Dear Mr. Shea, 5/15/81

I read your Declaration in C.A. 81-0023 and that of F. Henry Habicht II when I was in the hospital, recovering from the most recent emergency arterial surgery. It was a depressing experience. While I had felt, with the assurances that had been provided, that even of it had required 1981 litigation to obtain any compliance with my 1977 request, it would be complied with, reading these declarations and related papers does not justify that optimism. They are evasive, and records that clearly must exist remain withheld and not in any way accounted for.

In Paragraph 2 you state that your Declaration concerns only exemptions other than (b)(1) and that "classified information . . . will be addressed by the Declaration of Mr. Habicht." This is precisely what he states in his Paragraph 2, that [redacted] "My affidavit concerns only information classified and withheld from disclosure pursuant to 5 U.S.C. 552(b)(1)."

Between the two of you you succeed in representing that Mr. Habicht addresses all information withheld under (b)(1). This is not true, and if you read his Declaration closely and refuse to get lost in his chest-thumping, he is careful to restrict this with different language. He really says that he addresses only what you designated as Document 33.

In order to further the deception and misrepresentation - and if not intended, where is th justification for the withholding of other classified information in this case in his declaration - he forgets about his limitation to Document 33 nd runs off at considerable length with more general representations, like, "Prior to the preparation of this affidavit, I presonally examined the classified information falling within the scope of plaintiff's FOIA request. . ." If he did not intend to give the false impression that he had examined all withheld classified information he would have said no more than that he had read Document 33.

He thereafter continues to spout the standard boilerplate, quoting at great length from such things as the executive order, without showing what he cannot show, the pertinence of all the quotations and imputed dire consequences of not withholding.

He boasts about his judgement and his status as an original Top Secret classification authority and claims to have determined that disclosure of what is withheld "reasonably could be expected to cause at least identifiable damage to the national security," but his own description of his qualifications and time on the job makes it clear without possibility of doubt that if he had undertaken to do nothing other than read what the Department alone has disclosed in this case he was not on the job long enough to read those records.

Stripped of the verbiage and false pretenses this newborn Top Secret Classification Authority may actually be claiming perpetual national security status for what was all over the front pages of the New York Times and the Washington Post and disclosed, with

the Department's assent, by Congressional committees.

The characterizations of verbiage and false pretense are not rhetorical, as examination of the Habicht Declaration at this point establishes. Where he refers to indefinate hazard to the nation's security unless the information is not withheld until some unspecified time far into the future, he has less than a sentence of text, but he has almost two full pages of single-spaced footnotes. In his footnotes he does not pretend to quote provisions he claims are or may be applicable. He quotes all of that part of CFR Part 17 on the duration of classification. He is careful not to make a specific claim to the applicability of any portion of the CFR or, on the next page, where he quotes all of EO 12065 on "prohibitions," to the applicability of any of the seven sections he quotes in full, [redacted].

On these two pages, in fact, Habicht has only seven lines of text. The remainder - most - consists of the boilerplated footnotes, all single spaced.

Based, allegedly, on his "capacity as a declassification authority," Habicht claims that what he withholds continues "to meet prescribed classification requirement". He adds that the public interest "does not outweight the damage to national security that might reasonably be expected from disclosure." But he still fails to claim that any part of what he rubberstamps the withholding of has not been disclosed. And other portions of what remains disclosed in this instant cause are disclosed.

There is nothing in Habicht's Declaration to establish his competence to make such judgements. He is a designated authority. But he also is new on the job and there simply is no way in which he could have obtained the information required for any such affirmations within the time he had.

Within my not inconsiderable experience, however, such sweeping and often baseless [redacted] claims are a major cause of unnecessarily prolonged FOIA litigations, particularly where what can be embarrassing to officialdom is concerned.

There appears to be nothing about which Habicht is not willing to prate under oath and with the knowledge that the prosecutor will not prosecute himself. An example is his Paragraph 10, where this newborn authority pretends to lecture the Court and me:

"Exposure of an intelligence source's identity can result in the termination of the source, discontinuance of the source's services, exposure of ongoing intelligence gathering activities" and many other unimaginable horrors and dangers to the security of the nation. To say nothing of boons to supposedly enemy intelligence services. All this in 1981, when Dr. King was assassinated in 1968, and the withheld information is even earlier? All of this with the pretense that all sources are live and continuing sources, whereas all cannot be and some of the sources used in this matter were electronic and not in any way included within Habicht's pretenses of only human sources. (Those, of course, were terminated more than a decade ago, and NOT from "exposure of (the) intelligence source's identity."

