The Stipulation and the Consultanny

Of all the official misrepresentations in this officially-stonewalled litigation none have been more effective in stonewalling and in frustrating compliance that the Stipulation and the Consultancy agreement. Both are again misrepresented in the government's brief.

The Stipulation.

Basic to the defendant's claim that all required searches were made is this untruthful statement in the brief, " . . . entered into a stipulation spelling out the Department's search obligations." (page 5) No matter how often the defendant was corrected on this, including by the district court, it is one of the most persisting misrepresentations, used repeatedly as a justification for not making the required searches. The stipulation does not address searches or the Department's search obligations."

The stipulation was proposed by the FBI as a means of avoiding a Vaughn indexing of the MURKIN records. I agreed to waive this index if the FBI provided the assassination investigation records of seven filed offices under certain specified and agreed-to conditions. Nothing else was involved. No other components were involved, no other searches were waived, and there are no other provisions. I waived absolutely nothing except this Vaughn indexing, and that only conditional upon the FBI's compliance with all other provisions. It violated them from the outset, persisted in violating them through all the processing of those field office records, and because they were violated the stipulation was nullified and the court did order a sample Vaughn index, This would not have been required if the FBI had not broken the provisions of the stipulation it sought and drafted.

Because the FBI, after claiming complete compliance, searched a few other files later, it claimes (page 24) that ("(I)t thus complied with the plaintiff's requests and with the August, 1977 stipulation." If it violated the stipulation, as it did, and as the court held it did and as it has yet to deny it did, it could not "comply" with that Stipulation which in any event has no such provision and again is misused to

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allege that the FBI has met its search obligation when it has not.

The stipulation is stretched still farthur (on page 26) to pretend that the stipulation (which it nullified) obviates its need to "reprocess records processed from FBI field offices pursuant to the stipulation." The brief adds that I "must be aware" that reprocessing "nullifies a provision of the stipulation that states: (d)uplicates of documents already processed at headquarters will not be processed or listed on the worksheets." Aside from the fact that the FBI nullified the stipulation at the outset and contemporaneously it has yet to check to determine whether any withheld field office document is actually duplicated in the existing FBIHQ MURKIN file. Many headquarters MURKIN records are missing and not accounted for. In a concurrent case where the FBI also did not check to ascertain that headquarters still had and had processed documents provided by a single field office, more than 3,000 pages were found not to exist at headquarters and were not provided. Thereafter the FBI was compelled to provide these missing pages. Moreover, the defendant's own expert witness, head of its own appeals office, testified that the records require reprocessing because exemptions were claimed when they should not have been claimed, and in a report to the court he stated that non-duplicate field office records were withheld as duplicates. The brief's footnote ignores all of this and represents that only documents with "administrative markings" were withheld. The appeals office checked, found out this is not true, and stated that the nonduplicates should be provided from the field office files. This has not been done and the stipulation cannot be claimed to cover any other withholdings detected by the appeals office. The stipulation also does not cover any other improper withholdings.

The brief is both truthful and utruthful with respect to what was to have been produced under the stipulation by the field offices. ("...called for records only of the assassination investigation (the MURKIN files)" records, page 45.)

It is correct that the field offices were to have processed the records of "the assassination investigation," to cover which the FBI used its code word MURKIN. I raised the question of whether that this did not include the records on the Ray family that

are included in my request, and the FBI assured me not only that it would but that t he use of this code word was required for the field offices to know what records they were to send to FBIHQ for processing. It turned out that the FBI deceived me when it could no longer withhold the Long tickler. The Long tickler established the existence of other "assassination investigation" files in some field offices, pertinent records filed other than under MURKIN. One example is the "bank robbery" files on the Rays, the conspiracy part of the assassination investigation.

All the foregoing is undenied in the case record, which includes samples of the bank robbery records to reflect pertinence.

So, while it is true that under the stipulation the only field office records required to be provided related to "the assassination investigation," as the governments brief states, it is not true that all "the assassination investigation" records were filed under MURKIN!

Examples of outside-MURKIN filings of records pertinent to the assassination investigation that were later disclosed, thereby establishing still other violations and nullifications of the stipulation, include those on the police and FBI spies, Marrell McCullough and Oliver Patterson and the Memphis files on the Invaders and the sanitation workers strike.

As the appeals office director informed the FBI with regard to this litigation in a memorandum that was withheld from me under spurious claim to exemption and then disclosed to another requester, a memorandum he did not long survive, that records are pertinent by their content, not by how the FBI has them filed, and that when they can be located by a reasonable search, they are required to be processed.

Although the brief concedes that under court order other information was disclosed, the defendant claims that in its interpretation this information was "of slight and peripheral significance."(Page 46) It is by no means either slight or peripheral to disclose how the FBI hides main-file subject matter records outside the main subject file, one of those disclosures, and that it uses "66. Administrative Matters" files to hide records pertaining to and tapes of its electronic surveillances, which are an item of the request still not properly searched and for the most part not searched at all.

Throughout this litigation, every time the existence of pertinent and withheld records was established the defendant claimed that the stipulation covered them. In no case was this true. The defendant has tried to strecth the stipulation it nullified to include almost anything not in Fort Know.

process the second administrative request. See 5 U.S.C. 552. The district court, however, allowed the litigation to continue and permitted the second FOIA request to become part of the lawsuit.

