Told JL & delete Jerry Lee's bastards

". . . absent a showing of public interest in the information sought. . ." (p. 2)

Throughout this litigation I did make repeated showings of public interest, in no case refuted by the FBI. I did this under oath and in numerous appeals that, along with considerable documentation, I filed after the Cpirt asked me to cooperate with the appeals office. These appeals and the thousands of pages of xeroxes attached take up two full file drawerss. In additionnto what I provided under oath and in these written appeals I also provided information and documentation ~~with~~ in many meetings with the FBI and the xirector of appeals and his staff. "Public interest" is also reflected by the Attorney General's historical-case determination and by Congressional investigations and hearings, all of which followed the publication of my book on this subject and my requests.

Page 3, under "ARGUMENT," citation of Antonelli v. Department of Justice as relevant, quoted from Antonelli, "revealing that a third party has been the subject of FBI investigation." This is entirely irrelevant as it relates to three of the four Items of my request, as cited by the government in footnote 3 on page 5, and is largely if not entirely irrelevant as it relates to the fourth cited Item. ~~THREE~~ Three of these items,, Nos. 7,8 and 14, are limited to requesting copies of correspondence, which is not at all the same as third parties as " the subject of FBI investigations," and the government itself had disclosed ~~the~~ the existence of such correspondence to the press. ~~TH~~ Item 14 is limited to surveillances, the existence of which the government itself disclosed with regard to some of those listed, and it neither refers to these persons as "the subject of FBI investigations" nor is it so ~~limited~~ intended. Most FBI records relating to surveillances are not of persons as "subjects" but, particularly with regard to electronic surveillances, consist of listings of those "overheard" and those "mentioned." Contrary to the representations of this supplemental brief, the FBI did pretend third-party searches and then limited them to a) electronic surveillances that b) were authorized

But there were unauthorized surveillances, as is unrefuted in the case record, and even after appeal there was no search for "mentioned" or "overheard." Moreover, there are other forms of surveillance. Those disclosed by the government in this litigation include mail interception, shadowing and electronic.

The three non-surveullance items relate largely to government leaking that successfully infouenced the criminal proceeding and to the plea bargaining with which, to the accompaniement of nationak editorial outrage, any criminal proceeding was aborted. This is quite specifi before the district court. Contemporaneously the government disclosed both the plea bargaining and its own selection of the information sought but not all of that information.

Rather than the FBI having a concern for the alleged "privacy# of those listed it in fact outside this litigation disclosed that it had engaged in suchnleaking and in reaction one of those listed, Jeremiah O'Leary, stated publicly that all that he had written about the King/Ray aase for a major Readers Digest article was given to him by the FBI. Another of those listed, Gerold Frank, quoted verbatim from FBI records that were leaked to him in his widely-published and extensively-promoted book. Still another, Clay Blair, thanks the FBI for such assistance in his book. Another, George McMillan, didclosed privately that he had receiveds such assistance.

James Earl Ray's letters to the trial judge and his counsel were interceptedm copied and to a limited degree disclosed in this litigation. I obtained additional copies that were not provided by the FBI. All of this was despite the trial judge's order that ay not be subject to such surveillances.

The actual invasions of privacy were by the FBI.

Althpugh the existence and other information relating to plea bargaining were disclosed to the press by the government, one of the many proofs I presented in district court that compliance with my request by limiting it to the so-called MURKIN file is impossible is the absence of any of the plea-bargaining records in that file.

Jerry Ray is one of those listed in the surveillances item.

Rather than being concerned about his privacy the FBI disclosed that he slept with women to whom he was not married and it even disclosed their names. One was what the FBI refers to as its "symbol informant." This is an informer identified in its records by a symbol that consists of both letters and numbers. It has, however, not disclosed all its pertinent records. Rather has it disclosed those it wanted to disclose and, without even claiming an exemption, merely withheld the other pertinent records. So far from being concerned with orivacy was the FBI in this entire matter, it disclosed the names of Jerry "ay's illegitimate children, voluntarily and it disclosed that his wife slept with a balck man.

