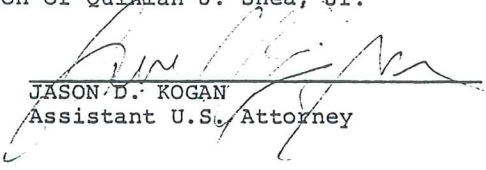


UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 81-0023  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

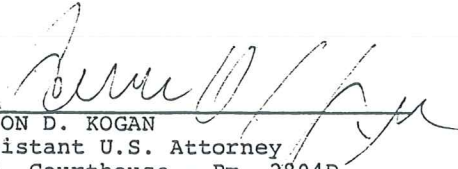
NOTICE OF FILING

Defendants hereby give notice, this 13th day of April, 1981  
that it is filing the Declaration of Quinlan J. Shea, Jr.

  
\_\_\_\_\_  
JASON D. KOGAN  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Filing  
has been mailed to plaintiff's counsel James H. Lesar, Esquire,  
2101 L Street, N.W., Suite 203, Washington, D.C. 20037.

  
\_\_\_\_\_  
JASON D. KOGAN  
Assistant U.S. Attorney  
U.S. Courthouse - Rm. 2804D  
3rd & Constitution Ave., N.W.  
Washington, D.C. 20001  
(202) 633-4977

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

|                             |   |                          |
|-----------------------------|---|--------------------------|
| HAROLD WEISBERG,            | ) |                          |
| Plaintiff,                  | ) |                          |
| v.                          | ) | Civil Action No. 81-0023 |
| UNITED STATES DEPARTMENT    | ) |                          |
| OF JUSTICE, <u>et al.</u> , | ) |                          |
| Defendants.                 | ) |                          |

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DECLARATION OF QUINLAN J. SHEA, JR.

I, Quinlan J. Shea, Jr., declare the following to be true and correct:

1. I am the Director, Office of Privacy and Information Appeals, Office of the Associate Attorney General, United States Department of Justice. One of the responsibilities of my Office is to review files within the Office of the Attorney General, the Office of the Deputy Attorney General and the Office of the Associate Attorney General that are the subjects of Freedom of Information Act and/or Privacy Act requests to determine whether they contain records within the scope of a request and, if so, what portions of those records should be made available to the requester. In processing such requests, I and my staff coordinate with personnel of the three mentioned Offices and, as appropriate, personnel of other components of the Department of Justice. I make the statements herein on the basis of personal knowledge, as well as information acquired in the course of performing my official duties.

2. This Declaration will be supplemented by the Declaration of F. Henry Habicht II, Special Assistant to the Attorney General, United States Department of Justice, which we intend to file with the Court on or before May 1, 1981. My Declaration concerns only information withheld pursuant to the Exemptions enumerated at

section (b) of 5 U.S.C. 552 other than (1). Classified information withheld pursuant to 5 U.S.C. 552(b)(1) will be addressed by the Declaration of Mr. Habicht. Mr. Habicht has only recently been appointed to the position of Special Assistant and is in the process of familiarizing himself with the Executive Order, Department policy and regulations, and the Federal Bureau of Investigation's national security activities. Accordingly, he is unable to execute a Declaration at this time due to the above and to the press of his other responsibilities. It is anticipated, however, that he will be able to review the materials and prepare a Declaration for submission to the Court on or before May 1, 1981.

3. By letters dated December 27, 1977, and January 7, 1978, counsel for plaintiff requested access to records in the Offices of the Attorney General and Deputy Attorney General pertaining to the assassination of Dr. Martin Luther King, Jr. (copies attached as Exhibits A and B).

4. A detailed true and comprehensive description of the records maintenance procedures of the Offices of the Attorney General and Deputy Attorney General, as well as of the records searches conducted by my staff in response to plaintiff's requests, is contained in the letter dated April 1, 1981, to plaintiff's counsel, from Acting Associate Attorney General Robert N. Ford (copies of Mr. Ford's letter and its attachments are Exhibit C).