Consistent with Habicht's pretense of having examined all information withheld as classified he pretends to have sought to make maximum possible disclosure, a cute way of referring to [redacted] withholding: "I have sought to apply classification to the material strictly in keeping with the spirit of the FOIA, so as to release as much information as possible, while at the same time prevent damage to the National security..."(Page 9)

Habicht pretends what is now without doubt clearly established as untrue, that the FBI's operations against Dr. King were a "foreign intelligence investigation." (Page 10)

(Habicht does not attach the record to his Declaration. It is not included with your letter of February 3, 1981 to Mr. Lesar, which actually ends with the preceeding number. It is beyond my present capability to make any further search for whatever Habicht may have disclosed. If indeed he disclosed anything not previously disclosed.)

In your Declaration there is inaccuracy and incompleteness. While it pretends to provide the history of this litigation, it fails to do so in material ways.

This is one of several requests made necessary by the Department's stonewalling. If it does not end at some point in the not distant future, still more litigation will be required to obtain the withheld information that was requested.

Mr. Ford's letter of 4/1/81, your Exhibit C, contributes to the misrepresentations and is pertinent. It states that [redacted] Office of Professional Responsibility (OPR) records "were not initially processed for release, in the belief they did not fall within the scope of any pending request by Mr. Weisberg and on the assumption they would be of no interest to him." This assumption ignores the specific items of my requests litigated in C.A. 75-1996 that pertain to all re-investigations, of which that by the OPR was but one of several.

Other Items of my C.A. 75-1996 requests pertain to records still not provided and of the offices of the Attorney General and his Deputy. It is because those records were and remain withehld that I had to file the requests involved in this instant cause, in which the records still have not been provided.

Your explanation about the nature of the records kept and not kept in these two offices (Paragraph 4, pages 2 and 3) omits any reference to the supposed searches already made in the regular files, not those kept in those offices. Because my prior requests include what is filed elsewhere, the thrust of this paragraph can be to mislead because you do not refer to the prior requests and litigation and failure to provide the information. [redacted] made and attested to. The reason is apparent: the information sought is embarrassing to the Department. I will address this below.

What your declaration does not state and should be apparent is that the pertinent records that are not provided, if they are not in the files of the two offices, should be in the regular files - which have not yet been searched in response to any request.

On page 3 you refer to the supposed nature and extent of the pre-OPR investigation and to Lesar v. Department of Justice. (Mr. Lesar filed that suit in his name because of my

health. The first arterial [redacted] blockage had just been diagnosed.) This pre-OPR investigation was by the Civil Rights Division (CRD). Unlike your description, one of limitation to the FBI's "investigation of the assassination of Dr. King," the re-investigations included the FBI's campaign to ruin Dr. King. (This also appears to be the subject matter of the records involved in the Habicht Declaration.)

One of the real problems with this and this formulation is the little-known fact that the FBI never investigated the assassination. When there was complaint about the inadequacies of the investigation, the FBI defended itself by the statement that it had not investigated the crime and that it had merely conducted a fugitive investigation in search of James Earl Ray. The re-investigations did not state [redacted] this, although the record is included among those supposedly examined, in the FBIHQ MURKIN file. This, of course, characterizes those subsequent inquiries, potentially embarrassingly.

You state that in the Lesar case the court upheld the claims to (b)(1) and (7)(C). This ignores much too much.

Some of what is withheld is included in my appeals, which were earlier and which to this day you have ignored. Those appeals are not within the Lesar case nd are within my litigation. They were [redacted] not before the Lesar courts.

Some of what was withheld was public domain, despite the (b)(1) and (7)(C) claims, like [redacted] those made to withhold the name of Stanley Levison. He has since died; there never was any basis for the withholding; there was disclosure in several Congressional investigations; and there even was the extensively publicized NBC-TV so-called "docudrama" on Dr. King in which Levision is the virtual hero. There also has been considerable disclosure by the Department, including some of the surveillances. [redacted] (This is not limited to electronic surveillances.)

Even if the 1977 conclusions of the Lesar court are justified, as it can be argued they were not; even if those judgements had not been influenced by false swearing by the Department, as I am quite prepared to prove they were, with proofs of the false swearing; there remains the fact that what was true four years earlier is not true now and what was disclosed in those four years is totally ignored in your Declaration. Need I remind you of the House Select Committee on Assassinations, for example? It followed and its Report and other publication followed the Lesar request.