More on this subject appears elsewhere.

With further regard to the surveullances Item and the aleged relevance of the Antonelli decision, the alleged lack of showing of any "public interest," even when I provided privacy waivers no search was made except i n one instance, after it was directed by the appeals office, and then the search was knowingly inadequate and did not include records referred to in those that were disclosed.

Oliver Patterson was an FBI symbol informer it used to penetrate the Ray refense and that of his brother John. The FBI withheld this information from me in this litigation but it came to light when for its own purposes it disclosed to the House Select Committee on Assassination -over Patterson's written objection - that he was its informer. (This, of course, is contrary to the FBI's conistent claim that it does not and may not disclose who its informers are.) Thereafter Patterson looked me up, provided a privacy waiver filed in this litigation, and he disclosed to me what he later attested to on deposition in another matter, how the FBI rewrite his reports to emphasize the prejudical and to omit what was not to its liking. (The FBI also used him to intrude into local political affaibs of a racial character.) The disclosed records reflect the existence of still-withheld and never searched for Top Echelon InformandInformant records relating to him. My appeal

remains ignored after about eight years.

Associated with Patterson was a woman, Susan Wadsworth. She provided a privacy waiver that I filed. After eight years the FBI has not even acknowledged receipt of that privacy waiver and my appeals are likewise ignored.

Still another FBI informer who penetrated the Ray defense is a man named Geppert. I had no address for him but I did have a tape recording of his confession to having been an FBI informer/spy as broadcast telecast in St. Louis. FBI counsel and the appeals office both indicated that the pertinent records would be disclosed if I provided this tape recording. I handed it to FBI counsel and I have not heard a word about it since, after about eight years.

I also provided a privacy waiver from a photographer assigned to cover the King assassination. He was not an informer but he told me that he was a source in that he took information he received to the FBI voluntarily. Records disclosed in this litigation include the FBI's efforts to rebut the i some of the information hhe provided. But they do not include either the actual information he provided or even the fact that he provided it.

Obviously there is considerable "public interest," alneit also consi erable potential embarrassment to the FBI, in records relating to its penetration of the legal defense of criminal defendants.

(on page 4)

This Supplemental Brief states what is directly and completely refuted by the case record and the holding of the appeals office, "that plaintiff has failed to remonstrate a sufficient public interest to justify invading the privacy of many individuals listed in his request." However, if this has not been amply demonstrated before the district court, as it was, without refutation even being attempted, it is obvious that there is no invasion of privacy with regard to the above-cited informers and source because they provided privacy waivers and one confessed publicly. It also is obvious that there is no invasion of the privacy of those writers who in their own writing thanked the FBI for the help it and information it provided (which is also included in Item 7 of the April 15, 1975 request) and in the case of O'Leary, he

went public on his own initiative - after the FBI voluntarily violated his privacy outside this litigation - and he stated that he received all his information from the FBI. (It embarrassed him by disclosing that in return for its help he agreed to submit his article for its prior censorship.)

Additional relevant information appears in connection with the FBI's claim that its limitation of compppiance to its MURKIN file is what it calls "reasonable" and all-inclusive.

Footbote 2 at this point and the citation of Ray v. Department of Justice (in which the alleged assassin was pro se) are not relevant because entirely different matters were at issue. My request is not for all the information the FBI has on the listed persons and does not and cannot show that they were "the subject of FBI investigations" but is limited to exi pre-existing correspondence the existence of which is most cases was disclsoed by the defendant and the surveillances item.

This footnote also is not truthful in its continyation on lage 5, where it is represented that the FBI disclosed all pertinent information relating to Bernard Fensterwald, who had been Ray's counsel and who headed a committee that it included in the requests. Records disclosed that Fenstereald and another attorney were under electronic surveillance. (The form of disclosure was an order to all 59 field offices to cease such surveillance.) None of the pertinent records were disclosed, although that there must be such records was disclosed.

