AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I have been a reporter, investigative reporter, Senate investigator and intelligence analyst. I am the author of six books on the assassination of President John F. Kennedy and one on the assassination of Dr. Martin Luther King, Jr. After publication of my book on Dr. King in early 1971 I became investigator for James Earl Ray, the convicted assassin who claimed his guilty plea had been coerced. I conducted the habeas corpus investigation and the subsequent investigation for the two weeks of evidentiary hearing in federal district court in Memphis, Tennessee.

1. As the plaintiff in C.A. 75-1996 I attended all but two of the many calendar calls and hearings that were held prior to September 1980 when I underwent arterial surgery that was followed by two serious complications and surgeries which have severely limited what I am able to do. I have not been able to get to any proceeding since the first of these three surgeries but I have and have read all pleadings filed by both sides and all transcripts. At the request of the court I met and tried to cooperate with the FBI, undertaking to make my subject-matter knowledge available to it and providing it with many copies of records, mostly its own records disclosed to me. When the court asked me to extend this cooperation to the Department of Justice's appeals office, I did so in all the personal conferences it requested, some rather lengthy, and in filing detailed and documented appeals that take up two full file drawers. Most of these two file drawers are taken up by xeroxes of the FBI's own records. A major portion of these appeals addressed improper withholdings under claim of

privacy. When the director of appeals, Mr. Quinlan J. Shea, Jr., appeared and testified for the government, he praised the help I provided, which included the privacy claims, and he testified on cross-examination that there was improper withholding of information that should be restored. In effect, he testified that the disclosed records required reprocessing. These are precisely the improper withholdings I called to the FBI's attention, withholdings relating to those Mr. Shea described as "players," or significant figures in the investigation. First among these were the names of trial witnesses, whose names the FBI then and since refused to restore. The FBI even withheld - ten times in a newspaper clipping - the name of its special agent who had addressed a professional group about his work in the King assassination investigation. I even prepared for the FBI a consolidated index to all the published books on the subject and it refused to use it in processing the records.

2. In preparing this affidavit I limit myself to what I recall of the case record, including what I recall of my many affidavits, some quite lengthy, detailed and thoroughly documented. All of this information is known to and is in the possession of the defendant, as also is those two file drawers of appeals.

3. In addition, when I was virtually coerced by the district court to act as the defendant's consultant in my suit against it, I prepared a lengthy, two-part consultancy report of approximately 200 pages. Mr. Shea stated that he also found it quite helpful and informative. (Defendant's then counsel insisted to the district court that my services were indispenable to compliance because I had unique subject-matter knowledge.)

4. I have read and herein address defendant's supplemental brief, filed May 18, 1984. Beginning with its very first sentence it misrepresents and is not in accord with or in any substantive manner supported by the case record.

The first sentence states that "a showing of public interest in the information sought" is "absent." Throughout the litigation I have shown the public interest in this information, the government's own expert held that the withholdings based on alleged privacy considerations were unjustified and that all information relating to those he referred to as "players" should be disclosed, and the attorney general decided that this is an "historical case" requiring maximum possible disclosure. Moreover, as I address below, even when I provided privacy waivers the FBI ignored and continues to ignore them and when it did not ignore them, it disclosed records reflecting the existence of still withheld records that remain unsearched for to this very day. (My appeals also are ignored.) At the same time it disclosed voluntarily a wide range of extremely personal and entirely irrelevant records about those it did not like or of whose views it disapproved. These range from the names of who was sleeping with whom, a few illustrations of which are below, to its complete fabrication that I, a Jew, allegedly was conspiring against it with one of the most notorious of anti-Semites, J. B. Stoner.

5. I am included in the persons listed in the Items of the request in question and to this day the FBI has still refused to search for and process the unquestionably relevant records the existence of which it disclosed unintentionally when I was able to tell the appeals office where to look for a major case tickler the FBI first claimed did not exist and then claimed it could not find. That tickler was decimated by the FBI after my request was filed, but what remains of it discloses that I and another person listed in these Items are included in not fewer than five "bank robbery" files. (FBI file classification 91) I have never had any connection, direct or indirect, with any bank robbery and as this record, Exhibit 5 below, states, "nor are there any criminal references to" me.

6. Bernard Fensterwald, Jr., who was Ray's chief counsel when I was his investigator, also is listed in those items. He provided a privacy waiver. In response the FBI disclosed records in which it ordered all field offices to suspend electronic surveillance of him and another lawyer and records reflecting physical surveillance of him. Despite his privacy waiver and my providing the FBI with this information in its own records, it has made no further search and provided no additional records. At the same time it disclosed its own political reporting on his mother, angled to defame her as some kind of "red," when neither she nor its slanted observations have any relevance to my request. He and I are among those included in the surveillances Item, No. 11 (see supplemental brief, page 5). Disclosed FBI records reflect that he was covered by its "symbol informants," informants who are carried in its records with an identification composed of letters and numbers. Only summary/paraphrases have been disclosed. The FBI refuses to search for and process the other relevant records required to exist. These include at the least the informant "contact" reports, on a printed FBI form and filed in accordance with the function of the informer, i.e., "134 **Security Informants," or "137 Criminal Informants." ("**Security-related Classification.")

7. I address below other privacy waivers and other Item 11 information relating to me and others that the FBI simply refuses to search for and process.

8. In alleging relevance of Antonelli v. Department of Justice beginning on page 3, the supplemental brief entirely misrepresents my Items 7, 8 and 14 and largely misrepresents the surveillance Item, No. 11, and then alleges relevance of Antonelli to its misrepresentation of my request, and thus Antonelli is relevant. Its language (brief, page 3) requires that "'the requester seeks access to another person's files,' and that 'revealing that a third party has

been the subject of FBI investigation is likely to constitute an invasion of that person's privacy.'" Items 7, 8 and 14 do not "seek" any other "person's files" and disclosure of the requested information would not and, indeed, could not "reveal" that any one "has been the subject of FBI investigations." Moreover, with regard to some, the fact is that the FBI itself had already disclosed that some were "the subject" of its investigations. The truth is that these three Items request only copies of "correspondence" - not "files" and not results of any "investigations."

9. In addition, before I filed these Items the defendant had disclosed the existence of such correspondence to the press.

10. With regard to the surveillances Item, No. 11, it is not necessarily true that any person listed was "the subject of FBI investigations," although the FBI itself has disclosed that a least six were. It is an FBI fiction persisted in throughout this litigation that it has only electronic surveillances indices and that these indices are limited to persons as "the subject of FBI investigations." There are, and Item 11 specifies, other forms of surveillance, like mail and physical surveillance, both relevant in this litigation, and these other forms of surveillance are not included in the indices of subjects of electronic surveillance. (Those overheard and those mentioned are not "the subject of investigation" in any event.) My attestation to the existence of indices of those mentioned and those overheard is undisputed and, in fact, outside this litigation the FBI itself has disclosed this.

11. There also are, and specifically in this case there were, unauthorized electronic surveillances the existence of which was first indicated, albeit involuntarily, in the disclosure to me of what remained of the allegedly

nonexistent Long tickler. These existed years after the request for permission was not granted and was withdrawn by the FBI. Three of the FBI's records in the case record relating to the request and its withdrawal are attached as exhibits. Exhibit 1 is the Rosen to DeLoach memorandum of May 9, 1968, written by R.E.L., the initials of then supervisor (later assistant director) Richard E. Long of the Long tickler. It recommends that the FBI bug and wiretap Ray's relatives on the theory that it would help catch him and in the interest of "national security." The "technical surveillance" it refers to is the wiretapping, also referred to as TESUR. "JUNE" added to thse records is the FBI code name for surveillances the records of which were kept outside the main files. While this recommendation was being considered by the FBIHQ hierarchy, the FBI's assistant director in charge of its Legal Counsel Division urged bugging Ray's sister and brother-in-law, Carol and Albert Pepper, on the theory that it could lead to his arrest. It admits that this bugging would be unconstitutional and would provide the Peppers with basis for suing. If there were to be such a suit, he concluded, "the government of the United States should surely be willing to pick up the tab for any judgment had against those who installed the microphones." (Exhibit 2) In this proposal no basis for believing that Ray would be in touch with those relatives is provided and in fact none existed. Ray had not seen his sister since she was a little girl and he had no idea of where she lived. (This also was true of his brother John, whose place of business the FBI also wanted to surveil electronically as it did at least physically.)

