Atlanta Police Department records. Exhibit 12 identifies Mr. Walker as the member of the OPR staff who obtained copies of those records from the FBI Atlanta Field Office.

116. Although my suit for King assassination records was filed before the OPR reinvestigation was established and prior to the August 4, 1976, "airtel" by the Atlanta SAC (Exhibit 12), neither the Walker affidavit nor the "airtel" forwarding these 29 pages to FBIHQ alleges any restrictions on them or any confidentiality attaching to them.

117. Mr. Walker does repeat the self-serving statements of the affidavit of Mr. Stanton with regard to the Memphis police department records.

118. Mr. Walker's representation of the OPR's mission (in Paragraph 1) is "... review of Department of Justice and Federal Bureau of Investigation files relative to Dr. King." A "review" of "files relative to Dr. King" is not the announced purpose of the OPR's review. This phrasing omits half of the OPR's task and understates the other half to avoid the inherent and explicit criticisms of the

[redacted]

On August 8, 1967, [redacted] Jackson, Mississippi, advised a Special Agent of the Federal Bureau of Investigation that she was well acquainted with [redacted] and frequently corresponded with him at Leavenworth Penitentiary. She explained that early in 1964 she rented a room at her residence where [redacted] stayed for a few weeks and that as far as she knew this was the only time he had spent in Mississippi. She did not believe him to have ever been involved in Klan activities or to have ever associated with anyone involved in Klan activities. She also denied any personal involvement in Klan activities.

She stated she had never heard of [redacted] and she denied having any knowledge of any plot to kill Martin Luther King, Jr.

Following the murder of Martin Luther King, Jr., on April 4, 1968, [redacted] was reinterviewed by Special Agents of the Federal Bureau of Investigation regarding the possibility of her having any knowledge of a plot to murder King. She said she recalled that in 1964 when she first met [redacted] the murder of three civil rights workers in Neshoba County, Mississippi, was getting a great deal of publicity and the Sheriff of Neshoba County was presumed to be, according to the news media, a member of the Klan. She recalled mentioning to [redacted] that her business was in minor financial difficulty and that if she approached the Sheriff of Neshoba County, she could probably get $100,000 for killing King. She said she now realized that [redacted] had taken her casual statement seriously and she also realized, since King's murder, the seriousness of such a statement. [redacted] denied having any knowledge of any plot to murder King.

C. A. 77-0692
EXHIBIT /2

FBI

Date: 8/4/76

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Precedence)

TO: DIRECTOR, FBI (100-106670)

FROM: SAC, ATLANTA (44-4685) (RUC)

SUBJECT: MARTIN LUTHER KING, JR.
CR

Re Atlanta nitel to FBIHQ and Birmingham, 8/3/76.

Enclosed for FBIHQ are five copies of an LHM plus one Xerox copy of 29 pages of material furnished by the Atlanta Police Department to the Atlanta FBI in April, 1968.

As pointed out in referenced Atlanta nitel, on the morning of 8/2/76, five members of the Task Force of the Office of Professional Responsibility (OPR), Department of Justice, arrived in the Atlanta FBI Office to review Atlanta's file on the MURKIN investigation. All the volumes of this file, namely Atlanta 44-2386, were made available to the Task Force members for their review. During this review, Task Force member JAMES WALKER, on 8/3/76, requested a Xerox copy of two serials in this file, namely 44-2386-1214 and 1215, which consisted of 29 pages of material furnished to the Atlanta FBI Office in April, 1968, relative to people who in the past had threatened the life of MARTIN LUTHER KING. A Xerox copy of this material was furnished to Mr. WALKER. Atlanta is enclosing one copy of this material for FBIHQ with this airtel.

In addition, as shown in referenced Atlanta airtel 8/5/1976 the Task Force members also interviewed SA O. RICHARD HAMILTON on 8/3/76, as he was the case agent in the MURKIN

2 - Bureau (Enc. 6) ENCLOSURE
2 - Atlanta
EAS/lru
(4)

ENCLOSURE

NOT RECORDED
46 AUG 16 1976

Approved: _____ Special Agent in Charge

Sent _____ M Per _____

34 AUG 19 1976

134

ORIGINAL FILED IN

case back in 1968. The results of this interview are set forth in the enclosed LHM.

The Task Force made no other requests and they departed the Atlanta FBI Office for Birmingham on the early afternoon of 8/3/76.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

Atlanta, Georgia
August 3, 1976

ASSASSINATION OF DOCTOR MARTIN
LUTHER KING, JR.

On August 3, 1976, Special Agent O. Richard Hamilton was interviewed in the Atlanta, Georgia, Office of the Federal Bureau of Investigation (FBI) by four attorneys from the U.S. Department of Justice. SA Hamilton was interviewed regarding the above-captioned matter inasmuch as the case had been assigned to him at one time.

The attorneys asked Hamilton at what point in the investigation the case was assigned to him. Hamilton advised he did not recall the date the case was assigned to him; however, it was after James Earl Ray had been identified and apprehended. They inquired of Hamilton as to how he could insure that all appropriate leads were covered and investigated regarding the assassination of King. Hamilton explained to the attorneys that this investigation was handled as a "Special" in Atlanta, that separate indices were maintained containing the names of all pertinent individuals and organizations which came to the attention of the Atlanta Office in connection with that investigation. He explained the use of lead cards which were maintained in duplicate, that a master lead card was retained with a copy attached to a particular serial containing a specific lead and this was assigned to a Special Agent to cover the lead set out in the serial. He advised the coverage of that lead by the agent to whom it was assigned was reflected through a written memorandum or other appropriate communication with reference made therein to the serial containing the lead. Hamilton advised the agent covering the lead then indicated the

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lead had been covered on his copy of the lead card. Hamilton explained that various agents were responsible for conducting neighborhood investigations, contacting or maintaining liaison with local police, and to conducting other pertinent phases of the investigation. He explained the captioned case was the priority investigation in the Atlanta Office at that time and that almost every agent was assigned to working on some phase of the investigation.

The attorneys inquired as to how the FBI developed information that Ray, then known as Eric Starvo Galt, was residing in a rooming house on 14th Street. Hamilton noted that this investigation occurred more than eight years ago, that he has not since reviewed the file and although he was not exactly sure, according to his best recollection the investigation reflected an individual in the apartment area where Ray parked a Mustang automobile saw Ray park it and get in a taxicab. According to Hamilton's best recollection, the ensuing investigation by the FBI through taxicab companies reflected Ray was taken to the 14th Street address. Hamilton assured them this may not be the way it occurred but these were the facts as he recalled them. One of the attorneys indicated that information is not reflected in the file.

The attorneys asked Hamilton what the FBI did with the Mustang which was used by Ray. Hamilton advised them the FBI in Atlanta turned the Mustang over to Memphis, Tennessee, Police officers, who returned it to Memphis. The attorneys asked whether the Memphis Police drove it back or took it in a van, to which Hamilton replied they drove it to Memphis. The attorneys raised a question that since it was not used in the trial of Ray, why the car was turned over to the Memphis Police. Hamilton replied that Ray was tried by the State of Tennessee, and that they requested the Mustang be released to them in the event it should be used as evidence, and this was done.

The attorneys asked Hamilton if it ever became a problem in his mind or a question to the FBI as to how Ray lived from day to day since he was an escaped prisoner.

Hamilton advised he did not know how Ray lived or his source of income; however, pointed out that Ray has an extensive arrest and conviction record for robbery, burglary, and other crimes and that many fugitives finance their living through armed robberies and burglaries. One of the attorneys asked if Ray committed numerous robberies, would he not get caught, and then the attorney asked what the solution rate usually is regarding the offense of robbery. Hamilton advised him he understands the Atlanta Police Department has about a 50 percent solution rate on robberies and a lesser percent on burglaries and that this was probably about in line with the solution rate for these crimes in most cities. Hamilton also pointed out that Ray had resided in various other areas of the country while in his escaped status and that he was not personally aware of investigation conducted by other field offices regarding Ray's source of income.

In response to Hamilton's inquiry of them as to what they felt would be Ray's source of income, they replied that it was possible that Ray had been paid by someone to kill King in which case there would be a conspiracy, which would present a problem for the FBI. Hamilton advised them that investigation by the FBI in Atlanta was always alert for evidence of a conspiracy, that no such evidence was developed during the investigation in Atlanta, and that if such evidence had been developed, it would have been thoroughly investigated.

The interview was concluded at that point. The interview lasted from approximately 12:00 noon to approximately 12:20 PM on August 3, 1976.

CA 77-0692
EXHIBIT 13

Inventory Worksheet
FD-503 (2-18-77)

Volume 9 — 178 Pages Atlanta

File No: 44-2386 Re: Hooker b7(C)(D) Date: 9-12-77 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b) or (3) cited)
1202	4/25/	Harding to Atl	1	1	
1203	"	Crawford " "	4	4	
1204	"	Harding " "	1	1	
1207	"	Darko " "	1	1	
1208	"	Watts " "	4	4	
1209	"	Miller " "	1	1	
1210	"	Watts " "	1	1	
1211	"	Michel " "	1	1	
1212	"	Haynes " "	1	1	
1214	12/3/67	[illegible]	1	1	
1215	4/18/68	Security Sq. to Spring	1	1	[redacted]
1217	4/25	Martin to Atl	1	1	

FBI/DOJ

137

18

C A 77-0642
EXHIBIT 14

April 18, 1968

MEMO:

RE: MARTIN LUTHER KING JR.

TO: LT. WAYNE SPIVA

FROM: SECURITY SQUAD

LT.

WE HAVE BEEN REQUESTED TO FURNISH YOUR OFFICE WITH THE NAMES OF PERSONS WHO IN THE PAST HAVE THREATENED THE LIFE OF MARTIN LUTHER KING JR. CHECK TO SEE IF ERIC GALT COULD HAVE BEEN ASSOCIATED WITH ANY OF THEM, AND ANY OTHER INFORMATION THAN COULD BE PERTINENT TO THE INVESTIGATION.

JESSE KILGORE, PENFIELD, N.Y.
HAOROD J. TIOME, TUJUNGA, CALIF.
M.L THOMPSON[illegible]
BILL WILLIAMS, NEW ORLEANS
ADRAIN JAMES HAHNENBERG @RONALD L. STEVENS @ RONALD LEON STEVENS DOB 8-6-46
L.C BLAYLOCK, WINONA, MISS.
STEPHEN LANE
JOSEPH GAFFNEY
T[illegible] DEXTER
JAMES WILLIAM COLE @CATFISH
MR. CHEW
CHARLES BRITTIN, COVINA, CALIF.
FRANCIS X. LAY, WM
WILLIAM D. MALLOY, WM
WILLIAM HAROLD JAMISON, SAN ANTONIO ST., SOUTH GATE, CALIF.
JACK MAYNARD RAY, WM 34 DOB 3-3-31
GEORGE MCLAIN WM37
RUTH HARRINGTON CF, 812 QUINTANA PL, WASHINGTON, D.C
WILLIAM THOMAS JACOBS, SALVATION ARMY, KANSAS CITY
JIM JOHNSON, NATIONAL KNIGHTS OF KKK
ALFRED SHAFFER WM 27, 5'6" Blonde, MAUDE, TEXAS
DAVID LANDSDEN, RELEASED FROM MENARD, ILL. (PRESUMABLY MENTAL INSTITUTE)

RESP,
SGT. R.B MOORE

Over to Sentinello re pp Letter 6 Apr

44-2336 -1215

140

NOVEMBER 13, 1967

C. A. 77-0692
EXHIBIT 15

IN LUTHER KING JR.

M

ICE IN CHICAGO RECEIVED WORD FROM THE LOCAL CHAPTER OF NAACP THAT CITY. THEY EIVED A TELEGRAM FROM A JESSE KILGORE, PENFIELD, N.Y. TELEGRAM STATED THAT D BE HARMED IF HE DID NOT TONE DOWN THE SPEECHES HE HAS BEEN MAKING. NO IDENTITY Y, OR ANY INFORMATION AS TO WHO KILGORE IS.

ted:

44-2386-1214

Make index card & File.

141

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

C. A. 77-0692
EXHIBIT /6

TO : SAC, ATLANTA (44-2386) DATE: 4/25/68

FROM : SA CHARLES T. HAYNES

SUBJECT: MURKIN

Reurmemo 4/24/68, with lead to attempt to develop any information from the Atlanta Police Department regarding the possibility of subject's being involved in any "fracas" with any Negro in the area during his presence in Atlanta.

Det. Sgt. ROBERT B. MOORE, Atlanta Police Department, advised on 4/24/68 that matters involving difficulty between white and Negro individuals are normally called to his attention for informational purposes; however, an arrest report would not necessarily be made on all arrests, therefore, the most satisfactory approach would be to contact the superior officers in charge of each watch as well as a particular officer covering the 14th and Peachtree Street area.

On 4/25/68, Sgt. MOORE advised that he had contacted the logical officers in a position to have knowledge of any arrests involving a white man of the subject's description with a Negro individual anywhere in the Peachtree-14th Street area during the approximate period of 3/24/68 through 4/11/68, and no one recalled any incident which could be considered pertinent to this matter.

(3) - Atlanta
CTH:met
(2)

44-2386 1/2/2

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
APR 25 1968
FBI—ATLANTA

142

C.A. 78-0249
EXHIBIT 3

with regard to the actual identification of informants and of sources who are not full-fledged informants. Actual practice is not as represented by the Department. The apparent purpose of misrepresentation is to extend the exemption in an effort to hide transgressions in this instant cause and, if there is precedent, in other cases. To accomplish this, Department counsel state what is not fact and what is not supported with regard to disclosure of actual identification of informants. There is no question of identification of informants in this case and there is no danger of its happening. What is or can be involved in disclosure of symbol identification also is misrepresented. Symbol identification is a filing designation and in some instances a means of hiding actual identification when that is necessary. The symbols also indicate the nature of the informant's activity, as in criminal, security or racial matters. The field office is included, as is a number.

73. It simply is not true that the FBI never discloses the actual name of an informant. It also is not true that disclosure of the symbol makes correlation with the name possible, the Department's representation in this instant cause.

74. In particular it is untrue to allege that any use by any requester of the symbol without a name is "hypothetical." I do not recall any such allegation by any FBI agent. I am certain that all FBI agents know better than to state what Mr. Metcalfe states in this regard.

75. I illustrate with the case of an agent informant whose name and symbol both were disclosed to me and to others by the FBI. There is no value to me in the name and I have no special interest in the name, which is Morris Davis. His symbol is BH 1079-PCI. I can read any one report of information attributed to BH 1079-PCI relating to the King assassination and know immediately not to trust anything BH 1079-PCI told the FBI. Having read more than one report, I can state unequivocally that I can pinpoint the public domain and bad street information sources of all the baloney he sliced for the FBI. Birmingham FBI agents initially might have no way way of knowing this but FBIHQ and a subject expert would have no doubt at all. BH 1079-PCI's "Liberto" story, for example, comes from the work of the late Bill Sartor, whose name the FBI persists in withholding on the claim to the privacy exemption. Bill Sartor, some of whose original notes and manuscripts I have, was a "stringer" for Time magazine in Memphis on the King assassination. I quoted one of his relevant articles in my book FRAME-UP. BH 1079-PCI's "Prosch" story is embellished from news stories. By the time BH 1079-PCI started giving the FBI bad information, anyone familiar with the subject would know what he took straight from others and

what he embellished. This is not "hypothetical." It does illustrate the importance of the symbols to subject experts as a means of evaluating the original information and the use, if any, made by the Department and the FBI.

76. This is especially relevant with the OPR and its report because the report draws heavily on the most undependable FBI sources.

77. Attached as Exhibit 10 are some of the FBI records relating to Morris Davis. These files reflect ulterior, political purposes in turning Morris Davis or BH 1079-PCI over to the House Select Committee on Assassinations. The FBI did it knowing that Davis's information on the King assassination was totally undependable and wrong. These documents do not reflect it but <u>everything</u> Davis said had been investigated and disproved earlier by the FBI. This is how FBIHQ knew it was passing bad information and a conspicuously bad source over to the House committee.

78. In turning BH 1079-PCI over to this committee the FBI was well aware of what to expect: utter irresponsibility by the committee; and, if there is truth to the claim that harm befalls exposed informants, the certainty that Morris Davis would be subject to harm. In fact, Davis complained to the FBI about a number of matters, ranging from the conspicuously unprofessional public conduct of the House investigator, which could have endangered Davis, to being turned over to Mark Lane by the committee. At that particular moment Lane was engaged in extensive public appearances to promote a dubious book. Lane holds the FBI responsible for the King assassination in a plot that extended to Director Hoover - wild and false but merchantable allegations.

79. There can be little doubt to those professional investigators, the FBI, that this committee is engaged in dredging the most stagnant swamps of assassination mythology. In turning the Davis and other records of that kind over to the committee, the FBI was misdirecting the committee. This serves to turn the committee away from investigating the FBI. (Under its present chief counsel there appears to be a high probability that the exploring of fictional reports of which those by Davis are characteristic will be the committee's substitute for a real investigation. Having proven what was not worth a second thought is baseless, the committee will then be able to declare, in the J. Edgar Hoover tradition, that it "left no stone unturned.")

80. One of this series of records turned over to the House committee relates to J. B. Stoner (see Paragraph 55 above). The two different copies of the one teletype were both provided to me by the FBI.

81. Under date of November 8, 1977, I wrote the FBI specifying what was in the public domain that it was withholding in this series of files. I have not had

acknowledgment and of course no replacement copies.

82. In Paragraph 76 I state that the OPR made use of some of the FBI's most irresponsible sources. The OPR also assumed James Earl Ray's guilt. OPR was hard pressed to find a credible motive so it drew upon pathological liars like Raymond Curtis. From such materials the OPR theorized Ray motives of racism and expected financial reward from southern business interests. None of this information was sound. When the FBI checked out a report of a $100,000 bounty on Dr. King, the untruth had more substance than existed in most such reports. This one came from a misunderstanding. (Exhibit 11 is a relevant page from FBIHQ file 44-38861-5154.) In virtually all other instances the fabrication was total. But these allegations are presented seriously in the OPR report. It gives Ray the dual motive of racism and financial reward. It gives no names for any sources, however, not even those that are in the public domain, like that of Raymond Curtis.

83. Curtis is a publicly known FBI source, although it continues to withhold his name in some records. Davis is a publicly known informant. Despite this the FBI refuses to replace copies of records from which his name, too, is withheld. There is importance in not withholding what it is not necessary to withhold. Unnecessary withholdings can lead to harm to the innocent from misunderstandings. In a case the Attorney General has designated as historic, all possible information should be available. Accuracy of the available information is important, as is independent means of making evaluations of official statements and conclusions.

84. The Davis case shows it is not true that the FBI never discloses the identity of an informant. However, disclosing the name is not the present issue. Disclosure of the name, which is an identification whereas the symbol is not, shows that any representation of the certainty of harm to an informant from disclosure is not true. Most informants are not Valachis.

85. No harm has come from disclosure of the Davis symbol with his name. The disclosure of symbols, not names, is the issue. They are symbols, not "codes," as the Department represents, using "codes" in the sense that codes can be broken. Nothing like that is possible because the symbols are arbitrary, not coded. Despite this, the Department states that "public disclosure and analysis" of these symbols "could ultimately lead to their complete ineffectiveness" and "significantly harm specific governmental interests."