The FBI fails to include the plaintiff himself in this listing although he is included in the Items cited. The plaintiff, without contradiction, attested that his telephone conversation with Jerry Ray was intercepted and reported by the FBI. His affidavit is accompanied by the FBI record proving this. All pertinent records remain withheld. It is patently impossible to violate plaintiff's privacy by disclosure to him. More appears below in connection with the relevant but still withheld bank robbery files.

In implying that the case record does not reflect the relevance of the Gerold Frank material disclosed, which is not the same all the relevant Frank material the FBI

has, this supplemental brief misrepresents because the relevance of the requested Frank information is stated in the case record and is unrefuted. Moreover, what this brief also ignores at this point is the voluntary disclosure by the FBI to plaintiff's counsel of what it withheld from plaintiff in this litigation, the relevant records pertaining to another lwriter listed in the request, William Bradford Huie. -without any privacy wiaver. (Huie bought exclusive rights from Ray's then counsel and thereafter both diminated the Ray defense and simultan4ously leaked to the FBI all the information he obtained from Ray through Ray's then counseo, a former FBI special agent.)

There is a partly truthful statement in this Supplenental Brief (pages 5-6): "It has always been the FBI's position, based on its knowledge of its files, that any information about individuals relevant to the King assassination and the ensuing FNI investigation is contained in the Bureau's MURKIN file." Tjis has been the FBI's position, but that it is "based on its knowledge of its files" is not true. Aside from his subject-matter knowledge and knowledge of the records disclosed in this litigation the plaintiff has seen and has, without contradiction, attested to the content of other relevant and requested FBI records which disclose that all the FBI's relevant information is not "containee in the Bureau's MURKIN file." Moreover, when the FBI refers to the "Bureau," it is referring to its headquarters only, and while there still has not been full disclosure of its relevant field office records, thousands of field office pages have been disclosed to plaintiff and they contain information that is not "contained in the Bureau's MURKIN file."

At this point in a footnote the FBI actually argues that "Indeed, plaintiff actually benefitted from the Bureau's reasonable interpretation of his request, which resulted in the release to him of more material on the King assassinatuon than would have been released through a piecemeal approach." (Footnote 4)

What this obscure reference to an alleged "piecemeal approach" really refers to is the fact that the FBI did not make the searches required to comply with plaintiff's

request and instead, without search and over his strongly-stated objections limited compliance to the FBIHQ MURKIN rile.

The entirely unsupported (there is no such evidence) claim that a) plaintiff "benefitted " and that the "material" released to him in MURKIN that he did not request is "on the King assassination" just are not true.

Most of the paper in the MURKIN file has nothing to do with the crime itself. Moreoger, when the plaintiff had no regular income, it was not by any means any "benefit" to him to make him pay 10 cents a page for records he did not request. The records themselves are not "on the King assassination." Rather are they a vast collection of the largely irrelevant the mass of which the FBI cited as evidence of the enormous investigation it allegexly conducted. There is much that tends to incriminate Ray, but most is not even of this character. It was hardly a "benefit" to plaintiff, for example, for the FBI to make him pay for all the many pages of its basely concoction that it also leaked extensively to the press to make itappear that the Ray aliases came from Ayn Rand's writing. (In fact, as early as the very day Ray was charged the FBI's own records disclose that it knew that the aliases he used were those of live people, witness phone book listings.)

It was hardly a benefit for the FBI to make the plaintiff pay for all the many pages of records devoted to the utterly irrelevant, scientific anal sis of the deposits of mud on Ray's automobile.

It was anything but a benefit to plaintiff for him to have to pay for and then to have to waste time in reading such junk as peoples' dreams, their imaginings, their racists diatribes thatwere relevant to nothion, their theories of the crime, their claims to having heard and seen what they could not have heard and seen and was not in any event relevant. I Must from 8-

What plaintiff conceived as benefiting him is what he requested, what the FBI ignored and substituted all this junk for, along with some information that was within his request and was in the MURKIN file. (What is not in that file, for one of

countless examples, and what he did request, is the results of standrad FBI testing, the simple swab test to determine if the alleged assassination rifle had been fired subsequent to either manufacture or cleaning.)

