Privacy

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

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

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

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

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Plaintiff also argues that the FBI's response to his request was inadequate because the Bureau failed to conduct particularized searches on J.C. Hardin, Raul Esquivel, Sr. and the "Lawn Tickler." Pl. Br. at 39-40. It has always been the FBI's position that any information about individuals relevant to the King assassination is contained in the Bureau's MURKIN file (see, e.g., Transcript of June 30, 1977 status call, R. 41 at p. 31) and plaintiff has presented no meaningful evidence to refute this position.[7] Moreover, plaintiff's FOIA request make no mention of Messrs. Hardin and Equivel, and we are unaware of any significant proceedings in the district court regarding their records. Finally, we note that Messrs. Hardin and Esquivel have not waived their rights under the Privacy Act, 5 U.S.C. 552a, regarding their personal files.[8]

With respect to the "Lawn Tickler," the FBI has conducted a thorough, fruitless search of the files of the General Investigative Division, in which Special Agent Lawn worked. Fifth Wood

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7 Plaintiff's reliance (Pl. Br. at 22) on the fact that an FBI memorandum concerning a request by a writer to interview FBI agents for a book on the King assassination was not filed in the MURKIN file is plainly misguided; it is self-evident that a request by a writer for an interview about an event is not part of the substantive investigation of the event itself.

8 Plaintiff's argument that the FBI wrongfully refused to search certain items of his December 23, 1975, request without a privacy waiver from the individuals involved has no merit. See, e.g., Terkel v. Kelly, 599 F.2d 214, 216 (7th Cir. 1979), cert. denied, 444 U.S. 1013 (1980); Rushford v. Civiletti, 485 F. Supp. 477, 479 (D.D.C. 1980), aff'd without opinion, 656 F.2d 900 (D.C. Cir. 1981)