It should be noted that, although many matters occurring within the Department of Justice result in written communications to or from the Attorney General or Deputy Attorney General, it is relatively infrequent that official files are opened in their Offices. For the most part, it is the files of whatever component has substantive responsibility for any given matter that are intended to be, and are, the official repositories of such written communications. It is somewhat more common for personnel within

the Offices of the Attorney General and Deputy Attorney General, responsible for advising these two officials, to create and maintain personal "desk" or "working" files to assist themselves in discharging their responsibilities. The files mentioned in Mr. Ford's letter are of this kind. Prior to the tenure of Attorney General Levi, it was the customary practice within the Office of the Attorney General for most such files to be sent to the appropriate components, taken away by the individual advisers, or destroyed, at the time of a change from one Attorney General to another.

5. By letter dated August 22, 1980, I advised plaintiff that records responsive to his request had been located and that a final response would be forthcoming by December 1, 1980 (copy attached as Exhibit D).

6. By letter dated February 3, 1981, fifty-three documents were released in their entireties.<sup>1</sup> I advised plaintiff that a final decision with respect to the remaining forty-nine documents would be forthcoming prior to April 1, 1981 (copies of my letter and its attachments are Exhibit E).

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<sup>1</sup> CVRTS #3 consists of a memorandum dated March 31, 1976, from Robert A. Murphy, Chief, Criminal Section, Civil Rights Division, to Assistant Attorney General Stanley Pottinger, Civil Rights Division, regarding the Federal Bureau of Investigation's investigation of the assassination of Dr. King and a cover memorandum dated April 9, 1976, from Assistant Attorney General Pottinger to the Attorney General. This material was released as it appears in a file of the Office of the Attorney General. It should be noted, however, that the Attorney General copy reflects excisions previously made by the Civil Rights Division when it released the items pursuant to the request of Attorney James H. Lesar on December 15, 1977. These excisions were effected pursuant to 5 U.S.C. 552(b)(1) and (b)(7)(C), which pertain to classified information and material contained in investigatory records, the release of which would constitute an unwarranted invasion of the personal privacy of third parties. On July 15, 1980, the Court of Appeals for the District of Columbia Circuit upheld those excisions. Lesar v. Department of Justice, 636 F.2d 472 (D.C. Cir. 1980).



7. By letter dated March 10, 1981, an additional sixteen documents were released in their entireties (copies of my letter and its attachments are Exhibit F).

8. In the letter from Acting Associate Attorney General Robert N. Ford dated April 1, 1981, nine documents were released in their entireties which are concerned with administrative aspects of the Office of Professional Responsibility's Task Force review of the F.B.I.'s assassination investigation and which are not part of the one hundred and two documents mentioned in my letter of February 3, 1981, as falling within the scope of plaintiff's requests. Of the thirty-nine remaining documents which were part of the one hundred and two documents, eighteen additional items were released by Mr. Ford in their entireties and ten others were released by him with excisions pursuant to 5 U.S.C. 552(b)(5), (6), (7)(C) and (7)(D). Information which pertained to a subject outside the scope of plaintiff's request was not processed. Exemptions 5, 6, 7C and 7D pertain, respectively, to privileged, predecisional inter- and intra-agency communications; to information the release of which would constitute a clearly unwarranted invasion of personal privacy; and to information contained in investigatory records, the release of which would constitute an unwarranted invasion of personal privacy and reveal the identity of a confidential source. Three documents (FBI #1-3) were never released pursuant to these requests and the fact of plaintiff's acquiescence in this is set forth in Mr. Ford's letter. Two documents were withheld in their entireties by Mr. Ford pursuant to 5 U.S.C. 552(b)(5), with portions of one of them also being withheld under 5 U.S.C. 552(b)(1) and (6). These provisions pertain, respectively, to privileged, predecisional intra-agency communications, to classified information, and to information

the release of which would constitute a clearly unwarranted invasion of personal privacy (copies of Mr. Ford's letter and its attachments are Exhibit C).

9. By letter dated April 10, 1981, information was released which previously had been inadvertently deleted due to an administrative error. This disclosure involves three documents released by Mr. Ford's letter of April 1, 1981. One name continues to be withheld from two of the documents pursuant to 5 U.S.C. 552(b)(6) (copies of Mr. Ford's letter and its attachments are Exhibit G).