86. I have prior experience with this argument. It was made in my C.A. 2301-70 in an affidavit by since-retired FBI SA Marion Williams. In that case my

request was for final reports of certain nonsecret laboratory testing of materials in the investigation of the assassination of President Kennedy. SA Williams stated that my request for final reports was a request for "raw materials." He then stated if this laboratory information were given to me that, too, would lead to the destruction of the FBI's informant system. That affidavit was the basis on which the Department prevailed in C.A. 2301-70. That case was instrumental in the 1974 amending of the investigatory file exemption. When I refiled that suit as C.A. 75-226, the FBI immediately and voluntarily provided me with the identical "raw material" the disclosure of which it had alleged would lead to the destruction of its informant system. Its informant system has survived these three years. Now disclosure of a filing designation that is not "coded" to any name is held forth as the newest hazard to this informant system.

87. The Davis case is not a unique case of FBI disclosure of informant identification. On an even larger scale it has disclosed the identification of sources.

88. The FBI voluntarily disclosed that one Carlos Quiroga of New Orleans was an informer and that his associate, Carlos Bringuier, was a source, whether or not an informer. These two men are anti-Castro Cubans whose involvement with Lee Harvey Oswald resulted in Oswald's receiving much attention as pro-Castro and "red." The FBI also disclosed Mr. Bringuier's source - known to me to have been an informant for the local police at that time. (The CIA has also disclosed that Mr. Bringuier provided it with information.)

89. On the other hand, in the King case the FBI withholds the fact that the deceased William Somersett was its informant by withholding his name from records it has released to me in C.A. 75-1996. When I informed the FBI that Somersett was known as an FBI informer and was also dead, the FBI nonetheless refused to replace the copies of records from which there was this unjustifiable withholding. With Mr. Somersett, who had been cut loose by the FBI because his information was so undependable, there was no possibility of harm befalling him after he was dead. To the best of my knowledge, Mr. Davis, Mr. Quiroga and Mr. Bringuier are alive. Yet I have not heard that any harm has befallen any one of them because the FBI has made public their associations with the FBI.

90. The FBI has also disclosed to me the name of one of its sources who gave it information about me. No harm befell this person, unless he was harmed by my sending him copies of what had been provided to me and telling him how I obtained it.

HOT472 1512119 BHOISZ 1512119

PP HQ

DE BH

P 3121 5Z MAY 77

FM BIRMINGHAM (44-1140) (RUC)

TO DIRECTOR (44-38861) PRIORITY

BT

CLEAR

MURKIN

MAY 31 5 25 PM '77

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.
Adm. Serv.
Crim. Inv.
Fin. & Pers.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgmt.
Spec. Inv.
Tech. Servs.
Training
Public Affs. Off.
Telephone Rm.
Director's Secy

REBUCAL TO BIRMINGHAM MAY 18, 1977, REQUESTING CONTACT WITH FORMER BH 1079-PCI, TO DETERMINE IF HE CAN BE IDENTIFIED TO THE HOUSE ASSASSINATION COMMITTEE (HAC) AS THE SOURCE OF INFORMATION REGARDING LIBERTO, ET AL.

SOURCE WAS UNAVAILABLE FOR CONTACT MAY 18-30, 1977. ON MAY 31, 1977, HE ADVISED SA PATRICK J. MOYNIHAN THAT HE CAN BE IDENTIFIED TO THE HAC AS THE SOURCE OF THE INFORMATION HE FURNISHED. HE FURNISHED THE FOLLOWING INFORMATION GRATUITOUSLY:

HE IS DISENCHANTZD WITH THE HAC AND BELIEVES IT IS TOO POLITICAL. HE HAS NOT TALKED TO THEM (MR. EDDIE EVANS) IN ABOUT THREE WEEKS. EVANS DESIRES SOURCE TO BE IN TOUCH TELEPHONICALLY AT LEAST TWICE A WEEK BUT IS NEVER AVAILABLE WHEN SOURCE PUTS HIMSELF OUT TO MAKE THESE CONTACTS.

REC-126

RO JUN 13 1977

UN 1 41977

147

SOURCE DISAPPROVES OF ALL THE TV PUBLICITY THZ HAC RECEIVED IN BIRMINGHAM, ALABAMA, AND MEMPHIS, TENNESSEE, A FEW WEEKS AGO, AND AGAIN BELIEVES THEY ARE "TOO POLITICAL."

THROUGH THE HAC, HE HAS MET MARK LANE. SOURCE HAS NO USE FOR LANE AND ARGUED WITH HIM ON THE OCCASION WHEN THEY MET.

SOURCE HAS CONDUCTED INVESTIGATION HIMSELF IN MEMPHIS, TENNESSEE, RECENTLY. JAMES EARL RAY LEFT BIRMINGHAM MARCH 30,0 1968, AND WENT DIRECTLY TO MEMPHIS, TENNESSEE, ON MARCH 30, 1968. HE STAYED AT MRS. DEATON'S RMINHOUSE ON PEABODY STREET IN MEMPHIS, AND SOURCE INTERVIEWED HER APPROXIMATELY THREE WEEKS AGO.

SOURCE DEVELOPED A "LIBERTO MAN" WHO SHOWED SOURCE THE ABOVE ROOMING HOUSE. SOURCE HAS NOT FURNISHED THIS INFORMATION REGARDING THE DEATON ROOMINGHHOUSE TO HAC SINCE THEY HAVE NOT BEEN IN RECENT CONTACT WITH HIM.

INFORMATION FURNISHED BY THIS SOURCE IN THE FUTURE WILL BE RECORDED AT BIRMINGHAM AND FORWARDED IF APPROPRIATE.

AIRMAIL COPPES BZING FURNISHED MEMPHIS AND NEW ORLEANS.

BT.

FBI

Date: 3/30/77

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIRMAIL - REGISTERED (Precedence)

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, BIRMINGHAM (44-1740)

SUBJECT: MURKIN
CR
OO: MEMPHIS

ReBHairtel, 3/21/77.

On 3/30/77, Major EMMETT DIXON, Alabama Highway Patrol (AHP), Montgomery, Alabama, advised that an AHP trooper had an informant who had been in contact with a [redacted] Birmingham, Alabama. [redacted] related information to the informant concerning a conspiracy to kill MARTIN LUTHER KING which involved FRANK LIBERTO and DR. GUS PROSCH. [redacted] indicated to the trooper's informant that the information had been related to the FBI, but apparently no action was taken.

Major DIXON was advised that the Birmingham Office had been in contact with [redacted] on several occasions, had taken all information in the possession of [redacted] and had furnished this information to FBIHQ and interested offices. DIXON was advised that Birmingham is positive that the FBIHQ had furnished [redacted] information to interested congressional committees, as [redacted] had stated that a representative of the House of Representatives Committee had been in contact with him.

The above is set forth for information of FBIHQ and Mobile. As Birmingham has had numerous contacts with [redacted] he will not be contacted at this time; however, Birmingham will continue to disseminate any pertinent information volunteered by [redacted]

ST-106 44-38861-1205
REC-7
22 APR 1977

2 - Bureau
1 - Mobile (Info)
1 - Memphis (44-1987) (Info)
1 - New Orleans (Info)
1 - Birmingham
MJB:hss
(6)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

APR 11 1977

149

0-70 (Rev. 3-25-72)

UNITED STATES GOVERNMENT

Memorandum

File Copy

TO Assistant Attorney General
Criminal Division
(Attn: Robert L. Keuch)

DATE 6/3/77

FROM Director, FBI

SUBJECT ASSASSINATION OF MARTIN LUTHER KING, JR.

Reference is made to ____ memorandum dated _____ (your file _____).

There is enclosed one copy of the report of Special Agent a teletype dated 5/31/77 at Birmingham, Alabama.

A. ☐ This covers the preliminary investigation and no further action concerning a full investigation will be taken by this Bureau unless the Department so directs.

B. ☐ The investigation is continuing and you will be furnished copies of reports as they are received.

C. ☐ The investigation requested by you has now been completed. Unless advised to the contrary no further inquiries will be made by this Bureau.

D. ☐ Pursuant to instructions issued by the Department, no investigation will be conducted in this matter unless specifically directed by the Department.

E. ☐ Please advise whether you desire any further investigation.

F. ☐ This is submitted for your information and you will be advised of further developments.

G. ☒ This is submitted for your information and no further investigation will be conducted unless specifically requested by the Department.

H. ☐ This covers the receipt of a complaint and no further action will be taken by this Bureau unless the Department so directs.

NOT RECORDED
JUN 14 1977

Enc. (1)

1 - Assistant Attorney General
Civil Rights Division (Enclosure 1)

SEE NOTE PAGE TWO . . .

1 - Office of Professional Responsibility, USDJ
(Enclosure 1)

JN 14 1977

150

FBI/DOJ

Assistant Attorney General
Criminal Division
(Attn: Robert L. Keuch)

NOTE: The House Select Committee On Assassinations has requested all information previously furnished by [redacted] which is being handled by separate communication. For your information, [redacted] previously furnished information on a confidential basis and the previous information he provided was furnished to the Department relating to the Liberto matter by my memoranda dated 12/17/75, 12/21/76, and 1/25/77.

Also for your information regarding the attached, previous investigation disclosed that James Earl Ray was in Atlanta, Georgia, on 3/31/68 and on 4/1/68. On 4/3/68 he registered at the Rebel Motor Hotel, 3466 Lamar Avenue, Memphis, Tennessee.

1982119 BHO152 1 -149 MAY 31 5 25 PM

HQ

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

E BH

P 312115Z MAY 77

FM BIRMINGHAM (44-1143) (RUC)

TO DIRECTOR (44-38851) PRIORITY

ST

CLEAR

MURKIN

REBUCAL TO BIRMINGHAM MAY 18, 1977, REQUESTING CONTACT WITH [redacted] TO DETERMINE IF HE CAN BE IDENTIFIED TO THE HOUSE ASSASSINATION COMMITTEE (HAC) AS THE SOURCE OF INFORMATION REGARDING LIBERTO, ET AL.

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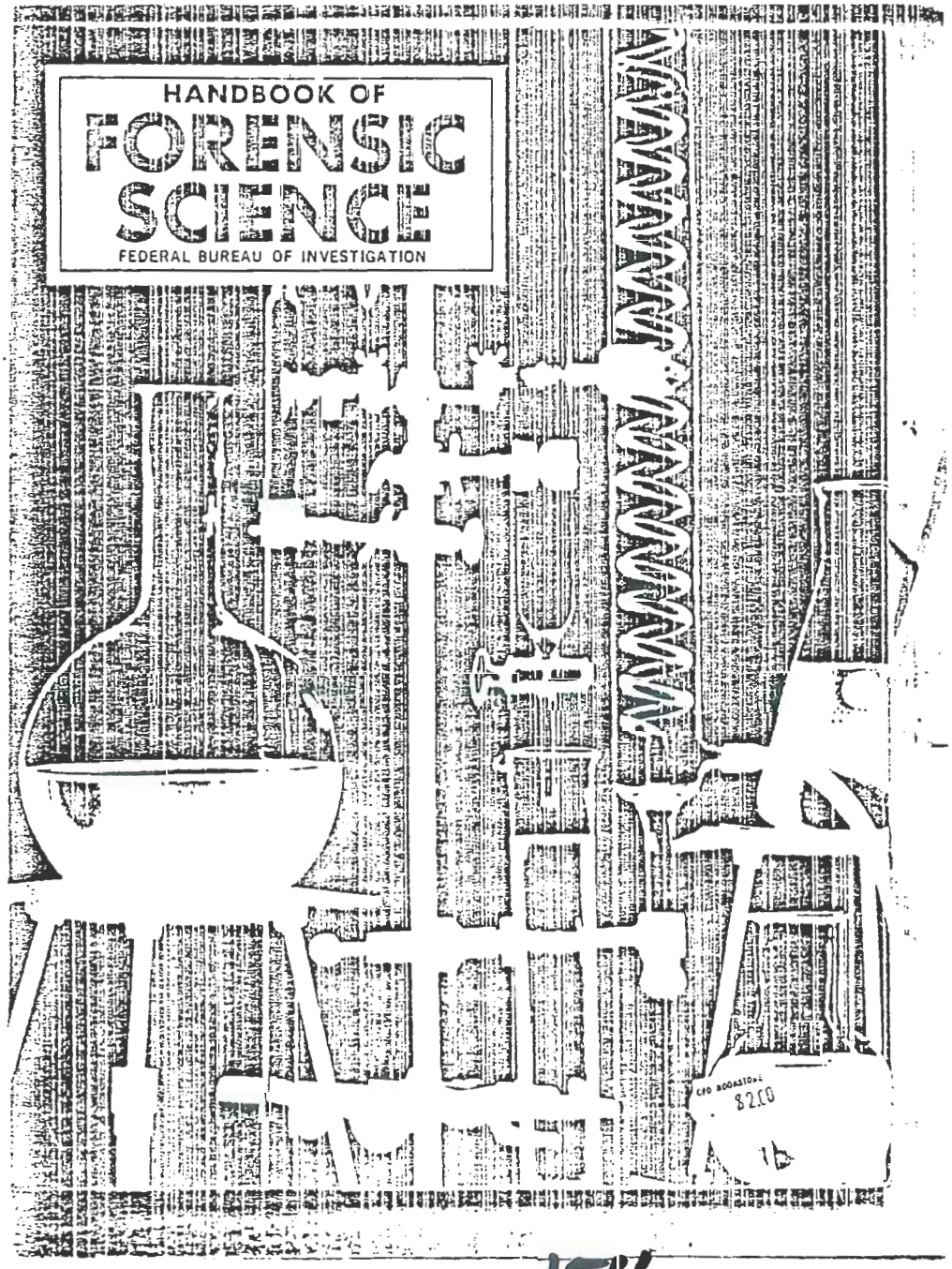
[redacted] DEVELOPED A "LIBERTO MAN" WHO SHOWED [redacted] THE ABOVE ROOMING HOUSE. [redacted] HAS NOT FURNISHED THIS INFORMATION REGARDING THE BEATON ROOMINGHOUSE TO HAC SINCE THEY HAVE NOT BEEN IN RECENT CONTACT WITH HIM.

EXHIBIT 4 Weisberg Affidavit Civil Action 78-0249



154

CONTENTS

FBI Asks Court
By Contempt

Battle Orders Fingerprint Expert To Show Cause In Publicity Order

[redacted] of Washington, a senior FBI fingerprint expert, was ordered yesterday to show cause on Dec. 6 why he should not be adjudged in contempt for violation of a Criminal Court order limiting pretrial publicity in the case of James Earl Ray.

Criminal Court Judge W. Preston Battle ordered Mr. [redacted] to appear before him on that date for the contempt hearing. Judge Battle said it was impracticable to hold the hearing before Ray's trial, set for Nov. 12.

[redacted] is expected to be a key witness, giving fingerprint testimony, as the prosecution presents its case. Ray is charged with the deer-rifle slaying of Dr. Martin Luther King here April 4.

Judge Battle cited Mr. [redacted] upon the recommendation of an amici curiae committee of the Memphis and Shelby County Bar Association. The committee, headed by Lucius Burch, advised Judge Battle it believes "[redacted] and actual knowledge of the aforesaid orders, decrees and injunctions issued by this court . . . Your petitioners aver therefore that there is strong cause to believe that respondent [redacted] is in contempt."

The charge is based on an interview with Mr. [redacted] published in the Sept. 7 issue of the Wichita (Kan.) Beacon. Mr. [redacted] was quoted as saying Ray's fingerprints were found near the scene of Dr. King's murder in Memphis.

"There is no doubt in my mind that Ray at least handled the murder weapon," Mr. [redacted] was quoted as saying. He was in Wichita to speak on fingerprint identification at a police seminar.

In Washington, a Justice Department spokesman said there would be no comment before Judge Battle's attested order reaches Washington. But he read the "Katzenbach Guidelines" governing inter-

Rule 3 says, "We do not believe department personnel should refer (publicly) to investigative procedures, such as fingerprints, polygraphs (lie detector tests), ballistics or laboratory tests. Such demonstrative facts constitute evidence which should be presented publicly for the first time to the trial jury in a court of law.

"Disclosure of such matters to the public before trial can be deeply prejudicial without any significant addition to the public's need to be informed."

Mr. [redacted] the fifth man to be charged with contempt of Judge Battle's pretrial publicity order. Ray's chief defense counsel and an investigator employed by him and two Memphis reporters were convicted Sept. 30 of contempt with sentence deferred.

MEMPHIS COMMERCIAL APPEAL
FINAL EDITION
10/25/68
Page 25

EDITOR: FRANK R. ANGREN

Civil Action 78-0249

Weisberg Affidavit

EXHIBIT 6

Serial Worksheet
FD-302 (2-10-77)

File No. 62-109060 Re: JFK Date: Aug 1977 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
43	11/24/63	Rosen memo - Belmont	1	1	None
44	11/25/63	Butel - Legat, Mexico	1	1	None
45	11/25/63	SLC tel - Bur.	2	2	7D
45	11/25/63	Butel - SLC	1	1	7D
46	11/25/63	Handley memo - Rosen	1	1	None
47	11/25/63	Gauthier memo - Callahan	15	15	None
48	11/26/63	CG tel - Bur.	2	2	None
49	11/23/63	Belmont memo - Rosen	2	0	B-1
50	11/23/63	Epley teleg - Hoover	1	1	None
50	11/25/63	Butel tel - LS	1	1	None
51	11/26/63	NH tel - Bur	1	1	7D
52	11/26/63	CV tel - Bur	1	1	None

157

EXHIBIT 7 Weisberg Affidavit Civil Action No. 78-0249

Serial Worksheet
FD-800 (2-16-77)

File No 62-109060 Re: Kennedy Assassination Date: July 1977

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom released (Identify statute if (b)(3) cited)
280	11/30/63	Little Rock tel to Bureau	4	4	b7D & b7C throughout
281	11/27/63	Moore memo to Sullivan	2	0	B-1 REFERRAL/CONSULT Referral/Consult pg 1
282	11/30/63	Dallas tel to Bureau	5	5	b7D, pgs 1, 2 & 4
283	11/29/63	CG tel to Bureau	5	0	Referral - Secret Service
284	11/22/63	Belmont memo to Tolson	1	1	None Referred
285	11/29/63	Burkart tel to Dallas	1	1	None Referred
286	11/27/63	Milwaukee airtel to Bureau	2	2	None
286	11/29/63	FBI Lab Rep. to Milwaukee	2	2	None
287	11/23/63	Miami airtel to Bureau	1	1	b7D
288	11/23/63	Springfield airtel to Bureau	2	2	None
289	11/23/63	L.A. airtel to Bureau	2	2	b7c
290	11/22/63	Miami airtel to Bureau	2	2	b7D

153

C.A. 78-0249
EXHIBIT 5

all relevant names in the FBI's records are in these books. The very first records provided to me in C.A. 75-1996 withheld names I published and in connection with the information I also published. These names and this information were included in news accounts the FBI later provided from its clipping files. Those initial records in which the FBI practiced unjustifiable "privacy" withholding have never been replaced. This refusal to replace records from which there was improper withholding is virtually total and continues as of this date. In the most extreme forms the FBI withholds what another writer published from its records and what I published. After I sent it copies of my publication and even of a phone book the listing in which it withheld, it still persists in these "privacy" withholdings.

47. There must be thousands of pages of records for which I was initially charged 10 cents a page in which the FBI withheld what was extraordinarily well known around the world. When I discovered this and when the FBI then refused to replace any of the pages on which it had practiced these unjustifiable withholdings, I asked it to use the indexes of the books on the subject. It is after FBI refusal to consult the indexes in the books it already had that I had the consolidated index prepared.

