56(a) (in response to plaintiff's second paragraph numbered 56) No factual response is deemed necessary to this allegation.

57(a) (in response to plaintiff's second paragraph numbered 57) No factual response is deemed necessary to this allegation, other than reiterating that we are not going to engage in a "battle of scientific experts" in an FOIA suit.

58 No factual response is deemed necessary to this allegation.

59-73 Please refer to Special Agent Kilty's affidavt for the correct information concerning these allegations. I respectfully reiterate my belief that the purpose of this FOIA litigation is not to judge Mr. Ray's guilt or Mr. Weisberg's scientific knowledge.

74 Plaintiff is correct in that perhaps my answer to his Interrogatory No. 17 should have been more clear to avoid any incorrect inferences. I meant my answer to mean that we furnished plaintiff all photographs of the bathroom windowsill taken by the FBI Laboratory which had been located in our search of FBIHQ files. I did not mean to leave the implication, nor do I claim, that the FBI possesses every picture ever taken, no matter by whom, or when, of the windowsill. We complied with plaintiff's request by furnishing him all photographs we had located in our file search pursuant to his request.

75 Plaintiff has been furnished all photographs and reports concerning the FBI Laboratory examination of the windowsill. Conclusions drawn by plaintiff or anyone else from the material furnished plaintiff have no bearing whatsoever on the subject matter of this litigation.

76 This allegation is irrelevant. Plaintiff knows that photomicrographs of the windowsill were taken, since he was furnished them, as he admits in the second sentence of his Paragraph 75.

77 This allegation is also irrelevant, since plaintiff also knows that the examination he describes in Paragraph 77 was conducted. All results of this examination were furnished him, specifically in the FBIHQ report to our Memphis Field Office dated April 11, 1968. He was also furnished all notes concerning the FBI Laboratory examination of the window-sill.

78 My answers to plaintiff's interrogatories correctly state that "there were no other suspects in the case in addition to James Earl Ray." Plaintiff correctly stated in his interrogatories that "on April 17, 1968, FBI Special Agent Joseph H. Gamble filed a conspiracy complaint with the United States Commissioner in Birmingham, Alabama." The complaint states that "on or about March 29, 1968, at Birmingham, Alabama, ... Eric Starvo Galt (subsequently determined to be identical with Mr. Ray) and an individual whom he alleged (emphasis supplied) to be his brother, entered into a conspiracy which continued until on or about April 5, 1968, to injure, oppress, threaten, or intimidate Martin Luther King, Jr. ... In furtherance of this conspiracy, Eric Starvo Galt did, on or about March 30, 1968, purchase a rifle at Birmingham, Alabama,... ." This complaint was dismissed on December 2, 1971. There were no other suspects in the case in addition to James Earl Ray. In response to plaintiff's allegation in Paragraph 78 that "I personally delivered to the FBI a sketch and a picture of another suspect but these were not among the sketches and photographs provided me," with all due respect to plaintiff, I can only reiterate that, pursuant to his FOIA request, we conducted a complete and thorough search of all central records located at FBIHQ and, based on the data submitted by plaintiff with his request, we located all records contained in our FBIHQ files which are in any way responsive to plaintiff's requests. We conducted the same searches in response to plaintiff's FOIA requests that we utilize in our day-to-day retrieval of necessary information in connection with our normal duties, which, because

of our uniform reporting rules and filing procedures, enable us to be certain that we maintain, in one centralized location, all pertinent information in possession of the FBI deemed worthy of retention which has been acquired in the course of fulfilling our investigative responsibilities. In addition, as I have previously stated, in order to ensure that we have completely complied with plaintiff's requests, we have gone beyond that which we feel is required by the FOIA and advised plaintiff that we will also search the files of our Memphis Field Office and in the very near future furnish him all releasable information located in this search which is within the scope of his request. The final sentence of plaintiff's Paragraph 78 consists of another unsubstantiated claim for which he furnishes no factual support, and no response is deemed necessary. As with the material he claims he gave us, we offered him the opportunity at the March 23, 1976, meeting to assist us with documentation of this claim, but he failed to do so.

79 Plaintiff alleges in Paragraph 79 that my answer to his Interrogatory No. 27 is deliberately non-responsive, inasmuch as his interrogatory is not limited to cigarette remains found in the white Mustang. I quote from plaintiff's April 15, 1975, FOIA request: "On behalf of Mr. Harold Weisberg I am requesting disclosure of the following information on the assassination of Dr. Martin Luther King, Jr.: ... 4. The results of any scientific tests performed on the butts, ashes or other cigarette remains found in the white Mustang abandoned in Atlanta after Dr. King's assassination and all reports made in regard to said cigarett remains." (Emphasis supplied.) As plaintiff's attorney was advised in Mr. Tyler's December 1, 1975, letter, "the Department of Justice (and this, of course, includes the FBI) never received any 'butts, ashes or other cigarette remains' from the 'white Mustang abandoned in Atlanta,' and for that reason did not

perform any scientific tests thereon." Furthermore, the letter went on to advise that a two-page schedule of all evidence acquired from the Mustang was being furnished - without charge - to plaintiff, even though he had not requested this information.

80 Plaintiff is correct in his allegation that the FBI conducted some examination on cigarette butts. They were recovered in New Orleans, Louisiana, not Atlanta, Georgia, and were recovered in an apartment, not a white Mustang. Plaintiff is also correct in his allegation that the FBI has not provided him with a single report on them, and for the reason that we have not provided them to him, the Court is respectfully referred to the quoted material setting out plaintiff's FOIA request referred to in the preceeding paragraph.

81 No factual response is deemed necessary to this irrelevant allegation. Plaintiff is mistakenly accusing the FBI of withholding material he did not request, and also once again attempting to adjudge James Earl Ray's guilt in this FOIA litigation.

82 Again, as last described in my Paragraph 78, we have done everything possible to fully comply with plaintiff's FOIA request of April 15, 1975. If my answers to plaintiff's Interrogatory Nos. 30 through 34 are interpreted as non-responsive, I certainly do deny that the FBI withheld from plaintiff any photographs and sketches located pursuant to his FOIA request. The last sentence of plaintiff's Paragraph 82 is another unsubstantiated claim for which he furnishes no factual support, although he has been offered numerous opportunities to do so. I repeat that, as plaintiff has been advised, we will also furnish him all non-exempt material within the scope of his April 15, 1975, request located in our Memphis Field Office.

83 My answers to plaintiff's Interrogatory Nos. 35 through 39 are true and correct. As Mr. Tyler advised plaintiff's attorney in his December 1, 1975, letter, "... no 'information, documents, or reports made available to any author or writer' can be identified as such in our records. To avoid any

misunderstanding, I wish to advise you that no release of any materials relating to the death of Dr. King has been made to any persons other than law enforcement or prosecutive authorities, except for the so-called 'extradition papers' which were shown in 1970 to Bernard Fensterwald, Jr., Esq., then the attorney for your client Mr. Weisberg, and which are in the public domain." We have conducted a massive and detailed review of all FBIHQ files concerning the King assassination, and have located absolutely no indication that any information whatsoever (except for that noted above, and that made available to the general public) from these files has been furnished by us to any person other than law enforcement or prosecutive authorities. Plaintiff's attorney, in his December 29, 1975, letter to the Deputy Attorney General, states, "I think it is relatively simple for you to ascertain what materials are included in this request (referring here to information pertaining to the King assassination furnished to various authors, etc.) if you will just make a few inquiries of the appropriate authors, writers, and FBI officials." I have contacted those FBI officials who would be aware of any information such as this, and they have all been unable to furnish any information which would be responsive to this portion of plaintiff's request. My interpretation of the FOIA is that neither we nor the Deputy Attorney General are required to make "inquiries of the appropriate authors (and) writers" in order to respond to plaintiff's FOIA request. It is suggested that if plaintiff truly believes information of this nature exists, and he truly desires this information, that he make inquiries of the individuals he names in his original request and in his interrogatories, whom he implies possess this information. It also might be noted parenthetically that, in connection with his request for "photographs from whatever sources," that he contact the sources he names in his interrogatories, to acquire the information he apparently believes exists. Regarding all the allegations plaintiff makes in the remaining portion of his Paragraph 83, which are unsubstantiated

and have no factual support furnished with them, I cannot, in a sworn affidavit, address any claims plaintiff makes concerning activities of individuals (in most cases unnamed) who have nothing to do with the FBI. I can only again reiterate, and swear to, the fact that we have done everything reasonably possible to comply completely with plaintiff's FOIA request of April 15, 1975.

