Abstracts

With regard to the abstracts the biref makes a number of untruthful and irrelevant and misrepresentative statements:

Tey are "similar to index cardds only because they are intended for retrieval purposes; they are duplicative; they had not been given to any other requester because they are duplicative and because of the work required to process them, as a matter of policy (pag e 42.

"The abstracts reveal less information that the documents which plaintiff received." (page 43)

"The court's assertion that the abstracts, indices and tickler files are valuable to historians is equally erroneous, since the Department's affidavits estaboish the duplicative anture of these materials."(page 52)

In supportof the latter argument the brief cites the attestations of notable his historians and experts of what is important to historians, an FBI clerk and an FBI special agent. I provided the attestation of a respected history professor who is also an archivist and bibliographer and he evaluated these materials as of considerable importance and value.

The real reason the abstracts had never been disclosed before is that the FBI kept their existence that secret. its coonsel confessed in this case that he had never heard of them. He also protested that they should not be disclosed because they are only an inded. He shifted this argument when he was rreminded than an Item of the request includes all indices, and on this ground alone they are pertinent. They were required to have been cisclosed vo,untarily because they also are MURKIN records, and all MURKIN records were to have been disclosed.

Whatever the FBI's planned use for these abstracts, because they are the only available index to the large MURKIN file they are of inestimable value. Under the brief's argument indices are a) valueless and b) merely duplicative. No librarian is cited as authority, obviously.

That the abstracts reveal less information that the underlying records is

irrelevant and immaterial. The very purpose of any index is to condense for access and to provide access.

The brief represents that I prolonged this litigation by deliberately dialtory tactics. The case record refelcts that this is false and that the defendant stone-walled. The matter of these abstracts illustrates this. Having forgotten that on tem of my request seeks all indices, FBI counsel first argued that they were not responsive because they were merely indices. reminded of the Item of the request he shifted to a series of other irrelavtn objects and thus prolong this one matter for months. He the argued that it would take an inordinate amount of time to process these brief items, exactly as the brief argues. Processing the abstracts was a simple matter and could have been done in short order- except for one thing. There was, as the FBI's own expert witness, the appeals director, Quinlan Shea, testified, extensive withho ding of what was not properly withheld. The only problem the FBI had, and this did take time it charges to me in its brief, was that it had to compare the abstracts with the underlying records to avoid not withholding what was improperly withheld, as Shea testified, in the underlying records that were indexed.

Under Abstracts, which includes indices, I refer to the FBI's eminent authorities on history as an agent, Wood, and a clerk, Whaley. I not believe that Whaley may be abother agent, so this should be changed to something like two in-house authorities whose credentials have nothing to do with history or scholarlship.

1979. R. 116. The cards were a part of of the Memphis field office document retrieval system and contained no substantive information (R. 108, Affidavit of William Earl Whaley). In its memorandum opposing production of these cards the Department quoted from a 1979 order of Judge Pratt denying the release of similar file cards because of the "very slight possibility" that such cards would have releasable information not already provided.

(2) Disclosure Of FBI Abstract Cards.

The abstract cards are similar to the index cards in that they were part of the FBI's document retrieval system, referring only to information already included in the document itself (R. 130, Affidavit of Martin Wood). These cards have been prepared in order to account for every piece of correspondence entering or exiting the FBI. Yet no previous FOIA requester had been given them in addition to the underlying documents because of the substantial additional work required to process this duplicative material. The reasons for this policy were made clear to the district court. Id. The court nonetheless ordered the Department to process and deliver these cards to plaintiff, on February 8, 1980 in a status conference. They were produced and copies of the documents were included in the Vaughn v. Rosen sampling ordered by the Court. In finally responding to plaintiff's motion of December 20, 1979 to release these cards, however, the court remarkably denied the previously granted motion "because the abstracts are essentially duplicative of

information already released to plaintiff. The abstracts reveal less information than the documents which plaintiff received" (R. 223, p. 3).

(3) Disclosure Of Civil Rights Division Records.

In the Order of Dec. 1, 1981, the Court ordered to be released an index of documents that was prepared by a Civil Rights Division attorney in 1977-78 "to determine whether Mr. Weisberg had received records responsive to his request." (R. 223, p. 7). The court read plaintiff's FOIA request "in liberal fashion . . . even though the index was not in existence at the time of the request". Ibid. Again, as with the Memphis field office index and the "abstracts", the information in the Civil Rights index was merely duplicative of the underlying documents which had been released to plaintiff. The one difference, as the court noted, is that this index was specifically prepared to deal with claims in this lawsuit and was prepared 2 1/2 years after receiving plaintiff's request.

Other Civil Rights Division releases ordered by the court in its December 1, 1981, order (R. 223, pp. 5 and 6) were dealt with as follows:

> (a) D.J. file 41-157-147, which the Department had sworn did not exist (R. 196, affidavit of Janet Blizard) continued not to exist (R. 228, declaration of R.J. D'Agostino). This was not a case of losing a file. Justice simply had no file number of this type. (R. 228, declaration of Robert Yahn).
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> (b) D.J. file 144-19-0, which the Department had sworn had nothing to do with the assassination of Dr. King (it was citizen mail received by the Division complaining of civil rights

investigation noted on pages 4-5 and 12 of the district court's January 20, 1983, Memorandum Opinion. When read in context, the hearing transcript quoted by the court to support this proposition appears instead to be a refutation.[20] H.T., October 8, 1976, at 5. The court's assertion that the abstracts, indices and tickler files are valuable to historians is equally erroneous, since the Department's affidavits establish the duplicative nature of these materials. See, e.g., R. 130, Affidavit of Martin Wood; R. 108, Affidavit of William Earl Whaley; R. 148, Fifth Affidavit of Martin Wood, ¶ 3. Indeed, even the district court appeared to recognize this fact, since, in its order denying release of the abstracts--apparently having forgotten ordering their release almost two years earlier--the court stated that:

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20 A remark (ibid.) by the Assistant U.S. Attorney that Weisberg had triggered a [FOIA] review of the entire King file did not refer either to the OPR investigation or the proposed release to the House Select Committee. The Court apparently misunderstood, saying:

> You see, they wouldn't have made this investigation if it hadn't been for Mr. Weisberg.

(ibid.). The AUSA immediately tried to correct his misapprehension, saying:

> I am sorry. I am a talking about the complete [FOIA] review.

(Ibid.). The AUSA explained that the FBI was processing Weisberg's FOIA request for release to the public. The OPR and House Select Committee releases were not for public release, but for totally separate purposes that had no bearing on this case. (Id. at 8)