48. The FBI is so totally dedicated to misuse of the privacy exemption with King assassination records that when I provided it with its own internal records reflecting its knowledge that it was withholding what was publicly known and its own admission that it would have to reprocess those records, it still refused to reprocess those records.

49. There is very little relating to the assassination or to the FBI's campaign against Dr. King that is not within the public domain.

50. With regard to political files relating to the King assassination, the FBI provided me with copies of its records disclosing:

A. The names of black women who are called prostitutes.
B. The names of black women reportedly sleeping with named black men to whom they were not married.
C. The names of black women who conceived out of wedlock, complete with details that include the names of relatives and later information relating to the child.
D. The name of a white woman reporter in slurring reference to her being seen with black men.
E. The names of middle-class white women in Memphis, including supporters of the mayor, when they disagreed publicly with his policies that caused the sanitation workers' strike that in turn led to Dr. King being killed in Memphis. (In this case the names of all these white ladies were indexed in the FBI's political files.)
F. The names of black men who are described as "monkey-faced," "good boys" when their beliefs were approved by the reporting FBI agents, pimps, drug-pushers or addicts, and criminals of various sorts.
G. Political defamations of white as well as black clergymen who supported the striking sanitation workers.
H. Where a white minister supported black efforts at self-improvement,

there was extensive FBI investigation to label this white minister as "red." His name is not withheld.

t. Because a black Memphis minister was a community leader in support of the sanitation strike and of efforts to improve the entire Memphis community by creating new employment and educational opportunities, he became the subject of extensive FBI investigation. When he was reported to be planning to attend a religious peace meeting in Prague, he was labeled "red." There was widespread distribution of these and other similar records.

51. The extent of the FBI's domestic intelligence activities in Memphis is incredible, as is its disclosure of personal information and misinformation about countless private matters, including personal and political associations and beliefs. Where these people held views or engaged in activities not approved by the FBI, there was no privacy concern, no withholding of names, often with addresses, and there was widespread distribution.

52. The FBI's concern for the privacy rights of those it does not like is so great that when I sought to obtain all its records relating to me (and the request was more than two years old) in order to be able to file a correcting statement, the FBI refused to respond to my letters. Mr. Lesar also received no response. The FBI then released false and defamatory records, with some overt fabrications by the FBIHQ.

53. One such illustration is the total fabrication that my wife and I celebrated the Russian Revolution every year. As best my wife and I can figure out what was corrupted into the deliberate defamation, it was a religious outing after the Jewish high holidays. (These do not coincide with the time of the Russian Revolution.) Rather than reds" our guests were Washington area Jewish military service personnel and their families. When my first book critical of the official investigation of the assassination of President Kennedy was attracting attention and the White House became interested, this is included in the defamations the FBI gave President Johnson.

54. Another illustration is a deliberate FBIHQ fabrication of nine years ago, clearly designed to hide from the Justice Department what subsequently became known of the violence the FBI precipitated as part of its "Cointelpro" activities.

55. J. B. Stoner, who prides himself on being a racist and an anti-Semite, told me of the disclosure to him of the fact that several men identified as FBI operatives had sought to entice him into acts of racial violence. Nine years ago this might well not have been believed in the Department. Since then, including from Congressional investigations and from information requests, these FBI practices have become well known. The FBI lied about and defamed me to continue to hide from the

C.A. 78-0240
EXHIBIT 9

3/11/69

Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

MR. TOLSON:

RE: JAMES EARL RAY
ASSASSINATION OF MARTIN LUTHER KING

Now that Ray has been convicted and is serving a 99-year sentence, I would like to suggest that the Director allow us to choose a friendly, capable author, or the Reader's Digest, and proceed with a book based on this case.

A carefully written factual book would do much to preserve the true history of this case. While it will not dispel or put down future rumors, it would certainly help to have a book of this nature on college and high school library shelves so that the future would be protected.

I would also like to suggest that consideration be given to advising a friendly newspaper contact, on a strictly confidential basis, that Coretta King and Reverend Abernathy are deliberately plotting to keep King's assassination in the news by pulling the ruse of maintaining that King's murder was definitely a conspiracy and not committed by one man. This, of course, is obviously a rank trick in order to keep the money coming in to Mrs. King, Abernathy, and the Southern Christian Leadership Conference. We can do this without any attribution to the FBI and without anyone knowing that the information came from a wire tap.

Respectfully,

C. D. DeLoach

CDD:CSH (3)

cc Mr. DeLoach
Mr. Bishop

See ADDENDUM...page 2

REC-33

14 MAR 26 1969

ADDENDUM OF MR. DE LOACH 3/12/68

If the Director approves, we have in mind considering cooperating in the preparation of a book with either the Reader's Digest or author Gerold Frank. The Reader's Digest would assign one of their staff writers or contract the preparation of a book out to an established author. Gerold Frank is a well-known author whose most recent book is "The Boston Strangler." Frank is already working on a book on the Ray case and has asked the Bureau's cooperation in the preparation of the book on a number of occasions. We have nothing derogatory on him in our files, and our relationship with him has been excellent. His publisher is Doubleday.

- 2 -

162

EXHIBIT 4 C.A. 78-0249
EXHIBIT 10

May 1, 1968

PLAINTEXT

TELETYPE URGENT

1 - Mr. Long

TO: SACS, CHICAGO
KANSAS CITY
ST. LOUIS
SPRINGFIELD

FROM: DIRECTOR, FBI

MURKIN

FULL COVERAGE IS TO BE AFFORDED THE RELATIVES OF SUBJECT RESIDING IN YOUR RESPECTIVE TERRITORIES. THIS WILL INCLUDE A SPOT SURVEILLANCE OF THESE PERSONS AS WELL AS A DETERMINATION OF THEIR ASSOCIATES AND INDIVIDUALS MAKING FREQUENT CONTACT WITH THEM. [redacted] YOU SHOULD MAKE THIS A CONTINUING PROJECT UNTIL OTHERWISE ADVISED BY THE BUREAU. [redacted]

IT WILL BE FULLY INCUMBENT UPON EACH OFFICE TO BE COMPLETELY AWARE OF ANY SITUATION IN WHICH THE SUBJECT CONTACTS RELATIVES

1 - MEMPHIS

REC-71 EX 109

19 MAY 2 1968

REL: ph

(6)

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

MAY 1 1968

SEE NOTE PAGE TWO...

MAIL ROOM TELETYPE UNIT

TELETYPE

163

TELETYPE TO SAC, CHICAGO
KANSAS CITY
ST. LOUIS
SPRINGFIELD

RE: MURKIN

OF THE SUBJECT. YOU SHOULD INSURE THAT EACH RELATIVE IS ADEQUATELY COVERED TO POSSIBLY ASSIST IN THE SUBJECT'S LOCATION AND APPREHENSION.

ARMED AND DANGEROUS.

AIRMAIL COPY TO MEMPHIS.

NOTE: In view of the fact subject could possibly contact his relatives, the offices covering residence of relatives requested to provide full coverage to provide any information whatsoever that could lead to the subject's apprehension.

164

EXHIBIT 6

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

APR 26 1968

TELETYPE

[illegible] DC

[illegible] ST LOUIS

1010EN WDSENT 4-26-68 JLS

TO BUREAU, MEMPHIS, CHICAGO AND SPRINGFIELD

FROM ST. LOUIS (44-775)

MURKIN - SUMMARY

JOHN LARRY RAY, BROTHER OF SUBJECT, REINTERVIEWED. MORE COOPERATIVE. ADMITTED VISITNG SUBJECT TWO OR THREE TIMES MSP. WAS IMPRISONED IN ILLINOIS PERIOD OF YEARS PRIOR TO SUBJECTS NINETEEN FIFTY NINE ARMED ROBBERY AND DENIED KNOWLEDGE OF SUBJECTS ACTIVITIES DURING SAME. AGAIN DENIED CONTACT WITH SUPJECT SINCE ESCAPE OR KNOWLEDGE OF HIS WHEREABOUTS.

[redacted]. EFFORTS DIRECTED TOWARD DEVELOPING LIQUOR PERMIT VIOLATION TO SERVE AS LEVER TO FORCE COOPERATION. SUPPLIERS OF GRAPEVINE TAVERN STATE DELIVERIES ARE COD AND PAID IN CASH BY WHO EVER IS ON DUTY. PUBLIC UTILITIES STATE BILLS PAID BY CASH OR MONEY ORDERS, NAME OF REMITTERS NOT YET KNOWN. [redacted]

[redacted] EMPLOYMENT ONE DAY MAY TWENTY EIGHT FIFTY EIGHT GLEN ECHO COUNTRY CLUB VERIFIED. [redacted] ED SOCIAL SECURITY NUMBER. [redacted] RESIDENCE ONE NINE ONE THREE HICKORY. NOT RECALLED BY EMPLOYEES.

REC-110 44-38821-2243

16 APR 29 1968

END PAGE ONE

~~CODE TEXT LINE FIFTEEN WORD NUMBERS SHOULD BE SUBJECT'S,~~

~~TEXT LINE FIFTEEN WORD SHOULD BE USED~~

66 MAY 3 1968

cc - Mr.

165

CL 44-775

COMMERICAL BAKERIES UNABLE TO LOCATE RAY EMPLOYMENT TO DATE.

HIPPIE NEIGHBORHOODS NEGATIVE.

MORERLY MO STATE TRAINING SCHOOL FOR MEN INMATE [redacted]

[redacted] STATED WHEN HE WAS AT MSP RAY INDICATED INTEREST IN LETTERS

[redacted] RECEIVED FROM MEXICO AND QUESTIONED REGARDING MEXICAN

ECONOMY AND ARMY STRUCTURE.

SUBJECT ARMED AND DANGEROUS.

END

GFH

FBI WASH DC

EXHIBIT 7

May 2, 1968

PLAINTEXT

TELETYPE URGENT

1 - Mr. Long

TO: SAC, ST. LOUIS

FROM: DIRECTOR, FBI

MURKIN

ST. LOUIS WILL PROVIDE FULL COVERAGE AT THE GRAPEVINE TAVERN TO DETERMINE IF THE OWNER OR OPERATOR OF THE TAVERN IS POSSIBLY ENGAGED IN ANY ILLEGAL ACTIVITIES WHATSOEVER. ALONG THESE LINES, YOU SHOULD IMMEDIATELY ASCERTAIN IF THE TAVERN IS POSSIBLY LICENSED AND IS CONFORMING WITH PRESENT LAWS AND REGULATIONS GOVERNING THEM. THIS IS FOR THE PURPOSE OF DEVELOPING INFORMATION WHICH CAN BE UTILIZED IN CONNECTION WITH INTERVIEWS TO DETERMINE WHEREABOUTS OF SUBJECT. KANSAS CITY HAS ADVISED THAT SUBJECT MAY UTILIZED THE ALBERT PEPPER STATIONERY COMPANY, SEVEN ONE TWO A SHENANDOAH STREET, ST. LOUIS, MISSOURI, AS A MEANS OF GETTING MONEY OUT OF PRISON, ALLEGEDLY PURCHASING STATIONERY. [redacted]

1 - MEMPHIS

REL: pbw (4)

SEE NOTE PAGE TWO....

66 MAY

167

TELETYPE TO SAC, ST. LOUIS

RE: MURKIN

[redacted]

[redacted] IF GRAND JURY IS NOT IN SESSION TO SUBPOENA RECORDS, YOU SHOULD INSURE THAT REVIEW OF RECORDS CAN BE ACCOMPLISHED WITH FULL SECURITY AND THE BUREAU'S INTEREST WILL BE FULLY PROTECTED.

ARMED AND DANGEROUS.

AIRMAIL COPY TO MEMPHIS.

NOTE: Kansas City has advised that Ray has utilized the Albert Pepper Stationery Company of St. Louis, Missouri, as a means of getting money out of the prison. [redacted] St. Louis also being instructed to fully cover the Tavern as owned and operated by subject's relatives and to ascertain if illegal activities involved and to establish the Tavern operating in compliance with regulations.

EXHIBIT 10

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
MAY 15 1968

TELETYPE

Mr. Tol
Mr. De
Mr. Mo
Mr. Ri
Mr. Cas
Mr. Cal
Mr. Cu
Mr. Fel
Mr. Gal
Mr. Roc
Mr. Sull
Mr. Tav
Mr. Trot
Tele. Roo
Miss Hol
Miss Gan

FBI WASH DC

FBI ST LOUIS

1126PM URGENT 5-14-68 JLS

TO DIRECTOR AND MEMPHIS
FROM ST. LOUIS
MURKIN - SUMMARY

RE [redacted] RAY AND JAMES LAOMA OWENS ENTER JEFFERSON-GRAVOIS BANK SL SUMMER SIXTYSEVEN.

CURSORY CHECK OF ALL CHECKING SAVINGS AND INSTALLMENT LOAN ACCOUN UNDER RAY NAME AND ALIASES AND JAMES LOAMA OWENS AT JEFFERSON-GRAVOIS BANK SL BY BANK [redacted] TODAY UNPRODUCTIVE. CHECK IN DEPTH OF ALL BANK RECORDS, INCLDUING SAFETY DEPOSIT BOXES, WILL BE MADE TOMORRO

RE EX CONS [redacted] AND [redacted]

[redacted] TODAY ADVISED HE AND [redacted] VISITED [redacted] LAST NIGHT. ALLEGED [redacted] TOLD OF FBI INTERVIEW. BOTH [redacted] AND [redacted] GAINED DEFINITE IMPRESSION [redacted] HAD HARBORED RAY AFTER ESCAPE, THO [redacted] DID NOT ADMIT TO SUCH IN SO MANY WORDS.

RE [redacted] [redacted] RRINTERVIEWED EXHAUSTIVELY. AGAIN DECLINED TO FURNISH SPECIFIC INFO RE DEEP SOUTH BANK ALLEGEDLY ROBBED BY UN-NAMED MAN AND RAY, JUNE JULY SIXTYSEVEN, ON GROUND WANTED FEW MORE DAYS TO DETERMINE IF SOMEONE ELSE AWARE OF SAME, SO HE WILL NOT BE FINGERED AS SOURCE. INSISTED SAW ACCOUNT OF ROBBERY IN CHICAGO

END PAGE ONE

REC-44 EX-115

MAY 16 1968

57 MAY 23 1968

SL 44-775

TRIBUNE, BUT NOW PLACES TIME AS MUCH AS MONTH FOLLOWING HIS RELEASE JUNE TWENTY THIRD. NOTE CG CHECK OF TRIBUNE WAS TO END JULY SIXTY-SEVEN. PLACES VISIT OF UN-NAMED MAN FEW DAYS OR WEEKS AFTER TRIBUNE ARTICLE. NOW CLAIMS MAN TOLD HIM ON FIRST VISIT RAY WAS ACCOMPLICE. PLACES SECOND VISIT WITHIN THREE OR FOUR WEEKS OF FIRST, INSTEAD OF SIX WEEKS AGO, AS ORIGINALLY STATED. NOW SAYS MAN JUST CAME FOR CUP OF COFFEE, SECOND VISIT, AND THAT RAY OR TWO HUNDRED FIFTY DOLLAR LOAN MADE ON PREVIOUS VISIT NOT MENTIONED. WHEN CONFRONTED WITH DISCREPANCIES STATED "AS I'VE TOLD YOU, MY BRAIN DON'T WORK RIGHT". STATED MAN MUST HAVE OBTAINED [redacted] ADDRESS FROM RAY AND RAY [redacted] NOW SAYS STATE LINE RIVER WAS MISSISSIPPI AND CITY WHERE BANK ROBBED ON EAST SIDE OF RIVER.

TOLD OF VISIT BY [redacted] WHO HE KNOWS AS [redacted] AND ANOTHER MAN LAST NIGHT. SAID [redacted] ASKED FOR FOOD MONEY. [redacted] GAVE HIM THREE OR FOUR DOLLARS. THEY TALKED OF RAY BEING RED HOT NOW AND BOTH MEN LEFT.

[redacted] EMPHATICALLY DENIED HARBORING RAY, OR KNOWING WHEREABOUTS SINCE ESCAPE. WHEN ADVISED OF REPORT RECEIVED RAY SEEN NEAR HIS RESIDENCE HE STATED IF HE WAS, HE NEVER CAME INSIDE OR CONTACTED HIM IN ANY WAY.

[redacted] CLOSED AS [redacted] UNRELIABLE. BEING CONSIDERED POSSIBLE HARBORER.

END PAGE TWO

SL 44-775

RE CAROL PEPPER SISTER.

CAROL PEPPER RE-INTERVIEWED TODAY. SPECIFICALLY DENIED CONTACT BY OR KNOWLEDGE OF RAY WHEREABOUT SINCE ESCAPE, OTHER THAN WHAT READ IN PAPERS AFTER START OF THIS CASE. SAYS BROTHER JERRY IS ONLY MEMBER OF FAMILY WHO HAS NOT MOVED SINCE ESCAPE, AND IS ONLY ONE WHOSE PRESENT MAILING ADDRESS KNOWN TO RAY. SAYS GRAPEVINE TAVERN BARELY MAKING ESPENSES AND MAY NOT CONTINUE.

RE JOHN LARRY RAY, BROTHER.

JOHN RAY ONLY PERSON OPERATING GRAPEVINE TAVERN TODAY AND COULD NOT BE INTERVIEWED BECAUSE OF CUSTOMERS.

RE JERRY RAYNES, FATHER.

SOURCES AND SPOT CHECK DISCLOSED NO SIGNIFICANT ACTIVITY.

FELLOW PRISONER INTERVIEWS AND LOOK ALIKE RESOLUTIONS CONTINUING.

SUBJECT ARMED AND DANGEROUS.

END

BGM

FBI WASH DC

FP

EXHIBIT 11

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

JUN 1 1968

TELETYPE

F

FBI WASH DC

FBI ST LOUIS

632PM URGENT 6-1-68 JLS

TO DIRECTOR AND MEMPHIS

MURKIN - SUMMARY

RE JERRY RAYNES, CAROL PEPPER, JOHN LARRY RAY.

SOURCES AND SPOT CHECKS DISCLOSED NO SIGNIFICANT ACTIVITY.

NO PERTINENT DEVELOPMENTS OTHER PHASES OF INVESTIGATION TODAY.

SUBJECT ARMED AND DANGEROUS.

END

GFH

FBI WASH DC

P

REC 11/11 4130

14 JUN 5 1968

EX 109

Deleted Copy Sent John Larry Ray
by Letter 7/25/68
Per FOIA Request 04

54 JUN 13 1968

CC - Tony

172

EXHIBIT 18

5/3/68

PLAINTEXT

TELETYPE URGENT

1 - Mr. McDonough

TO: SAC, ST. LOUIS (44-775)

FROM: DIRECTOR, FBI (44-38861)

EX-105 28.97

MURKIN

REURLET APRIL THIRTY LAST.

YOU ARE AUTHORIZED TO OBTAIN [redacted] INDICATED WHICH HAVE NOT BEEN PREVIOUSLY AUTHORIZED. [redacted]

ARMED AND DANGEROUS. AIR MAIL TO MEMPHIS.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
MAY 3 1968
TELETYPE

1 - MEMPHIS

EJM:cs
(4)

NOTE: In connection with investigation being conducted by St. Louis, that office requests authority to obtain [redacted] information on [redacted] Portageville, Mo. [redacted] had been described as close associate of subject Ray and allegedly hid Ray out at time he escaped from Missouri State Penitentiary in April, 1967.