84 The only allegation contained in this paragraph which is relevant has already been dealt with; the searches we conducted in response to plaintiff's FOIA request and in furnishing the answers to his interrogatories were made of all FBIHQ files pertaining to our investigation regarding the assassination of Martin Luther King, Jr.

V Although in this and Special Agent Kilty's affidavit we have in effect answered plaintiff's interrogatories, it is my belief that plaintiff is attempting to obtain through these interrogatories information to which he is not entitled pursuant to the FOIA. Portions of his interrogatories make requests for information which does not consist of "identifiable records." The interrogatories also request information which has to be created, inasmuch as we do not presently possess this information in record form. The interrogatories request that the identities of certain FBI personnel be disclosed, which I feel would be a violation of these individuals' right to privacy, and thus exempt from release pursuant to subsection (b)(7)(C) of the FOIA. Furthermore, the interrogatories would require that we furnish information which plaintiff did not even request access to in his April 15, 1975, FOIA request. Finally, answers to most of the questions propounded in the interrogatories are contained in the material we have already furnished plaintiff, as well as in the December 1, 1975, letter to plaintiff's attorney from the Deputy Attorney General.

VI We have interpreted the FOIA as conferring a duty upon the FBI to furnish a requester all reasonably identifiable, non-exempt agency records presently in our possession which could

logically be deemed responsive to his request, and to give the requester an opportunity to avoid payment of substantial special search fees for additional material, which even if located, would appear to bear only a peripheral relationship to the subject matter of his request. We follow both the letter and the spirit of this interpretation in our response to all FOIA requests, including plaintiff's. We do not interpret the FOIA as requiring the FBI to conduct an individual's scientific and/or historical research for him by creating information which we ourselves do not presently possess in record form.

VII The FBI is being placed in the near-impossible position of attempting to prove a negative. Plaintiff is now claiming, inter alia, that there is further information in our possession which he desires, but as I have stated, we simply do not possess the records which he claims we do. At the direction of the Deputy Attorney General, we furnished plaintiff, by our letter of December 3, 1975, all information we could locate and release which the Deputy Attorney General deemed responsive to plaintiff's request, and we had done this before we were notified by the Department of Justice that plaintiff had instituted this litigation. On March 23, 1976, we furnished plaintiff the further material which his attorney's letter of February 23, 1976, stated he was interested in and would pay the special search fees for. There is nothing more we can do in response to plaintiff's request except, as stated above, he will be furnished all non-exempt material falling within the scope of his request located in the search of our Memphis Field Office.

Thomas L. Wiseman

THOMAS L. WISEMAN
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and Sworn to before me this 21st day of April, 1976.

Marguerite F. Dunn
Notary Public

My commission expires 12/14/78.

Mr. J. B. Adams 4/21/76

Legal Counsel

HAROLD WEISBERG v.
U. S. DEPARTMENT OF JUSTICE
(U.S.D.C., D. C.)
CIVIL ACTION NO. 75-1996

PURPOSE:

To recommend that attached affidavit be approved.

SYNOPSIS:

Attached affidavit of SA John W. Kilty of the Laboratory Division, sets forth our method of compliance with plaintiff's FOIA request for certain laboratory materials pertaining to the Murkin investigation, and also further explains our answers to plaintiff's First Set of Interrogatories, as these answers apply to the Laboratory Division. This affidavit must be filed no later than 4/21/76.

RECOMMENDATION:

That the original and seven copies of attached affidavit be approved for immediate hand-delivery to AUSA for the District of Columbia John Dugan, who is handling the litigation of this matter, and that one copy also be furnished to Departmental Attorney Richard Greenspan.

Enclosure

1 - Mr. Cochran
Attn: Mr. Kilty
1 - Mr. Gallagher
Attn: Mr. Helterhoff
1 - Mr. McDermott
Attn: Mr. Wiseman
1 - Mr. Mintz
1 - FOIA Litigation Unit
(Blake)

PTB:rme
(6)

(CONTINUED - OVER)

Memorandum to Mr. J. B. Adams
Re: Harold Weisberg v. U. S. Department of Justice
(U.S.D.C., D. C.), Civil Action No. 75-1996

DETAILS:

By memorandum from Legal Counsel to Mr. Adams dated 3/10/76, we furnished answers to plaintiff's First Set of Interrogatories, along with our objections to answering portions of these interrogatories. Plaintiff subsequently filed a motion to compel answers to the interrogatories, and attached affidavit of SA Kilty is to be utilized in supporting defendant's opposition to plaintiff's motion to compel. This affidavit, the preparation of which was coordinated between SA Kilty, SA Parle Thomas Blake of Legal Counsel Division and AUSA Dugan, sets forth our method of complying with plaintiff's request and answering his interrogatories, with respect to the Laboratory Division, and must be filed by 4/21/76.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

Civil Action No.
75-1996

UNITED STATES DEPARTMENT
OF JUSTICE,

Defendant

AFFIDAVIT OF JOHN W. KILTY

I, John W. Kilty, being duly sworn, depose and say as follows:

I I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned as Chief of the Elemental Analysis Unit of the FBI Laboratory at FBI Headquarters (FBIHQ), Washington, D. C. I possess a Bachelor's degree in chemistry, and have been assigned to the Laboratory for more than ten years. I have testified numerous times in Federal, state, and local courts as an expert witness.

II I have read and am familiar with plaintiff's Freedom of Information Act (FOIA) request dated April 15, 1975, for specified categories of material relating to our investigation concerning the assassination of Dr. Martin Luther King, Jr. I personally conducted the search of FBIHQ files for all material relating to the FBI Laboratory which would be responsive to plaintiff's request. I have read and am familiar with Plaintiff's First Set of Interrogatories and his affidavit dated March 23, 1976, filed in this litigation.

III The purpose of my affidavit, which is submitted with the affidavit of Special Agent Thomas L. Wiseman, is to set forth the pertinent facts concerning the allegations made in plaintiff's affidavit and to correct the erroneous statements he has made therein, as they apply to FBI Laboratory

procedures and the scientific data plaintiff requested and was furnished. Most of the questions concerning these procedures and data which plaintiff raises in his affidavit were explained by me to him in the meeting we had on the day plaintiff executed his affidavit, March 23, 1976. At several points throughout this meeting, I asked plaintiff if he had any additional questions concerning the Laboratory procedures and scientific data which he would like explained to him, and I fully responded to all of his questions.