Insert where indicated on 7)

Nor did plaintiff consider it any kind of benefir to have to pay for all the countless, unwanted and entirely irrelevant praises of the late J. Edgar Hoover that are included in the MURKIN file but are not within his request.

It is not true to described and there is no evidence in the case record that describes the MURKIN file as "on the xx King assassination." As a result of plaintiff's writing and investigating and his disclosure of information he obtained in this litigation, which began before the first records processed in the MURKIN file were disclosed to him, and as a result of unjustified interpretations of his work and disclosures, the FBI was considerably embarrassed. It then defended itself and it actually states in the disclosed MURKIN records that it did not investigate the assassination itself. Its one defense description of its MURKIN file is that it conducted only a UFAC investigation, or an investigation of Ray as an escapee.

While ~~it~~ without any evidentiary support at all ~~the~~ this supplemental brief ~~does~~ describes what it did, not search to comply with the request and substitute instead its Headquarters MURKIN file as "reasonable," the case record is entirely to the contrary and is unrefuted. It is not reasonable, the plaintiff proved over and over again that it was not reasonable, the court and the appeals office h ld it was no reasonable, and it is not what the Act and controlling regulations require, a search to comply with the actual request.

(Not searching and instead substituting records of the FBI's selection is its itds standard practise with this plaintiff. It did precisely the same thing in his C.A.'s 78-0322 and 0420, later combined and now on appeal. In that litgation the FBI forgot itself and actually attested to this substitution instead of searching.)

At this point the Supplemental Brief (page 6) goes farthur in its misrepresentations

and it desceibed its failure to search and opposed substitution as more than merely a "reasonable" interpretation of plaintiff's requests. It actually describes plaintiff's requests as "pertaining exclusively to the MURKIN file."

The most causal reading of the actual request discloses that compliance is impossible if limited to that file. Moreovery, and contrary to the misrepresentations to this coyrt in this brief, the case recordm without refutation ve even being attempted, discloses the zctaul files in which relevant records are ~~xtorsd~~ kept. (As with all else in this, this tstatemnt is based on the case record.)

One of the Orwellian titles of FBI files is the classification of "Research Matters" for Classification 94. It actually consists of the FBI records relating to the press, writers, its lobbying and its leaking. In those days it was largely a classification for the division titled "Crime Records" whose head, Cartha DeLaoch, was actually the FBI's top press agent, leaker and lobbyist.

Any search of any 95 94 files was literally refused by FBI counsel in this litigation when the plaintiff displayed the FBI's own search slips that disclosed and identified relevant 94 files relating to the writers listed in the above-cited Items, those to whom the FBI beyond question did leak information it still withholds from the plaintiff in this litigation.

The FBI's ticklers are not limited to records from a single file, like MURKIN, and the ticklers were held to be relevant. The FBI claimed it did not have any at first, and when plaintiff then established by the FBI's own ecords that in fact it didhave ticklers, it claimed not to be able to find them. When plaintiff showed the appeals office how to find one, the so-called "Long tickler," it was located. It then turned out tthat after the beginning of this litigation the FBI gutted that large tickler. But in what remained of it the relevance of certain "bak robbery" vlassification files was established. Excerpts from some of these files are in the Long tickler and their content is with the requet and does relate to the King assassination and the FBI's investigation. Those "bank robbery" or 91 files also disclose the interception referred to above, of plaintiff's conversations with Jerry Ray.

(Plaintiff was in his home in Maryland, Ray was in the midwest, in Illinois and Missouri.) Those 92 files also disclose the physical surveillance of Jerry Ray and others of his family, all specifically included in the cited items misr presented in this Supplemental Brief.