12. The FBI's position is that it does not require the Attorney General's approval for bugging and in this case it did not seek it. On May 18 it requested permission to wiretap only. Attorney General Ramsey Clark did not grant it. After Ray's arrest, under date of June 11, Director Hoover withdrew this request.

(Exhibit 3) This memo was classified Top Secret and initially was withheld from me on that basis.

13. The "recorded" or indexed original of Exhibit 3 is not a MURKIN record. It is identified in the margin as in 66-8160, where it is Serial 2987. The 66 file classification is officially "Administrative Matters." Actually, this particular "admat" file, 66 (the FBI has several admats), is the one in which it hides electronic surveillances records, including tapes. Thus, as the case record shows, when the Department asked the FBI to submit an inventory of all the holdings of the 59 field offices relating to MURKIN and their multitudinous actions against Dr. King and 400 pages of inventory were sent to FBIHQ, they do not inventory a single one of its countless tapes. The FBI merely omitted all citations of its 66 records. In this litigation, too, it has steadfastly refused to search its 66 files on the spurious basis that all relevant information is included in the MURKIN file, about which more appears below. (This 66 file classification is not the only one I identified as holding relevant information that the FBI refused to search. Others include 91 and 94, about which more appears below. (See paragraphs 57 and 60ff.)

14. Despite this request for permission to wiretap and its ostentatious withdrawal, there is persuasive reason to believe that the FBI was already engaged in these electronic surveillances and had pulled "black bag" jobs, which require breaking and entering, to seek and, if found, steal what it wanted. Exhibit 4 is the May 2, 1968, FBIHQ order to the St. Louis office to "provide full coverage" of John Ray's tavern. The case record also holds other "full coverage" directives pertaining to other Rays and relatives, in response to which various field offices provided information that included their phone numbers. The coverage could not be "full" without electronic surveillances, and when only

physical surveillance was directed and performed, it was referred to and reported as only physical surveillance. (Code name FISUR) In this case St. Louis was ordered to obtain financial information (all else is withheld under claim to exemption not posted on the record itself) that ordinarily would require a subpoena. St. Louis was told that if no subpoena was available it was to get the information without subpoena if that "can be accomplished with full security and the Bureau's interest will be fully protected." This is a standard FBIHQ formulation for "if you can do it without getting caught."

15. Of the persons listed in Item 11 the disclosed MURKIN records indicate that not fewer than 10 were under some form of surveillance pertaining to which the FBI has information it has not disclosed to me. I provided this information and the FBI has neither searched for what is withheld not denied having it. One illustration, again a listed member of the Ray ramily, relates to the FBI's mail, physical and even bed surveillance of Jerry Ray. When the FBI learned from mail surveillance that he was going to go to Camden, New Jersey, to visit a woman, it made her an informer of the Newark field office. She then took Jerry to her bed. In its deep concern for privacy, the FBI disclosed her name, Marjorie Fetters. The MURKIN file holds only what the FBI wanted that file to include of what she reported. The underlying information remains withheld. I correctly identified her informer file number, 137-6826, but the FBI refuses to make any search. Notwithstanding the fact that it had already disclosed that she was an informer and that she took Jerry Ray to bed after she became an FBI informer, it makes a "privacy" claim and alleges that I have made no showing at all when all of this and much more is in the case record. (In this litigation the FBI disclosed the names of a number of its symbol informers, as I recall, a total of five. This does not include Patterson and Geppert, referred to below.

After I informed it the FBI did not ask me to return those pages or ask to replace them with pages from which the names were withheld. One of these disclosed informers was a woman reporting on the mafia in Chicago. To the best of my knowledge, these informers are also identified by name in the copies available to anyone in the FBI's public reading room.) My appeals remain ignored.

16. Jerry Ray, who with the other Rays is included in my Item 11, was under physical surveillance in a number of midwestern cities. This is disclosed in the MURKIN records. Other surveillances of him, not included in the MURKIN records, are in other records the FBI did not disclose to me. It would have learned this, assuming that it did not know, if it had consulted its indices but it refused and still refuses to do that, notwithstanding all it has made public relating to Jerry and other Rays. Aside from reflecting the actualities involved in the FBI's refusal to search and its alleged reason for refusing to search, privacy, this also reflects the fact that the MURKIN file is not all inclusive and the FBI knows it is not. More about this misrepresentation of the inclusiveness of the MURKIN file appears below.

17. The three nonsurveillance Items in question relate largely to the plea bargaining that was the cause of national editorial outrage, particularly in the New York Times and the Washington Post; to those included in the prosecution and defense, some of whom were involved in it; and to the official leaking that greatly influenced the outcome. It also includes the writer who bought the exclusive literary rights in return for a guilty plea, as he testified, of all places, to the grand jury that indicted Ray in Memphis. Prior to the guilty plea the government itself disclosed that it was in negotiation and the identifications and comments of some of those involved in its negotiations. (The prosecution was by the State of Tennessee but the Department of Justice was involved in plea

bargaining with the King family and associates. Item 8 is limited to this.

18. At no time did the FBI ever ask me to inform it of the public interest involved in these Items, but when asked by the court and the appeals office I did provide such information, across the board. From the outset, until it was, clearly, a futility, I voluntarily provided the FBI with proof that it was claiming privacy to withhold where there was no privacy to protect, to use the appeals director's own words. Some of this also was in open court, when the judge openly ridiculed the FBI's claims. In the very first records processed, the FBI withheld what it knew was disclosed in the Tennessee court and the extradition hearing and was published from coast to coast. From then until now it has refused to restore such information, withheld under privacy claim.

19. Writers to whom the FBI leaked and who had and used FBI records are included in Items 7 of both the April 15 and December 23 requests. With regard to these writers, I did not request all the FBI's files on them or "the results of FBI investigations of them," as the supplemental brief represents. What I did request is copies of the information disclosed to them and related correspondence. Of these writers:

a) Clay Blair thanked the FBI for its help in his book and quoted FBI FBI records verbatim in it;

b) George McMillan has the content of FBI reports in his book and he claimed to have copies of Carol Pepper's financial records (see Exhibit 4 above);

c) Jeremiah O'Leary is disclosed by the FBI in this litigation to have agreed to submit his significant Readers Digest article for its editing prior to publication. When outside this litigation the FBI disclosed this and O'Leary was asked to explain his submission to prior censorship to his

peers, he stated, as without contradiction the case record reflects, that it made no difference because the FBI provided him with all the information he used;

d) Gerold Frank had copies of FBI reports and used them verbatim in his book.

e) William Bradford Huie, the writer who bought the exclusive rights to what he expected would be a confession of guilt while presenting himself as Ray's defender, is disclosed in the FBIHQ MURKIN file to have been bargaining with the FBI to sell Ray out. The FBI knew it had other and extensive relevant Huie records not filed in MURKIN but it denied them to me. When my counsel made a separate request for them, many were provided to him.

20. In every instance, the relationship of all these writers to the FBI was disclosed by them, by it or by both the writers and the FBI.