IV The paragraphs listed below are numbered to correspond to the pertinent paragraphs in plaintiff's affidavit:

40 Most items in plaintiff's Interrogatory No. 1 cannot be answered by giving the type of test which would be employed because many of these items themselves demand conclusions which cannot be made no matter what kind of scientific test is employed. For instance, Item (A) asks the type of examination and tests which would be used to determine whether or not bullet or bullet fragments have a common origin. Elemental analysis is used to determine the composition of bullets and bullet fragments. If bullet A has the same composition as bullet B, our report would say that bullet A came from the same homogeneous source of lead as bullet B, or another source of lead with the same composition as bullet B. This does not associate bullet A with bullet B to the exclusion of all other bullets. If bullet A is different in composition from bullet B we point out this fact and say that bullet B could not have come from the same homogeneous source of lead as bullet A; however, we point out that bullets of more than one composition are often represented in a single box of ammunition. There are situations where the composition of a bullet is so substantially different from the composition of another bullet that it can be said that the two bullets could not have come from the same box. Our Laboratory and several other laboratories have demonstrated that several different compositions of lead are often represented in a single box of cartridges. In my meeting with plaintiff on March 23, 1976, he mistakenly commented that if the

"death bullet" was different in composition from the bullets left in the gun the "death bullet" could not have come from the same source of lead as the bullets left in the gun. In this case, more than one composition of lead was represented among the bullets examined. These compositions were compatible with different compositions often found in the same box of cartridges. Item (B) asks what kind of tests would be used to determine which bullet or bullet fragment struck which person or object or which particular part of a person or object. There are no tests available which will specifically associate a bullet or bullet fragment to the exclusion of all other bullets or bullet fragments with a particular hole in a person or object. There are tests available which will determine if a hole in a person or object or a dent in an object could have been caused by being struck by a bullet. In this case, emission spectroscopy was used to determine the composition at the edges of holes in certain garments and this composition was compared with cloth taken from areas distant from the holes. Item (C) asks what examinations are used to determine whether a specific bullet or remnant thereof can be identified as having been fired from a particular rifle. Generally, firearms examinations are used to answer this question. Firearms examinations are also involved in answering Item (D). Item (E) asks what tests would be used to determine whether a specific bullet or remnant thereof can be identified as having been fired from a particular cartridge case. Generally, it is not possible to determine if a particular bullet was part of a particular cartridge before it was fired, to the exclusion of all other cartridges. It is possible to say that a particular bullet could not have been fired from a particular cartridge case if the bullet, for instance, is of a different caliber from the cartridge case. A .22 caliber bullet could not have been part of a .38 caliber cartridge case. Items (G) and (H) involve elemental analysis of smears or fragments which may be around a dent or hole in an object. Elemental analysis cannot associate these smears or fragments with a particular bullet to the exclusion of all other bullets because many times the smears or fragments are too limited for complete analysis, or if the

fragments were of proper size to conduct an adequate compositional analysis these fragments could have been deposited by any bullet which had this composition. Each bullet does not have a unique composition. Item (H) cannot be answered reasonably. If, for instance, a hole or dent was identified as having been made by a hammer, it appears safe to say it was not caused by a bullet. Going back to Items (C) and (D), it is pointed out that many times no conclusion can be reached regarding the possibility of a bullet being fired or not fired from a certain gun. Some of the reasons for not being able to reach a conclusion are that there are not sufficient individual characteristic marks remaining on the bullet, there is an inability to identify consecutive test bullets with each other due to changing barrel conditions, and/or the barrel of the gun is heavily leaded.

43 Firearms examinations, compositional analyses (neutron activation and emission spectroscopy), document examinations, blood examinations, soil examinations, etc., were performed on items of evidence submitted in this case. Plaintiff's April 15, 1975, letter did not request the results or notes on Laboratory examinations other than firearms, compositional analyses, and on cigarette butts he mistakenly claimed were recovered from an automobile in Atlanta.

46 It is doubtful that if I were again to go through the notes generated in the Laboratory, that I would be able to determine what dates various examinations were performed. As I recall, some of the notes were dated and other notes were not dated. Based on my years of experience, I fail to see how the dates of these particular examinations would have any relevance to their conclusions.

47 The fact that the Laboratory reports which have been furnished to plaintiff bear dates one to three weeks after Dr. King was killed is not remarkable. Time is required to conduct examinations of physical evidence and a report cannot be furnished until the examinations are completed. The Laboratory reports do not include the dates upon which various examinations were conducted.

Plaintiff's allegation that a "Reader's Digest" article states that the rifle had been test fired twelve hours after Dr. King's death has no connection with the date of the Laboratory report which included the results of the firearms examinations.

49 Plaintiff made this same claim at the meeting of March 23, 1976, and at the time I explained how he had misunderstood the materials he had been furnished due to his ignorance of the scientific symbol for "similar to." I explained that the firearms expert had indicated in the material furnished plaintiff, that based on his experience and knowledge, the general rifling characteristics of the bullet were the same as those produced by any one of numerous rifles. The firearms expert then listed these rifles. The material furnished plaintiff did not indicate these rifles had been "used" or that there were "any reports or results on these rifles." Based on my educational background and Laboratory experience, and with no disrespect intended for plaintiff, I believe that many of the questions he has raised in his affidavit stem from his lack of knowledge or understanding of even basic laboratory procedures, much less the relatively sophisticated examinations.

54 There is no record of the date on which the three color photographs of Q64 (the "death bullet") were taken. Based on my experience and knowledge gained in the FBI Laboratory, I would assume that these photographs were taken shortly after the bullet was received in the Laboratory.

59 The FBI has no "comparison photographs" of the "death bullet." No photomicrographs were taken of this bullet inasmuch as it was not possible to effect an identification between this bullet and test bullets from the questioned rifle. It seems obvious that where there is no identification between the "death bullet" and test bullets, that no "comparison photographs" would be taken - they would have absolutely no prosecutive or evidentiary value. Plaintiff is correct in his allegation that the prints of Q64 which were given him were made recently. These prints were made in late November, 1975, from negatives which were made in 1968.

60 Competent firearms examiners do not make comparisons between test bullets and a questioned bullet by examining photographs or photomicrographs. The comparisons are made by

examining the bullets themselves, using a comparison microscope. It is immaterial that the markings which plaintiff apparently refers to are "obscured by the manner in which the three photographs" were taken.

61 Plaintiff is correct in his allegation that these photographs were not taken for scientific purposes. These photographs have nothing to do with the firearms examiner's opinion concerning the bullet and the gun.

62 These photographs are the only photographs taken of the "death bullet." Plaintiff is correct in his allegation that these photographs are "utterly incompetent for ballistic purposes." These photographs were taken for the purpose of recording the general appearance of the bullet when it was received at the FBI Laboratory.

63 My previous paragraph furnishes the reason for taking these pictures. The pictures were not taken for CBS or as a part of the firearms examination. As I stated previously, and for the reasons I gave, there were no photographs or photomicrographs of the "death bullet" taken for firearms identification purposes.

64 There were no photographs taken of any test bullets fired from the questioned rifle. The Q64 bullet was compared with the test bullets fired from the questioned rifle. For the reasons I previously gave, no photographs were taken of these comparisons inasmuch as no identifications were effected.

65 Plaintiff has been furnished the spectrographic analysis of the bullet jacket of Q64 along with the spectrographic analysis of the bullet jackets from the other cartridges recovered at the scene which have bullets physically the same as Q64. Plaintiff has been furnished the spectrographic analysis and neutron activation analysis of the lead core of the "death bullet" along with the spectrographic analysis and neutron activation analysis of the cores of the bullets physically the same as Q64. No spectrographic examination or neutron activation was conducted on the "empty shell and the powder remaining in it." There was no reason to conduct any compositional examinations on the "empty shell" and powder. Plaintiff has been furnished the

results of the spectrographic examination of the areas surrounding the holes in Dr. King's jacket, shirt, and tie, along with the spectrographic analysis of the fabric taken from areas distant to the holes. As a point of information, had the firearms examiner been able to positively associate the Q64 bullet with the rifle, no compositional analysis would have been conducted on the bullet jacket or core of the bullet or any of the bullets from the cartridges found at the scene of the crime. Normally, compositional analysis has value only when it is not possible to effect an identification between the bullet and the gun. The next best thing to do is to attempt to associate the lead in the questioned bullet with the lead in the bullets of cartridges which may remain in the gun or be recovered from a suspect.

66 The notes that plaintiff has been furnished regarding the compositional analyses are the only notes we have. Due to what I believe is lack of knowledge, plaintiff is placing too much stock in the results of a compositional analysis of Q64 and the bullets from the cartridges left at the scene.

67 The first two sentences of plaintiff's Paragraph 67 are essentially correct. His next sentence concerning the fact that only one element, lead, is present on any of the clothing is also correct, but it is misleading. The minute smears of material which may be deposited on the edges of clothing when a bullet passes through the clothing are very difficult to test for. It is not at all unusual to find only lead, or perhaps lead and copper; in many cases, no foreign material can be detected around the hole in a piece of clothing. Plaintiff has been furnished a listing of elements in the jacket material of Q64 and the other bullets recovered at the scene which were physically identical to Q64.