10. Attached as Exhibit H is a Declaration of Frederick D. Hess, Acting Director of the Office of Legal Support Services of the Criminal Division of the Department of Justice. This Declaration explains the legal basis for withholding the substantive portions of three documents which originated in the Criminal Division.

11. Attached as Exhibit I is a complete list of all one hundred and two documents. This list indicates which documents were released in their entirety, which were released with excisions and which were withheld in their entirety.

12. COMMENTS AS TO THE APPLICATION OF EXEMPTIONS 5, 6, 7C AND 7D OF THE FOIA

These comments concern only unclassified information which was withheld pursuant to 5 U.S.C. 552(b)(5), (6), (7)(C) and (7)(D). As explained above, classified information withheld from disclosure pursuant to 5 U.S.C. 552(b)(1) will be addressed in the Declaration of F. Henry Habicht II, Special Assistant to the Attorney General.

- A. 5 U.S.C. 552(b)(5) exempts from mandatory release inter- and intra-agency communications which would not be available by law to a party other than an agency in litigation with the agency.

Neither of the two documents being withheld in their entireties pursuant to Exemption 5 would be so available. The documents, which are described below in greater detail, reflect the subjective opinions and recommendations of the writers and, in one document, of other Department personnel in conference with the Attorney General. Both documents contain material of a predecisional, advisory and deliberative nature, reflecting the free exchange of opinions of Government officials in the course of the decision-making process within this agency. Their disclosure would severely inhibit the Government's future ability to have open and frank, internal discussions of important issues which are so necessary for efficient and proper operation of Government. Each document is predecisional in nature. One of them was drafted for possible transmittal to the Attorney General by an Assistant Attorney General but was never sent. The other is a set of handwritten notes--reflecting predecisional discussions--for use by a Special Assistant in his role as confidential advisor to the Attorney General. Final Department policy is not revealed in either document. These two records are part of the deliberative process of the Government which courts protect to shield decision-making from the type of intrusive inspection which would prevent the deliberative process from operating effectively. Unless protected from disclosure, predecisional deliberations such as these which do not reveal final actions or decisions on the part of Government officials will not be committed to writing. This would have a severe damaging effect on the ability of the Government to function responsibly and judiciously.

- B. 5 U.S.C. 552(b)(6) exempts from disclosure information (1) which is contained in personnel and medical files and similar files and (2) which, if released, would constitute a clearly unwarranted invasion of personal privacy. The information being withheld pursuant to Exemption 6 meets both aspects of this statutory test.

The legislative history of the exemption shows that Congress intended that the terms "personnel and medical files" be interpreted as illustrative examples of records containing the type of information--intimate details about an individual--which deserves protection. Information sought to be protected on a "similar files" rationale must be of the same magnitude--as highly personal or as intimate in nature--as that at stake in personnel and medical records. The withheld information is concerned with matters of a deeply personal nature and is unrelated to the functioning of the professional or occupational responsibilities of the individuals. It is not the type of information contained in any public records of which defendant is aware.

In no case is the public benefit from disclosure of the information being withheld greater than the right of the individuals or their families to protection from unwarranted invasions of personal privacy. The potential harm to an individual or his family includes unnecessary and unfounded public attention, harassment, criticism and embarrassment resulting from the disclosure of



intimate personal matters, or from derogatory inferences of a comparable magnitude which could be drawn from the information.

- C. 5 U.S.C. 552(b)(7)(C) exempts from mandatory release information contained in investigatory records compiled for law enforcement purposes, the disclosure of which would constitute an unwarranted invasion of personal privacy.

In this case, Exemption 7C was asserted to protect identifying information about an individual who provided information to the Department of Justice with the express promise that his or her identity would be kept confidential. Providing protection for the privacy rights of confidential sources is vitally important to the ability of the Department to obtain information from such individuals. Release of information that could identify such individuals would be very likely to subject them to disapproval and even reprisals.