21 With regard to Ray's counsel, the disclosed MURKIN records hold intercepted copies of his letters to his lawyers, the trial judge and to Jerry relating to legal matters. These were intercepted before entering the mails despite the order of the trial judge that it not be done and assurances that it had not been done. Copies of all intercepted copies have not been provided. I know this because prior to and outside this litigation I obtained copies not provided to me by the FBI from its MURKIN file. Ray wrote the judge after publication of the FBI/Readers Digest/Jeremiah O'Leary article that if the judge did not stop such prejudicial pretrial publicity he might as well just go before the judge and plead guilty.

22. Based on my experience and subject-matter knowledge, I believe that the FBI's leaking had enormous influence on the aborting of the criminal proceeding in which the FBI's evidence would have been subject to cross-examination. After I

examined the alleged evidence, I was without doubt about this. I thus believe that, particularly because no violation of privacy is involved with regard to the writers and the Rays, the FBI had and has other reasons for refusing to search, even after I provided it with all the foregoing information and much more.

23. In this supplemental brief (page 5, footnote 2) the FBI insists there is a privacy question in -withholding from me what it admits disclosing to another. At the same point it infers that when I filed privacy waivers it searched and complied. It does not include all the privacy waivers I filed in this case and it does not refute what I provided showing that it had records relating to its surveillances of Mr. Fensterwald that it has not searched for and has not provided. It has not denied that it has additional relevant records relating to surveillances of me, proof of which I provided and is in the case record, but it has not searched for them and it can hardly claim privacy with regard to such records on me. It also ignored and continues to ignore privacy waivers I did file. My relevant appeals remain ignored.

24. Oliver Patterson was an FBI symbol informer. The FBI had him spy on the Ray family and defense counsel and this is within Item 11. Relevant as this is to MURKIN, no record suggesting it in any way is in the MURKIN files or was disclosed voluntarily to me in any other way. As Patterson later testified, the FBI had him alter one of his reports in a manner that made it prejudicial against Ray. It then asked him to disclose himself as its informer and testify to this report before the House Select Committee on Assassinations. He objected, in writing, yet contrary to its claim that it never discloses an informer and withholds only to protect them, over his written objections it disclosed him to the committee - and not him alone among its informers. He thus was coerced into working for the

the committee as its spy. In time he rebelled and went public. He came to see me and he provided me with a privacy waiver. In response, when directed to, the FBI provided some records. Those records it provided refer to others neither provided nor claimed to be within any FOIA exemption. I requested them, I appealed their denial, and I have had no response. These are unsearched-for "Top Echelon Informer" Patterson records and the Patterson records of an FBI committee of the same name, "Top Echelon Informer."

25. Patterson had a woman associate, Susan Wadsworth. She also came to see me and she also provided a privacy waiver, which I filed. I have not had acknowledgment of receipt of her privacy waiver, I have not received any FBI record relating to her or any denial of the existence of any and my appeal remains ignored.

26. Another FBI symbol informer who spied on the Ray family and defense (Item 11) was Richard Geppert. Both he and Patterson spied on J. B. Stoner, who is included in my request. Geppert appeared on St. Louis television and confessed to spying for the FBI. I had no address for him but I had an audio tape of his TV confession. Both then FBI counsel and the appeals office indicated that if I provided this tape the relevant records would be disclosed. I provided the tape and I have not heard a word since, after about seven years.

27. I provided a privacy waiver from Matt Herron, a photographer assigned to cover the King assassination for Newsweek. Herron had covered the civil rights struggles extensively from New Orleans. He had a good rapport with blacks and they reported what they saw and heard to him. He told me that he took this information to the FBI in Memphis, but there is no indication of this in any Memphis or FBIHQ records disclosed to me. There is a clear reflection of the FBI's effort to refute what he reported. I know some of what he reported because he still had

some of his notes and provided them to me. This information included advance knowledge of the assassination, about which more appears below in connection with the FBI claim that all such information is in its MURKIN files. I have heard nothing at all since filing Herron's privacy waiver. Moreover, no Antonelli claim appears to be possible relating to him because the FBI itself, in records relating to the investigation of President Kennedy's assassination, has already disclosed investigatory records on him.

28. With regard to what the FBI describes as a "laundry list of names," it represented to this Court that "it does not have to confirm or deny the existence of records pertaining to those individuals" but the truth is that it has already done this in this litigation and elsewhere. I do not recall that any one of the persons included in these items referred to as a "laundry list" is not included in the MURKIN records already disclosed. There thus is no genuine question of either confirming or denying because the FBI has already confirmed and cannot deny "the existence of records pertaining to these individuals." Most of these records are available in the FBI's own public reading room, where it deposits records provided to me.

29. Each of these persons is what Mr. Shea described as a "player," a person with a significant role, and thus, as he held and testified, "public interest" does exist. Were this not true, however, the allegation of this supplemental brief, that I "failed to demonstrate sufficient public interest" (page 6) still would not be true. Whether or not this is required of an FOIA requester, I provided such information under oath to the district court and to the defendant, with documentation that I believe is extraordinarily extensive. In many meetings with the FBI I also addressed "public interest" with regard to each person whose name came up. When these names came up in the consultancy into which I was virtually

coerced by the court at the defendant's request, and that report is about 200 pages long, I provided exactly the kind of information the brief represents I did not provide.

30. The FBI has not refuted the accuracy of the information I provided. It filed no counter-affidavits.

31. The FBI has a record of withholding from me what it discloses to others. To establish this I assisted a reporter friend in another part of the country with a request relating to another informer who claimed to have King assassination information. The FBI withheld his already disclosed name and other information from me. I then displayed several of the volumes of records the FBI disclosed to my friend to the district court and the defendant - without a single additional record being disclosed or any of the information withheld from me although already disclosed being restored to the records that were provided. (This man also was dead and the other requester had provided the FBI with proof of his death.)

32. There is half-truth in the claim (at the top of page 6) that it has "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 FBI investigation is contained in the Bureau's MURKIN file." What is true is that this has been the FBI's position, persisted in despite the enormous amount of contrary evidence in the case record, those appeals and my consultancy report. It is not true that the FBI maintains this position "based on its knowledge of its files" because those very files disclosed to me establish beyond question that it is not true. Moreover, my request is not limited to individuals and it also is not true with regard to information other than pertaining to individuals. It also is not true that all the information the FBI has disclosed "is contained in the

Bureau's MURKIN file." (As the FBI uses it, "Bureau" is synonymous with FBI Headquarters. At the time of the King assassination FBIHQ also was referred to by FBIHQ and the field offices as "Seat of Government," contracted on occasion to "SOG.")

33. The FBI took the same position before the district court, was proven to be wrong, and was compelled to disclose a large volume of field office MURKIN information that was not duplicated at FBIHQ even though those records were the field office MURKIN records.

34. Information relevant to the assassination and its investigation is in files other than MURKIN files that were disclosed to me. Included in these are the FBIHQ and Memphis files on a group of young Memphis blacks who called themselves "the Invaders" and the files on the strike of the Memphis sanitation workers in support of which Dr. King was in Memphis when he was assassinated. (See also paragraphs 52ff.)

35. The FBI refused to disclose a file on the threat to kill Dr. King when he returned to Memphis, claiming it was not relevant merely because it was not classified by it as MURKIN. When the court compelled its disclosure, it revealed that what was threatened is what came to pass and that the FBI did not even bother to notify the intended victim. (This is dealt with at greater length in my reply brief.)

36. The appeals director, in a memorandum the entire text of which was withheld from me but was disclosed to another, informed the FBI that information is relevant by virtue of its content, not by how the FBI has it filed. It paid no attention to him and made no further searches.

37. In expanding on its serious misrepresentation about the alleged all-inclusiveness of MURKIN, in footnote 4 the brief actually states that by not

searching to comply with my request ("rather than treating the specific items of plaintiff's request on a piecemeal basis") it did me a great favor: "Indeed, plaintiff actually benefited from the Bureau's reasonable interpretation (sic) of his request, which resulted in the release to him of more material on the King assassination than would have been released through a piecemeal approach." This is not cited to the case record and it cannot be because it is not true.