MAY 3 1968
MAIL ROOM TELETYPE UNIT

NOTE CONTINUED PAGE TWO...

NOTE CONTINUED:

[redacted] St. Louis, Missouri. She is landlady of [redacted] former cell mate and alleged close friend of subject Ray.

[redacted] Jerry Raynes, Ray's father who resides at Center, Missouri.

St. Louis also requested authority to obtain similar data on [redacted] Albert and Carol Pepper (sister and brother-in-law of subject) and on the Grapevine Tavern owned by Carol Pepper but operated by John Larry Ray, subject's brother. This coverage has previously been authorized by Butel 4/30/68.

174

EXHIBIT 20

UNITED STATES GOVERNMENT

Memorandum

JUNE

TO: Mr. DeLoach

DATE: May 9, 1968

FROM: A. Rosen

SUBJECT: MURKIN

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Long
1 - Mr. Conrad
1 - Mr. Gale

PURPOSE: To recommend the installation of a technical surveillance (TESUR) on the telephones of Albert and Carol Pepper, St. Louis, Missouri, and the telephone listed to the Grapevine Tavern in St. Louis, Missouri, owned by Carol Pepper, subject's sister, and operated by John Larry Ray, subject's brother, and the installation of a microphone surveillance at the residences of Carol Pepper, and John Larry Ray, and at the Grapevine Tavern. These installations could assist in the early apprehension of the subject, which could possibly be instrumental in reducing the stresses and tension placed on our national security subsequent to the death of Martin Luther King, Jr.

BACKGROUND: We are presently conducting exhaustive and extensive investigation to determine the present whereabouts of the subject James Earl Ray, who is one of the TEN MOST WANTED FUGITIVES. Although many hundreds of interviews have been conducted and leads run out, we have not been able to locate the subject nor have we located any person who can furnish us any information as to the subject's present whereabouts. It has been determined that Carol Pepper, the sister of the subject, and John Larry Ray, the brother of the subject, are the closest relatives to him. Carol is married to Albert Pepper and they reside at 2025 Belleview, St. Louis, Missouri, telephone number 645-2948. John Larry Ray resides at 1900 A Cherokee, St. Louis, Missouri, no telephone listed. Carol presently owns the Grapevine Tavern, 1982 Arsenal, St. Louis, Missouri, telephone number PR 6-9417. This tavern is operated by John Larry Ray.

John Larry Ray has expressed a cooperative attitude; however, it is felt that he is not giving us complete and accurate information. Carol Pepper refuses to submit to interview and is not cooperative. It is felt that if the subject telephones or personally contacts any of the relatives, it will most likely be Carol Pepper or brother John Larry Ray.

Enclosure

REL:erge

MAY 31 1968

EX-102

REC 11

CONTINUED - OVER

11 MAY 22 1968

SPEC. MAIL RM

MAY 31 1968

175

Memorandum to Mr. DeLoach
RE: MURKIN

RECOMMENDATION: That a technical surveillance be installed on the telephones of Albert and Carol Pepper and the Grapevi[illegible] Tavern and a microphone surveillance be installed at the residences [illegible] Albert and Carol Pepper and John Larry Ray and at the Grapevine Tavern.

Attached for approval is a memorandum to the Attorney General requesting authority for this coverage. It is doubtful that A.G. will approve. This could be of great assistance.

OK

176

UNITED STATES GOVERNMENT

Memorandum

EXHIBIT 21

TO : Mr. Mohr

DATE: May 10, 1968

FROM : J. J. Casper

SUBJECT: MURKIN

JUNE

As shown in attached memorandum of May 9, 1968, from Mr. Rosen to Mr. DeLoach, consideration is given to microphone installations on certain properties of Albert and Carol Pepper. The proposal raises a question concerning the legality of any action taken against the subject of this case on the basis of information obtained from the microphones.

We believe these microphones can be installed and used without prejudicing the case against the subject. In a very recent decision of the United States District Court for the Southern District of New York, a listening device was installed on the premises of one Levine. Later, a subject named Granello, an associate of Levine, came up for trial and claimed that the listening device installed on Levine's premises, which was installed by trespass, was illegal as to him, Granello. It was not contended that any information obtained from the Levine microphone was used as evidence against Granello at trial either directly or as a lead. The court held that since Granello had no interest in the Levine premises, the monitor was not illegal as to him and he could not obtain a new trial or dismissal of the indictment. U.S. v. Granello, 280 F. Supp. 482 (1968).

Applied to instant case, this rule of law could work out in different ways. Assuming that the subject of this case is not on the premises to be surveilled by the means suggested, and has no possessory or other right in those premises, any information disclosed by the surveillance in some way, such as conversation among the Peppers, could be used to learn the whereabouts of the subject for purposes of arrest. The problem becomes somewhat more complicated, however, if the subject of this case made a telephone call to those premises and that telephone call were recorded and used as the basis for his apprehension. He then could claim that the surveillance violated his right of privacy in the telephone communication he made to that place, citing the Katz decision in the Supreme Court.

REC 11 44-38861-3763

31 MAY 22 1968

Enclosure

1 - [redacted]
1 - Mr. DeLoach
1 - Mr. Conrad
1 - Mr. Gale
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Long
DJD/pal
(6)

MAY 31 1968

"CONTINUED - OVER"

Memorandum J. J. Casper to Mr. Mohr
RE: MARKIN

The worst that could happen in either of the above circumstances, however, - assuming that we follow the precautionary measures listed below - is that we illegally learn where the subject is located and thus are able to arrest him on that knowledge. The rule that comes into play here, established in the last century by the Supreme Court in Ker v. Illinois, 30 U.S. 347 (1886), is that an illegal arrest is no bar to prosecution. Wong Sun v. U.S., 371 U.S. 471 (1963); U.S. v. Hoffman, 385 F2d 501 (1967); Keegan v. U.S., 385 F2d 260 (1967). A person may be arrested unlawfully and actually kidnapped into the court having jurisdiction of the criminal case, yet the court still retains jurisdiction to try the person for the offense. The court would not allow the prosecution to use as evidence any information obtained through the illegal surveillance but the illegal surveillance would not taint the use of any other evidence obtained either before or after and which was gotten in a legal manner. Nor, to repeat, would the illegality of the arrest alone, resulting from whereabouts disclosed by unlawful surveillance, prevent the court from trying the subject for the offense.

If the action being considered is taken, we strongly suggest three precautionary measure s, as follows:

(1) That all recordings be preserved intact. It may be necessary to disclose some of them to the court or even to the defense.

(2) That no use be made of any information obtained against anyone whatsoever or in any way whatsoever except for the single purpose of locating the subject in this case. As we well know by this time, evidence of the offense obtained in this manner is not admissible. It would not be admissible against the subject and it would not be admissible against the Peppers on a charge of harboring.

(3) Be aware that since this search and seizure is unconstitutional as to the Peppers, they have at least a theoretical cause of action for damages against those who installed the devices by trespass. Here again, however, if nothing learned by this surveillance is used against the Peppers in any way, their cause of action is diminished to the lowest possible degree, becoming that for a technical violation only rather than one of substantial harm to them. Moreover, in any such case the government of the United States should surely be willing to pick up the tab for any judgment had against those who installed the microphones.

RECOMMENDATION:

For information.

-2-

PLEASE SEE ATTACHED

EXHIBIT 22

ROUTE IN ENVELOPE

The Attorney General — JUNE — May 13, 1968

Director, FBI

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. McGowan
1 - Mr. Long

ASSASSINATION OF MARTIN LUTHER KING, JR.

James Earl Ray has been identified as the subject in the case involving the murder of Martin Luther King, Jr.

Extensive investigation has been conducted, and no information has been developed indicating his present whereabouts. In order to possibly assist in locating and apprehending the subject, it would be of extreme value to know if the subject has made any contact, either personal or by telephone, with his sister, Carol Pepper, as well as his brother, John Larry Ray.

In view of the above, it is requested that you authorize installation of a technical surveillance at the residence of Carol Pepper and at the Grapevine Tavern, owned by Carol Pepper and operated by John Larry Ray. It is also requested that you authorize installation of microphone surveillances on the residences of Carol Pepper and John Larry Ray, as well as the Grapevine Tavern.

These installations could assist in the early apprehension of the subject, which could possibly be instrumental in reducing the stresses and tension placed on our national security subsequent to the death of Martin Luther King, Jr.

RELivea
(7)

NOTE: See memorandum A. Rosen to Mr. DeLoach dated 5-9-68, caption "MURKIN," RELivea.

3509

11 MAY 17 1968

SENT FROM D. O.
TIME
DATE
BY

6 MAY 21 1968

179

C.A. 78-0249
EXHIBIT 11

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

Mr. Harold Weisberg
Route 12 - Old Receiver Road
Frederick, Maryland 21701

JUL 7

Dear Mr. Weisberg:

You appealed from the failure of the Federal Bureau of Investigation to respond within the time limits of the Act to your request for access to the worksheets utilized in processing its files on the assassination of President John F. Kennedy.

The F.B.I. has now released excised copies of the worksheets to you. As I explained to you in our recent telephone conversation, only those excisions were to be made from the worksheets which were necessary to preclude compromising material which had been excised from the underlying records themselves. Those excisions were of classified information, informant file numbers and material the release of which would reveal the identities of confidential sources, or disclose investigative techniques. 5 U.S.C. 552(b)(1), (2), (7)(D) and (7)(E). In addition, 5 U.S.C. 552(b)(7)(C) was cited by the Bureau to protect the identities of Special Agents, the names of authors of citizen complaint letters, and certain intimate and/or derogatory information about third parties. A member of my staff reviewed the worksheets prior to their release and determined that only those excisions had been made which were in fact necessary to be compatible with the excisions made from the actual records. Accordingly, I am affirming the initial action in this case. The classified materials have been referred to the Department Review Committee for determination whether they warrant continued classification under Executive Order 11652. You will be notified if the Committee's final decision results in the declassification of any information.

Finally, please be assured that my action on this appeal encompasses only the Kennedy assassination worksheets themselves and the excisions made from them. It does not purport to affirm

the excisions made from the underlying documents. As I stated in my letter to you of February 21, 1978, I am treating your letter of January 19 as a protective appeal encompassing any particular Kennedy assassination records which you may ultimately decide to appeal. As you already know, this Office would prefer to address any possible issues in the released Kennedy records in the context of specific exemptions and specific documents.

Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where the worksheets you seek are located.

Sincerely,

Benjamin R. Civiletti
Deputy Attorney General

By: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

cc: James H. Lesar, Esquire

C.A. 75-0249
exhibit 12A

Assassination of President John F. Kennedy

SECRET

Oswald was interviewed by Special Agents of this Bureau at Fort Worth, Texas, on June 26, 1962, at which time he was curt, sullen and arrogant. He declined to answer questions as to why he made the trip to Russia or his experiences while there. He indicated that he had been employed as a sheet metal worker in a television factory and admired the Russian form of Government. He claimed familiarity with the theories of Karl Marx, but denied being a member of the Communist Party or having renounced his United States citizenship. According to Oswald, the Soviets never attempted to obtain information from him nor did he make any deals with the Soviets in order to obtain permission to return to the United States. He disclaimed any affiliation with Soviet intelligence.

Upon reinterview on August 16, 1962, he acknowledged recently visiting the Soviet Embassy in Washington, D. C., but indicated his visit was solely to register his wife's current address as required by Soviet law. He again denied requesting revocation of his United States citizenship or allegiance to the Soviet Government.

According to information developed by this Bureau, Oswald was arrested on August 9, 1963, for disturbing the peace in New Orleans, Louisiana, as a result of distributing a pamphlet for an organization known as "Fair Play for Cuba." He pleaded guilty and elected to pay a fee of $10.

Oswald was interviewed on August 10, 1962, at which time he indicated he was unemployed and had been in New Orleans for approximately four months. While there he read literature distributed by the Fair Play for Cuba Committee which he considered not to be communist dominated or controlled. He corresponded with the Committee at 799 Broadway, New York City, and paid a $5.00 membership fee. He received a membership card in the New Orleans chapter dated June 6, 1963, signed A. J. Hidell.

The Fair Play for Cuba Committee is a pro-Castro organization founded during the Spring of 1960, whose function is to propagandize the Castro regime.

[redacted]

SECRET

4

182

C.A. 78-0249
EXHIBIT 12 A

Assassination of President John F. Kennedy

SECRET

[redacted]

Oswald during previous interviews with FBI Agents claimed to have married his wife, Marina Nikoleavna Oswald, nee Prusakova, at Minsk, Russia, on April 30, 1961. He likewise claimed an American passport, number D092526, issued at New Orleans, Louisiana, on June 25, 1963, for proposed travel of three months to one year as a tourist to England, France, Germany, Holland, USSR, Finland, Italy, and Poland. He indicated an intention to depart from New Orleans during the latter part of 1963.

Additional information developed by this Bureau indicated one Lee Oswald during September, 1962, was a subscriber to "The Worker" an east coast communist newspaper.

SECRET

C.A. 78-0249
EXHIBIT 12B

[From a 5-page FBI r[illegible] dated November 23, 1963 [illegible] Thi[illegible] copy sent from Hoove[illegible] o Rowley (Secret Service) on N[illegible] given Secret Service control number 104, and released by the Secret Service, without deletions, sometime before March 7, 1977. PLH]

Assassination of President John F. Kennedy

Oswald was interviewed by Special Agents of this Bureau at Fort Worth, Texas, on June 26, 1962, at which time he was curt, sullen and arrogant. He declined to answer questions as to why he made the trip to Russia or his experiences while there. He indicated that he had been employed as a sheet metal worker in a television factory and admired the Russian form of Government. He claimed familiarity with the theories of Karl Marx, but denied being a member of the Communist Party or having renounced his United States citizenship. According to Oswald, the Soviets never attempted to obtain information from him nor did he make any deals with the Soviets in order to obtain permission to return to the United States. He disclaimed any affiliation with Soviet intelligence.

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The Fair Play for Cuba Committee is a pro-Castro organization founded during the Spring of 1960, whose function is to propagandize the Castro regime.

The Central Intelligence Agency advised that on October 1, 1963, an extremely sensitive source had reported that an individual identified himself as Lee Oswald, who contacted the Soviet Embassy in Mexico City

Inquiries as to any messages. Special Agents of this Bureau, who have conversed with Oswald in Dallas, Texas, have observed photographs of the individual referred to above and have listened to a recording of his voice. These Special Agents are of the opinion that the above-referred-to individual was not Lee Harvey Oswald.

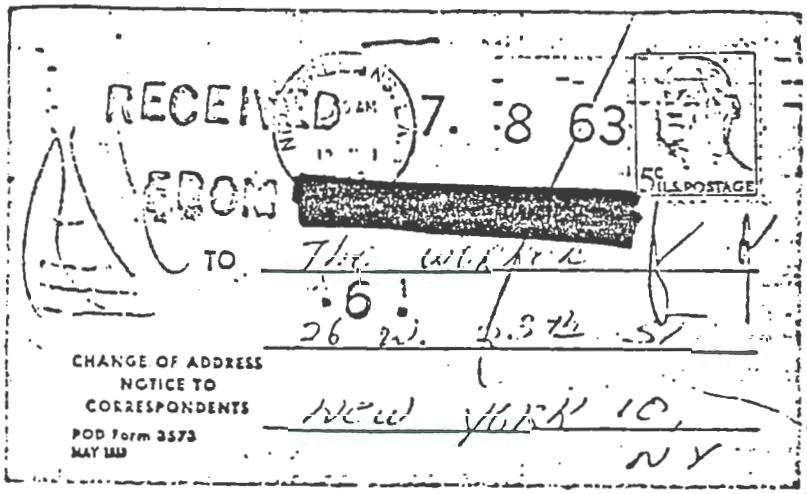
A highly confidential source of this Bureau advised that an individual identifying himself as Oswald on November 18, 1963, was in contact with the Soviet Embassy in Washington, D. C., at which time he referred to a recent meeting with Comrade Kostin at the Soviet Embassy in Mexico City. This individual indicated that he originally intended to visit the Embassy in Havana, Cuba, where he would have had time to complete his business, but that he had been unable to do so. He furnished his address as Box 625, Dallas, Texas, and claimed to be the husband of Marina Nikolaevna Oswald, a Soviet citizen and father of Audrey Marina Oswald, born October 20, 1963, at Dallas, Texas.

Oswald during previous interviews with FBI Agents claimed to have married his wife, Marina Nikolaevna Oswald, nee Prusckova, at Minsk, Russia, on April 30, 1961. He likewise claimed an American passport, number D002528, issued at New Orleans, Louisiana, on June 25, 1963, for proposed travel of three months to one year as a tourist to England, France, Germany, Holland, USSR, Finland, Italy, and Poland. He indicated an intention to depart from New Orleans during the latter part of 1963.

Additional information developed by this Bureau indicated one Lee Oswald during September, 1962, was a subscriber to "The Worker" an east coast communist newspaper.

PLH ITEM # 464

C.A. 78-0249
EXHIBIT 13A



[The deleted information is

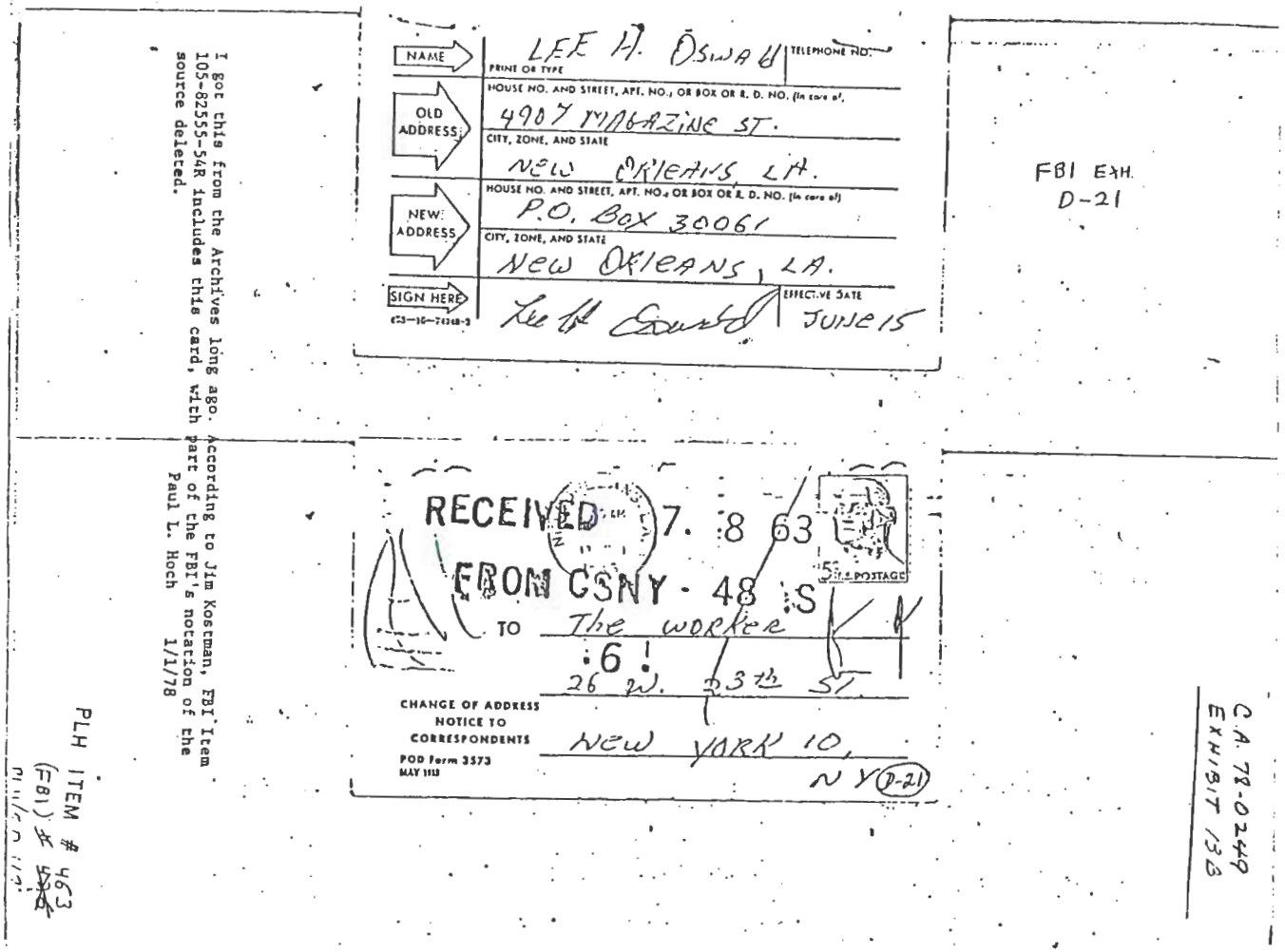
CSNY - 48 .S

I got this from the Archives years ago. See PLH/AIB #463.]