There is evasiveness in your attachments, for example Exhibit H, the Declaration of Frederick D. Hess of the Criminal Division. He attests that three withheld records are within (b)(5), as deliberative records. What he does not state is that other records of that precise description, recommendations pertaining to the re-investigations, have been disclosed; and that as a matter of administrative descretion they cannot be released.

There is considerable public interest, much more since the end of the House investigation, in the nature of the investigation and how the agencies of government functioned.

The request is not fairly described in your Paragraph 4, cited above. You refer only to records physiccally in the offices of the AG and DAG, but this limitation does not appear in my requests, your Exhibits A and B. My words used are " originated by" and were "ever in the possession of" the offices, as well as those stored there. Clearly the requests include all such records, wherever they may now be, as long as they can be identified and searched for, which have not been done yet. I do not limit to what is now in those offices.

There are other at least questionable statements in your Declaration. Some is typical FBI boilerplate and just isn't true. For example, on page 10, that always "A person who furnishes information to an investigatory agency does so with the implied or express promise that at least his identity will be held in confidence." Where there is an express promise the FBI's records always record it, as they also do if such a request is made. However, with regard to the implied promise, this is not ture. If it were there would never be witnesses. Often it is understood that the source is to be a witness. With regard to the similar JFK case, which preceeds FOIA, J. Edgar Hoover held to the contrary and ordered that these names not be withheld in the Warren Commission records. In that same case, according to a Criminal Division record I saw for the first time two days ago, when the Department asked then Dallas Police Chief Jesse Curry about the full disclosure of the vast number of records he had provided, his reply was that full disclosure would not in any way interfere with the operation of his department.

There is a separate and legitimate question of confidentiality, but it is not addressed by sweeping, conclusory and factually inaccurate statements like yours that I quote above. All sources are not confidential and all human sources do not expect or require confidentiality.

Lower in the same Paragraph you state what I correct above, what is not true, that "The Bureau files were created for the purpose of investigating the murder of Dr. King, clearly a law enforcement function." The FBI never conducted any other than a fugitive investigation, as it states in its own internal records.

Likewise, all the OPR's records were not compiled for law enforcement purposes. You quote only two of the AG's charges.

On page 14 and elsewhere you refer to what was withheld as ourside scope and here is described as pertining solely to the assassination of President Kennedy. These are records pertaining to the House committee, which was charged with looking into both assassination. In that sense it may be that no such distinction can be made when one is examining into the committee's or the Department's functioning. However, what is clear is that all such information is within other of my requests that are withhout compliance. If you faced any deadlines in preparing your Declaration and providing records, that deadline has passed and good faith calls for the production of those records that are located and are known to be within my requests that you have been ignoring for years.

You have not provided these records and you have not informed me that with their having been located, which means no search is now required, they will not be disclosed.

And might it not have been informative to the Court if you had not withheld the fact that these withheld records are within other of my requests that lack compliance?

There is information of significance and considerable historical importance that was in the possession of the AG and DAG, whether or not now filed in those offices. It is of a nature that indicates it should still exist. It is historical-case information and is not subject to automatic destruction.

While it is alleged that the FBI's involvement in the King assassination was at the order of the Attorney General, it has not been able to produce any such directive. It is not able to claim any authorization, from any lesser source, until some time after it had involved itself, which in plain English means after seized the case and used the locals as its front. Any authorization certainly should exist, and if there was no such authorization, is it possible that the many subsequent investigations were other than whitewashes if those eminent lawyers did not seek and come up with such authorization? in report the lack of it

AG Clark made a public statement the day after the assassination in which he represented there was no conspiracy, that Ray, then not identified with his correct name, was a lone assassin. Mr. Clark then was accompanied by Mr. Hoover's expert press manipulator, Cartha DeLoach. There is no source available to the AG for any such information other than the FBI. There also was considerable and negative reaction to this unjustified public statement by the AG. It appears unlikely that there is nowhere any pertinent record. Particularly when the FBI itself filed a conspiracy charge against Ray, as Galt, within a few days (it and did not drop that charge for years after Ray's guilty plea and sentencing.)