38. I have read every word of the considerable volume of paper disclosed to me in this litigation and most of it has nothing at all to do with the King assassination or with my request. For the most part it is a large collection of the utterly irrelevant, mostly junk compiled under MURKIN to create impressive statistics which the FBI then used to indicate a great labor and diligent investigation. In addition, to make these artificial statistics appear to be even more impressive, all the field offices were required to keep detailed records of agent and clerical time, paid and unpaid overtime, mileage in official and mileage in personal cars and other such things, and to report those statistics to FBIHQ on a monthly basis. Even when the field offices asked to be relieved of this burden, they were directed to continue compiling and providing their statistics.

39. It was no "benefit" to me to make me pay 10 cents a page for all that junk that is not within my request when I had no regular income.

40. A large percentage of the MURKIN file consists of letters praising Director Hoover and the FBI, not uncommonly from those who expressed extreme rightwing belief and who described Dr. King as a Communist enemy who deserved killing. The MURKIN file includes the careful check of FBI indices and records on each letter writer before there was any response. It also includes the responses, none of which I asked for, wanted or has any relationship to the crime.

41. It includes all the many dreams, visions and theories that were reported to the FBI, even by "Friendly Val."

42. It includes, and I had to pay for, the many pages representing the considerable expense the FBI went to to read, analyze and index every word of Ayn Rand's writing on the theory that Ray adopted his aliases from her writings. This actually began with receipt of one of those nut letters. The FBI wasted all that time, effort and money after it knew there was nothing to this theory and that Ray used as aliases the names of real people. It was the Kansas City office which used the Canadian phone book and made the discovery. It reported this to FBIHQ the very day FBIHQ identified James Earl Ray as the man who used the aliases, the very day the FBI disclosed that the person using that "Galt" alias was in fact James Earl Ray. It was on April 18, 1968, exactly two weeks after the assassination.

43. It includes clippings of the newspapers that used this Ayn Rand concoction after it was leaked.

44. It includes a great volume of racist diatribes sent to FBIHQ, and I certainly did not regard it as a "benefit" to have to pay for or read such stuff.

45. I did not request but it includes a considerable volume of paper relating to the obvious fabrications of a young drug offender named Byron Watson who cooked up a fanciful tale in an unsuccessful effort to escape confinement. It includes a second volume of worthless paper relating to this after Mark Lane and Dick Gregory used the boy's fabrication on coast-to-coast TV and to the White House. That triggered still another volume of paper I did not ask for, want to waste time on or want to have to pay for when I had no regular income.

46. There is an astounding amount of similar paper - volumes of it - reporting the FBI's wasted time in tracking down such reports, all compiled into those statistics, all used to support the claim that it "left no stone unturned."

And all had no relationship to the crime.

47. It includes all the many records relating to the collection of soil samples from various parts of the country and from Ray's abandoned automobile and the reports of the laboratory's testing of those samples, which I did not request, did not want and did not and do not, after reading the entire MURKIN file, believe is relevant to anything.

48. It does not, however, include such essential evidence as the results of the customary swab test to determine whether the rifle the FBI refers to as the "death" rifle had been fired after its last cleaning and it does not include any proof that that rifle was used in the crime. In fact - and from the records provided, without test firing it although rifles not allegedly used in the crime were test fired - the FBI Lab stated it could not prove that the "death" bullet came from that rifle.

49. It does not include all the FBI's records relating to its performance of spectrographic and neutron-activation analyses. These are generally considered to be significant tests that yield significant results, important in criminal investigations and in the identification of bullet material. Without question such records belong in MURKIN, the file on the "Murder of King."

50. Describing MURKIN as the FBI's file "on the King assassination" (brief, page 6) is misleading because the FBI did not investigate the crime itself. Its statement that it did not is in the MURKIN file and the case record. When the FBI was subject to criticism, some of it unfair, like that of Mark Lane and Dick Gregory, it defended itself by saying that its investigation was of a fugitive case, UFAC. (UFAC means unauthorized flight to escape confinement. Ray had escaped from the Missouri State Penitentiary.) This self-defense is not entirely true. The file does hold the results of the considerable FBI effort to make it

appear that Ray was guilty of the assassination but it does not reflect any attempt to investigate the crime rather than Ray, it makes little of all the exculpatory and potentially exculpatory evidence the FBI could not avoid, and it avoids entirely all its substantial indications of a conspiracy while conducting exhaustive investigations of all the clearly insubstantial and downright silly reports of a conspiracy.

51. In describing not "treating the specific items of plaintiff's request" (page 6) as benefiting me, the brief does not cite the case record. There is no such evidence in the case record but the exact opposite abounds in it. Beginning the moment the FBI disclosed that it was going to give me the MURKIN file instead of searching to comply with my request, the case record holds my uncontradicted complaints that a) I had not requested the MURKIN file and b) that entire file could not begin to comply with my request.

52. In carrying forward the false pretense that the FBI was doing me a big favor and giving me all I requested and more, there is another footnote at this point. It identifies other alleged FBI generosities as "on several groups and subjects (e.g., the Invaders and the Memphis Sanita tion Workers strike)." Of these it states "that those files were not within the scope of plaintiff's requests." This statement provides a means of evaluating the FBI's response to my request and the dependability of its brief because the FBI's records relating to the Invaders ~~is~~ are Item 26 of my request and its records relating to that strike are Item 27.

53. Part of the FBI's self-described "reasonable" approach was to refuse to provide these files originally and in compliance with my request. Whatever explains the FBI position that two specific Items of it make those Items "not within the scope of" the request, it is a fact that those files hold seriously embarrassing information and information that, without question, is relevant to both the assassination and its investigation yet is not in MURKIN. They hold the

background to the assassination as well as facts relating to it. They disclose new FBI dirty tricks against Dr. King, like planting stories that he was an (anti-black) racist by refusing to stay at the black motel at which its own records reflect he always stayed until the police, as a security measure, once took him elsewhere. They disclose spying on Dr. King and his associates. They hold significant and detailed information about the extensive domestic intelligence operations carried on jointly by the FBI and the local police and the FBI's extensive distribution of such information - even its attempts to harm the families of the younger people it did not like. (Where the young people and preachers were white the FBI slandered them, attempted to portray them as Communists. It pretended that white women were seeking black sex. It pursued a young unmarried pregnant black woman student relentlessly, investigated to identify the father of her child and spread detailed reports of where her relatives had public employment in its effort to attract retribution against them.) When the FBI's investigation disclosed the murder of a black youth by Memphis police, with which the FBI enjoyed a cozy relationship, it did nothing about that "civil rights" matter althouth it ostensibly was conducting a civil rights investigation. (The FBIHQ MURKIN file is 44-38861, the classification 44 representing civil rights.) These two files disclose that FBI special agents referred to mature black males as "boys" and even as "monkey faced." They disclose that this domestic spying extended to Congressional campaigns and the local city council and other political matters. They disclose that three it named of the top leaders of the Memphis NAACP were symbol FBI informers. (These three are not included in its five informer identifications of which I informed the FBI because by the time these files were disclosed it was apparent that the FBI disclosed these identifications purposely or did not care about such disclosures because it never once responded.)

54. The first person to reach the body of the fallen Dr. King was a police agent who had penetrated the Invaders, the strike committee and Dr. King's party, for which he also provided local transportation and thus spied on them more effectively.

55. These two sets of files in which, according to the brief, I had merely expressed later and casual interest but in fact specifically included in my request, by name, are not insignificant in ways not related to the assassination. They are of considerable public interest. After I made them available to others they were the subject of two collegiate "honors papers." The strike file is the subject of a professor's scholarly paper in the current issue of The South Atlantic Quarterly, published by Duke University, as "A Case Study in Urban Surveillance" by the FBI.