68 See my Paragraph 67 above.

69 Plaintiff has been furnished all "results" of the spectrographic and neutron activation tests. Also, at the March 23, 1976, meeting he requested and obtained copies of the calculations in the neutron activation tests, although his original request stated he wanted only the results.

70 The quantitative measurements made by the emission spectrograph were not absolute measurements, but were relative measurements, which were the only necessary object of that examination. Plaintiff has been furnished all "results" of the examination.

71 Based upon my knowledge and experience, I am not aware what plaintiff refers to when he comments about "normal practice" in the first sentence of his Paragraph 71. In a review of the neutron activation results, it is seen that only one element, antimony, was measured. The cores of the bullets examined had relatively high amounts of antimony present. The concentration of antimony varied from bullet to bullet, except for a general similiarty between Q64 and Q4. These differences in antimony concentrations are quite typical of differences we encounter in the cores of bullets from the same box of cartridges. As pointed out previously, there is no guarantee that all the bullets in a single box of cartridges will have the same composition.

72 The "stated conclusions" which plaintiff is asking for with regard to the spectrographic and neutron activation tests are included in the copies of the reports which he has been furnished.

73 The material plaintiff has been furnished indicates that spectrographic examinations were conducted on April 19 and April 22, 1968, and apparently also on April 11, 1968. (It is difficult to read the April 11, 1968, date on the notes.) The dates on which the neutron activation examinations were conducted are obtained by referring to the pages of notes which were furnished plaintiff at the March 23, 1976, meeting. The exact reason for not having the reports dated a day or two after the completion of the examinations, since this is not pertinent, is not known. However, it is easily possible for several days to pass between the completion of the analysis and the date of the report.

The above information was obtained by me in my official capacity, and is based on my knowledge and experience, and my review of FBIHQ files as they pertain to FBI Laboratory procedures and data concerning the investigation of the assassination of Dr. Martin Luther King, Jr.

John W Kilty

JOHN W. KILTY
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and Sworn to before me this 20th day of April, 1976.

Marguerite F. Davis
Notary Public

My commission expires 12/14/76.

March 31, 1976

1 - Mr. Walsh
Attn: Mr. Groover
1 - Mr. Gallagher
Attn: Mr. Helterhoff
(For info)

Mr. John Larry Ray 86798
Post Office Box 1000
Marion, Illinois 62959

Dear Mr. Ray:

Receipt of your payment for fees as previously requested is acknowledged.

Enclosed are copies of documents from our files. Excisions have been made from these documents, and other documents have been withheld in their entirety in order to protect materials which are exempted from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(5) inter-agency or intra-agency documents which are not available through discovery proceedings during litigation; or documents whose disclosure would have an inhibitive effect upon the development of policy and administrative direction; or which represent the work product of an attorney-client relationship;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances

1 - The Deputy Attorney General
Attention: Susan M. Hauser

clf:pjc (7)

SEE NOTE PAGE TWO

or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means;

(E) disclose investigative techniques and procedures, thereby impairing their future effectiveness;

(F) endanger the life or physical safety of law enforcement personnel.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (54)

NOTE: Ray is brother of James Earl Ray, convicted assassin of Dr. Martin Luther King, Jr. He is subject of Bufiles 91-36719 and 91-38065. He is also identical with several miscellaneous references, including Bufile 44-38861 captioned "MURKIN." Excised documents being released were reviewed and approved by Civil Rights Section, Division VI and subsequently by the Civil Rights Division, Department of Justice. The Department had no objection to the release of these documents even though certain ones pertained to the King investigative file and this release was coordinated with General Investigative Division which is conducting the inquiry regarding King. Documents being released are from 91-36719-3,7,9,10 NR mail dated 8/31/70, 18, NR mail dated 9/3/70, 20,21,25,27,28,29; 91-38065-3,9,11,12,13,16,17,20,24,27,29,33,34, "St. Louis Globe Democrat" 3/30/71, 37, "Washington Post" 4/8/71, 38, "Evening Star" 4/24/71, 41,42,43,51,55,59,62,65,69,81,85, 94; 44-38861-1725, 1840,1895,3333,4130,4503,4585,4760; 91-34552-18; and 91-35511-7, 10. Notarized signature was received 10/1/75.

Mr. J. B. Adams 3/25/76

Legal Counsel

HAROLD WEISBERG
v. U. S. DEPARTMENT OF JUSTICE
(U.S.D.C., D. C.)
CIVIL ACTION NO. 75-1996

PURPOSE:

The purpose of this memorandum is to advise of the results of the 3/23/76 meeting between plaintiff and his attorney and SAs Thomas L. Wiseman, (FOI-PA Section), John W. Kilty, (Laboratory Division), and Parle Thomas Blake, (Legal Counsel).

SYNOPSIS:

At a 3/23/76 meeting between plaintiff and FBI representatives, plaintiff reviewed all documents located at FBIHQ pursuant to his FOIA request for Murkin material, and indicated a strong belief that the FBI possessed additional material responsive to his request which we had not furnished him. There is a possibility he is correct in this contention, in that the Memphis Division may have material of this nature which was not forwarded to FBIHQ.

1 - Mr. Cochran
Attn: Mr.Kilty
(1) - Mr. Gallagher
Attn: Mr. Helterhoff
1 - Mr. McDermott
Attn: Mr. Wiseman
1 - Mr. Moore
Attn: Mr. Gunn
1 - Mr. Mintz
1 - FOIA Litigation Unit
(Blake)

PTB:rmc
(7)

(CONTINUED - OVER)

Memorandum to Mr. J. B. Adams
Re: Harold Weisberg v. U. S. Department of Justice
(U.S.D.C., D. C.), Civil Action No. 75-1996

RECOMMENDATIONS:

(1) That the FOI-PA Section, Records Management Division, expeditiously furnish Memphis with copies of pertinent correspondence concerning plaintiff's FOIA request, and request Memphis to immediately review its files to locate any information in its possession not previously furnished to FBIHQ which might be within the scope of plaintiff's request. (This would be an exception to the FOI-PA Section's position that FBIHQ searches alone constitute sufficient compliance with respect to FOIA requests; however, this position is not considered tenable, given the facts in this case, and to attempt to defend it in this litigation could very well result in a precedent-setting adverse decision on this point.)

(2) That AUSA John Dugan, District of Columbia, be requested to advise plaintiff through his attorney that the FBI, in order to insure that we have completely complied with plaintiff's request, is searching the files of the Memphis Field Office (the only logical remaining repository of information responsive to plaintiff's request), within 30 days. It should be noted that there is a status call in this case Friday morning, 3/26/76 and it would be very beneficial if Dugan relayed this message prior to then.

Memorandum to Mr. J. B. Adams
Re: Harold Weisberg v. U. S. Department of Justice
(U.S.D.C., D. C.), Civil Action No. 75-1996

DETAILS:

Plaintiff, through his attorney, James H. Lesar, (who is also an attorney for James Earl Ray), originally submitted an FOIA request to us for certain categories of material concerning our investigation of the King assassination, including "the results of any ballistics tests," and "all photographs from whatever source taken at the scene of the crime on April 4th or April 5th, 1968." After some delay, we denied this request, citing exemption (b)(7)(A) of the FOIA (investigatory records compiled for law enforcement purposes, the production of which would interfere with enforcement proceedings), inasmuch as James Earl Ray is currently appealing his conviction in the 6th Circuit. Plaintiff appealed this denial, and over the strenuous objections of the Department's Civil Rights Division and the FBI, Deputy Attorney General Tyler, in a letter to plaintiff's attorney dated 12/1/75 over-ruled our denial, and advised plaintiff's attorney that he was granting "access to every existing written document, photograph and sketch which I consider to be within the scope of Mr. Weisberg's request."