Information about third parties which was excised pursuant to Exemption 7C was obtained from FBI investigatory files and provided to the Department for use during the Office of Professional Responsibility's Task Force review of the Bureau's investigation of the King assassination. The Bureau files were created for the purpose of investigating the murder of Dr. King, clearly a law enforcement function. 45 Fed. Reg. 2198 (Jan. 10, 1980). Documents created by the Task

Force during its review of the Bureau's investigation were plainly for law enforcement purposes, since the Attorney General had directed the Task Force specifically to determine (1) whether the FBI might have been responsible in some way for Dr. King's death and (2) whether actions by the FBI might have violated Dr. King's civil rights in any other way. The Attorney General requested from the Task Force recommendations for criminal, disciplinary or other appropriate action. The Court of Appeals for the District of Columbia Circuit agreed that Task Force materials met the threshold requirement of Exemption 7 in Lesar v. United States Department of Justice, 636 F.2d 472 (D.C. Cir. 1980), as investigatory records compiled for law enforcement purposes:

Where personal privacy interests have been established, disclosure is appropriate only where the public's right to be informed is found to outweigh the personal privacy of individuals. In the excision discussed here, defendant is unaware of any countervailing public interest that would outweigh the privacy concerns involved.

- D. 5 U.S.C. 552(b)(7)(D) exempts from mandatory release information contained in investigatory records compiled for law enforcement purposes, the disclosure of which would reveal the identity of a confidential source.

This Exemption protects both the identity of the source and information which might reasonably lead to the disclosure thereof. Sources can be paid informants or simply concerned citizens who

give information to law enforcement agencies. A person who furnishes information to an investigatory agency does so with the implied or express promise that at least his identity will be held in confidence. In some instances, that promise extends to the actual information provided as well. It would hinder a law enforcement agency in obtaining access to needed information if sources thought that their identities would be available if sought under the Freedom of Information Act. The identity of a confidential source which was excised pursuant to Exemption 7D under an express promise of confidentiality was obtained from FBI investigatory files and provided to the Department for use during the Office of Professional Responsibility's Task Force review of the Bureau's King assassination investigation. The Bureau files were created for the purpose of investigating the murder of Dr. King, clearly a law enforcement function. 45 Fed. Reg. 2198 (Jan. 10, 1980). Documents created by the Task Force during its review of the Bureau's investigation were plainly for law enforcement purposes, since the Attorney General had directed the Task Force specifically to determine (1) whether the FBI might have been responsible in some way for Dr. King's death and (2) whether actions by the FBI might have violated Dr. King's civil rights in any other way. The Attorney General requested from the Task Force recommendations for criminal, disciplinary or other appropriate action. The Court of Appeals for the District of Columbia Circuit agreed that Task Force materials met the

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threshold requirement of Exemption 7 in Lesar v. United States Department of Justice, 636 F.2d 472 (D.C. Cir. 1980), as investigatory records compiled for law enforcement purposes.

13. ITEMIZATION OF DOCUMENTS WITHHELD IN WHOLE OR IN PART AND JUSTIFICATION FOR FOIA EXEMPTIONS ASSERTED

A. Item: OPR #1

Date: November 4, 1976

Document: A one-page memorandum from Martin Luther King, Jr., Task Force Leader Fred G. Folsom to Counsel Michael E. Shaheen, Jr., Office of Professional Responsibility, regarding Task Force Access to F.B.I. files.

Paragraph One, brackets:

The words within these brackets were excised because they identify an FBI informant who gave information with the express promise that his or her identity would be kept confidential, who is alive today and whose identity has never been made public. Applying the standards discussed above, I withheld this information because I believe it to be exempt pursuant to 5 U.S.C. 552(b)(7)(C) and (7)(D). The memorandum was created during the investigation by the Office of Professional Responsibility's Task Force of the Bureau's Martin Luther King, Jr., assassination investigation. The information in it pertaining to the informant was derived from Bureau investigatory records which were provided to the Task Force for its review. Accordingly, the information qualifies as an investigatory record compiled for law enforcement purposes. Release of the information would, in my view, subject



the individual to embarrassment and harassment. I am unaware of any public interest which would be served by a release. Furthermore, to identify the individual as an informant for the F.B.I. would jeopardize the ability of the Department to gain access to such information in the future.