56. Despite the inclusion of these Items in my request, despite the fact that any examination of the specific Items of the request discloses that most are not appropriate for filing under "the murder of King" caption, and despite the fact that the FBI never claimed or even represented that it claimed to have examined its own indices, the brief also states at this point that my request pertains "exclusively to the MURKIN file," (page 6) which is not even mentioned in my request. This too the brief describes as "reasonable." (page 6)

57. Another of the relevant FBI files correctly identified in the case record, without contradiction by the FBI, is its 94 classification. Although the FBI describes this classification as for "Research Matters," it in fact is where the FBI hides and by this classification alone avoids on search its records pertaining to its own leaking, the press, publishers and writers, the electronic media and its lobbying, all of which, at the time of the King assassination, were handled by the division titled "Crime Records." When on deposition I established

that the FBI's own search slips listed withheld 94 records for which no claim to exemption was made, then FBI counsel refused to even ask it to search its 94 files. My appeal remains ignored and the correctly identified and relevant files remain unsearched. I identified a number of these 94 files as having possibly relevant information. Some examples are: 94-3-4-221 holds information relating to O'Leary, the Readers Digest and the very article in question; 94-8 file holds information about O'Leary and the Washington Star and another 94-3 file relates to the Readers Digest; the 94-63917 file holds information relating to Gerold Frank. These relate to specific Items and persons in my request.

58. Refusing to search to comply with the Items of my requests is not abnormal for the FBI. It is normal. In C.A. 78-0322/0420 combined the FBI also substituted files of its selection, without search being made, as it actually admitted in that litigation. (By this means that litigation is stonewalled, now into its sixth year.)

59. Another matter in the case record reflecting the FBI's certain knowledge that is directly opposite to what it now represents to this Court is the content of its ticklers. The MURKIN records themselves refer to several King assassination ticklers maintained by different supervisors by whose names they are identified. Then supervisor, later assistant director, Richard E. Long had a large one, as supervisor Jack Lawn also did. After the FBI made several untruthful representations, that these did not exist, then that they could not be located (without ever asking either supervisor), I told the appeals office how it could locate the Long tickler and it did. It then turned out that this tickler had been gutted after this litigation was filed. After gutting it still held King assassination records that are not from the MURKIN file.

60. The FBI's conspiracy theory of the King assassination, and contrary

to its public statements it did theorize that the crime was the result of a conspiracy, in in its 91 or bank robbery files. One record that escaped the Long memory hole (attached as Exhibit 5) apparently because it holds statements about me that appear to be prejudicial and suitable for leaking, identifies three of the relevant 91 files in which I am mentioned. After discovering this in the Long tickler, I obtained access to additional disclosed and relevant 91 files and provided copies for the case record identifying a total of five such files by their number, with indications that others must exist in other field offices. (The Springfield office, where all of this originated, responded to my request for all records on or about me by stating that it had none at all, an obvious untruth.) What this record says about me is carefully angled to be prejudicial and is not fully in accord with the facts as the FBI's own files reflect them. It does disclose, however, that the FBI received and refused to respond to my 1969 King assassination requests because it does not like me.

61. While as Exhibit 5 states it is true that I have been critical of the FBI, it also is true that on numerous occasions I have defended it against unfair charges such as those referred to above. One I recall very well is making use of an appearance on Good Morning America, for which I flew from Dallas to New York when I was ill, to defend the FBI against Mark Lane's and Dick Gregory's fabrications.

62. I knew of the FBI's bank robbery conspiracy theory, which is based on the fiction that Ray's brothers robbed a series of banks to finance him after his escape only for both brothers and Ray to remain impoverished after their five supposed heists. I therefore knew that the only way I could be associated with them as of this date was through tapping Jerry Ray's phone conversations with me because he then was the only Ray with whom I'd had any contact and my contact with

him had been exclusively when he phoned me. We are both, I note, included in my Item 11 on surveillances.

63. These other disclosed 91 fire records that remain withheld from me despite my appeal after providing them for the case record do establish that the FBI's source was telephonic. They also disclose physical surveillance of Jerry Ray, which also is within Item 11. Having disclosed physical surveillance of all the Rays in St. Louis in the MURKIN files, physical surveillance of Jerry Ray outside of St. Louis and in other than the MURKIN files, and of telephone surveillance of Jerry Ray and me, the FBI now takes the position that it cannot disclose what it has not searched for in this litigation, allegedly on grounds of privacy, after disclosing voluntarily all sorts of personal details of Jerry Ray's life and that of the women in his life. (The FBI also disclosed MURKIN records reporting that unmarried John Ray slept with a woman he took to a cheap hotel and John Ray also is within my Item 11.) The FBI did not deny the relevance to Item 11 of its own records that I provided. It merely ignored this evidence, as the appeals also were ignored.

64. Even a key element in the official solution to the King assassination does not exist in any MURKIN record disclosed although it is required to exist. The only alleged eyewitness was an alcoholic with a record of violence, Charles Quitman Stephens. He lived in the flophouse, next to the bathroom from which the FBI claims the fatal shot was fired. A disclosed MURKIN Memphis record reports in summary-paraphrase what is not faithful to fact, that when Stephens was shown a photograph of Ray he was uncertain of identification. Thereafter the FBI and Civil Rights Division got him to sign three different affidavits, all identifying Ray. One was used in the extradition proceeding and was disclosed to me in the FOIA lawsuit referred to in Exhibit 5. But the records of interview on which the

paraphrase-summary allegedly is based are not in the MURKIN file.

65. It is standard FBI practice to report interviews on a printed FD 302 form. It is not standard FBI practice to preserve agents' notes. Sometimes they are kept in filed in "evidence envelopes" or FD 340s and sometimes they are destroyed after reports are typed. But within my experience it is undeviating FBI practice to preserve what it shows a witness for identification, along with notes on the evidence envelope reflecting at the very least which special agent showed the picture to the witness and when that was done. As disclosed to me the MURKIN files do not include any FD 302 of any interview with Stephens or any such evidence envelopes. Because Stephens' statement was used to get Ray extradited, the FBI was required to preserve all relevant records. The most obvious explanation is that it is filed outside of MURKIN and where it is filed is posted in the indices.

66. The actuality is that 14 days after the assassination and long before he attested to identification for the extradition - the very day the FBI disclosed Ray's name - CBS-TV showed the picture to Stephens and he was firm in making negative identification. CBS did not telecast that interview until several years later, when it prepared a special that it aired after Ray had exhausted his appeals.

67. James McCraw is the cab driver Stephens usually phoned to take him on his trips to the liquor store. As Ray's investigator I interviewed McCraw and later produced him to testify at the evidentiary hearing. He testified that after the FBI learned that he had found Stephens too drunk to take as a fare, it obtained his cab manifest which proves this and did not return it. His testimony was not rebutted. Neither his cab manifest nor any record reflecting that the FBI obtained it is in any MURKIN record disclosed to me. This matter, like the Stephens matter preceding it above, is in the case record.

68. There is no evidence in the case record that my request pertains "exclusively to the MURKIN file" but it abounds with contrary evidence as the supplementary brief states on page 6.

69. The brief cites no evidence in support of its statement (pages 6 and 7) that "to the extent that information on the listed individuals pertinent to the King assassination exists, it is located in the MURKIN file, which plaintiff has received." Aside from the fact that this is abundantly proven not to be true by the case record, no part of which is cited in support of this claim, there is no way in which this can be known without search of the indices, and that was not made and remains refused. Moreover, the request in general and those four Items in particular are not limited to whatever the FBI may represent is "pertinent to the King assassination."