The Deputy Attorney General, in the same 12/1/75 letter, qualified the above grant of access by stating, "I have not included as matters for consideration the results of a great number of ballistics tests performed on rifles other than the one owned by Mr. Ray." He also stated, ". . . in addition, in an effort to save your client considerable expense, I have construed item number six (the request for 'all photographs' referred to above) so as not to encompass the several hundred photographs in Bureau files of Dr. King's clothes, the inside of the room rented by Mr. Ray, or various items of furniture and personal property." The Deputy Attorney General advised that if plaintiff did in fact desire this material, he should make a written request for same, agreeing to pay the reproduction and special search costs which would be involved.

Plaintiff's attorney had been informally advised by a staff attorney in the Deputy Attorney General's office a week or so before this letter was sent as to what the general contents of the letter would be. At approximately the same time plaintiff instituted suit.

Plaintiff subsequently furnished the written assurance requested in Deputy Attorney General Tyler's letter that he did desire all ballistics tests and photographs, along with a promise to pay for the special search for this material, and, after the search was completed, this material was made available to plaintiff and his attorney for a review at FBIHQ on 3/23/76. Plaintiff and his attorney were met by SAs Wiseman and Blake and, after plaintiff tendered a check for $141.00 covering the special search fees, the material was made available for their review.

During the course of reviewing this material, plaintiff strongly indicated his belief that he had not been furnished all the material in possession of the FBI falling within the scope of his request, and specifically indicated that he was positive that we would have more laboratory material and photographs than we had made available to him. He was politely but firmly advised that we had thoroughly reviewed the entire Murkin file at FBIHQ and made available to him all material located which could possibly be within the scope of his request and which could be released pursuant to the FOIA and Deputy Attorney General Tyler's 12/1/75 letter. When plaintiff continued to persist in his statements that the laboratory material was incomplete, SA Blake requested SA Kilty to join the meeting in an effort to convince plaintiff of the completeness of the laboratory material. SA Kilty was somewhat successful in this regard, although it is felt it would be impossible to ever convince plaintiff he has been furnished all material concerning this matter, in view of his previous and well-publicized statements that the government has engaged in a massive coverup in connection with both the King and J. F. Kennedy assassinations.

Plaintiff also expressed concern that he had not been furnished all photographs pursuant to his request, and cited as an example the fact that "in the second most extensive investigation in the FBI's history" (plaintiff's words), we did not even possess photographs of the motel balcony on which King died, and the surrounding area. (It should be noted that plaintiff is correct in this contention, in that our search of FBIHQ files did not reveal any photographs of this nature.)

Plaintiff claimed at several points in the discussion to have information which would help us locate other material in our possession responsive to his request, and he was advised that we would very much appreciate his furnishing this information to us in written form to assist us in completely complying with his request. He offered to furnish this information orally, but we advised him that, inasmuch as the FBI is currently attempting to process thousands upon thousands of FOI-PA requests, it would be necessary for us to have this information in written form in order to insure that no errors would be made, and to assist our Reviewer-Analysts in processing his request. Although plaintiff did not specifically refuse to do so, he did not indicate that he planned to furnish this information in written form.

Plaintiff expressed his belief that, if this material which he "knew" we possessed was not located in FBIHQ files, then it most certainly would be located in appropriate field office files.

After indicating which of the documents made available to him he desired copies of, plaintiff concluded the meeting by stating that he was not interested in suing, harassing or embarassing the FBI, but that he only wanted all information he had requested.

Memorandum to Mr. J. B. Adams
Re: Harold Weisberg v. U. S. Department of Justice
(U.S.D.C., D. C.), Civil Action No. 75-1996

On 3/24/76, SA Blake telephonically contacted SA Joseph Hester of the Memphis Division (who was case agent on Hurkin and whose name is known to plaintiff), and Hester indicated that in all probability, Memphis could possess information responsive to plaintiff's request which was not furnished FBIHQ. Hester specifically mentioned newspaper photographs concerning the King assassination which he believed might be located in the Memphis file which presumably, would fall within the scope of plaintiff's request.

AIRTEL

3/31/76

To: SAC, Memphis

From: Director, FBI (44-38861)

Subject: MURKIN

HAROLD WEISBERG V.
U. S. DEPARTMENT OF JUSTICE
USDC, D. C.
CIVIL ACTION NO. 75-1996

Re telephone conversation from SA Parle Thomas Blake of Legal Counsel to SA Joseph Hester of Memphis Field Office 3/26/76.

Enclosed for Memphis is a copy of plaintiff's original request dated 4/15/75, copy of letter dated 12/1/75 to plaintiff's attorney from the Deputy Attorney General, copy of letter dated 12/29/75 to the Deputy Attorney General from plaintiff's attorney, and copy of letter dated 2/23/76 to SA Thomas L. Wiseman of FOIPA Section, Division 4, from plaintiff's attorney.

On 3/23/76 plaintiff and his attorney reviewed at FBIHQ material located through a search of Bufiles deemed pertinent to plaintiff's request. During the course of reviewing this material, plaintiff strongly indicated his belief that he had not been shown all material in possession of the FBI falling within the scope of his request. Plaintiff was advised that FBIHQ files were searched and that pertinent information concerning an investigation is channeled to FBIHQ. Plaintiff stated that he had "knowledge" of

Enclosures (4)

1 - Legal Counsel
Attn: Mr. Blake
(1) - Mr. Gallagher
Attn: Mr. Helterhoff
1 - Mr. Cochran
Attn: Mr. Kilty
TLW:dkb
(7)

Airtel to Memphis
Re: Murkin
Harold Weisberg v.
U. S. Department of Justice
USDC, D. C.
Civil Action No. 75-1996

additional photographs, etc., that must be in the Field Office files if they are not contained in FBIHQ files.

The referenced telephone call to Memphis indicated the possibility that Memphis files may contain some photographs, etc., which were not forwarded to FBIHQ.

In order to insure that we have completely complied with plaintiff's request, Memphis is requested to locate any material in its possession not previously furnished to FBIHQ which might be within the scope of plaintiff's request. The results of this review must be furnished to FOIPA Section, Records Management Division, by April 12, 1976. Any questions concerning this review may be resolved by contacting SA Thomas L. Wiseman, FOIPA Section.

NOTE: See memo from Legal Counsel to Mr. Adams, captioned as above, dated 3/25/76, which recommended that plaintiff be advised FBI would voluntarily search its Memphis Field Office in order to completely comply with his FOIA reqest.

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

[illegible] 1975

DEPUTY

April 15, 1975 GENERAL

FREEDOM OF INFORMATION REQUEST

The Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20531

Dear Sir:

On behalf of Mr. Harold Weisberg I am requesting disclosure of the following information on the assassination of Dr. Martin Luther King, Jr.:

1. The results of any ballistics tests.

2. The results of any spectrographic or neutron activation analyses.

3. The results of any scientific tests made on the dent in the windowsill of the bathroom window from which Dr. King was allegedly shot.

4. The results of any scientific tests performed on the butts, ashes or other cigarette remains found in the white Mustang abandoned in Atlanta after Dr. King's assassination and all reports made in regard to said cigarette remains.

5. All photographs or sketches of any suspects in the assassination of Dr. King.

6. All photographs from whatever source taken at the scene of the crime on April 4th or April 5th, 1968.

7. All information, documents, or reports made available to any author or writer, including but not limited to Clay Blair, Jeremiah O'Leary, George McMillan, Gerold Frank, and William Bradford Huie.

This request for disclosure is made under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561.

Sincerely yours,

Jim Lesar

DEC 1 1975

Mr. James H. Lesar, Esquire
1231 Fourth Street, S.W.
Washington, D.C. 20024

Dear Mr. Lesar:

This is in further response to the pending administrative appeal under the Freedom of Information Act filed by you on behalf of your client, Mr. Harold Weisberg, from the denial by Director Clarence M. Kelley of the Federal Bureau of Investigation of Mr. Weisberg's request for specific records and photographs relating to the assassination of Dr. Martin Luther King, Jr.

