Counsel
Administrative Practices Subcommittee
U.S. Senate
Washington, D.C.

7627 Old Receiver Road, Rt. 12
Frederick, Md. 21701
8/25/79

Dear Counsel,

If the enclosed copy of my ~~enclosed~~ FOIA appeal of today is of interest to you my files and my many FOIA cases hold much more like it.

Some months ago one of your staff phoned to ask if the promises made ~~by~~ to Mrs. Lynne Zusman testified had been kept. I responded that they have not been. I asked for and was promised a copy of the hearings when printed but I have not received it.

Quite the opposite of the intent to which Mrs. Zusman testified has continued to be the practice and she has presided over it, including even new devices for stalling and perpetuating non-compliance.

One of her devices in C.A. 75-1996, when she personally was handling the case, was to persuade the judge that she and the Department required my help in my case against the Department and that I should be its consultant.

This resulted in a special kind of stalling, until I could complete a 200-page consultancy memorandum. Once it was completed it was totally ignored, to be replaced by other stonewalling.

The "generous" fee I was to have been paid has not been, nor have my out-of-pocket expenses.

All of this and much more is in the record in C.A. 75-1996.

Moreover, Mrs. Zusman and her successor counsel, also her subordinate, made endless misrepresentations to that Court, as the transcripts reflect. I have most of them.

Among their devices was the filing of knowingly and deliberately false affidavits. When I proved that one for which the Civil Division is responsible was flagrantly sworn and that they used an unindicted co-conspirator in the Pat Gray case, a vulnerable man, for this, instead of apologizing or withdrawing the affidavit they moved instead for expunging and were critical of my counsel and me for providing the Court with undisputed truth. After a year that false swearing has been neither withdrawn nor replaced.

While I don't know of anything else as brazen as Mrs. Zusman's trick of misrepresenting to a court to have an FOIA plaintiff act as the Department's consultant in his case against it, in general these kinds of practices, including providing false affidavits, continue to taint all my FOIA cases after Mr. Schaffer and Mrs. Zusman testified to the extent of intentions and determination to reform before you. The record of their untruthfulness is abundant and on paper.

The resulting cost and waste are great and non-compliance is the result.

Sincerely,

Harold Weisberg

7627 Old Receiver Road
Frederick, MD 21701
August 23, 1979

Quinlan J. Shea, Jr.
Director, FOIA/PA Appeals
Department of Justice
Washington, DC 20530

Re: King Assassination records appeal
Flanders letter of 8/21/79 to me and its attachment
spurious "national security" claims and their consequences

Dear Mr. Shea:

The inexact Flanders letter, which with its enclosure is attached, states that "one document from the MURKIN files has been partly declassified" by the Department's Review Committee. Because I did not trust this formulation and because it has been so very long since I requested a review of all the many classification claims, I checked the original records provided in C.A. 75-1996. I find that the entire document was not withheld. Rather were there what it is now apparent are totally spurious claims to "national security."

I also attach the first page of the record as originally disclosed. The only declassification is on this page. All but the first sentence was originally withheld.

Although ostensibly both versions are made from the same record in 44-38861, in fact they are not identical.

As provided to me in early 1977, there was no classification stamp or other classification indication. The worksheet makes only a (b)(1) claim, for the entire record. This is to say that the "national security" claim was made for an unclassified record, one not generated until 1976. At the time this record was created, the FBI was well past the point where it could assert its stock claim, that before FOIA it did not classify records because nobody ever saw them.

The record as just provided is classified both CONFIDENTIAL and SECRET without any compliance with the E.O. Neither declassification to Confidential nor upgrading to Secret, whichever it may have been, is in compliance with the E.O.

The "Indefinite" claimed exemption from downgrading is undated if one goes by the right-hand stamp and of 10/26/78 if one goes by the same stamp on the left side. While information remains withheld, both classification stamps are excised, leaving no classification but a persisting (b)(1) claim.

These are not the only indications that the FBI has used different copies of the same record, both from the same MURKIN file.

If the date on the right side handwritten notation that is on the new copy only is 1971, it is prior to the time the original record was provided to me. If the unclear date is 1976, it is of about the time the record was provided.