70. This misrepresentation is followed by another misrepresentation (on page 7), that I "did not even focus on the FBI's approach to his (my) December 23, 1975 request until November 11, 1980." Again there is no citation of the case record. This is because the case record is exclusively and extensively to the contrary. I first "focused" on that FBI "approach" before the district court beginning before the first MURKIN record was processed. I then informed the court, in the presence of the FBI's case supervisor and counsel, that providing the MURKIN file would not and could not comply with my request. I never departed from that position and repeatedly and without disproof provided much evidence, some of which is referred to herein in support of my position.

71. Despite the great amount of it in the case record, the FBI now states that I have not "presented any meaningful (sic) evidence to refute the FBI's position," described as "all material relevant to the King assassination is in the MURKIN file."

72. In turn this is followed (page 7) with the statement that "the district court determined that the FBI had conducted an adequate search of its King assassination records." It is my recollection that the court held only that the FBI's search of its MURKIN records was, finally, after years of contention, adequate. My request is not limited to King assassination records and, as the case record reflects, over and over again the court compelled the FBI to produce other than MURKIN records.

73. In all prior references this supplementary brief refers to MURKIN rather than "King assassination" records. At this point, where MURKIN for once is appropriate, it is omitted and "King assassination" records is substituted for it. The supplementary brief thus misleads and misrepresents.

74. The thrust of the FBI's supplementary brief invoking Antonelli is that the FBI has a proper regard for privacy; that I have made no showing of the public interest involved; and that it has, in each and every instance, refused to search only to protect the privacy of the persons listed in the four Items of my request that the brief refers to. In all particulars this is in defiance of the entirely undisputed case record in which I addressed these matters repeatedly and under penalty of perjury.

75. The defendant's own expert witness testified and in several memoranda he prepared for the court stated that the public interest exists with regard to the more significant figures in the FBI's files, those he referred to as "players." With regard to the withholding of most names under privacy claim, he testified that those withheld names should be disclosed. Besides his testimony as the defendant's expert witness and the evidence I presented attesting to the public interest or to prior disclosure of what was withheld, there is nothing in the case record. Specifically, the defendant presented no evidence at all that there

is no public interest in these disclosures. (Subsequent to his testimony, however, the FBI did not make the disclosures it and his memoranda require. It continued to refuse to make the searches the testimony of its own expert witness required.)

76. Rather than not making any showing at all with regard to the FBI's concept of privacy as the brief represents, I did, on a number of occasions and with regard to different matters. A few illustrations follow.

77. One illustration I used is from the FBI's disclosed records relating to the assassination of President Kennedy. It disclosed voluntarily and not in response to any appeal the most personal details of the life, thoughts and even dreams of the young widow left by the accused assassin. She was a witness to nothing and she had no relevant knowledge other than what she knew about her husband and his personality. But the FBI had hopes that it might obtain from her some information it could use. It therefore contrived to freeze the Secret Service, which had her in protective custody, out of its meetings with her. It flew a high official of the immigration service down to Dallas and told her bluntly that she would be deported unless she "cooperated." Her cooperation consisted in saying just about anything she understood officialdom wanted her to say. But the late Senator Richard B. Russell, a member of the Commission who until his dying day encouraged my inquiries, some of which I made at his request and reported to him, was disturbed about the glaring contradictions between what Mrs. Marina Oswald said prior to being leaned on by the FBI and after she was pressured. He forced an additional hearing after the Commission's report was drafted and questioned her more closely. In polite and understated words she gave him to understand that the FBI had blackmailed her. (This is, in fact, what its records disclosed to me reflect.)

78. Also in the Commission's early days, just after she was released from protective custody, Director Hoover persuaded Chief Justice Warren that Mrs. Oswald's phone should be tapped. Based on this the Attorney General agreed for the FBI to tap her phone. It then taped her conversations with older women friends and reported to the prurient at FBIHQ her conversations of sexual content. The teletypes disclosed to me, in records in which the FBI undertook to hide its electronic surveillances, convey the results of wiretapping and bugging under the caption "physical surveillance." (The FBI also kept her under physical surveillance around the clock.)

79. Marina Oswald embarrassed the FBI by disclosing how it had pressured her. Thereafter the FBI failed to make a proper and necessary privacy claim and instead disclosed what could be hurtful to her and her children and is not in any way relevant to the assassination and its investigation.

80. The FBI also undertook to hide the fact that it had her under electronic surveillances. (It did not request permission to bug her and it had her home bugged before she moved in.) When it was required to disclose an inventory of the relevant records to me, it withheld everything relating to its electronic surveillances under (b)(2) and (7)(D) claims. It never explained how electronic surveillances "related solely to the internal personnel rules and practices" of the FBI or how its electronic surveillances became a live informer whose identification it must not disclose. It contrives automatic claim to FOIA exemption by attributing its electronic-surveillance information to the number identification of a nonexistent live "symbol informant." In this instance, as is commonplace within my experience, it had the relevant records hidden in its files as "admat," or "Administrative Matters." When it was ultimately required to disclose the numbers (after I had learned them on my own without its knowledge),

it disclosed only one, that for the authorized wiretapping, 66-1313. The records relating to the unauthorized bugging are in this separate file, 66-1313A, identification of which it continues to withhold.

81. The foregoing information relating to Marina Oswald was pertinent in this and in another case and I presented and documented it in both, without any denial by the FBI.

82. Illustrative of the difference between the FBI's attitude and practice and mine with regard to privacy is the fact that after I prevailed on appeal it actually offered me copies of all its tapes of her conversations with her women friends about sexual matters. (They also include her intercepted conversations with and for her counsel.) I declined copies.

83. The defendant has a record relating to privacy and me - and I am included in two of the Items it refuses to search - now claiming the protection of Antonelli to justify it. What it disclosed relating to me in this case and outside it, with defamatory disclosures relating to me it made publicly available in its reading room, range from the deliberately twisted and distorted to outright fabrications. When it became apparent that such defamations - and violations of privacy - would receive considerable attention in the FBI's general JFK assassination releases of December 1977 and January 1978 and when it was ignoring my request for all records relating to me, my counsel wrote the director and asked that I receive these long overdue records so that I might use the rights granted to me by the privacy act. We never received any response. My counsel then telegraphed the same request to the attorney general and he also never responded. Thus such completely fabricated defamations as that I had conspired against it with the notorious anti-Semite J. B. Stoner were disclosed, but the statements I had filed contradicting and correcting the records I had seen were not disclosed with them.

84. Blacked out on the publicly disclosed records that do hold defamations of the opposite extreme is what was distributed widely throughout the government, to the White House when the President inquired about my writing, to the Congress, and to attorneys general and their subordinates. It is not responsive to any inquiry about my writing and it is another complete fabrication. The FBI told President Johnson and all the others who received and read copies, that my wife and I annually celebrated the Russian revolution at our residence. There was no basis for this extremely damaging falsehood then, now or at any other time. The nearest my wife and I can figure out what was embellished upon comes from the FBI's report that we then entertained 30 to 35 strangers in this alleged celebration. We then had a small farm and there was an annual religious gathering there after the Jewish high holidays which do not coincide with the Russian revolution. We are childless but recognized the attractiveness of what we had for children, so I arranged for eggs to hatch and chicks to be available for children to admire, enjoy and handle on weekends. All our livestock was tame and the children could ride even on our cattle. They gathered eggs from under docile hens and saw and played with waterfowl. Our wild geese, Canadian honkers, ate from their hands without biting them. The University of Maryland, which was aware of what we did, copied it for children in the metropolitan area and called that "McDonald's farm." This, the annual outing arranged for Washington area Jewish service personnel and their families by the rabbi of the Jewish Welfare Board, was the only occasion on which we ever had more than a few friends at our farm as guests, and the FBI presented it to the President of the United States and all those many others as our alleged observation of the Russian revolution.

85. This also has been presented to two courts and is in the case record in this litigation for years. The FBI has not uttered a word of disagreement - or apology or retraction.