After careful consideration of this appeal, I have decided to modify Director Kelley's action in this case and to grant access to every existing written document, photograph and sketch which I consider to be within the scope of Mr. Weisberg's request. Minor excisions have been made from the documents to delete purely internal agency markings and distribution notations, as well as the names of Bureau personnel. In my opinion, the matter so excised is not appropriate for discretionary release.

The results of all "ballistics tests" [item number 1 of Mr. Weisberg's request], as performed on either the death bullet or Mr. Ray's rifle, are included with the materials to be released. "Spectrographic or neutron activation analyses" [item number 2 of the request] were made only on the clothing worn by Dr. King at the time of his death. All eight pages pertaining to such tests will be released. The results of all "scientific tests made on the dent in the windowsill (sic)" [item number 3 of the request] are available for release to your client, including both written reports and photographs of the window sill and rifle barrel. All "photographs or sketches of any suspects in the assassination" [item number 5 of the request] are to be released. These photos and

cc: Federal Bureau of Investigation

sketches portray only Mr. Ray, as there never were any other suspects in the case. It may be that the Department has no photographs "taken at the scene of the crime" [item number 6 of the request], in the sense your client uses the phrase. To the limited extent that we have photographic and other materials that depict physical conditions or events, they will be released to Mr. Weisberg. In the event that the non-photographic materials are of no interest to him, they may be returned.

The Department of Justice never received any "butts, ashes or other cigarette remains" from the "white Mustang abandoned in Atlanta," and for that reason did not perform any scientific tests thereon [item number 2 of Mr. Weisberg's request]. A two page schedule of all evidence acquired from the Mustang is included, without charge, in the package to be released. Similarly, as to item number 7 of the request, no "information, documents, or reports made available to any author or writer" can be identified as such in our records. To avoid any misunderstanding, I wish to advise you that no release of any materials relating to the death of Dr. King has been made to any person other than law enforcement or prosecutive authorities, except for the so-called "extradition papers" which were shown in 1970 to Bernard Fensterwald, Jr., Esquire, then the attorney for your client Mr. Weisberg, and which are in the public domain. In 1971 these same papers were made available to another person not named in item number 7, who may or may not be a writer. In any event, if Mr. Weisberg wishes access to the extradition papers, his written request in that respect should be addressed to the attention of the Freedom of Information and Privacy Unit in my Office. Based on the foregoing facts, I have concluded that there are no records within the scope of either item number 4 or item number 7 of Mr. Weisberg's request. There can, of course, be no denial of access where there is no record; there can be no appeal where there has been no denial of access.

In adjudicating this appeal as to item number 1 of Mr. Weisberg's request for "results of any ballistics tests," I have not included as matters for consideration the results of a great number of ballistics tests performed on rifles other than the one owned by Mr. Ray. If Mr. Weisberg wishes access to them, he should make a specific written request to Director Kelley, attention Special Agent Thomas Wiseman, agreeing to pay both the costs of reproduction and the special search fees which

will be necessary to locate and identify the same, as provided by 28 C.F.R. 16.9(b)(6). In addition, in an effort to save your client considerable expense, I have construed item number 6 so as not to encompass the several hundred photographs in Bureau files of Dr. King's clothes, the inside of the room rented by Mr. Ray, or various items of furniture and personal property. If Mr. Weisberg does, in fact, wish copies of these photographs, he should make a further request for them and agree to pay the reproduction and special search costs which will be involved.

Your client will now be furnished seventy-one pages of material for which the charge is ten cents per page, the two-page schedule of evidence at no charge, fifteen black and white photographs at their reproduction cost of forty cents each and three color photographs at their reproduction cost of three dollars each. Please remit $22.10 to the F.B.I. headquarters office, Washington, D. C. 20537, attention Special Agent Wiseman, specifying whether you wish the materials mailed or held for you to pick up. As a matter of my discretion, I am waiving $80.00 in special search fees which could be charged for non-clerical work in connection with this request and another one for many of the same materials.

Because of the nominal excisions of agency markings and the names of agents, I am required to advise you that if Mr. Weisberg is dissatisfied with my action on this appeal, judicial review thereof is available to him in the United States District Court for the judicial district in which he resides, or in which he has his principal place of business, or in the District of Columbia, which is also where the records he seeks are located.

Very truly yours,

Harold R. Tyler, Jr.
Deputy Attorney General

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

December 29, 1975

Mr. Harold Tyler, Jr.
Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Tyler:

Your letter of December 1, 1975, is apparently intended to give the appearance of good faith compliance with Mr. Harold Weisberg's April 15, 1975, request for the disclosure of certain records pertaining to the assassination of Dr. Martin Luther King, Jr. Unfortunately, this is achieved by rephrasing Mr. Weisberg's request so as to exclude most of the records sought.

For example, Mr. Weisberg's April 15 request specified that he wants the results of any ballistics tests performed in connection with the investigation into Dr. King's assassination. Yet you restated his request in a manner which excludes all ballistics tests except those performed on the bullet removed from Dr. King and the rifle placed at the scene of the crime. However, as his request clearly states, Mr. Weisberg wants all ballistics tests and reports, not just those performed on the murder bullet and the rifle placed at the scene.

In response to Mr. Weisberg's request for the ballistics evidence, you provided him with three distorted color photographs of the bullet removed from Dr. King. Mr. Weisberg wants all photographs taken for ballistics purposes, including all photographs taken with the aid of a comparison microscope and all blowups of any photograph.

With respect to Mr. Weisberg's request for all photographs taken at the scene of the crime, Mr. Weisberg defines this term broadly to include all of the buildings and areas in the immediate vicinity of the crime site. It would include, for example, photographs taken of or at the Lorraine Motel, Canipe's Amusement Center, the parking lot, the fire station, the rooming house at 418 1/2 to 422 1/2 S. Main Street, and any areas in between or adjacent thereto. It also includes photographs of the interior of any of these buildings and of any objects found in them.

When I spoke with Mr. Volney Brown two or three months ago, he said that the Department would have no objection to a procedure which would allow Mr. Weisberg to examine these photographs first, then

elect which ones, if any, he wishes to have copied for him. This, of course, will save everybody time and money.

I would appreciate it if this examination of the King assassination materials could be arranged for the earliest possible mutually convenient date. Mr. Weisberg is suffering from a serious case of phlebitis and no longer travels to Washington as frequently as he did in the past. This is why I phoned Mr. Wiseman on December 22nd to ask if he could arrange for Mr. Weisberg to view the photographs of the scene of the crime and the excluded ballistics materials on the afternoon of December 23rd when Mr. Weisberg was coming to D.C. for a medical appointment. Mr. Wiseman informed me, however, that the FBI agent responsible for assembling the King assassination documents had told him that it would not possible to reassemble them in time for Mr. Weisberg's visit the following afternoon. Hopefully, Mr. Weisberg's examination of these materials can be arranged to coincide with his next trip to D.C.

With respect to the ballistics materials sought by Mr. Weisberg, he has asked me to inform you that as of this date he has still not received the results of the ballistics comparisons which the FBI did perform. He further states that, notwithstanding Mr. Shea's letter of December 23, 1975, what has been provided him of the spectrographic and neutron activation analyses is incomplete and does not meet the normal standards for such tests.

You state that the photographs and sketches of suspects in the assassination of Dr. King portray only James Earl Ray "as there never were any other suspects in the case." If you are not already aware of it, I think you should be informed that on April 17, 1968, FBI Special Agent Joseph H. Gamble filed a conspiracy complaint with the U.S. Commissioner in Birmingham, Alabama. If, as you say, there never were any other suspects in the case, doesn't this constitute abuse of process?

I should also inform you that Mr. Weisberg and I have seen a sketch of at least one other suspect in the murder of Dr. King. In view of this, I suggest that you have the FBI make a further check of its files to see if it cannot find additional photographs and sketches of suspects in the assassination of Dr. King.