With regard to that guilty plea, the Department and others leaked their heads off. In 1971 I published some of what they disclosed. In 1973 I learned more as Ray's investigator and during the evidentiary hearing in Ray v. Rose in [redacted] federal district court in Memphis. The Department, including the AG and DAG, were involved, with the King family and associates, in the guilty plea negotiations, if what actually came to pass can be called the end product of negotiation. There was considerable adverse comment on such a case being settled without any trial at all, without any of the claimed evidence being tested under cross examination and in public, the traditional, American way. In return for pleading guilty Ray was awarded the maximum possible sentence, as the judge himself later stated in public, when he claimed to have made a good deal because Ray could have been acquited after trial. (It then also was improper for the judge to be involved in guilty plea negotiations, according to the standards of the bar, drafted by the man who is now Chief Justice of the United States.) My requests litigated in C.A. 75-1997 are specific in seeking all information pertaining to the guilty pleas. They also seek records pertaining to those involved in foisting off this "deal" which guaranteed Ray the longest

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sentence then possible.

What makes this even more dubious is that when copping a plea was first presented to Ray, by the counsel he had before he got Percy Foreman (or vice versa), the offer was for a 20-year sentence. Ray rejected it outright and did not authorize the Arthur Haneses to make any deal or negotiate any. The Haneses testified in the evidentiary hearing that if Ray had asked their advice, they would have advised him to reject the deal and stand trial. Percy Foreman "negotiated" the 99-year deal with the judge.

But as testimony and public statements make clear, all was in association with the Department and its top officials.

They, meanwhile, had virtually no case to take to court against Ray and if their extradition alone had been subjected to close scrutiny, the prospects for embarrassment were considerable.

There was no witness who could or did place Ray at or near the scene of the crime, not even in Memphis or the State of Tennessee, for the two hours before the crime. The only witness who ever placed him within the city or state was, at the time of the extradition, in a mental hospital. To get Ray extradicted the Department got one Charles Quitman Stephens, an alcoholic with a long criminal record, to pretend to having identified Ray as a man he claimed to have seen two hours before the crime. However, what the Department withheld is the fact that long before the extradition proceeding, two weeks after the crime, when Stephens was shows a photograph of Ray he stated unequivocally that Ray was not the man he'd seen.

(One of those countless appeals on which you have not acted pertains to this and the FBI's continued withholding of the original records of its interviews of Stephens.)

The FBI was never able to tie the alleged death rifle with the remnants of bullet removed from Dr. King's body; it claims it did not test fire the rifle (although HSCA claims to have gotten the test-fired specimens); and no Department lawyer ever had or posed any questions, not even when so charged by the AG? It is not only the FBI that can be embarrassed by the information I sought and still seek. The guilty plea and subsequent so-called investigations are among the areas of potential embarrassment that are also included within my earlier requesta and litigation, in C.A. 75-1996. It is no search was made and now you claim no more than that the withheld information is not filed in the offices mentioned in my compliant, which is not limited to what is presentely in those offices.

For half a decade the Department has been boasting in public that it was going to make all public as it took the so-called hangout road, all the while doing all it dared try to withhold what is pertinent and what I sought. It has not yet searched in response to my 1975 and earlier requests; it insisted on loading all the junk in its MURKIN file on me under the false pretense that this would constitute compliance, to which I then and since objected strongly; and when I have not done so it has regularly claimed in C.A. 75-

1996 that I have expanded my requests, meanwhile, as in this instant cause, not complying with other and pertinent requests I am forced to file in a to now vain effort to obtain the information first requested more than a decade ago.

The Department, whose employees are immune from any offense committed in any FOIA matter, has crwated a situation where a requester of information the Department does not want to disclose faces a choice between permanent non-compliance and permanent litigation. While the Department is not concerned about the great costs it thus creates, for other purposes it complains about the cost of FOIA, without regard to the major portion of those costs attributable to non-compliance with FOIA rather than compliance with it.

Your Declaration does not state that the information I seek is not available. It does not even pretend to a good-faith search. All it claims is that the information is not now physically in either office, which is meaningless. If the Department's intent was to comply, I do not see why you provided any Declaration prior to making the required searches, which are not limited to those offices.

I believe the intent not to comply, a general stonewalling intent with regard to me, is clearly reflected by the withholding of records that, whether or not pertinent in this case, clearly are within other and ignored requests of which you know, requests followed by appeals on which you have not acted.

Of course, I reget it all very much. And appeal the denials.

Sincerely,

Harold Weisberg