Plaintiff also is included in these cited Items, yet the FBI did not search those files for compliance ither in this litigation or in compliance with his separate request for all records on or about him, filed with headquarters and all 59 field offices. After hep provided copies of pertinent FBI records from the Long tickler those relevant records remained and remain withheld and his appeal remains ignored after about six years.

Charkes Qhitman Stephens, to provide another example of what rather than "pertaining exclusively to the MURKIN file" pertains to what the FBI deliberately withheld from its MURKIN file but has, was interviewed by the FBI and shown a photograph of James Earl Ray. Stephens is the only alleged eyewitness who allegedly identified Ray at the scene of the crime. In fact, three different and somehwta inconsistent affidavitd were prepared for his signature, after which one was used to obtain Ray's extradition. These affidavits represent that Stephens did identify Ray. But before he executed these affidavits he actually stated, on examining the photograph, that it was not Ray that he saw. The Memphis MURKIN file holds a distorted summary of what Stephens allegedly told the FBI, but it does not, at least in what was provided to the plaintiff in this case, hold any FBI reports of its interviews of him. Specifically what was disclosed does not include the basis for the disclosed and unfaithful paraphrase.

At the time of the crime Stephens, an alcoholic with a record of dangerous violence, was so druck he had no idea of ehat was going on. He had phoned for his regular cab driver to take him to the liquor store. That driver, James McCraw, found Stephens - only minutes before the assassination - so drunk he did not dare transport him. McCraw also provided information qyite relevant to the crime and its investigat ion. When plaintiff was Ray's investigator, conducting the investigation

for the successful habeas corpus proceeding and then for the evidentiary hearing that followed, he located and interviewed McCraw, who was then presented as a Ray witness in the evidentiary hearing. Without refutayiion McCraw testified that the FBI obtained and kept his cab manifest, which he attested would support his testimony to where he was, whennhe was there and what he then saw. This manifest Neither nor any record relating to it is in any disclosed MURKIN file.

From these and other illustrations in the case record what the FBI'd records reflect and what it knows about its files and filing practises is the exact opposite of what, without evidentiary base cited or existing, the Supplemental Brief states, that the actual request pertained "exclusively to the MURKIN file." The case record abounds with only the contrary of this representation, beginning when it was stated to the Court before the first MURKIN record was processed and continuing throughout the litigation and never once refited by the FBI.

Consistent with this and footnoted in support of it is the overtly false representation the pertinent and specifically requested records relating to a groups of Memphis Black calling themselves "The Invaders" and the FBI records relating to the Memphis sanitation workers strike are not included in my request and were provided "although the FBI has always maintained that these files were not within the scope of plaintiff's requests." The plain and simply truth is that Item 26 is specifically on the Invaders and by name and Item 27 is e specifically "on any of the unions involved in or associated with the garbage strike."

When the FBI states that it has "always maintained that these files were not within the scope of the plaintiff's requests" when in fact they are two separate and specific Items of that request it discloses its attitude toward the request and its intent not to comply with the actual request and then to misrepresent what it did and di dnot do.

(Dr. King was in Memphis to be assassinated there only because of his support of that strike. He was there to support it.)

Moreover, both files are largely of assassinated-related information. The first person to reach the fallen Dr. King was the police spy who had penetrated the Invaders, the strike organizations and the King party itself, for which he provided transportation. ZThese files actually hold xeroxes of his reports, including wh about what was going on in the King party.

An even more spectacular FBI self-disclosure of its intent not to search and not to comply is its failure to provide the records that properly should be the very first in the MURKIN file and are entirely outside it, the records of the reporting of the fact that Dr. King would be assassinated when he returned to Memphis. Because it is a separate file the FBI withheld it, refused to disclose it when plaintiff accurately identified it, including by its correct number and title, and did not disclose it until ordered to by the Court. Its content is in the record of this litigation and thus is known to the FBI and its cousel. It actaully is the first reporting of the " Murder of King," contracted into MURKIN. (And the FBI did not even bother to notify the intended victim or anyone associated with him, according to the file itself.)