None of the notations on the bottom of the new version are on the original one.

That both versions began with a copy that is identical is apparent from examination of other added matter that is on both versions.

If the right hand notation is "DRC" and if that signifies "Department Review Committee," then the offense is even greater because it means that the Review Committee approved the withholding under "national security" claim of what has no relationship with the "national security" and clearly does not fall within any other exemption of the Act. This has to have been more than three years ago, not now, because the date cannot be 1979.

It is only on examining what is withheld under this phony "national security" claim that the full magnitude of what was perpetrated becomes apparent.

To understand this more fully, I refer you to Item 17 of my amended request. It reads:

> All notes, memoranda, correspondence or investigative reports constituting or pertaining to any re-investigation or attempted re-investigation of the assassination of Dr. King undertaken in 1969 or any time thereafter, and all documents setting forth the reasons or guidelines for any such re-investigation.

The withheld content relates to these reinvestigations, not "national security." More, in the very first sentence of what was originally withheld, the Office of Professional Responsibility reinvestigation is described as "a continuation of the 'partial review' recently completed by the Civil Rights Division of the Department under the direction of Assistant Attorney General J. Stanley Pottinger." (emphasis added)

At a time when I was ill and not able to be in court, the Department represented that the OPR reinvestigation was not included within my request. The Department prevailed in this representation. This required still another suit, C.A. 77-0692. Because of the state of my health, my counsel filed it in his name.

It is apparent that the Department does not dispute that the CRD reinvestigation is within what the Department recognizes as my request because there has been partial compliance with regard to CRD reinvestigation records.

Thus there is motive for the unjustifiable claim to "national security" and the apparent Review Committee rubber-stamping of it: to hide the fraud on the court and on me in the misrepresentations made to mislead the court into ruling that the OPR reinvestigation is not within my request.

This is the FBI's own statement in what was withheld, that the OPR's work is but "a continuation" of what the Department and the FBI admit is within my request, the CRD's reinvestigation.

Because of the fact that the two investigations were really one, the FBI states in what was originally withheld that it required no new directives to make records available to the OPR.

This also, obviously, is not a "national security" matter, either "CONFIDENTIAL" or "SECRET," and whether or not approved by the classification review committee.

One of several remaining (b)(1) claims follows. With regard to these I raise a question I have raised countless times without response: is the FBI making (b)(1) claim for what is within the public domain? On a number of occasions,

also without response, I have provided proof that in fact the FBI does make "national security" claim for what is within the public domain. Not one of these appeals has been acted upon and they go back to 1976.

The previously withheld information also states what is other than I was informed in C.A. 75-1996, that there are "informants who were not afforded symbol numbers."

It is, I believe, clear that the real reasons for the foregoing withholdings from the record as originally provided were for the sole purpose of effectuating fraudulent misrepresentation to the court and defrauding me. The claim to exemptions is spurious and no other purpose was served by it.

It should also be apparent that another result, aside from continuing noncompliance, is the wasted cost to all parties of the additional litigation required, which was before a judge who lacked any personal knowledge of or background in what was established in C.A. 75-1996.

What this just released information does not state is also within the public domain - that the CRD reinvestigation itself was a continuation of earlier ones. This was published in a New York Times series of about January 1, 1976.

As I have previously informed you in earlier appeals that remain without action, John Crewdson, who by-lined those articles, was in touch with me while he researched them and from this I knew he was provided with information by both the Department and the FBI. Yet none of the information provided to the Times then or on a number of earlier occasions has been provided in response to Item 7 of my request or other Items. The apparent contrivance is that these records were not duplicated in MURKIN filing. There is the continuing, steadfast refusal to search any other files even though most of the Items of the request clearly are not suitable for MURKIN filing. I have even specified where searches should have been made and I provided file numbers, yet as recently as the second day of the Wiseman deposition of last month Department counsel and the FBI were steadfast in this refusal, in the face of proof of the relevance of the HQ 94 file.

With regard to this and all the great cost resulting from it, the Department and the FBI represented to the court that there would and could be full compliance from MURKIN records only. The FBI knew this representation to be false. To anyone in the Department who read the request, beginning in 1975, this had to be obvious.