PLH

54(R) PLH ITEM # 505

186



NAME (PRINT OR TYPE): LEE H. OSWALD — TELEPHONE NO.

OLD ADDRESS — HOUSE NO. AND STREET, APT. NO., OR BOX OR R. D. NO.: 4907 MAGAZINE ST.

CITY, ZONE, AND STATE: NEW ORLEANS LA.

NEW ADDRESS — HOUSE NO. AND STREET, APT. NO., OR BOX OR R. D. NO.: P.O. BOX 30061

CITY, ZONE, AND STATE: NEW ORLEANS, LA.

SIGN HERE: Lee H Oswald — EFFECTIVE DATE: JUNE 15

CHANGE OF ADDRESS NOTICE TO CORRESPONDENTS
POD Form 3573
MAY 1963

RECEIVED 7. 8 63
FROM CSNY - 48 S
TO The worker
26 W. 37th ST
NEW YORK 10,
N Y

5¢ POSTAGE

I got this from the Archives long ago. According to Jim Kostman, FBI Item 105-82555-54R includes this card, with part of the FBI's notation of the source deleted.

Paul L. Hoch 1/1/78

PLH ITEM # 463
(FBI) # 5[illegible]
01/1/[illegible]

FBI EXH. D-21

C.A. 78-0249
EXHIBIT 138

187

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

AFFIDAVIT

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

1. In my affidavit of July 10, 1978, I state that many of the claims to exemptions in the worksheets in question are spurious, are based on the underlying records where they are not warranted, and that the claim to an alleged need to withhold the names of FBI Special Agents (SAs) to protect them from harassment and in order not to impair their efficiency is a knowing and deliberate falsehood, particularly for anyone who reviewed the underlying records and alleged first-person knowledge.

2. Since July 10 I have had an opportunity to review claims to exemptions noted on the worksheets and to compare them with underlying records.

3. I find that the most common claim to "national security" under (b)(1) is in fact for records clearly identifiable with a matter that is within the public domain, that was all over the newspapers, radio and television newscasts in November 1976, and was published and public knowledge several years earlier.

4. I find that under techniques and methods that have to be "protected" one claim is to the oldest known in the intelligence business, going back to Joshua's blowing of his trumpet at the walls of Jericho: pretext.

5. I find that on one occasion where techniques and methods were not excised in the underlying records FBIHQ directed the Dallas Field Office to take the "con man" approach to Marina Oswald in order to set her up for a direct threat to deport her to get her to "cooperate." Alternatively, for "cooperation" she was to be

enriched and granted citizenship, as she was enriched and was granted citizenship when she did "cooperate." Here techniques and methods were not for either a law enforcement or a national security purpose, neither of which is alleged by the respondent in any event.

6. I find that the FBI has disclosed the names, addresses and home phone numbers of each and every SA assigned to the Dallas Field Office at the time in question. If there were, as long experience shows there is not, any prospect of such harassment, then contrary to its representations to this Court the FBIHQ is guaranteeing it by making these identical records available to anyone who wants to use its public reading room.

7. The names of all these agents are included in three separate released records, attached as Exhibits 1, 2 and 3. Exhibit 1 breaks the agents on duty on the day the President was killed into two listings, those assigned to the Dallas headquarters and those assigned to its residencies. Exhibit 2 specifies whether these agents did or did not see the parade that day. Exhibit 3 provides their addresses and phone numbers.

8. These records reached me two months after the affidavit I believe was falsely sworn was executed.

9. The fact is that in the processing of most of the underlying records the names of agents were not withheld. At a time that appears to coincide with a renewed FBI effort against FOIA with the Congress, those who executed the work-sheets and processed the records began to excise virtually all FBI names, willy-nilly. This includes the names of the agents who executed the worksheets. As a result of this withholding, on appeal I have not been able to specify the name of the agent who recorded his entries both upside down and backward. I submitted the appeal by sending a copy of one such set of his worksheets. Even the pagination of his worksheets is backward. How this FBI SA knew in advance exactly how many worksheet pages would be required for each volume remains a mystery. On his worksheets serials with lowest numbers are on the worksheets with the highest numbers and it all comes out to the even worksheet page in each and every instance. One can conjecture a different kind of harassment and a rewriting of the worksheets after they were completed to harass me and for other purposes I do not believe to be within the purposes of the Act.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 19TH day of July 1978 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 7-1-82

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

C.A. 78-0249
EXHIBIT 1

HEADQUARTERS AGENTS				RESIDENT AGENTS			
Abernathy	✓	Hosty	✓	Albert	✓	Horton, D.	✓
Alcon	✓	Howe	✓	Bremer	✓	Jenkins	✓
Anderson	✓	Kuykendall	✓	Brinkley	✓	Jennings	✓
Anderton	✓	Lee	✓	Brown, A.	✓	Kreutzer	✓
Barrett	✓	Lish	✓	Carr	✓	Larson	✓
Bookhout	✓	Loeffler	✓	Carter	✓	Lester	✓
Brown, C.	✓	Mosley	✓	Cavanaugh	✓	Lose	✓
Brown, H.	✓	Newsom	✓	Cesare	✓	Mabrey	✓
Clark	✓	Odum	✓	Copeland	✓	Medland	✓
Clements	✓	Perryman	✓	Cotton	✓	Manning	✓
Drain	✓	Pinkston	✓	Davis	✓	Myers	✓
Echenrode	✓	Robertson	✓	Dorris	✓	O'Malley	✓
Ellington	✓	Shanklin	✓	Drake	✓	Pfleuter	✓
Gemberling	✓	Swinford	✓	Elliott	✓	Propst	✓
Griffin	✓	Thompson	✓	French	✓	Rabideau	✓
Hall	✓	Underhill	✓	Geiger	✓	Reddhew	✓
Hanley	✓	Williams	✓	Grandy	✓	Schott	✓
Harrison, R.	✓	Wilson	✓	Haley	✓	Stephens	✓
Heitman	✓	Wulff	✓	Harrison, D.	✓	Stevens	✓
Horton, E.	✓						
				White-(F.W.)	✓		
11-22-63							

C.A. 78-0249
EXHIBIT 2

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, DALLAS (89-43) DATE: 1/4/67

FROM : SA MANNING C. CLEMENTS

SUBJECT: ASSASSINATION OF PRESIDENT
JOHN FITZGERALD KENNEDY
DALLAS, TEXAS, 11/22/63
MISCELLANEOUS - INFORMATION CONCERNING

Re Bureau Radiogram, 12/22/66.

Attached are the following:

Xerox copy of page 1, Dallas Personnel as of 11/22/63;
" " " #1 Register for 11/22/63
Document showing attendance, AL, etc., 11/22/63

Attached are memoranda from SA's assigned to Dallas in headquarters city, as of 11/22/63, plus memos from RA's who were in Dallas on that day. Where no memo appears, a footnote explains basis therefore.

Name	Saw Parade	Did Not
ABERNATHY, JOE B.		X
ALMON, JOHN V.		X
ANDERSON, ROBERT J. (S.F.))		X
ANDERTON, JAMES W.	X	
BARRETT, ROBERT M. (BH)		X
BOOKHOUT, JAMES W.	X	
BROWN, CHARLES T., JR.		X
BROWN, W. HARLAN (1)		
CLEMENTS, MANNING C.	X	
DRAIN, VINCENT E.		X
ECKENRODE, RAYMOND C.		X
ELLINGTON, ALFRED C.	X	
GEMBERLING, ROBERT P.	X	
GRIFFIN, WILL HAYDEN		X
HALL, C. RAY (MI)		X
HANLEY, JOSEPH J.		X
HARRISON, RICHARD E. (2)		

89-43-5613

FILED
DALLAS

MCC:beg
(1)

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

DL 89-43

Name	Saw Parade	Did Not
HEITMAN, WALLACE R.		X
HOLTON, EMORY E.		X
HOSTY, JAMES P. (KC)	X	
KUYKENDALL, EDWIN D.		X
LEE, IVAN D. (CO) (3)		X
LISH, ROBERT C.		X
NEELEY, ALFRED D.		X
NEWSOM, MILTON D.	X	
ODUM, BARDWELL D.		X
PERRYMAN, CURTIN L. (4)		X
PINKSTON, NAT A.	X	
ROBERTSON, LEO L. (5)		X
SWINFORD, JAMES W. (NYC)	X	
THOMPSON, GASTON C.		X
UNDERHILL, CARL E. (AT)		X
WILLIAMS, J. DOYLE		X
WILSON, GARY S. (JK)		X
WULFF, PAUL E.	X	
HALEY, EARLE (Ft. Worth)		X
O'MALEY, THOMAS W. (Amarillo)	X	
SHANKLIN, J. GORDON		X
CLARK, KYLE G. (CG)	X	
LOEFFLER, JOSEPH J.		X
HOWE, KENNETH C. (SE)		X

Footenote: (1) Retired, 3142 Satsuma, CH 7-7816; employed Safeway Stores, 9111 Garland Road, DA 7-8211.

(2) Resigned, 9016 Hackney Lane, DI 8-6895; Attorney, 1025 Elm, RI 1-6881.

(3) Assigned Dallas 11/22/63, but in-service Washington, D.C. to 9:00 PM.

(4) Assigned Dallas, 11/22/63, but on Special out of Dallas to 8:45 PM.

(5) Assigned Dallas, 11/22/63, but on road trip out of Dallas.

C.A. 78-0249
EXHIBIT 3

MEMO, ALL EMPLOYEES November 22, 1963

EMPLOYEES, DALLAS DIVISION

OFFICE: 12th Floor, 1114 Commerce St., Dallas, Texas 75202 TEL: RI 1-1211

NAME	ADDRESS	TELEPHONE
SUPERVISORY STAFF:		
Shanklin, J. Gordon, SAC	6419 Preston Rd., Apt. 8	LA 1-5831
Clark, Kyle G., ASAC	6250 Kenwood	TA 7-4754
Loeffler, Joseph J. #1 Supv.	10433 Sinclair	DA 7-7561
Howe, Kenneth C. #2 Supv.	3816 Bryn Mawr	EM 8-5969
HEADQUARTERS AGENTS:		
2. Abernathy, Joe B.	4150 Willow Grove Rd.	FL 2-5760
4. Almon, John V.	11360 Gatewood	DA 8-1133
3. Anderson, Robert J.	1734 Loree	DA 7-5317
4. Anderton, James W.	8871 Liptonshire Dr.	DI 8-4215
1. Barrett, Robert M.	3314 San Marcus St.	BR 9-5887
2. Bookhout, James W.	7048 Cornelia Lane	TA 3-5846
1. Bray, Allan D. (On transfer in from New Agents' Training)		
4. Brown, Charles T., Jr.	916 Beechwood Dr. RICHARDSON	AD 5-3016
4. Brown, W. Harlan	3142 Satsuma Dr.	CH 7-7816
4. Butler, Robert P (On transfer in from Denver) 8660 Lyndon [illegible]		AD 7-[illegible]
4. Clements, Manning C.	3736 Glencoe, Apt. 104	TA 4-4354
1. Drain, Vincent E. J.	5031 Cedar Springs, Apt. 101	LA 6-6210
3. Eckenrode, Raymond C.	11027 Genetta	BR 9-7135
3. Ellington, Alfred C.	613 Aqua Drive	DA 7-0058
3. Gemberling, Robt. P.	7106 Clemson Dr.	DI 8-3906
3. Griffin, Will Hayden	3228 Perryton	FE 7-7440
2. Hall, C. Ray	6542 Ellsworth	TA 3-5616
2. Hanley, Joseph J.	2014 W. Five Mile Parkway	FE 9-9896
2. Harrison, Richard E.	9016 Hackney Lane	DI 8-6895
4. Heitman, Wallace R.	1110 Elizabeth Lane, RICHARDSON	AD 5-0926
3. Horton, Emory E.	807 Blue Lake Circle, RICHARDSON	AD 5-8662
4. Hosty, James P., Jr.	11018 Genetta	BR 9-4084
4. Kuykendall, Edwin D.	7428 Wentwood Dr.	EM 1-5803
1. Lee, Ivan D.	9640 Livenshire Dr.	DI 8-0373
3. Lish, Robert C.	6930 Kenwood	TA 4-3870
4. Neeley, Alfred D.	7403 Centenary	EM 1-4574
2. Newsom, Milton L.	605 Greenleaf Dr., RICHARDSON	AD 5-6492
4. Odum, Bardwell D.	8727 Fawn Dr.	DI 8-3165
2. Perryman, Curtis L.	8118 Garland Rd.	DA 7-1393
2. Pinkston, Nat A.	2106 Van Cleave	FR 1-8325
1. Robertson, Leo L.	3533 Greenbrier Dr.	EM 8-5780
1. Swinford, James W.	7216 Gaston Ave., Apt. 123	DA 7-4491
3. Thompson, Gaston C.	6312 Overlook Dr.	EV 1-2011
2. Underhill, Carl E[illegible]	3711 Cragmont	LA 8-9876
3. Williams, J. Doyle	3307 Lancelot Dr. 89-03 [illegible]612)	FL 2-6472
1. Wilson, Gary S.	3309 Santa Teresa	BR 9-1509
3. Wulff, Paul E.	4159 Willow Grove Rd.	FL 1-0929

Number by name indicates supervisory desk to which Agent assigned.

All addresses at Dallas unless name of city set out in address.

[illegible]

FILED: AUGUST 16, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

CLARENCE M. KELLEY, et al.,

Defendants

Civil Action No. 78-0249

NOTICE TO TAKE DEPOSITIONS

TO: Mr. Emory J. Bailey
Attorney
U.S. Department of Justice
10th & Pennsylvania, N.W.
Washington, D.C. 20530

Please take notice that plaintiff will take the depositions of Mr. Allen H. McCreight and Mr. Horace P. Beckwith on Wednesday, August 30, 1978, at the hour of 10:00 a.m., at the offices of Mr. James H. Lesar, 910 Sixteenth Street, N.W., Suite 600, Washington, D.C. 20006 for use as evidence in the above-styled cause. Said depositions will be with reference to the issues raised by plaintiff's Freedom of Information Act requests which are the subject of this lawsuit, and will be upon oral examination before a Notary Public for the District of Columbia, and will continue from day to day until completed.

Messrs. McCreight and Beckwith are required to bring the following records with them: (1) any list(s) of requests for copies of FBI records pertaining to the assassination of President John F. Kennedy; (2) all memoranda, correspondence, or other records pertaining to the handling of the Freedom of Information

Act request by Mr. Harold Weisberg which is the subject of this lawsuit; and (3) all memoranda, correspondence, or other written records pertaining to a plan to deposit copies of the FBI's JFK assassination records at locations such as the Library of Congress.

Respectfully submitted,

James H. Lesar

JAMES HIRAM LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice to Take Depositions was mailed this 16th day of August, 1978 to Mr. Emory J. Bailey, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lesar

JAMES H. LESAR

CIVIL SUBPOENA

FBI-MI—10-1-75-20M-4437

United States District Court

for the

District of Columbia

Harold Weisberg
Plaintiff.

vs.

CIVIL ACTION No. 78-0249

Clarence M. Kelley, et al.
Defendant.

To: Mr. Horace P. Beckwith

YOU ARE HEREBY COMMANDED to appear in ~~(this court)~~ (the office of Mr. James H. Lesar, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006)

to give testimony in the above-entitled cause on the 30th day of August, 1978,

at 10:00 o'clock a. m. (and bring with you) (1) any list(s) of requests for copies of FBI records pertaining to the assassination of President John F. Kennedy; (2) all memoranda, correspondence, or other records pertaining to the handling of the Freedom of Information Act request by Mr. Harold Weisberg which is the subject of this lawsuit; and (3) all memoranda, correspondence, or other written records pertaining to a plan to deposit copies of the FBI's JFK assassination records at locations such as the Library of Congress.

and do not depart without leave.

JAMES F. DAVEY, *Clerk*

By Robert L. Line
Deputy Clerk.

Date August 16, 1978

James H. Lesar
Attorney for { *Plaintiff.* / *Defendant.* }

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h____ and tendering to h____ the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, 19 ____, at _____

Dated _____

_____

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 ____

_____

NOTE.—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

197

CIVIL SUBPOENA

FPI-MI—10-1-73-20M-4437

United States District Court

for the

District of Columbia

Harold Weisberg
Plaintiff.

vs.

CIVIL ACTION No. 78-0249

Clarence M. Kelley, et al
Defendants

To: Mr. Allen H. McCreight

YOU ARE HEREBY COMMANDED to appear in ~~(this court)~~ (the office of Mr. James H. Lesar, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006)

to give testimony in the above-entitled cause on the 30th day of August, 19 78,

at 10:00 o'clock a. m. (and bring with you) (1) any list(s) of requests for copies of FBI records pertaining to the assassination of President John F. Kennedy; (2) all memoranda, correspondence, or other records pertaining to the handling of the Freedom of Information Act request by Mr. Harold Weisberg which is the subject of this lawsuit; and (3) all memoranda, correspondence, or other written records pertaining to a plan to deposit copies of the FBI's JFK assassination records at locations such as the Library of Congress.

and do not depart without leave.

JAMES F. DAVEY, *Clerk*

By Robert L. Lesar
Deputy Clerk.

Date August 16, 1978

James H. Lesar

Attorney for { *Plaintiff.* ~~*Defendant.*~~

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h____ and tendering to h____ the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, 19 ____, at _____

Dated _____

_____

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 ____

_____

NOTE.—Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.

198

FILED: AUGUST 29, 1978

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 78-0249

CLARENCE M. KELLEY, ET AL.,

Defendants.

DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

Defendants, by and through counsel, hereby move the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for a protective order preventing plaintiff from deposing Allen H. McCreight and Horace P. Beckwith, employees of the Department of Justice (Federal Bureau of Investigation), on August 30, 1978, at 10:00 a.m. The basis for defendants' motion is that both plaintiff and defendants have filed motions for summary judgment and oppositions thereto. Additionally, defendants filed along with its motion for summary judgment, a motion to dismiss. These motions are pending before the Court and should be disposed of before any discovery proceedings are conducted. The eventual determination of these motions may eliminate any need for discovery.