At this point (pages 6 and 7) the Supplementary Brief continues with another statement that the unrefuted case record establishes is not true,"to the extent that information on the listed [redacted] individuals pertinent to the King assassination exists, it is located in the MURKIN file, which the plaintiff has received." As the case record, without dispute, reflects, the FBI's records relating to its belief that there was a Ray family conspiracy to kill Dr. King, are not in its MURKIN file but are in its "bank robbery" or 91 files, five of which pl aintiff identified by tjeir correct numbers in his affidavits. The FNI's records relating to its leaking are classified as 94 files and after they were correctly identified on the FNI's own search slips it refused to even exmine them for possible relevance. Moreover, the request seeks information that is not on "the King assassination" but relates to surrounding events and acts by the FBI, and the FBI knows very well and

the case record establishes that such information is not and ought not be in the MURKIN file but does exist and to the FBI's knowledge does exist in other files, which it has steadfastly refused to search.

In continuing with this false pretense the supplemental Brief next claims in glaring defiance of the case record that "plaintiff did not even focus on the FBI's approach to his December 23, 1975 request until November 11, 1980." Without interruption, this is followed by another untruth, that this was "more than seven months ~~that~~ after the district court determined that the FBI had conducted an adequate search of its King assassination records." despite the liking of the supplemental brief for the a codename MURKIN, the one point at which it is reve relevant, this very point, is the one place it is not used. The district court did not "determine" anythig about any "search of its (the FBI's) King assassination records." That court then referred only to the MURKIN records, which the FBI knows veey well is not identical with its substitution for MURKIN, # "its King assassination records."

The truth is that from the moment the FBI disclosed that it intended to provide its MURKIN file in substitution for the plaintiff's actual requests he informed his counsel and his counsel immediately and without refutation informed the court that the MURKIN file did not respond to the actual request. Thereafter, rather than allegedly failing to "focus" on this until November 1980, plaintiff in great and documented detail enevr stopped "focusing" on this in those two file drawers of appeals, in his many detailed and documented affidavits, and in his counsel's pleadings and representations to the court, s he did also in personal meetingd with the FBI.

What the FBI now really represents is that the evidence it did not even try to refute does not exist, merely because for all these years it has ignored it and pretended does not exist, to the point where it actually misrepresents and is in opposition to the turth in its present representations. The footnote at this piint actually states that "Plaintiff has not presented any meanignful evidence

to refute the FBI's position," i.2 i.e., that all relevant material "is in the MURKIN file." What is cited above from the case record is far from all that refutes this FBI position that to its knowledge is in the case record.

As the FBI knows very well, it has provided in this litigation, without searching to comply with the requests and still without prividing all the relevant and correctly identified information it has, many thousands of pages that are not "in the MURKIN file." (Those on the Invaders and the snaitation srtike alone take up two file drawers of records.)

The supplemental brief misrepresents in stating that the district court did not find that the FBI's "interpretation of plaintiff's request was unreasonable." The district court did, as did the appeals office, and as a result thousands of additional pages of records were disclosed, as the FBI and its counsel know very well, still without an actual search to comply with the actual request. No remand is necessary to determine what that court did dedetermine and thecase record reflects. Such a "couse"course" would sevre only to further stonewall this case now nine years old. (It actually is much older because plaintiff filed two requests in 1969 or more than 15 years ago. They were not complied with by order of the FBI's top command of that era, as the case record reflects. The district court also held them to be pertinent.)

In its conclusion this supplemental brief does not claim limitation to what is represented to this court in stating that "plaintiff presented his 'public interest' argument for the first time on appeal." This argument was presented and to and supported by the distfict court and the appeals office. Moreover, the district court did not "determine(d) that the FBI conducted an adequate search." (page 8) The District Court's cited determination is limited to the MURKIN file only, and that, clealy, does no include all known relevant records.