B. Item: CVRTS #7

Date: March 22, 1977

Document: A four-page draft memorandum from Assistant Attorney General Drew S. Days III, Civil Rights Division, to the Attorney General regarding Ramsey Clark's request to meet with Department of Justice personnel on behalf of the King family.

Entire Document:

This draft memorandum contains views and recommendations which Assistant Attorney General Days contemplated sending to the Attorney General regarding issues which the King family wished to discuss with the Department and the propriety of the representation of the King family by former Attorney General Clark. I have found no indication anywhere that this draft was ever actually finalized and sent to the Attorney General; in fact, this memorandum bears a handwritten notation over the subject heading, which says, "Not Sent". The Attorney General's Office had requested the opinions of the Civil Rights Division regarding Mr. Clark's request, but, to the best of my knowledge and belief, and that of personnel currently with the Civil Rights Division, no action was ever taken by the Department of Justice with

respect to the issues raised in this draft memorandum. Applying the standards described above, I believe that the document is in its entirety a privileged, pre-decisional intra-agency communication of an advisory nature exempt from disclosure pursuant to 5 U.S.C. 552(b)(5), and that release of this document would impair the quality of the decision-making process by revealing the tentative, preliminary views of an individual official. The document contains no segregable material of a purely factual nature.

C. Item: AG #25

Date: March 9, 1977

Document: A four-page letter from the Honorable Louis Stokes, Chairman, House Select Committee on Assassinations, to Attorney General Griffin B. Bell requesting certain Department materials pertaining to the assassinations of Dr. Martin Luther King, Jr. and President John F. Kennedy.

Page 2, part f, brackets:

Chairman Stokes requested Department of Justice and Federal Bureau of Investigation files pertaining to eleven named individuals. One name contained within the brackets was withheld pursuant to 5 U.S.C. 552(b)(6). This name could not be located in the Index for that portion of the House Select Committee on Assassinations Report entitled "The Investigation of the Assassination of John F. Kennedy" (where some information pertaining to individuals in the context of the King assassination is present), nor was it located in the Table of

Contents of the Findings and Recommendations of the Committee's Report. (The thirteen volumes of that portion of the Committee's Report entitled "The Investigation of the Assassination of Dr. Martin Luther King, Jr." have not yet been indexed.) FBI personnel have advised that this name has never been released by the Bureau in connection with the King assassination. Applying the standards for Exemption 6 described above, I concluded that it would be a clearly unwarranted invasion of personal privacy to reveal the individual's name in this context without being absolutely certain that it is already in the public domain. Public disclosure of the fact that the Committee requested information pertaining to the King assassination about this individual would subject him or her to unnecessary and unfounded public attention, harassment and embarrassment because the natural inference to be drawn from such mention is that the individual was suspected of involvement in criminal activity. I am unaware of any public interest which would be served by such a disclosure.

Page 2, section 4, through page 4, subsection k:

This material pertains solely to the assassination of President Kennedy and was not processed since it is clearly outside the scope of plaintiff's request.

D. Item: AG #26

Date: undated

Document: A four-page agenda for a meeting with Attorney General Bell regarding the matters

presented in Chairman Stokes' letter of  
March 9, 1977.

Page 2, brackets:

The same name was excised as on page two of  
AG #25 pursuant to 5 U.S.C. 552(b)(6).

Page 2, number 1, through page 3:

This material pertains solely to the assassination  
of President Kennedy and was not processed since it is  
clearly outside the scope of plaintiff's request.

E. Item: AG #27

Date: April 22, 1977

Document: A four-page memorandum from Special Counsel  
to the Attorney General Robert L. Keuch  
to the Attorney General regarding Mr. Keuch's  
function as liaison between the Department  
of Justice and the House Select Committee  
on Assassinations.

Page 3, paragraph 2 and page 4:

This material pertains solely to the assassination  
of President Kennedy and was not processed since it is  
clearly outside the scope of plaintiff's request.

F. Item: AG #31

Date: October 3, 1977

Document: A two-page memorandum from Mr. Keuch to the  
Attorney General regarding Mr. Keuch's  
function as liaison between the Department  
of Justice and the House Select Committee  
on Assassinations.