86. This is not the only such FBI concept of privacy in this case record. It also holds the fact that the FBI made and kept files on students who were interested in my work. In the case record I was careful not to disclose the FBI source for this information in order that there be no retribution. The source is an FBI employee involved in this case who had a relationship with the parents of one student. That student was warned that these files could always be hurtful to them.

87. The careful angling and distorting of personal information in disclosed FBI records to make them defamatory and then to disclose them without consideration of the privacy involved is illustrated by Exhibit 5. In it FBIHQ informed the field offices of the entirely irrelevant and did that in a manner designed to be prejudicial and to control what they would believe and keep on file about me. What this FBIHQ record states is that "He was one of ten employees fired by the State Department in 1947, because of his loyalty being suspected. He was later allowed to resign." While it is true that ten State Department employees, almost all Jews, were fired in that McCarthyite era, it is not true that any loyalty charges were ever made or given to me or stated by the State Department. What the FBI knew and omitted from its prejudicial formulation that is, among other places, in its public reading room, with plenty of similar company, is that I was represented by a former federal agency head, a former federal appeals court judge and an eminent lawyer who was later a Justice of the Supreme Court. As a result the action against me was withdrawn and the State Department apologized publicly. In fact, when interviewed for a signed article by a Pulitzer prize-winning reporter, on the specific instructions of the Republican owner of that paper, the New York Herald-Tribune, J. Edgar Hoover himself found no basis for the firing and was so quoted. Although this story made

page-one news from coast to coast, the FBI managed not to disclose any copy of it to me or in its general disclosures. It did, however, find and disclose an earlier, prejudicial leak to one of the papers it most liked to leak to, the old Washington Times-Herald. It also managed not to find and distribute and thus not to disclose to me with its records about me J. Edgar Hoover's published praise of my pre-Pearl Harbor exposes of Nazi cartels and the espionage they made possible. It found and disclosed only what it made appear to be defamatory.

88. The case record as cited partially herein is diametrically opposite the claim of the FBI's supplementary brief with regard to the public interest and privacy showings I made, with regard to its searches and refusals of searches, and with regard to how the FBI in fact rather than as in its brief regards and treats privacy and searches.

EXHIBIT 1

Memorandum

JUNE

TO : Mr. DeLoach

DATE: May 9, 1968

FROM : A. Rosen

SUBJECT: MURKIN

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Long
1 - Mr. Conrad
1 - Mr. Gale

PURPOSE: To recommend the installation of a technical surveillance (TESUR) on the telephones of Albert and Carol Pepper, St. Louis, Missouri, and the telephone listed to the Grapevine Tavern in St. Louis, Missouri, owned by Carol Pepper, subject's sister, and operated by John Larry Ray, subject's brother, and the installation of a microphone surveillance at the residences of Carol Pepper, and John Larry Ray, and at the Grapevine Tavern. These installations could assist in the early apprehension of the subject, which could possibly be instrumental in reducing the stresses and tension placed on our national security subsequent to the death of Martin Luther King, Jr.

BACKGROUND: We are presently conducting exhaustive and extensive investigation to determine the present whereabouts of the subject James Earl Ray, who is one of the TEN MOST WANTED FUGITIVES. Although many hundreds of interviews have been conducted and leads run out, we have not been able to locate the subject nor have we located any person who can furnish us any information as to the subject's present whereabouts. It has been determined that Carol Pepper, the sister of the subject, and John Larry Ray, the brother of the subject, are the closest relatives to him. Carol is married to Albert Pepper and they reside at 2025 Belleview, St. Louis, Missouri, telephone number 645-2948. John Larry Ray resides at 1900 A Cherokee, St. Louis, Missouri, no telephone listed. Carol presently owns the Grapevine Tavern, 1982 Arsenal, St. Louis, Missouri, telephone number PR 6-9417. This tavern is operated by John Larry Ray.

John Larry Ray has expressed a cooperative attitude; however, it is felt that he is not giving us complete and accurate information. Carol Pepper refuses to submit to interview and is not cooperative. It is felt that if the subject telephones or personally contacts any of the relatives, it will most likely be Carol Pepper or brother John Larry Ray.

Enclosure 5-13-68

REC 11 44-D-261-3764

REL:erg

MAY 31 1968

EX-102

CONTINUED - OVER

11 MAY 22 1968

SEC/MAIL RM

Memorandum to Mr. DeLoach
RE: MURKIN

RECOMMENDATION: That a technical surveillance be installed on the telephones of Albert and Carol Pepper and the Grapevine Tavern and a microphone surveillance be installed at the residences of Albert and Carol Pepper and John Larry Ray and at the Grapevine Tavern.

Attached for approval is a memorandum to the Attorney General requesting authority for this coverage.

It is doubtful that A.G. will approve. This could be of great assistance.

OK.

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Mohr

DATE: May 10, 1968

FROM : J. J. Casper

SUBJECT: MURKIN

As shown in attached memorandum of May 9, 1968, from Mr. Rosen to Mr. DeLoach, consideration is given to microphone installations on certain properties of Albert and Carol Pepper. The proposal raises a question concerning the legality of any action taken against the subject of this case on the basis of information obtained from the microphones.

We believe these microphones can be installed and used without prejudicing the case against the subject. In a very recent decision of the United States District Court for the Southern District of New York, a listening device was installed on the premises of one Levine. Later, a subject named Granello, an associate of Levine, came up for trial and claimed that the listening device installed on Levin's premises, which was installed by trespass, was illegal as to him, Granello. It was not contended that any information obtained from the Levine microphone was used as evidence against Granello at trial either directly or as a lead. The court held that since Granello had no interest in the Levine premises, the monitor was not illegal as to him and he could not obtain a new trial or dismissal of the indictment. U.S. v. Granello, 280 F. Supp. 482 (1968).

Applied to instant case, this rule of law could work out in different ways. Assuming that the subject of this case is not on the premises to be surveilled by the means suggested, and has no possessory or other right in those premises, any information disclosed by the surveillance in some way, such as conversation among the Peppers, could be used to learn the whereabouts of the subject for purposes of arrest. The problem becomes somewhat more complicated, however, if the subject of this case made a telephone call to those premises and that telephone call were recorded and used as the basis for his apprehension. He then could claim that the surveillance violated his right of privacy in the telephone communication he made to that place, citing the Katz decision in the Supreme Court.

REC 11 44-3[illegible]-3763

Enclosure

1 - Mr. Tolson
1 - Mr. DeLoach
1 - Mr. Conrad
1 - Mr. Gale
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Long
DJD/pal
(10)

MAY 31 1968

MAY 22 1968

"CONTINUED - OVER"

The worst that could happen in either of the above circumstances, however, - assuming that we follow the precautionary measures listed below - is that we illegally learn where the subject is located and thus are able to arrest him on that knowledge. The rule that comes into play here, established in the last century by the Supreme Court in Ker v. Illinois, 30 U.S. 347 (1886), is that an illegal arrest is no bar to prosecution. Wong Sun v. U.S., 371 U.S. 471 (1963); U.S. v. Hoffman, 385 F2d 501 (1967); Keegan v. U.S., 385 F2d 260 (1967). A person may be arrested unlawfully and actually kidnapped into the court having jurisdiction of the criminal case, yet the court still retains jurisdiction to try the person for the offense. The court would not allow the prosecution to use as evidence any information obtained through the illegal surveillance but the illegal surveillance would not taint the use of any other evidence obtained either before or after and which was gotten in a legal manner. Nor, to repeat, would the illegality of the arrest alone, resulting from whereabouts disclosed by unlawful surveillance, prevent the court from trying the subject for the offense.

If the action being considered is taken, we strongly suggest three precautionary measures, as follows:

(1) That all recordings be preserved intact. It may be necessary to disclose some of them to the court or even to the defense.