For the next five years, litigation focused chiefly on the scope of plaintiff's FOIA requests and the adequacy of the Department's searches. During late 1976 and 1977, approximately 45,000 pages of material were made available to plaintiff, as a result of the processing of plaintiff's second administrative request. In August 1977, plaintiff and the Department entered into a stipulation spelling out the Department's search obligations. R. 44. Plaintiff continued to assert, however, that the Department had not conducted an adequate search of its records. Attempts to define the scope of plaintiff's requests proved futile;[3] thus, the Department released approximately 15,000 pages of nonresponsive and/or duplicative material (e.g., abstracts and indices of documents) simply because of the amorphous nature of plaintiff's requests. Moreover, the Department was forced to undertake numerous generally fruitless searches for material that plaintiff claimed was in its possession. The processing of plaintiff's FOIA requests alone

[3] Indeed, the Department of Justice even contemplated hiring plaintiff as a consultant so that he would be able to specify the material he wanted. See infra, pp. 6-15, 29-35.

gories are not the FBI's categories. The FBI searched those files in which it was most likely to find the information requested by plaintiff, and released those files to plaintiff.[5] It thus complied with plaintiff's requests and with the August, 1977 stipulation. Thus, the Bureau plainly "conducted a search reasonably calculated to uncover all relevant documents." Weisberg v. Department of Justice, supra, 705 F.2d at 1351.

Plaintiff further alleges that "[t]he Department of Justice failed to search all of its components which might have responsive documents." (Pl. Br. at 37). The Department, however, has absolutely no reason to believe that the "components" named by plaintiff have any documents relevant to plaintiff's request. Having searched thoroughly the files of those components which it reasonably believed to have information pertinent to plaintiff's request, the Department legitimately refrained from searching other components on the strength of plaintiff's speculation.[6] Ground Saucer Watch v. CIA, supra, 692 F.2d at 771, 772; cf. Weisberg v. Department of Justice, supra, 705 F.2d at 1357 n.22.

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[5] Plaintiff's statement that "the FBI attempted to restrict its search to its MURKIN file" (Pl. Br. at 37) is flatly incorrect. As the Mitchell affidavit and the August, 1977 stipulation clearly show, the FBI searched numerous files other than MURKIN. R. 91, Mitchell Affidavit at ¶2; R. 44.

[6] Indeed, at plaintiff's behest the district court ordered the Department to search the files of the office of the Attorney General and the office of the Deputy Attorney General. R. 182. No relevant documents were found. R. 187, App. B. (Affidavit of Quinlan J. Shea).

Affidavit, R. 148, exhibit A. This outcome is hardly surprising, since ticklers are merely duplicates of material found in FBI control records, and are routinely destroyed within a specified period of time after an investigation has ended. Id., ¶ 3. These are the only "divisional files" maintained by the Bureau.

Plaintiff next contends (Pl. Br. at 38-39) that the FBI should be required to reprocess records processed from FBI field offices pursuant to the August 12, 1977, stipulation between the parties. Plaintiff must be aware, however, that his request nullifies a provision of the stipulation that states:

> [d]uplicates of documents already processed at headquarters will not be processed or listed on the worksheets.

(R. 44). As a result of this stipulation, which was duly signed by the district court, the FBI consistently processed and released only those field office records which were not processed at Headquarters, while also releasing from field office files "attachments that are missing from headquarters documents" and "copies of [Headquarters] documents with notations," as provided for by the stipulation.[9] Plaintiff now requests this Court--as he requested the district court on numerous occasions--to scrap this long-standing agreement by

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The Department long argued that these items either had been released to plaintiff or did not exist. The Department claimed that this was sufficiently attested to by the deposition of John Kilty of the FBI (see Transcript of April 6, 1981, p. 42). Nonetheless, the court ordered the Department to search again. The FBI accordingly re-released items previously given to plaintiff in 1977 because he had apparently lost his earlier copies (this time releasing names of FBI Special Agents withheld under now-superseded policy, see n.13, supra) and submitted an affidavit from John Kilty stating again that nothing else existed to be turned over (R. 228).

(6) Field Office Investigatory Records.

The December 1, 1981 Order credited the FBI with having already released to plaintiff all of the items which he claimed not to have received--with three exceptions. The first exception consisted of evidentiary items (e.g., a case of Clairol hair spray, an ashtray) which the court held non-retrievable under the FOIA. The other items, "the Memphis files" and "the Savannah files," were ordered released (Dec. 1, 1981 Order, pp. 8-9). The Memphis files had not been turned over because they were not responsive to plaintiff's FOIA request (they dealt with a threat to bomb a plane on which Dr. King was once a passenger and with a file entitled "Martin Luther King Security Matters" that was unrelated to the assassination). Since the 1977 Stipulation between Justice and plaintiff's counsel had called for records only of the assassination investigation (the MURKIN

files) to be released to plaintiff, these items were not turned over until the court's order. The Savannah Field Office was not one of the offices included in the search, pursuant to the Stipulation. The three internal Savannah memos ordered released were of slight and peripheral significance (see 2nd affidavit of John Phillips, R. 187, pp. 8-9).

(7) "CIA Documents."

On January 28, 1981, the Court denied plaintiff's motion for documents referred to the CIA. The explanation for this is contained in the Department's memorandum of January 26, 1981 (R. 187 and exhibits). The Department explained that nine of ten of the CIA documents had already been dealt with in one of plaintiff's lawsuits against the CIA. The tenth document--which apparently had also been requested in the other litigation--concerned an individual whose name bore a resemblance to James Earl Ray. The document was eventually released by CIA. It is clear that this one item was not the source of any "page-one story" in the L.A. Times as indicated by plaintiff on paragraph 58 of his October 26 affidavit, cited by the court. A look at the item clearly demonstrates that it was, like the others, insignificant.[16]

(8) The Court's Sua Sponte Order For A Renewed Search For A Taxicab Manifest.

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16 Of course, the CIA was not a defendant in this case and thus could not be compelled to produce documents by the court.