In reply to Mr. Weisberg's request for "all information, documents, or reports made available to any author or writer," you state that no information, documents, or reports made available to any author or writer "can be identified as such in our records." Assuming this to be true, it still dodges the issue by the use of semantics. As I indicated to Mr. Volney Brown when we spoke about this a couple of months ago, I think it is relatively simple for you

to ascertain what materials are included within this request if you will just make a few inquiries of the appropriate authors, writers, and FBI officials.

The alternative, of course, is to proceed to take despositions and testimony from these officials and writers and let the district court determine the matter. I think this is unnecessary, since the fact that FBI materials were made available to writers and authors is incontestible. I note, for example, that in his book The Strange Case of James Earl Ray, Clay Blair, Jr. thanks the FBI for its assistance. In addition, Mr. Weisberg informs me that some of the writers listed in his information request have copies of such evidence as the autopsy photographs which have been denied James Earl Ray's defense and that they have flashed FBI reports on the King assassination in order to impress people. Moreover, one of the writers mentioned in Mr. Weisberg's request has obtained copies of the bank records of Ray's sister, Carol Pepper.

In closing, let me apologize for the delay in responding to your letter. I work entirely alone. I have no secretary or law clerk to assist me and must of necessity do my own typing and filing. Recently I have been very pressed for time and this accounts for the delay. However, Mr. Weisberg did write both you and Attorney General Levi about these and other matters soon after he received a copy of your letter and I trust you paid him close attention.

Sincerely yours,

Jim Lesar

Jim Lesar

cc: Attorney General Edward H. Levi
FBI Director Clarence Kelley
FBI Special Agent Thomas Wiseman

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024

TELEPHONE (202) 484-6023

February 23, 1976

Mr. Thomas Wiseman
Information and Privacy Unit
Federal Bureau of Investigation
Washington, D. C. 20537

Dear Mr. Wiseman:

On December 22, 1975, I phoned to ask if you could arrange for Mr. Harold Weisberg to view the photographs of the scene of Dr. King's murder and the ballistics materials he had requested the following afternoon, December 23rd, when he was coming to D.C. for a medical appointment. You told me that the FBI agent responsible for assembling the King assassination documents said that it would not be possible to reassemble them in time for Mr. Weisberg to see them on December 23rd. This was the only reason given for his not being able to inspect these records on that date.

Subsequently, on December 29, 1975, I wrote Deputy Attorney General Harold Tyler a letter in which I expressed the hope that Mr. Weisberg's examination of the requested materials could be arranged to coincide with his next trip to D.C. because he suffers from a serious case of phlebitis which makes it inadvisible for him to travel frequently. Copies of this letter were sent to you and FBI Director Clarence Kelley. I received no response.

After the calendar call on February 5, 1976, Mr. Weisberg and I met briefly with Assistant United States Attorney John Dugan and sought to enlist his good offices in arranging for Mr. Weisberg's inspection of your records to coincide with his next trip to D.C.

Today I called to ask that you arrange for Mr. Weisberg to examine these materials when he comes to Washington this Thursday, February 26th. However, you called to my attention a statement in Mr. Tyler's December 1, 1975, letter to me which required that Mr. Weisberg agree to pay the "reproduction and special search costs" if he wanted the photographs which he had in fact requested. You said, correctly, that Mr. Weisberg had not written you agreeing to pay these costs.

Shortly afterwards, Mr. Dugan called. He told me that you would not institute the "search" for these photographs until you received Mr. Weisberg's written agreement to pay the search costs. He also informed me that you could not have the requested materials ready by this Thursday.

I write, first, to assure you that Mr. Weisberg will pay the necessar search and reproduction costs but he does not waive his right to recover them.

I note, however, that when CBS News requested some of the same records sought by Mr. Weisberg, the search fees were waived.

I also advise you that I know of two Freedom of Information lawsuits where well-known millionaires have not been charged a cent by the Department of Justice for searching for the records requested by them. This contrasts glaringly with the treatment accorded my client, who can ill afford such fees, and is an affront to the spirit and meaning of the Freedom of Information Act.

Secondly, I ask you to state your agreement with the assurance Mr. Volney Brown gave me last summer that Mr. Weisberg will be allowed to examine and selected those documents and photographs he wants copied, rather than your foisting upon him, sight unseen, whatever you may determine to be within the purview of his request.

Thirdly, I ask that you select a date on which Mr. Weisberg will be allowed to examine the photographs and records which he has requested. I believe Mr: Weisberg will be able examine these records on any day between March 1 and March 6, or on March 15. I would appreciate it very much if you could advise me at the earliest possible time which date you prefer.

Sincerely yours,

Jim Lesar

Jim Lesar

Mr. J. B. Adams 3/10/76

Legal Counsel

HAROLD WEISBERG v.
U. S. DEPARTMENT OF JUSTICE
(U.S.D.C., D.C.)
CIVIL ACTION NO. 75-1996

Reference is made to memorandum of Legal Counsel to Mr. Adams dated 2/20/76, which attached a copy of Defendant's Answer to Plaintiff's First Set of Interrogatories.

Attached hereto is one copy of these answers, along with objections to portions of the interrogatories, which were filed on our behalf, and a copy of which was received by mail from AUSA John R. Dugan on 2/25/76. Also received on that date from AUSA Dugan, and attached hereto, were copies of Plaintiff's Notice of Amendments to Complaint, and Defendant's Answer to Amended Complaint. Plaintiff by his amended complaint has made his 1/23/76 letter to the Deputy Attorney General, which is a much broader request for King assassination material, the subject matter of this litigation. We were not aware that plaintiff had amended his complaint, nor that an answer had been filed to the amended complaint on our behalf, until so advised by AUSA Dugan in the middle of February. Dugan and Departmental Attorney Richard Greenspan, who is handling this litigation for the Department, have both been requested to immediately advise us of all pertinent developments such as this in all cases in which we are involved in the litigation.

Enclosures (3)

CONTINUED - OVER

1 - Mr. Cochran
Attn: Mr. Kilty
1 - Mr. Gallagher
Attn: Mr. Helterhoff
1 - Mr. McDermott
Attn: Mr. Wiseman
1 - Mr. Moore
Attn: Mr. Gunn
1 - Mr. Mintz
1 - FOIA Litigation (Blake)

PTB:lsy
(7)

Memorandum to Mr. J. B. Adams
Re: Harold Weisberg v.
U. S. Department of Justice
(U.S.D.C., D.C.)
Civil Action No. 75-1996

RECOMMENDATION:

None. For information.

Dugan

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Copy Ret to DOJ on 12/30/75 A A-10

HAROLD WEISBERG, Plaintiff,	
v.	C. A. No. 75-1996
U. S. DEPARTMENT OF JUSTICE, Defendant	

NOTICE OF AMENDMENTS TO COMPLAINT

PLEASE TAKE NOTICE that plaintiff hereby amends his Complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure.

The amendment consists of adding a new paragraph, paragraph number "10", after paragraph "9". Paragraph "10" shall read:

> 10. By letter dated December 23, 1975, plaintiff submitted an additional Freedom of Information request for records pertaining to the assassination of Dr. King. A copy of this letter is attached hereto as Exhibit F to the Complaint. Plaintiff also brings suit for the twenty-eight numbered items specified in Exhibit F.

JAMES HIRAM LESAR
Attorney for Plaintiff
1231 Fourth Street, S. W.
Washington, D. C. 20024

Phone: [202] 484-6023

CERTIFICATE OF SERVICE

This is to certify that I have this 24th day of December, 1975, mailed a copy of the foregoing Notice of Amendments to Complaint together with the attached Exhibit F to the Complaint to Assistant United States Attorney John Dugan, Room 3419, United States Courthouse, Washington, D. C. 20001.

JAMES HIRAM LESAR

EXHIBIT F

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

December 23, 1975

FREEDOM OF INFORMATION REQUEST

Mr. Harold Tyler, Jr.
Deputy Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Tyler:

On behalf of Mr. Harold Weisberg, I am requesting that you grant him access to the following records pertaining to the assassination of Dr. Martin Luther King, Jr.:

1. All receipts for any letters, cables, documents, reports, memorandums, or other communications in any form whatsoever.