(2) That no use be made of any information obtained against anyone whatsoever or in any way whatsoever except for the single purpose of locating the subject in this case. As we well know by this time, evidence of the offense obtained in this manner is not admissible. It would not be admissible against the subject and it would not be admissible against the Peppers on a charge of harboring.

(3) Be aware that since this search and seizure is unconstitutional as to the Peppers, they have at least a theoretical cause of action for damages against those who installed the devices by trespass. Here again, however, if nothing learned by this surveillance is used against the Peppers in any way, their cause of action is diminished to the lowest possible degree, becoming that for a technical violation only rather than one of substantial harm to them. Moreover, in any such case the government of the United States should surely be willing to pick up the tab for any judgment had against those who installed the microphones.

RECOMMENDATION:

For information.

PLEASE SEE ATTACHED

EXHIBIT 3

U.S. SECRET

~~DATED IN ENVELOPE~~

1 - Mr. C.D. DeLoach
1 - Miss Holmes

The Attorney General

June 11, 1968

1 - Mr. Rosen
1 - Mr. W.C. Sullivan
1 - Mr. C.D. Brennan
1 - Mr. M.J. Rozanus

Director, FBI

JUNE

ELECTRONIC SURVEILLANCES

MURKIN

Reference is made to my memorandum dated June 4, 1968, captioned as above, pointing out that your decisions were urgently needed concerning requests for electronic surveillances on the individuals and organizations listed in my memorandum of May 28, 1968. Subsequent to the memorandum of May 28, 1968, a request for electronic surveillance was submitted to you on May 31, 1968, concerning the National Headquarters of the Students for a Democratic Society, Chicago, Illinois. (S) U

As you were previously advised, this Bureau is greatly concerned about the delays involved regarding the requests for electronic surveillances which have been submitted to you. While we are making every feasible effort to obtain essential intelligence data in the internal security field, we cannot hope to fulfill our responsibilities in the intelligence field unless the requested investigative techniques are made available. It is absolutely essential that in critical cases full coverage be given in areas of foreign intelligence, counterespionage, domestic subversion, and insurrection. The requests which are pending are in critical cases and in view of the developments during the past several weeks, particularly concerning activities of subversive organizations, civil rights groups, and organizations affiliated with the New Left, this Bureau must have consideration of the coverage requested of you. (S) U

NOT RECORDED
57 OCT 11 1968

I again find it necessary to bring to your attention that your delays involving requests for electronic surveillances are causing a loss of invaluable intelligence information. It is again requested that you furnish your decision as soon as possible concerning the requests which have been made.

(S) U

66-8160

MJR:pag/sib (9)

JUN 14 1968

SEE NOTE PAGE TWO

CONFIDENTIAL

~~Classified by~~
Excluded from automatic downgrading and declassification

SENT FROM D. O.
TIME 5:00 PM
DATE 6-11-68
BY

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

DECLASSIFIED BY 6855
ON 9/8/77

OCT 1 1968

MAIL ROOM ☐ TELETYPE UNIT ☐

NW 55182 DocId:32989871 Page 1

The Attorney General [redacted]

For your information, inasmuch as James Earl Ray has been apprehended, the request for electronic surveillances mentioned in my memorandum dated May 13, 1968, captioned "Assassination of Martin Luther King, Jr.," is hereby withdrawn. (UNCLASSIFIED)

NOTE:
See memorandum C.D. Brennan to Mr. W.C. Sullivan, same caption, dated 6/10/68, prepared by MJR:sss.

This memorandum is classified "Top Secret" since unauthorized disclosure could result in exceptionally grave damage to U.S. intelligence interests.

~~Revised by 3002~~
~~2/21/77~~

7306 TSS/ 2/21/77

2-3 INDEF

[redacted]

[redacted]

EXHIBIT 4

PLAINTEXT

May 2, 1968

TELETYPE

URGENT

1 - Mr. Long

TO: SAC, ST. LOUIS

FROM: DIRECTOR, FBI

MURKIN

ST. LOUIS WILL PROVIDE FULL COVERAGE AT THE GRAPEVINE TAVERN TO DETERMINE IF THE OWNER OR OPERATOR OF THE TAVERN IS POSSIBLY ENGAGED IN ANY ILLEGAL ACTIVITIES WHATSOEVER. ALONG THESE LINES, YOU SHOULD IMMEDIATELY ASCERTAIN IF THE TAVERN IS POSSIBLY LICENSED AND IS CONFORMING WITH PRESENT LAWS AND REGULATIONS GOVERNING THEM. THIS IS FOR THE PURPOSE OF DEVELOPING INFORMATION WHICH CAN BE UTILIZED IN CONNECTION WITH INTERVIEWS TO DETERMINE WHEREABOUTS OF SUBJECT. KANSAS CITY HAS ADVISED THAT SUBJECT MAY UTILIZED THE ALBERT PEPPER STATIONERY COMPANY, SEVEN ONE TWO A SHENANDOAH STREET, ST. LOUIS, MISSOURI, AS A MEANS OF GETTING MONEY OUT OF PRISON, ALLEGEDLY PURCHASING STATIONERY. [redacted]

[redacted]

1 - MEMPHIS

REL: pbv (4)

SEE NOTE PAGE TWO...

66 MAY 7 1968

COMMUNICATIONS SECTION
MAY 2 1968
TELETYPE

REC 54 47-8861-27
EX-103
19 MAY 8 1968

TELETYPE TO SAC, ST. LOUIS

RE: MURKIN

[redacted] IF GRAND JURY

IN SESSION TO SUBPOENA RECORDS, YOU SHOULD INSURE THA

OF RECORDS CAN BE ACCOMPLISHED WITH FULL SECURITY ANI

BUREAU'S INTEREST WILL BE FULLY PROTECTED.

ARMED AND DANGEROUS.

AIRMAIL COPY TO MEMPHIS.

NOTE: Kansas City has advised that Ray has utilized
Albert Pepper Stationery Company of St. Louis, Missou
as a means of getting money out of the prison. [redacted]
St. Louis also being instructed to fully cover the T
as owned and operated by subject's relatives and to
if illegal activities involved and to establish the T
operating in compliance with regulations.

EXHIBIT 5

0 13 (#4)

Springfield

Director, FBI - 91 [illegible] 21

6-11-70

1 - Mr. Beale

REC-23

CWSUBS (2);
FARMERS BANK OF LIBERTY
LIBERTY, ILLINOIS
10/17/69
ER
Springfield File (91-4653)
Bufile (91-34552)

UNSUBS (2);
FARMERS AND TRADERS STATE
BANK OF MERIDOSIA,
ILLINOIS, 1/28/70
ER
Springfield File (91-4774)
Bufile (91-35511)

Re Baltimore letter to Bureau 5-25-70.

For your information the Harold Weisberg referred to in referenced Baltimore letter is apparently identical with Harold Weisberg, an individual who has been most critical of the Bureau in the past. He is the author of several books including one entitled, "Whitewash - The Report of the Warren Report," and has been critical of the FBI, Secret Service, police agencies and other branches of government. He was one of ten employees fired by the State Department in 1947, because of his loyalty being suspected. He was later allowed to resign. In a letter directed to the Bureau in April, 1969, he requested information on the Martin Luther King murder case for a forthcoming book, however, because of his past animosity toward the Bureau, the letter was not acknowledged. This Weisberg has a pending civil suit against U. S. Department of Justice and the U. S. Department of State demanding copies of certain documents utilized in the extradition of James Earl Ray, the murderer of Martin Luther King.

There are numerous references in the Bureau files regarding Weisberg, however, he is not the subject of any main criminal files nor are there any criminal references to Weisberg in the Bureau files.

60 JUN 22 1970

JLB:dmv
(6)

MAIL ROOM ☑ TELETYPE UNIT ☐

COVER PAGE

JUN 11 1970

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