Furthermore, plaintiff seeks the production of documents which are the subject matter of the litigation and thus, are not within the scope of proper discovery.

In support of this motion, the Court is respectfully referred to defendants' Memorandum in Support of their Motion for a Protective Order.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justice
10th & Pennsylvania, Ave., N.W.
Washington, D.C. 20530
Telephone 739-3423

Attorneys for Defendants.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 78-0249

CLARENCE M. KELLEY, ET AL.,

Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT
OF MOTION FOR A PROTECTIVE ORDER

Statement

Plaintiff brought this action pursuant to the Freedom of Information Act (5 U.S.C. § 552 - sometimes hereinafter referred to as FOIA), seeking the disclosure of the following documents regarding the Kennedy assassination:

> A copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept, as in the Office of Origin or other points as well as in Washington. If there are other records that indicate the content of these released records I am especially interested in them because they can be a guide to content. If there is a separate list of records not yet released I ask for a copy of it also or if an inventory was made, a copy of the inventory.

Plaintiff requested this data by letter dated December 6, 1977, addressed to Allen H. McCreight, Chief, Freedom of Information/Privacy Acts Branch, Records Management Division.

Plaintiff was notified by letter dated February 21, 1978, that release of the worksheets[1/] was being discussed. Additionally, by letter dated March 6, 1978, plaintiff's request was acknowledged.

On April 12, 1978, 2,581 pages of worksheets were released to plaintiff pursuant to his request of December 6,

1/ It was determined that plaintiff was requesting the inventory worksheets since he had previously mentioned them and the information on the worksheets appeared to conform with the information requested by plaintiff.

1977. Defendants contend that portions of the worksheets are exempt from mandatory disclosure under the FOIA. The exemptions utilized by defendants in deleting data are as follows: Title 5, United States Code, Section 552(b)(1), (b)(2), (b)(7)(C), (b)(7)(D), and (b)(7)(E).

Plaintiff served his motion for summary judgment on March 31, 1978, and defendants served their opposition to said motion on April 18, 1978. Subsequently, on July 3, 1978, defendants served plaintiff with their motion to dismiss or in the alternative motion for summary judgment and plaintiff served his opposition to said motion on August 1, 1978.

Now, plaintiff seeks to depose Allen H. McCreight and Horace P. Beckwith.[2/]

ARGUMENT

I. The Deposing Of Defendants' Employees Is Inappropriate At This Time.

Plaintiff seeks to depose two employees of defendant United States Department of Justice. Defendants assert that if discovery is proper this is not the appropriate time. Dispositive motions are now pending before the Court and these motions should be disposed of prior to any discovery.[3/] In Klein v. Lionel Corporation, 18 F.R.D. 184 (D. Del. 1955), the Court stayed the taking of depositions pending the disposition of a motion for summary judgment and explained that:

2/ A copy of plaintiff's "Notice To Take Depositions" is attached hereto as Exhibit 1.

3/ It should be noted that plaintiff's complaint was served on February 13, 1978. Thus, plaintiff had ample opportunity to depose defendants prior to the filing of dispositive motions.

> There could be no reason to undergo the expense and inconvenience of long depositions . . . until the disposition of the defendants' motions for summary judgment. . . .

See also, Allied Poultry Processors Company v. Polin, 134 F. Supp. 278 (D. Del. 1955).

The taking of depositions at this stage in the litigation would indeed be burdensome and possibly a waste of resources. The Court should have the opportunity to consider the motions before it since the decision of the Court could render discovery unnecessary.

The plaintiff's case will not be prejudiced if the taking of depositions is stayed pending the resolution of the motions presently before the Court.

II. Plaintiff's Request For The Production Of Documents Is Not Proper Discovery.

Even if the Court should decide that the depositions should be taken, the documents that plaintiff requests defendants to produce are not within the scope of proper discovery.

Defendants have given plaintiff all the data identifiable with his request with the exception of that data properly withheld pursuant to exemptions under the Freedom of Information Act. Thus, any data not already in the hands of plaintiff is data which defendants contend is exempt from disclosure and as a result is the subject matter of the complaint.

If defendants were to produce the requested data this in effect is a granting of the full, complete and final relief available to complainant under the Freedom of Information Act. The right of the Government to adjudicate its claim of exemptions would be lost, probably irreparably.

See Theriault v. United States, 504 F.2d 390 (9th Cir. 1974); Janner Motor Livery Ltd. v. Avis, Inc., 316 F.2d 804 (9th Cir. 1963), cert. denied, 375 U.S. 821 (1963).

The Government is entitled to due and regular process in the pleading, hearing, consideration and disposition of litigated claims. Martin v. Neuschel, 396 F.2d 759 (3rd Cir. 1968). Thus, any production of the exempt data would terminate the action at the discovery stage, thus depriving the Government of its right to thoroughly litigate the matter.

CONCLUSION

For the foregoing reasons, defendants Motion for a Protective Order should be granted.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justice
10th & Pennsylvania, Ave., N.W.
Washington, D.C. 20530
Telephone 739-3423

Attorneys for Defendants.

FILED: OCTOBER 4, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

OCT 4 1978

JAMES F. DAVEY, Clerk

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 78-0249

CLARENCE M. KELLEY, et al.,

Defendants

NOTICE TO TAKE DEPOSITIONS

TO: Mr. Emory J. Bailey
Attorney
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Please take notice that plaintiff will take the depositions of Mr. Allen H. McCreight and Mr. Horace P. Beckwith on Tuesday, October 31, 1978, at the hour of 10:00 a.m., at the offices of Mr. James H. Lesar, 910 Sixteenth Street, N.W., Suite 600, Washington, D.C. 20006 for use as evidence in the above-styled cause. Said depositions will be with reference to the issues raised by plaintiff's Freedom of Information Act requests which are the subject of this lawsuit, and will be upon oral examination before a Notary Public for the District of Columbia, and will continue from day to day until completed.

Respectfully submitted,

James H. Lesar

JAMES H. LESAR
910 Sixteenth Street, N.W.
Washington, D.C. 20006
Phone: 223-5587

Attorney for Plaintiff

205

10/16/78

FILED: OCTOBER 16, 1978

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff,	
v.	Civil Action No. 78-0249
CLARENCE M. KELLEY, ET AL., Defendants.	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER

Defendants, by and through counsel, hereby move the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for a protective order preventing plaintiff from deposing Allen H. McCreight and Horace P. Beckwith, employees of the Department of Justice (Federal Bureau of Investigation), on October 31, 1978, at 10:00 a.m.[1/] The basis for defendants' motion is that both plaintiff and defendants have filed motions for summary judgment and oppositions thereto. Additionally, defendants filed along with its motion for summary judgment, a motion to dismiss. These motions are pending before the Court and should be disposed of before any discovery proceedings are conducted. The eventual determination of these motions may eliminate any need for discovery.

1/ Plaintiff originally sought to depose Messrs. McCreight and Beckwith on August 30, 1978, and defendants thereafter moved for a protective order, but no decision has been rendered on that motion.

206

In support of this motion, the Court is respectfully referred to defendants' Memorandum in Support of their Motion for a Protective Order.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY

Attorneys, Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D. C. 20530
Telephone 724-7235

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,	]	
	]	
Plaintiff,	]	
	]	
	]	Civil Action No. 78-0249
v.	]	
	]	
CLARENCE M. KELLEY, ET AL.,	]	
	]	
Defendants.	]	
	]	
	]	

DEFENDANTS' MEMORANDUM IN SUPPORT
OF MOTION FOR A PROTECTIVE ORDER

Statement

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> A copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept, as in the Office of Origin or other points as well as in Washington. If there are other records that indicate the content of these released records I am especially interested in them because they can be a guide to content. If there is a separate list of records not yet released I ask for a copy of it also or if an inventory was made, a copy of the inventory.

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1/ It was determined that plaintiff was requesting the inventory worksheets since he had previously mentioned them and the information on the worksheets appeared to conform with the information requested by plaintiff.

Additionally, by letter dated March 6, 1978, plaintiff's request was acknowledged.

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Plaintiff served his motion for summary judgment on March 31, 1978, and defendants served their opposition to said motion on April 18, 1978. Subsequently, on July 3, 1978, defendants served plaintiff with their motion to dismiss or in the alternative motion for summary judgment and plaintiff served his opposition to said motion on August 1, 1978.

Now, plaintiff seeks to depose Allen H. McCreight and Horace P. Beckwith.[2/]

ARGUMENT

I. The Deposing Of Defendants' Employees Is Inappropriate At This Time.

Plaintiff seeks to depose two employees of defendant United States Department of Justice. Defendants assert that if discovery is proper this is not the appropriate time. Dispositive motions are now pending before the Court

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2/ A copy of plaintiff's "Notice To Take Depositions" is attached hereto as Exhibit 1.

and these motions should be disposed of prior to any discovery.[3/] In Klein v. Lionel Corporation, 18 F.R.D. 184 (D. Del. 1955), the Court stayed the taking of depositions pending the disposition of a motion for summary judgment and explained that:

> There could be no reason to undergo the expense and inconvenience of long depositions ... until the disposition of the defendants' motions for summary judgment....

See also, Allied Poultry Processors Company v. Polin, 134 F. Supp. 278 (D. Del. 1955).

The taking of depositions at this stage in the litigation would indeed be burdensome and possibly a waste of resources. The Court should have the opportunity to consider the motions before it since the decision of the Court could render discovery unnecessary.

The plaintiff's case will not be prejudiced if the taking of depositions is stayed pending the resolution of the motions presently before the Court.

3/ It should be noted that plaintiff's complaint was served on February 13, 1978. Assuming arguendo that any discovery is appropriate in this case, plaintiff had ample opportunity to seek depositions prior to the filing of dispositive motions.

CONCLUSION

For the foregoing reasons, defendants' Motion for a Protective Order should be granted and the depositions of Messrs. McCreight and Beckwith not be taken.

BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

EARL J. SILBERT
United States Attorney

LYNNE K. ZUSMAN

EMORY J. BAILEY
Attorneys for Defendants
Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D. C. 20530
Telephone 724-7235

FILED: OCTOBER 23, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

OPPOSITION TO DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER

This is a Freedom of Information Act lawsuit in which plaintiff seeks disclosure of:

1. All worksheets related to the processing of records released to the public on December 7, 1977 and January 18, 1978 from the FBI's Central Headquarters' files on the assassination of President John F. Kennedy;

2. All other records related to the processing, review, and release of these records;

3. Any other records which indicated the content of FBI Headquarters records on the assassination of President Kennedy; and,

4. Any separate list or inventory of FBI records on President Kennedy's assassination not yet released. (Complaint, ¶¶6-7)

It is apparent from the pleadings in this case, particularly plaintiff's opposition to defendants' motion for summary judgment, that there are material facts in dispute which preclude an award of summary judgment at the present time.

On August 16, 1978, plaintiff undertook to initiate discovery with respect to these issues by noticing the depositions of Mr. Allan H. McCreight and Mr. Horace P. Beckwith, employees of the

the Federal Bureau of Investigations. Mr. McCreight is presently Chief of the Freedom of Information/Privacy Acts Branch of the FBI's Records Management Division and had a personal involvement in the creation of some of the records sought by this lawsuit. Mr. Beckwith, reportedly a unindicted co-conspirator in some of the FBI's illegal activities, has been used as an affiant in this case.

The day before these depositions were to be taken plaintiff's counsel called defendants' attorney. Plaintiff's counsel was informed that Messrs. Beckwith and McCreight would not appear for the depositions scheduled for the next day and that the government was filing a motion to quash the depositions. Plaintiff's counsel immediately cancelled the depositions because his client, who lives at Frederick, Maryland and who for health reasons only travels to Washington, D.C. by bus, can ill-afford to spend either time or money on any wasted endeavors.

On October 4, 1978, plaintiff again noted the depositions of Messrs. Beckwith and McCreight. Defendants have once again moved for a protective order, asserting that depositions of their employees is not appropriate at this time because dispositive motions are presently before the Court. In addition, defendants assert, without any evidentiary support whatsoever, that taking depositions at this stage of the litigation "would indeed be burdensome and possibly a waste of resources."

Rule 30 of the Federal Rules of Civil Procedure provides:

> (a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including any party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant . . ..

Rule 30 is very clear: except under circumstances which do not now obtain in this case, depositions may be taken at any time without leave of court. As the court said in Grinnell Corp. v. Hackett, 70 F.R.D. 326, 333-334 (1976):

> . . . it should be noted that an order to vacate a notice of taking a deposition is generally regarded by the court as both unusual and unfavorable, and most requests of this kind are denied. Investment Properties International, Ltd. v. Ios, Ltd., 459 F. 2d 705, 508 (2d Cir. 1972); Wright and Miller, supra, § 2037 at 272-75. A showing that the liklihood of harassment is "more probable than not" is in my view insufficient without a concomitant showing that the information sought was "fully irrelevant and could have no possible bearing on the issues." Wright and Miller, supra, § 2037 at 275.

The cases cited by defendants are exceptions to the general rule. For example, the Allied Poulty case involved a question as to whether or not the court even had jurisdiction. Since the Court is obligated to determine whether or not it does have jurisdiction and a negative determination would make any discovery on the merits a wasted effort, the court felt this issue should be resolved first.

The jurisdiction of this court is not at issue in this case and discovery would help clarify the factual issues now in dispute. In addition, no showing has been made that the depositions will be burdensome or oppressive. Plaintiff doubts that the depositions will take more than two or three hours at most. In short, defendants are expending more time and energy opposing these depositions than it would take to proceed with them on schedule.

For these reasons, the motion for a protective order should be denied.

Respectfully submitted,

James H. Lesar

James H. Lesar
910 16th Street, N.W., #600
Washington, D.C. 20006

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

FILED

OCT 25 1978

JAMES F. DAVEY, Clerk

HAROLD WEISBERG,

Plaintiff,

v.

CLARENCE M. KELLEY, ET AL.,

Defendants.

Civil Action No. 78-0249

O R D E R

This Motion having come before the Court on Defendants' Motion for a Protective Order and the Court being fully advised in the premises and having concluded that the Motion is well taken, it is by the Court on this 25th day of October, 1978.

Ordered that Defendants' Motion for a Protective Order be and hereby is granted, and the depositions of Messrs. McCreight and Beckwith not be taken.

UNITED STATES DISTRICT JUDGE

(N)

215

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

Washington, D. C., January 10, 1979

BEFORE THE HONORABLE JOHN LEWIS SMITH, Jr., United States District Court Judge, Motions.

APPEARANCES:

JAMES LESAR, Esq., on behalf of Plaintiff.

EMORY J. BAILEY, Esq., on behalf of Defendants.

P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action No. 78-249.

Weisberg versus Kelley.

Mr. Lesar and Mr. Bailey.

THE COURT: We have cross motions in this case, is that correct?

MR. BAILEY: Yes, Your Honor.

MR. LESAR: Well, I think the primary issue is their motion for summary judgment and our opposition to it.

There was an earlier summary judgment motion filed but it was filed on a different factual -- in a different factual context.

THE COURT: It is just the government's motion then?

MR. LESAR: Yes.

THE COURT: All right.

MR. BAILEY: I would agree with that, Your Honor.

Your Honor, I would like to reserve time for rebuttal.

THE COURT: How much time do you want total?

MR. BAILEY: I would like to reserve -- how much time total?

About ten minutes -- I think I would take about 15 minutes for my initial presentation and an additional five minutes for rebuttal.

THE COURT: As long as you make a complete opening, that is agreeable.

MR. BAILEY: Yes.

May it please the Court, we are before the Court this morning on basically the defendants motion to dismiss or in the alternative for summary judgment.

There was a motion on the part of the plaintiff for summary judgment at an earlier stage in the litigation which was not -- basically we think it was just a tactic on the part of the plaintiff and as a result was not meant indeed to seek summary judgment in this particular case due to circumstances surrounding the case at that particular time.

This case is an FOIA case. Plaintiff seeks from the F.B.I. basically information dealing with the assassination of President John Kennedy.

In his initial request to the Bureau, Plaintiff wrote a somewhat rambling letter and at the very end of that particular letter he indicated that he wanted certain information regarding the processing of some 98 -- at that time -- some 98,000 pages of documents regarding the assassination of President Kennedy.

At that particular time, because of the fact that plaintiff indicated that he was referring to work sheets, the F.B.I. tried to cooperate and surmised that he indeed wanted the work sheets that had been generated in the processing of these particular documents.

As a result thereof, the Bureau released to plaintiff some 2500 pages of work sheets minus certain deletions.

I might add parenthetically that these work sheets were released to plaintiff free of charge. There was no charge for the reproduction.

Then the work sheets, the Bureau utilizing proper exemptions under the Freedom of Information Act, excised certain material pursuant to exemptions B-1, B-2 and B-7(c), B-7(d) and exemption B-7(e).

Now, with regard to exemption B-1, I call Your Honor's attention to the affidavit of Mr. Lattin, a special agent at the Bureau, who is authorized to review documents according to Executive Order 11652, and who indeed reviewed the work sheets in accordance with that particular executive order and found that the information therein should be withheld in accordance with that particular executive order.

Certainly in plaintiff's opposition to defendants summary judgment motion, plaintiff raises the red-herring that Mr. Lattin did not indicate in his affidavit that he had reviewed the actual document itself.

The defendant submits that that indeed is not necessary in the particular case because the document -- because the work sheet itself was independently reviewed by Mr. Lattin and the information thereon was independently reviewed and determined, in accordance with the executive order, that it was properly

classified.

Now, in this particular case we are talking, as indicated in the affidavit of Mr. Lattin, we are talking about information -- what we are talking about basically is information which would -- which if released would do harm to the national security because we are talking about the fact that we have an intelligent source and I believe we are talking in this particular case about cooperation between the Bureau and foreign police agencies.

Certainly when you look at the legislative history and indeed look at the applicable case law, that type of information customarily -- not only customarily but as a matter of law, it has been withheld and that holding has been sustained by courts throughout the country.

Indeed, as was indicated in the opinion that I submitted to this Court, noticeof filing, an opinion of Lesar versus the United States Department of Justice, Judge Gesell of this Court, and you will note that it indeed contained certainly many of the same issues that this particular case contains.

Judge Gesell consistently found for the government and upheld the government's position throughout the case.

The Bureau also utilized exemption B-2. Now, this exemption is taken in conjunction with B-7(d).

Now, in the B-2 situation, basically what was withheld were the symbol numbers used by the Bureau to identify

confidential sources, confidential informants.

Indeed, in this particular case, the release of such symbol numbers could possibly -- maybe I should say probably lead to the identification of some F.B.I. informants.

It is certainly necessary that the Bureau be able to maintain the integrity and the confidentiality of its informant system.

To release that type of information to the public at large would compromise the Bureau and some of its more vital functions.

In the case of Lesar decided by Judge Gesell, which I filed with this Court, Judge Gesell upheld the deletions of the symbol numbers and found for the government in that regard.

In regards to the exemption B-7(c), here we are dealing with a situation where we have information that was gathered by the Bureau in the course of its investigation and in the course of law enforcement activities, and obviously because they were investigating the assassination of a President.

In this particular case, the Bureau deleted information regarding third parties, the release of which would be an unwarranted invasion of their privacy and in this particular case I would like to point out to the Court that B-7(c) is some what different than B-6.

B-6 uses the word clearly which, of course, gives us a greater burden and that word clearly is deleted in B-7-(c).

Certainly information regarding third parties regarding their sex life, psychological evaluations, would certainly be an unwarranted invasion of their privacy and serve no good by their release.