In addition, there is the continuing noncompliance with most Items that results.

As I have informed you on a number of occasions and in various earlier appeals, what was withheld in the MURKIN processing was not withheld when other FBI personnel processed the OPR records in C.A. 77-0692. As recently as in an appeal I wrote only yesterday, I attached copies of the same records as processed in both cases. Among other violations these show the deliberate violation of a court order in C.A. 75-1996. In C.A. 75-1996 the FBI withheld and on appeal you have not replaced information that was not withheld from the records provided in C.A. 77-0692.

The originally withheld information about informers and the FBI's means of identifying and not identifying them in its records appears to me to have added point when considered with this morning's news story reporting what Director Webster has informed the Edwards subcommittee.

I doubt that Director Webster's report includes what is in many of my appeals, the FBI's systematic disclosure to the recent House Select Committee on Assassinations of the actual identifications of its informers. In each of a number of cases, more than I have called to your attention, the informer was known to have provided only bad information, which would mislead the committee, or the most prejudicial kind of information, which could be expected to and which in fact did have the same effect. (There are several instances of the disclosure of the names of Mafia informants.)

In this connection, there are the appeals on which you have not acted relating to St. Louis informants. Richard Geppert is one of those who were disclosed to the committee. Thereafter, in an effort to justify himself, he appeared on TV. At the request of Department counsel, I provided my tape recording of this. I am informed that Department counsel provided it to you. Also in this connection you have not acted on my last year's appeals relating to Oliver Patterson, or my subsequent providing of the Susan Wadsworth privacy waiver, or the Byers matter appeal.

All are relevant and all are or are involved with informants. All these FBI games in disclosing the identifications of its informers resulted in major misleadings of the committee.

I also note that this long-delayed partial disclosure of two days ago was delayed until after the appeals brief was filed in what was C.A. 75-0692.

I regard all of the foregoing as quite serious and as an appeal requiring prompt attention. If as I believe the withholdings involve fraudulent misrepresentations, then in addition to the denial of my rights and those of the public through me, at least one court was victimized.

Sincerely,

Harold Weisberg

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 21, 1979

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

Pursuant to a recent decision by the Department Review Committee, one document from the Murkin files has been partially declassified.

A copy of this document, reflecting the current classification, is attached hereto. For your assistance, this document is located in the main Murkin file, 44-38861, section 87 between recorded serials 6121 and 6122.

Sincerely yours,

David G. Flanders, Chief
Freedom of Information-
Privacy Acts Branch
Records Management Division

Enclosure

FBI/DOJ

CONFIDENTIAL

1 - Mr. J. B. Adams
1 - Mr. R. J. Gallagher
(Attn: J. S. Peelman)

SECRET

Mr. T. W. Leavitt

5/21/76

1 - Records Management Division
1 - Legal Counsel Division
1 - Mr. T. W. Leavitt
1 - Mr. J. O. Ingram
1 - Mr. J. G. Deegan
1 - Mr. J. T. Aldhizer

J. G. Deegan

MARTIN LUTHER KING, JR.

CLASSIFIED BY
EXEMPT FROM GDS,
DATE OF DECLASSIFICATION INDEFINITE

PURPOSE: To advise the degree of access to our files given the Department Task Force of the Office of Professional Responsibility (OPR) which is assigned to review our past investigations relating to Martin Luther King, Jr. (U)

SYNOPSIS: Correspondence from the Department indicates that the current review of our King investigations by the OPR Task Force is a continuation of the "partial review" recently concluded by the Civil Rights Division of the Department under the direction of Assistant Attorney General J. Stanley Pottinger. Therefore, in absence of any information to the contrary received from the Department to date, personnel conducting the OPR review will have the same access to our files that was afforded the Pottinger review group. Under instructions from the Attorney General the Pottinger group was allowed to review raw files pertaining to King, his family, relatives, friends, associates and the Southern Christian Leadership Conference (SCLC) as well as files relating to COINTELPRO actions, electronic surveillance, all intelligence files and our complete file on investigation of the assassination of King. [redacted] (6)(7) Informant files will not be made available for review. It should be noted that current review by the OPR Task Force will include cover pages of communications containing identities of some Bureau confidential sources and informants who were not afforded symbol numbers at that time and individuals who expressed or implied confidentiality. This review commenced 5/10/76 in Room 4171 of the JEH Building with review of our files pertaining to King's assassinatio 44-38861-

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JTA:adn/scb (10)

1 - [illegible]

DECLASSIFIED BY [illegible]
ON [illegible]

SECRET

51 JUN 11 1976

100-106670

Memorandum to Mr. T. W. Leavitt
Re: Martin Luther King, Jr.