Page 2, paragraph 1:

This material pertains solely to the assassination of President Kennedy and was not processed since it is clearly outside the scope of plaintiff's request.

G. Item: AG #33

Dates: December 1, 3 and 8, 1975

Document: Twenty-six pages of handwritten notes pertaining to three different meetings. These notes came from a folder marked "MLW [Mark L. Wolf]/FBI/Martin Luther King--Notes"

Entire document:

These notes were written by former Special Assistant to the Attorney General Mark L. Wolf during meetings with the Attorney General, other Special Assistants, the Deputy Attorney General, and several Associate Deputy Attorneys General, Assistant Attorneys General and Deputy Assistant Attorneys General. These meetings were concerned with the proper procedures and objectives for conducting a possible review of the F.B.I.'s investigation of the King assassination. The notes are selective in content rather than being anything approaching a verbatim, or even substantively complete, recitation of everything which transpired at these meetings. As a Special Assistant, Mr. Wolf provided confidential advice and assistance to the Attorney General on various matters on a continuing basis. I am satisfied that these notes were made by him to assist him in carrying out his responsibility to provide such advice and assistance to the Attorney General. Applying the standards described above, it is

my own judgment that they constitute the sort of privileged, predecisional intra-agency document which should be protected from disclosure pursuant to 5 U.S.C. 552(b)(5) in its entirety. Release of this material would impair the quality of the decision-making process by revealing the tentative, preliminary views of individual officials and by impeding the ability of confidential advisors to high-ranking government officials effectively to function as such. The document contains no segregable material of a purely factual nature.

In addition, certain portions of the following paragraphs pertain to intimate aspects of Dr. King's personal life which are not a matter of public record: page eight, paragraph three; page nineteen, paragraphs one and two; page twenty, paragraph six; page twenty-one, paragraph two. Applying the standards described above, it is my judgment that disclosure of this information would create unnecessary public attention, harassment and embarrassment for the King family. Accordingly, these portions could not be released without resulting in clearly unwarranted invasions of personal privacy. 5 U.S.C. 552(b)(6). I am unaware of any public interest which would be served by the disclosure of this material. Any further public description of this information would require revealing exactly that which we are attempting to protect to prevent embarrassment to the family.

The following paragraphs in this document are also classified: page seven, paragraphs four and

six (brackets only); page ten, paragraph seven; page seventeen, paragraph five; page eighteen, paragraph two. As mentioned above, the Declaration of F. Henry Habicht II, Assistant to the Attorney General, will describe why these paragraphs have been withheld pursuant to 5 U.S.C. 552(b)(1).

H. Item: CIV #1

Date: July 12, 1976

Document: A two-page memorandum from Assistant Attorney General Rex E. Lee to the Attorney General regarding the King Estate request for tapes, transcripts and other materials resulting from FBI wiretapping and surveillance.

Page 3, paragraph 2:

The third sentence of this paragraph pertains to an intimate aspect of Dr. King's personal life which is not a matter of public record. Applying the standards described above, it is my judgment that disclosure of this information would create unnecessary public attention and embarrassment for the King family. Accordingly, the sentence was excised pursuant to 5 U.S.C. 552(b)(6). I am unaware of any public interest which would be served by the disclosure of this material. Any further public description of this information would require revealing exactly that which we are attempting to protect to prevent such a clearly unwarranted invasion of personal privacy.

I. Item: CRIM #5

Date: April 5, 1976

Document: (See Exhibit H, Declaration of Frederick D. Hess, Acting Director of the Office of Legal Support Services of the Criminal Division)

J. Item: CRIM #6

Date: April 21, 1976

Document: (See Exhibit H, Declaration of Frederick D. Hess, Acting Director of the Office of Legal Support Services of the Criminal Division)

K. Item: CRIM #7

Date: April 20, 1976

Document: (See Exhibit H, Declaration of Frederick D. Hess, Acting Director of the Office of Legal Support Services of the Criminal Division)

I certify under penalty of perjury that all of the above is true and correct to the best of my knowledge.

  
Quinlan J. Shea, Jr.

13 904  
Executed on April 10, 1981.