It was also used to withhold the names of certain F.B.I. investigators. Again, this type of deletion has been held -- upheld and was upheld in the case that I previously cited in Lesar versus the United States Department of Justice.

I think that is good law. I urge this Court to follow that opinion.

In the B-7(d) exemption, the Bureau withheld information of a confidential nature and also this was taken not only because of a confidential nature but confidential sources.

Again, this is consistent with the Congressional intent, the legislative intent of Congress and it was also consistent with the applicable case law.

It is very interesting to note, if I may address myself, that plaintiff in his opposition to defendants' motion relied almost extensively upon his client, Mr. Weisberg's affidavit, and indeed we got to the point where it was almost the law according to Mr. Weisberg.

He cited very little authority whatsoever for any of the propositions.

To go on, exemption B-7(d) was also taken in conjunction with the symbol numbers in regards to the informant files.

Again, this is consistent with the applicable law and consistent with the nature of the Act and consistent with the intent of the Act.

B-7(e) was taken to protect investigative techniques. This is important here because plaintiff makes much of the fact that indeed there was no indication of whether this particular technique was known generally to the public.

Defendants admit it is not and if it were so, then it would have been released. If indeed the Bureau had made it generally known to the public, and I think that is the point and the Bureau is not responsible if someone is able to make a lucky guess or base it on some information they acquired in some form or another, and are able to put these things together and to come up with that particular technique.

The Bureau did not make that technique public and indeed, the Bureau still has the right and indeed the obligation to refrain from making it public if indeed that is a vital technique used by the Bureau in its investigations.

The defendant has set forth in two affidavits the basis for the utilization of the exemption so provided by the

Act.

There is no indication and plaintiff does not raise this, that there was in any way bad faith on the part of defendant in regards to the affidavits before this Court.

I would like to impress upon the Court that the defendant has been very cooperative in this case at adhering to the dictates of the Act and indeed taking those exemptions given by the Act for the purpose of protecting certain information.

The defendant has released some 2500 pages of work sheets to plaintiff at no cost to plaintiff. The defendant has not tried to withhold information that was not necessary to be withheld and could not be withheld pursuant to the Act.

It is the defendants position that dismissal or summary judgment in this particular instance is appropriate.

Your Honor might note that I did not go into the issue of whether Mr. Kelley and certain other individuals are proper parties to this case.

The plaintiff did not address himself to that particular issue and I think plaintiff concedesthatindeed those individuals are not proper parties, Your Honor, and should not be part of the case.

It is the defendants position that this case should be dismissed or in the alternative defendant should be granted summary judgment.

MR. LESAR: James Lesar for plaintiff, Mr. Harold Weisberg.

A couple of preliminary comments before I proceed with the argument.

In response to a couple of remarks just made, first, we do not concede that Kelley and the other parties are not proper parties. It seems self-evident that we didn't bother to address that.

Secondly, with respect to the several repeated references in Mr. Bailey's presentation to the fact that the documents which have been made available were released without charge to Mr. Weisberg, and I should like to inform the Court that this is not because of the generosity of the F.B.I.

A decision was made by the Freedom of Information Appeals Office of the Department of Justice that Mr. Weisberg was to get all materials in the Department's files on the King and Kennedy assassinations without charge.

That decision was made over F.B.I. opposition and so to represent it as having come out of the good heart of the F.B.I., is highly misleading.

The defendant has raised the question of bad faith. I think that bad faith is evident in this case. It, of course, has been evident in the handling of all of Mr. Weisberg's requests for information pertaining to the King and Kennedy assassinations over the past 15 years.

Over the past 15 years the F.B.I. has gone to enormous lengths to obstruct to deny his requests to the King and Kennedy assassination records on orders from the highest level of the F.B.I., and apparently from Director Hoover himself and F.B.I. officials were even directed not to respond to his requests for information.

His FOIA requests were filed under a file number which designates subversive activities. Repeatedly, throughout these cases, the F.B.I. has filed false affidavits stating that records did not exist or could not be located when in fact they did exist and ultimately were located.

The purpose of the F.B.I.is to delay and obstruct Mr. Weisberg's access to information. They have done it in this case and through a very simple tactic. They have proclaimed and they have rewritten his request and rewritten it to pertain only to one category of information, the work sheets pertaining to the processing of J.F.K. assassination documents.

In fact, that request refers to other categories of information.

Specifically I call the Court's attention to the complaint which requests first the work sheets and secondly, all other records relating to the processing, review and release of these records.

Now, this morning only Mr. Weisberg has learned and has advised me that he has just received five cartons containing,

he estimates, some 15,000 relevant pages which were delivered to him, although they should have been delivered to him a year ago, at the time of the release. No exemptions were claimed for these documents.

They were documents relating to the F.B.I.'s scientific testing.

THE COURT: Are those documents that are involved in this complaint?

MR. LESAR: Yes, they are because of the way the request is worded and they are involved also because -- the withholding of those documents was in addition made possible only by the fact that the F.B.I. ignored the other items on the request. We would have known about the existence of these documents many months ago if it had not been for the stone-walling of this request and the refusal to admit that the request is for items other than the work sheets.

In addition, Mr. Weisberg has also received records again that he read on the bus coming down here this morning and those documents were obtained by another requester, had relevant materials which should have been provided in this case and they referred to materials which should have been provided in this case.

One example is that they disclosed that there was a 1972 review of all the relevant files at F.B.I. headquarters on the J.F.K. assassination.

Now, that is just the second item of the request, all other records relating to the processing, review and release of these records.

So we know absolutely that they do have records that are within the scope of the request and they have withheld them.

The same files that he has just obtained make it clear why they wished to withhold these. They wished to withhold them because they concealed records that Mr. Weisberg has requested and not obtained.

They conceal the fact that other requesters have not been denied the access to records he has requested and while he himself has not been able to obtain them.

They reveal the F.B.I.'s policy of resisting the Department of Justice's Freedom of Information Act policy and that the F.B.I. is so highly disturbed by the request for information on the F.J.K. assassination that it has referred -- described FOIA requesters as "smear artists" and the like even though no such description is remotely applicable to those persons.

Now, there are without question issues of material fact in dispute here. First, of course, and the most obvious is the one that I have been addressing, the scope of the information request itself.

It is quite plain that the F.B.I. has not responded to the other items on his request.

We know of various types of documents which are obviously within the scope of his request that they have not provided us.

These examples are records of their plan to put the J.F.K. assassination files in the Library of Congress and elsewhere.

Their guidelines and procedures to be followed in the processing of the J.F.K. assassination headquarter files, and their memoranda on the cost of processing that data and it is known that there are at least 60 other Freedom of Information Act requests for Kennedy assassination records and those too are within the scope of Mr. Weisberg's request.

None of them have been provided.

Secondly and obviously closely related to the issue of material fact in dispute is whether or not a good faith search was made and it is obvious that because of the way in which the F.B.I. deliberately misconstrued the Freedom of Information Act request that no search in fact was made at all.

With respect to the exemptions claim, the first, of course, relates to Exemption 1.

The only affidavit which the government has set forth in support of that exemption is the Lattin affidavit.

It does not meet the requirements that are now the law.

As has been noted earlier this morning, the present

executive order is Executive Order 12065, which is found at 43 Fed. Register 28950 which became effective December 1, 1978. That order requires even more stringent standards than Executive Order 11652, which is the executive order which Mr. Lattin executed --

THE COURT: Is that order to be applied retroactively in your opinion?

MR. LESAR: Yes, it is quite clear from the reading of the executive order that any time that a question arises concerning the classification or declassification of documents they are to be judged according to the classification standards of the new executive order and there are some very important differences between the classification standards of the new executive order and the old executive order.

First of all, the threshold test as to classifiability has been changed and whereas before it was whether or not the unauthorized disclosure of the information reasonably could be expected to cause damage to national security.

THE COURT: Has there been an official determination of that?

MR. LESAR: I don't think there is any case law on it because the Act -- the order just became effective about a month ago but I think it is plain from the text of the executive order itself.

The first point is that the executive order now requires that it reasonably be expected -- that the unauthorized release cause identifiable damage to national security.

There is no such statement in the Lattin affidavit.

Secondly, the new executive order requires a balancing test and even if a record may be made to fall within the criteria for classification, the need to protect the information must be weighed against the public interest in the disclosure of that information.

In fact, just the new philosophy of the new executive order is that virtually all information -- all classified information will be expected to be declassified within six years after its origination.

We are talking about information here that is ten years old already and there is no reason to believe that it can meet the stringent test of the new executive order.

In addition, there is every reason to believe that there -- it is quite obvious that there is a very important public interest in releasing all possible information about the assassination of President Kennedy.

As the attorney for the defendant noted, we also contend that the Lattin affidavit is deficient because it does not indicate that any review was made of the classification of the underlying documents.

Now, Mr. Weisberg appealed the determinations in this

case that the information deleted on the work sheets is properly deleted under Exemption 1 and that appeal I think is still pending in the Department of Justice.

They have made no determination as to whether or not either that information -- excuse me.

They have made -- Mr. Weisberg has appealed the classification of the underlying documents and there has been no decision made as-- upholding the classification of those documents.

Obviously, if the underlying documents are not properly classified or still do not warrant classification, then the derivative information on the work sheets cannot be properly classified either and so there first must be a determination as to whether or not the underlying documents have been properly classified and still warrant classification under the new executive order.

The affidavit of Mr. Weisberg on this -- one of his affidavits states that he has reviewed some of the documents and it is apparent to him that much of what has been withheld as classified has in fact been the subject of wide spread public attention.

So, therefore, there is no basis for requiring its continued classification.

I should add that our experience in this regard has been time and time again that the government agencies have

withheld information claiming it to be classified and then when they get faced with a situation, and they will say so in affidavits and mislead the court into believing that that is the case, and we just had another recent experience where the C.I.A. claimed that and then on the day their brief was due in the Court of Appeals, they released the information. There never was any basis for any claim that it would endanger national security.

With respect to Exemption 2, we have information on which -- have insufficient information upon which the Court can properly make a determination as to whether or not that exemption applies.

We don't know, for example, whether or not they apply it to informant symbol numbers. We don't know whether or not the informant symbol numbers are already public.

We have had many cases and many inferences in other cases in which the F.B.I. has deleted informant symbol numbers even though they have already been publicly released. .

Simply interrogatories would establish that fact and we could have a fuller record on whether or not that is the case.

Another obvious factual question there is whether or not the informant is dead. Quite obviously once the informant is dead, the Exemption 2 cannot apply and even though this is true, we have had instances where the F.B.I. has continued to apply that exemption to documents that Mr. Weisberg has

requested even though the informant himself was dead.

With respect to Exemption 7, there is a threshold question whether or not it can apply to these materials at all.

The simply fact is that in order for Exemption 7 to apply, there must be a law enforcement purpose and at the time President Kennedy was assassinated, the F.B.I. had no statutory authority for investigating that crime. It was not a federal crime. The investigation was not made pursuant to any law enforcement purpose but pursuant to a request by the President of the United States that he be informed of facts and that a report be made to him about the facts.

More specifically, with respect to the claim for Exemption 7(c), the use of this exemption is preposterous in the manner in which the F.B.I. does it, and particularly in this case.

We have put into the record, for example, one of the things they have used it for is to delete the names of F.B.I. agents. Well, the F.B.I. has a habit of releasing those names to other persons and sometimes Mr. Weisberg, but when it wants to delay him access, they delete the names of F.B.I. agents. They have done it in this case, and yet we have put into the record --

THE COURT: Isn't it conceivable that there is a reason for deleting those names?

MR. LESAR: No, sir, no. There is no --

THE COURT: What evidence do you have of bad faith?

MR. LESAR: Well, I think we can -- we have listed several things and one is the fact that they have --

THE COURT: Specifically with reference to your latest statement that they deleted the names of the agents.

MR. LESAR: I think the evidence is that, for example, we have put into the record cases where they have released whole pages of names of F.B.I. agents with their telephone numbers, their addresses, everything.

THE COURT: What possible motive would they have?

MR. LESAR: In withholding the names? Simply to deprive Mr. Weisberg of information that would enable him to prosecute his Freedom of Information cases more successfully.

You see, one of the things --

THE COURT: Mr. Weisberg has been quite successful, has he not?

MR. LESAR: Well, if he has been, the nation owes him an enormous debt and we would not be where we are today without his efforts either in the general sense of the Freedom of Information law and specifically with respect to the status of public knowledge about the assassination of President Kennedy.

But not withstanding that, it has come after 15 years of effort in which every obstacle that is possible has been thrown in his path and the need -- let me give you a specific example.

They deleted even the names of people who processed these work sheets. Now, they didn't do this in Civil Action 75-1996, which was his suit for King assassination documents. They didn't do it there but they have done it here.

I suggest the only reason is, that they have done it here, is that they have hit upon it as a tactic for stalling and delaying and preventing his access to information.

Secondly, and I meant to inform the Court of this earlier, but the government's case or a large part of the government's case and I think really everything of the government's case with respect to everything except Exemption 1, which is addressed by Mr. Lattin, is addressed by F.B.I. Agent Beckwith.

Now, F.B.I. Agent Beckwith is an unindicted co-conspirator in F.B.I. illegal activities. He has recently been fired.

Now, the Court couldn't possibly give any credence to the affidavit of a man in that position and that -- I think the very use of that affidavit is another example of bad faith.

They have got an agent that is extremely vulnerable and the agent has a history—in other cases we have his affidavit pop up and we have found out that he has made false statements in those affidavits and this is a matter of record and Mr. Weisberg so states, without contradiction, in one of the affidavits that he has filed in this case.

Your Honor, that is the agent that they have chosen to rest their case on. I think it is an outrage and I think the Court ought to be very upset that a Court would be asked to render findings of factson the basis of an affidavit with that kind of a history.

And so those are specific examples. Now, there are-- of course, the Exemption 7(c) requirement is, by the F.B.I.'s own admission by the former Director of the F.B.I., Mr. Kelley, in historical cases and this is a historical case, and the interest of the public in knowing the names of the agents -- the public interest outweighs whatever privacy interest could be attached to making public the name of an F.B.I. agent.

The fact is that after 15 years in which this case has been in the papers repeatedly and in which hundreds of thousands of pages of documents have been released, the names are known. It is just that they decided as a tactic to keep Mr. Weisberg from learning them.

The names can be very important to Mr. Weisberg because of his subject expertise and he is able to -- when he knows the names to better evaluate the information to determine which agent is responsible for doing something or for failing to do something and so there are important reasons in the public interest why those names should not be deleted and usually and in fact in historical cases, according to the word of the F.B.I. director himself, that kind of information is not

deleted, but in this case it has been.

With respect to Exemption 7(d), that exempts information which 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 intelligence investigation, confidential information furnished only by the confidential source.

Now, you turn to the affidavit of Mr. Beckwith at page 7 and you find that his affidavit does not state that. It states instead that the material deleted is material that would disclose the identity of the confidential source or-- and not and but or reveal confidential information furnished only by the confidential source and then he adds a further qualification, and not apparently known to the public.

Well, there is, of course, that -- that does not meet the criteria of the statute and we don't know from his affidavit and we can't know from his affidavit whether or not the information which is public is being deleted under this guise.

Again, discovery, I think, would -- discovery and a Vaughn v. Rosen response would do much to clear this up and it is again another factual question that is in dispute.

Finally, with respect to Exemption 7(e), which concerns investigatory techniques, the criteria requires -- the

Freedom of Information Act makes quite clear that that applies only to methods and techniques which are secret, which are not generally known.

The fact is, as one of Mr. Weisberg's affidavits specifically states, that it is quite clear that they have used this exemption to conceal the use of pretext as an investigatory technique.

Well, my goodness, everybody knows that pretext is an investigatory technique and yet they are claiming the exemption to conceal that sort of information, but again, on the record that is before the Court now, the Court cannot sustain the government's claims.

The government has not met its burden of proof with respect to any of the exemptions and in particular it is obvious that it has flagrantly misinterpreted Mr.Weisberg's request and there are many documents within the scope of that request which have not been provided.

Thank you, Your Honor.

THE COURT: Mr. Bailey.

MR. BAILEY: It has been the history of Mr. Lesar in arguing these FOIA cases to stray sometimes from the instant matter or the matter that is present before the Court, and attempts to argue every FOIA case that Mr. Lesar has ever filed and indeed argue every FOIA request that Mr. Weisberg has

filed.

In this particular instance, Mr. Lesar makes much of the fact that the Bureau flagrantly and intentionally misinterpreted Mr. Weisberg's request.

I would like to call to the attention of the Court Mr. Weisberg's request. In reading Mr. Weisberg's request, Mr. Weisberg's request consists of very disjointed, rambling letter and at the end throws in this request that indeed it is very vague and unclear and certainly within the Act itself, there is ample authority that a request should have and should meet certain criteria of specificity.

Certainly in this regard he mentioned work sheets and talks about the processing and we must remember what he is talking about in this initially. He is basically talking about the 98,000 pages of documents that had originally been released to him.

Certainly the Bureau is well within reason when it interprets that request and when he mentioned the work sheets, the purpose of that is to mean he is talking about work sheets.

Now, certainly there may be all kinds of documents. I don't know but the point is that when you make a request, there is a burden to make -- indicate what it is that you seek, and certainly we must look at this request in light of the things that have gone on before and his request in regards to the work sheets dealt with at that time the 98,000 pages of documents

regarding the Kennedy assassination that had previously been released to Mr. Weisberg, and incidentally, at a time when Mr. Weisberg requested the work sheets, there was no appeal, at least, at Justice regarding the actual documents themselves.

Mr. Lesar attempts to make much of the fact that the underlying documents regarding documents of the 98,000 pages, I suppose, and there was no indication that the underlying documents had been classified.

Defendant submits that that indeed is not necessary. The documents in question in this case are the work sheets and if indeed the work sheets have been reviewed in accordance with the executive order then in effect, that is the appropriate way of determining whether indeed the decisions were properly made.

Mr. Lesar makes much of the fact that the executive order that was utilized, Executive Order 11652, at the time the work sheets were reviewed by Mr. Lattin, no longer is applicable today -- is no longer the applicable executive order.

The defendant submits that that would be applicable in the executive order at that time and indeed the defendant cannot be held to any burden of the executive order that went into effect in December.

Certainly we cannot be held to -- accountable for any law or rule that is not in effect.

Plaintiff submits that the executive order is to be

applied retroactively.

Defendant submits that plaintiff reads too much into the order. He fails to understand the intent of the order.

The order is not to be applied retroactively as plaintiff submits.

I think it is incumbent upon the defendant to make some statement in regard to Special Agent Beckwith.

Plaintiff makes several statements regarding Mr. Beckwith. I think plaintiff at this point is rather unfair to Mr. Beckwith and I would think that plaintiff of all people, plaintiff's counsel, would avoid some of the statements, Your Honor, regarding Mr. Beckwith.

In regards to this case, it is noted that plaintiff does not submit that Mr. Beckwith nor did he offer any proof that Mr. Beckwith's affidavit was in any way false or misleading.

Plaintiff relies basically upon some conclusionary statements regarding other affidavits. I submit that this Court is not and should not be concerned with statements regarding other affidavits in other cases.

That is not before the Court and indeed the Court -- if the Court considered such statements, it would be unfair not only to Mr. Beckwith but indeed unfair to the government in this case.

Mr. Lesar seems content to rely upon the law according

to Mr. Weisberg.

I would submit that the Court will indeed rely on the law according to the law, according to the way the law is written.