RECOMMENDATION: For information. (U)

DETAILS: The Attorney General has instructed the Office of Professional Responsibility (OPR) of the Department to conduct a review of our past investigations relating to Martin Luther King, Jr. By letter dated 5/10/76, Michael E. Shaheen, Counsel of the OPR, defined the areas of concern in the review which will include perusal of all King related records in the Department, at FBIHQ and in Bureau field offices. The review must be completed "forthwith" and is to answer the following four questions: (1) Was the FBI's investigation of King's assassination thorough and honest? (2) Is there any evidence the FBI was involved in the assassination? (3) Is there any new evidence which has come to the attention of the Department concerning the assassination? (4) Does the relationship between the Bureau and King call for criminal prosecutions, disciplinary proceedings or other appropriate action? (U)

DETAILS CONTINUED:

Attached to the above mentioned letter was a copy of a letter to Shaheen from the Attorney General dated 4/26/76, outlining the previous review of the King matter by the Civil Rights Division and the basis on which the Attorney General decided to order a more complete review. In this letter the Attorney General indicated that the OPR review is a continuation of the "partial review" completed by the Civil Rights Division under direction of Assistant Attorney General J. Stanley Pottinger. (U)

Since correspondence to date from the OPR has not dealt specifically with file access by the OPR Task Force, it is concluded that personnel conducting the OPR review will have the same access to our files that was authorized at the outset of the Pottinger review. (U)

The material/files desired by the Civil Rights Division in its review were set forth in a letter from Pottinger to the Director dated 12/4/75. In this letter Pottinger indicated the Attorney General had instructed his Division to review all actions taken by the FBI against King. Requested were all materials concerning King that were provided to the Senate and House Select Committees on Intelligence; all COINTELPRO proposals, actions and results of actions; all requests, approvals and results, including tapes, transcripts and logs of electronic surveillances; all intelligence files; and our complete file on the investigation of the assassination of King. This letter further stated that the Civil Rights Division was interested "in reviewing every single item in your files which relates in any way to Dr. King, his family, friends, associates or SCLC." It is further noted that the Attorney General (letter dated 12/12/75) authorized Pottinger personal access to tapes, transcripts of tapes and other sensitive information concerning King and his case file. (U)

SECRET

Memorandum to Mr. T. W. Leavitt
Re: Martin Luther King, Jr.

DETAILS CONTINUED:

[redacted] (S) (b)(1)

It is noted that the above outlined access will allow the OPR to review all raw files in our investigation of King. Included will be cover pages of documents containing the identities of some confidential sources and potential informants who were not concealed by symbol numbers according to our policy at the time. Cover pages will also contain identities of individuals who have furnished information to us on an expressed or implied basis of confidentiality. This review commenced 5/10/76, in Room 4171 of the JEH Building under the direction of Task Force leader Fred G. Folsom. The Task Force began reviewing files relating to our investigation of King's assassination. (U)

SECRET

1 - Mr. J. B. Adams
1 - Mr. R. J. Gallagher
(Attn: J. S. Peelman)

5/21/76

1 - Records Management Division
1 - Legal Counsel Division
1 - Mr. T. W. Leavitt
1 - Mr. J. O. Ingram
1 - Mr. J. G. Deegan
1 - Mr. J. T. Aldhizer

Mr. T. W. Leavitt

J. G. Deegan

MARTIN LUTHER KING, JR.

PURPOSE: To advise the degree of access to our files given the Department Task Force of the Office of Professional Responsibility (OPR) which is assigned to review our past investigations relating to Martin Luther King, Jr.

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