Certainly in the case of the B-7(c) exemption, the investigation that was carried on by the Bureau is indeed an investigation conducted pursuant to law enforcement activities.

The mere fact that at the time President Kennedy was assassinated, assassinated in Dallas, and as a result thereof, he poses the fact that there was no law at that time explicitly giving the Bureau jurisdiction in terms of the investigation.

I would submit that the common sense conclusion, the obvious conclusion, is the fact that indeed the Bureau conducted this investigation as a part of its law enforcement activities, and indeed at the request of the highest official in this country.

I submit that the Bureau's investigation was a law enforcement activity and to say otherwise, is wrong, and certainly not supported by any kind of common sense analysis of the situation at the time.

It is always interesting to note and Mr. Lesar makes much of the fact that this information has been released to others, and that it is the -- that the Bureau is in some way harassing Mr. Weisberg.

I would submit to this Court that Mr. Weisberg made quite

a few FOIA cases in various courts of the land and may have been given "X" number of pages of documents by various agencies of the Federal Government.

I would submit that Mr. Lesar exaggerates to some extent. His client is not the center of wide spread conspiracy to in some way keep him from obtaining certain documents. Customarily I would avoid comment upon statements to that effect because they are, obviously on the face of them, not worth commenting on.

In this particular case I think it is time that someone made the comment that Mr. Weisberg is not as great as Mr. Weisberg may think so -- may think Mr. Weisberg is or Mr. Lesar thinks he is.

I would submit to this Court that any statements regarding the bad faith of the Government, the bad faith of the Bureau, should be taken in light of the fact or with a view to the fact that Mr. Weisberg and Mr. Lesar failed to submit any tangible proof of that and indeed relied basically upon affidavits, conclusionary statements, innuendos, and total untruths.

In conclusion, I submit that the government has indeed -- the Bureau has indeed filled its obligation in regards to the Freedom of Information Act, in regards to the exemptions that have been taken, and indeed have acted in good faith.

I call the Court's attention to the applicable case law cited in the defendants' brief and indeed I would again call the Court's attention to the case of Lesar versus the United States Department of Justice.

I think a fair reading of the issues in this particular case indicate that the so-called questions of fact raised by plaintiff are not really questions of fact. There are no questions of genuine fact in this case.

Indeed, the government has acted properly and as I noted before, plaintiff fails to state or cite any case law for some of his assertions.

In conclusion, the government requests, based upon the brief and the record submitted before this Court, this case be dismissed or in the alternative the government be granted summary judgment.

Thank you, Your Honor.

THE COURT: Mr. Lesar.

MR. LESAR: Your Honor, just a couple of brief things that I want to call to the Court's attention.

First, with respect to the question of whether or not Mr. Weisberg's request was misinterpreted or was understandable, I would like to point out that under the Department of Justice's own regulations, if they had any question about what the request pertained to, if they had any question about whether or not it reasonably described the records, and under 28 C.F.R.

16.3, they are then required to contact and I will read the subsection "D" of that section and it states, "If it is determined that a request does not reasonably describe the records sought as specified in paragraph B-1 of this section, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of paragraph B-1 of this section and shall extend to the requester an opportunity to confer with Department personnel in order to attempt to reformulate the request in a manner which will meet the needs of the requester and the requirements of B-1 of this section."

No attempt at all was made to do that. Even after the complaint was filed, no attempt was made to reformulate the request with Mr. Weisberg's assistance.

That, I think, is a clear indication that this is just a tactic that they hold up in order to stall compliance with the request.

It is a perfectly readable and understandable request and secondly, with respect to Executive Order 12065, and I note that the government in this case has taken an inconsistent position, I think, with the case of Allen versus C.I.A., which was argued here earlier this morning in which they did apply the order to a request retroactively.

In addition, I would like to just quote Section 3-302 of that executive order.

"When information is reviewed for declassification pursuant to this Order, or the Freedom of Information Act, it shall be declassified unless the declassification authority established pursuant to Section 31 determines that the information continues to meet the classification requirements proscribed in Section 1-3 despite the passage of time."

That, I think makes clear the intent of the Act, to apply its standards to -- to apply them retroactively.

Thank you, Your Honor.

THE COURT: Gentlemen, I will review the matter further and advise counsel at a later date.

- - - -

This record is certified by the undersigned to be the official transcript of the above-entitled matter.

Dawn T. Copeland, Official Court Reporter

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v

CLARENCE M. KELLEY, et al.,

Defendants

Civil Action

No. 78-249

FILED

JAN 12 1979

JAMES F. DAVEY, Clerk

O R D E R

Upon consideration of defendants' motion to dismiss, the entire record herein, and oral argument by counsel, it is by the Court this 12th day of January 1979

ORDERED that defendants submit within ten days an affidavit by the appropriate person regarding classification status under Executive Order 12065 of those documents at issue in this action previously classified pursuant to Executive Order 11652; and it is further

ORDERED that plaintiff shall have five days to reply to said submission.

United States District Judge

248

FILED: JANUARY 22, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff v. CLARENCE M. KELLEY, et al., Defendants	)	CIVIL ACTION NO. 78-0249

AFFIDAVIT OF BRADLEY B. BENSON

I, Bradley B. Benson, being duly sworn, depose and say as follows:

(1) This affidavit supplements the affidavit of Special Agent (SA) David M. Lattin dated April 28, 1978, and is intended to set forth the results of my personal independent examination of the inventory worksheets described in paragraph (4), infra, under the provisions of Executive Order (EO) 12065. The exemption set forth in Title 5, United States Code, Section 552 (b)(1) was utilized to withhold items of information classified pursuant thereto.

(2) I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Document Classification Review Unit in the Records Management Division at FBI Headquarters, Washington, D. C.

(3) I have been authorized to classify FBI documents pursuant to EO 12065, Section 1-204. My current assignment in classification matters involves a review of classified documents requested under the Freedom of Information Act-Privacy Acts (FOIPA) as to their suitability for continued classification under EO 12065, and, when indicated, declassification.

(4) The documents referred to herein are inventory worksheets utilized in the processing under the FOIPA of files pertaining to the investigation of the assassination of President John F. Kennedy. These worksheets are referred to in the affidavit of Special Agent Horace P. Beckwith which was filed in this matter, April 28, 1978.

249

(5) I have made a personal independent examination of these inventory worksheets utilized in the processing of files pertaining to the investigation of the assassination of President John F. Kennedy. I have personal knowledge of the information set forth therein for which exemption (b)(1) pursuant to Title 5, United States Code, Section 552 is claimed.

(6) I have examined all the documents specified below and found that their classification is in conformity with procedural criteria set forth in EO 11652 and the Department of Justice (DOJ) Implementing Order 489-72 (contained in Code of Federal Regulations, Title 28, Chapter 1, Part 17), in that:

(a) the material has been classified by an appropriately designated Classifying Officer with authority to classify documents. The documents have been properly stamped as "Confidential," with the date of classification and the identity of the Classifying Officer noted thereon. The General Declassification Schedule exemption category and declassification date has also been placed on the document. As provided in the EO, the documents bear the declassification date of "indefinite." Following each classified item a marking of a "C" for "Confidential," appears. Items not marked as "C," are unclassified.

(B) The items classified contain information concerning national security, that is, regarding national defense or foreign relations of the United States; and the revelation of the information could reasonably be expected to cause damage to the national security.

250

(7) The information in these documents is also classified in conformity with substantive requirements set forth in EO 12065. Section 1-301 identifies the type of information which may be considered for classification:

(a) Military plans, weapons, or operations;

(b) Foreign government information;

(c) Intelligence activities, sources or methods;

(d) Foreign relations or foreign activities of the United States;

(e) Scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities: or

(g) Other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President pursuant to Section 1-201, or by an agency head.

The information classified in these inventory worksheets concerns one or more of these criteria in Section 1-301, EO 12065, and, as an original classification authority, I have determined that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security (1-302, EO 12065). The identifiable damage is detailed below in paragraphs 8 (a), (b) and (c).

(8) A further explanation of the identifiable damage to the national security that could reasonably be expected from the unauthorized disclosure of the information classified in these inventory worksheets is as follows:

(a) If a withheld classified item identifies a foreign government source or international organization source, the item is so identified but with no further particularity. The information may not be further described without breaching

the assurance of confidentiality afforded the foreign source. The revelation of either the identity of the source or the information furnished could reasonably be expected to cause identifiable damage to the national security by the curtailment of the flow of such information from foreign or international sources who demand or expect confidentiality. The revelation could harm foreign relations, cause expulsion of United States officials and precipitate a break in normal diplomatic intercourse. The revelation could cause physical harm or other personal disruption in the lives of cooperative foreign officials and their sources.

(b) If a withheld classified item contains the identity of a source or method providing information regarding a specific foreign relations matter or activity of the United States, that data identifying the source or method is identified but not described with particularity. Revelation of the source, method or information, in addition to damage to source/method operations cited below, could reasonably be expected to cause identifiable or serious damage to the national security by causing a break in diplomatic relations, reprisal against United States citizens and disclosure of particular United States intelligence interests in the foreign country, and allow countermeasures to be implemented by hostile intelligence agencies.

(c) If a withheld classified item contains classified data which specifies the source or method by which the information was obtained, that

fact is so indicated. In these instances, more particular descriptions regarding the identity of the source or method could reasonably be expected to cause identifiable damage to the national security. This damage may entail:

(1) Death of the source;

(2) Discontinuance of the source's services with resulting loss of intelligence information;

(3) Damage to other ongoing intelligence activities;

(4) Modification or cancellation of future intelligence activities;

(5) Permitting hostile entities to evaluate the number and objectives of informants targeted against them, and take appropriate countermeasures, again causing loss of intelligence information; and

(6) Causing an overall chilling effect on intelligence collection by reducing the climate of cooperativeness from sources, both current and prospective, not willing to risk the probability of exposure with its potential effect on loss of jobs, friends, and status.

(9) The standard for designating information as "Confidential" under the previous EO is whether its unauthorized disclosure could reasonably be expected to cause damage to the national security (EO 11652, 1(C)). Effective December 1, 1978, EO 12065, 1-104, specifies "identifiable" damage as the criterion for "Confidential." During my examination of these documents, the prior classification of the documents pursuant to EO 11652 was reviewed to determine its current appropriateness pursuant to EO 12065. I assert that all material classified "Confidential" in these inventory worksheets meets both standards. The classified items were also reviewed to identify any reasonably segregable portion that could be declassified, and none were found.

(10) The below-listed inventory worksheets were found to contain classified data. These worksheets are identified according to the file subject, section and serial to which they refer. A description and justification of classification for each item classified in these worksheets follows in this order:

Subject	Section	Serial
JFK	170	Not Recorded (NR) after 6841 and 6842
		NR after 6845
		6846
	171	6849
		NR after 6851
	183	7424X
	184	7437X
		7437X1
	187	7580
OSWALD	69	1494
	86	2095
	96	2463
	174	4106
	204	4718
	214	5024
		5026
	232	5565
RUBY	62	1670

The Inventory worksheets pertaining to Section 170, (JFK), dated August, 1977, consist of 8 pages. Page 7 contains a reference to serials 6841 and 6842.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 170, (JFK), dated August, 1977, consist of 8 pages. Page 8 contains a reference to non-recorded serial after 6845 and 6846.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 171, (JFK), dated August, 1977, consist of 4 pages. Page 1 contains a reference to serial 6849 and not recorded serial after 6851.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 183, (JFK), not dated, consist of 5 pages. Page 4 contains a reference to serial 7424X.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (c) and 1-302. Only that portion is classified that would identify an intelligence gathering method which remains in use by the United States Government today, the loss of which would have a serious impact on the ability of the United States to obtain vital intelligence information.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(b), above.

The Inventory worksheets pertaining to Section 184, (JFK), not dated, consist of 7 pages. Page 1 contains a reference to serials 7437X and 7437X1.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (c) and 1-302. Only that portion is classified that would identify an intelligence gathering method which remains in use by the United States Government today, the loss of which would have a serious impact on the ability of the United States to obtain vital intelligence information.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(b), above.

The Inventory worksheets pertaining to Section 187, (JFK), not dated, consist of 6 pages. Page 5 contains a reference to serial 7580.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (c) and 1-302. Only that portion is classified that would identify an intelligence gathering method which remains in use by the United States Government today, the loss of which would have a serious impact on the ability of the United States to obtain vital intelligence information.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(b), above.

The Inventory worksheets pertaining to Section 69, (Oswald), dated August, 1977, consist of 6 pages. Page 1 contains a reference to serial 1494.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 86, (Oswald), dated August, 1977, consist of 4 pages. Page 3 contains a reference to serial 2095.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 96, (Oswald), dated August, 1977, consist of 6 pages. Page 3 contains a reference to serial 2463.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (c) and 1-302. Only that portion is classified that would identify foreign intelligence sources. These sources were recruited with a pledge of extreme secrecy and can be expected to provide information only as long as they feel secure in the knowledge that they are protected from retribution and embarassment.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(c), above.

The Inventory worksheets pertaining to Section 174, (Oswald), dated August, 1977, consist of 3 pages. Page 1 contains a reference to serial 4106.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 204, (Oswald), dated August, 1977, consist of 4 pages. Page 2 contains a reference to serial 4718.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 214, (Oswald), dated August, 1977, consist of 4 pages. Page 1 contains a reference to serials 5024 and 5026.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

The Inventory worksheets pertaining to Section 232, (Oswald), dated August 28, 1978, consist of 7 pages. Page 5 contains a reference to serial 5565.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings

nder Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (c) and 1-302. Only that portion is classified that would identify foreign intelligence sources. These sources were recruited with a pledge of extreme secrecy and can be expected to provide information only as long as they feel secure in the knowledge that they are protected from retribution and embarassment.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(c), above.

The Inventory worksheets pertaining to Section 62, (Ruby), dated August, 1977, consist of 4 pages. Page 2 contains a reference to serial 1670.

Under EO 11652, this page was classified and marked Confidential on April 27, 1978, by Classification Authority Number 6855. The classification level and paragraph markings under Executive Order 11652 are still appropriate under Executive Order 12065. The withheld classified portion meets the classification requirements of Executive Order 12065, 1-301 (b) and 1-302. Only that portion is classified that would reveal cooperation with a foreign police agency.

A more detailed description of the withheld classified portion of this document could reasonably be expected to result in identifiable damage as explained in paragraph 8(a), above.

Bradley B. Benson
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and sworn to before me this 22nd day of January, 1979.

Mary B. Kitchen
Notary Public

My commission expires September 14, 1982.

261

FILED: JANUARY 26, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES F. DAVEY, Clerk

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

MOTION FOR EXTENSION OF TIME

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, for an extension of time, to and including February 8, 1979, within which to file his response to the affidavit of Bradley B. Benson. As grounds for this motion, plaintiff states to the Court as follows:

1. Mr. Benson's affidavit was filed on January 22, 1979, and the certificate of service recites that it was mailed to his counsel on that date. However, plaintiff's counsel did not receive Mr. Benson's affidavit until January 25, 1979. By the order of this Court dated January 12, 1979, plaintiff has only five days from January 22nd within which to respond to it. A copy of Mr. Benson's affidavit was mailed to plaintiff on January 25th but his counsel does not know whether he has yet received it. (Attempts to reach Mr. Weisberg by phone this afternoon have been unsuccessful. There is nobody at home.) In view of past experience, Mr. Benson's affidavit may not reach plaintiff at Frederick, Maryland until January 29, 1979.

2. Plaintiff will undoubtedly want to respond to Mr. Benson's affidavit with his own counteraffidavit. He should be allowed

several days to check his own records for relevant information and to prepare a counteraffidavit.

3. Plaintiff's counsel is presently working on a brief that is overdue in the Court of Appeals. He will be working this weekend and most of next week to complete the brief for the appellee in that case (Weisberg v. Department of Justice, Court of Appeals Case No. 78-1641).

4. Plaintiff may also wish to submit an affidavit by Mr. William G. Florence, a security classification expert he has used in the past. Plaintiff's counsel attempted to reach Mr. Florence on January 26, 1979, but was unable to do so. Mr. Florence lives in Haddonfield, New Jersey, so additional time will be needed to send and receive materials from him. After plaintiff's counsel is able to consult with Mr. Florence by phone, he may wish to file a motion for in camera inspection with the aid of Mr. Florence. This, too, will require some additional time.

For the above reasons, plaintiff requests that the Court extend his time to respond to Mr. Benson's affidavit to and including February 8, 1979.

Respectfully submitted,

James H. Lesar

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

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of January, 1979, mailed a copy of the foregoing Motion for Extension of Time to

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. CLARENCE M. KELLEY, et al., Defendants	1979 Civil Action No. 78-0249

O R D E R

Upon consideration of plaintiff's motion for an extension of time within which to respond to the affidavit of Bradley B. Benson filed in this case on January 22, 1979, and the entire record herein, it is by the Court this 1st day of February, 1979, hereby

ORDERED, plaintiff's time for responding to the affidavit of Bradley B. Benson is extended to and including February 8, 1979.

UNITED STATES DISTRICT COURT

(N)

269

FILED: FEBRUARY 9, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MOTION FOR FURTHER EXTENSION OF TIME WITHIN WHICH TO RESPOND TO AFFIDAVIT OF BRADLEY B. BENSON

Comes now the plaintiff, Harold Weisberg, and moves the Court, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, for a further extension of time, to and including February 17, 1979, within which to respond to the affidavit of Bradley B. Benson. As grounds for this motion, plaintiff represents to the court as follows:

Plaintiff has reviewed Mr. Benson's affidavit and examined the worksheets on which material has been excised on the grounds that it is allegedly classified pursuant to Executive order 12065. He has been working on a draft affidavit which is now nearly completed. Unfortunately, work on this affidavit has been slowed considerably by the fact that plaintiff, who suffers from circulatory problems, has not been feeling well. In recent weeks he has passed out on one occasion and nearly did so again only last week. He has had to take time to see his physician and to undergo some medical tests.

In addition, plaintiff, who lives in the country near Frederick, Maryland, has had to expend time and energy battling to

keep his 100 yard long lane free of ice and snow. This is necessary both because of the possibility that there might be a medical emergency involving him, and because his wife does accounting and tax work at this time of the year and her clients need to be able to drive up this lane.

Weather and health permitting, plaintiff will be in D.C. on Tuesday, February 13, 1979, to hear in the oral argument in a case of his that is now before the U.S. Court of Appeals. At that time he should be able to furnish his counsel with a completed draft of his affidavit. His counsel feels he will need an additional four days time after this in which to make any revisions in the affidavit and to draw up a memorandum accompanying it.

Accordingly, plaintiff requests that the time for responding to Mr. Benson's affidavit be enlarged to and including February 17, 1979.

Respectfully submitted,

James H. Lesar

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

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of February, 1979, mailed a copy of the foregoing Motion for Further Extension of Time Within Which to Respond to Affidavit of Bradley B. Benson to Mr. Emory J. Bailey, Attorney, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lesar

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff	)	Civil Action
v	)	No. 78-249
CLARENCE M. KELLEY, et al., Defendants	)	

FILED
FEB 12 1979
JAMES F. DAVEY, Clerk

O R D E R

Upon consideration of plaintiff's motion for a second extension of time within which to respond to the affidavit of Bradley B. Benson filed in this case on January 22, 1979, and the entire record herein, it is by the Court this 9th day of February 1979

ORDERED that plaintiff's motion for a further extension of time to respond to the affidavit of Bradley B. Benson is denied.

United States District Judge

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268