2. All receipts for any items of physical evidence.

3. All reports or memorandums on the results of any tests performed on any item of evidence, including any comparisons normally made in the investigation of a crime.

4. All reports or memorandums on any fingerprints found at the scene of the crime or on any item allegedly related to the crime. This is meant to include, for example, any fingerprints found in or on the white Mustang abandoned in Atlanta, in any room allegedly used or rented by James Earl Ray, and on any registration card. It should also include all fingerprints found on any item considered as evidence in the assassination of Dr. Martin Luther King, Jr.

5. Any taxicab log or manifest of Memphis cab driver James McCraw or the cab company for which he worked.

6. Any tape or transcript of the radio logs of the Memphis Police Department or the Shelby County Sheriff's Office for April 4, 1968.

7. All correspondence and records of other communications exchanged between the Department of Justice or any division thereof and:

R. A. Ashley, Jr.
Harry S. Avery

James G. Beasley
Clay Blair
David Calcutt
Phil M. Canale
John Carlisle
Robert K. Dwyer
Gov. Buford Ellington
Michael Eugene
Percy Foreman
Gerold Frank
Roger Frisby
Arthur Hanes, Jr.
Arthur Hanes, Sr.
W. Henry Haile
William J. Haynes, Jr.
Robert W. Hill, Jr.
William Bradford Huie
George McMillan
William N. Morris
Jeremiah O'Leary
David M. Pack
Lloyd A. Rhodes
J. B. Stoner
Hugh Stoner, Jr.
Hugh Stoner, Sr.

8. All correspondence or records of other communications pertaining to the guilty plea of James Earl Ray exchanged between the Department of Justice or any division thereof and:

Rev. Ralph Abernathy
Rev. James Bevel
Rev. Jesse Jackson
Mrs. Coretta King
Rev. Samuel B. Kyles
Rev. Andrew Young
Harry Wachtel

9. All notes or memorandums pertaining to any letter, cable, or other written communication from or on behalf of the District Attorney General of Shelby County, Tennessee, or the Attorney General of Tennessee to the Department of Justice or any division thereof.

10. All notes or memorandums pertaining to any telephonic or verbal communications from or on behalf of the District Attorney General of Shelby County, Tennessee, or the Attorney General of Tennessee to the Department of Justice or any division thereof.

11. All tape recordings and all logs, transcripts, notes, reports, memorandums or any other written record of or reflecting any surveillance of any kind whatsoever of the following persons:

Judge Preston Battle
Wayne Chastain
Bernard Fensterwald
Percy Foreman
Gerold Frank
Arthur Hanes, Jr.
Arthur Hanes, Sr.
Renfro Hays
Robert W. Hill, Jr.
William Bradford Huie
James H. Lesar
Robert I. Livingston
George McMillan
Judge Robert McRae, Jr.
Albert Pepper
Carol Pepper
James Earl Ray
Jerry Ray
John Ray
Richard J. Ryan
J. B. Stoner
Russell X. Thompson
Harold Weisberg

This is meant to include not only physical shadowing but also mail covers, mail interception, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

12. All tape recordings and all logs, transcripts, notes, reports, memorandums or any other written record of or reflecting any surveillance of any kind whatsoever on the Committee to Investigate Assassinations (CTIA) or any person associated with it in any way.

This is meant to include not only physical shadowing but also mail covers, mail interception, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

13. All records pertaining to any alleged or contemplated witness, including any statements, transcripts, reports, or memorandums from any source whatsoever.

14. All correspondence of the following persons, regardless of origin or however obtained:

Bernard Fensterwald
Percy Foreman
Robert W. Hill
William Bradford Huie
James H. Lesar
Albert Pepper
Carol Pepper
James Earl Ray
Jerry Ray
John Ray
J. B. Stoner
Harold Weisberg

15. All letters, cables, reports, memorandums, or any other form of communication concerning the proposed guilty plea of James Earl Ray.

16. All records of any information request or inquiry from, or any contact by, any member or representative of the news media pertaining to the assassination of Dr. Martin Luther King, Jr. since April 15, 1975.

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

18. Any and all records pertaining to the New Rebel Motel and the DeSoto Motel.

19. Any records pertaining to James Earl Ray's eyesight.

20. Any records made available to any writer or news reporter which have not been made available to Mr. Harold Weisberg.

21. Any index or table of contents to the 96 volumes of evidence on the assassination of Dr. King.

22. A list of all evidence conveyed to or from the FBI by any legal authority, whether state, local, or federal.

23. All reports, notes, correspondence, or memorandums pertaining to any effort by the Department of Justice to expedite the transcript of the evidentiary hearing held in October, 1974, on James Earl Ray's petition for a writ of habeas corpus.

24. All reports, notes, or memorandums on information contained in any tape recording delivered or made available to the FBI or the District Attorney General of Shelby County by anyone whomsoever. All correspondence engaged in with respect to any investigation which was made of the information contained in any of the foregoing.

25. All records of any contact, direct or indirect, by the FBI, any other police or law enforcement officials, or their informants, with the Memphis group of young black radicals known as The Invaders.

26. All records of any surveillance of any kind of The Invaders or any member or associate of that organization. This is meant to include not only physical shadowing but also mail covers, mail interception, interception by telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

27. All records of any surveillance of any kind of any of the unions involved in or associated with the garbage strike in Memphis or any employees or officials of said unions. This is meant to include not only physical shadowing but also mail covers, mail interception, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

28. All records containing information which exculpates or tends to exculpate James Earl Ray of the crime which he allegedly committed.

This request for disclosure is made under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561.

Sincerely yours,

Jim Lesar

Jim Lesar

1 - Mr. Mintz
Attention: Mr. Blake

1 - Mr. Cochran
Attention: Mr. Kilty

March 9, 1976

1 - Mr. Gallagher
Attention: Mr. Helterhoff

James H. Lesar, Esq.
1231 Fourth Street, S. W.
Washington, D. C. 20024

Dear Mr. Lesar:

Your recent letter to Special Agent Thomas L. Wiseman, regarding the Freedom of Information Act (FOIA) request of your client, Mr. Harold Weisberg, for access to certain materials pertaining to the assassination of Dr. Martin Luther King, Jr., was received February 26, 1976.

Based on the assurances you have expressed in the referenced letter, we shall begin our search to compile the photographs and records which you have requested. As the Deputy Attorney General (DAG) pointed out to you in his letter of December 1, 1975, the materials to which you now seek access were determined to be within the scope of your request. They simply were not provided so as to avoid substantial fees to your client of material that may be of little or no interest. At this point I am unable to furnish an estimate of the special search fees which must be incurred prior to an inspection by you and your client. Every effort will be made to accommodate your suggested date of March 15, 1976. Special Agent Wiseman will contact you when the search has been completed to advise you as to the amount of the special search fees which you should tender at the time of inspection.

Your recent letter implied that this Bureau gave CBS preferential treatment by waiving special search fees for the same records you have requested. Your implication is incorrect. I note in this regard you fail to mention the fact that all special expenses incurred by this Bureau in processing your request, to date, were waived. This fact was

1 - Assistant Attorney General - Enclosure
Civil Rights Division
Attention: Mr. Richard Greenspan

2 - The Deputy Attorney General - Enclosure
Attention: Susan M. Hauser
Attention: Volney Brown

TLW:mjs (10)

SEE NOTE PAGE TWO

James H. Lesar, Esq.

brought directly to your attention in the DAG's letter of December 1, 1975, and in my letter of December 2, 1975, wherein you were advised that the portion of special search fees involved in processing your request, which amounted to $30.00, were being waived. I wish to assure you that CBS has received no preferential treatment over your client.

You may wish to consult Title 28, Code of Federal Regulations, Section 16.9, for fees regarding the release of records pursuant to the FOIA.

Sincerely yours,

Clarence M. Kelley
Director

NOTE: James H. Lesar is an attorney currently representing James Earl Ray. Lesar requested certain material related to the assassination of Dr. Martin Luther King, Jr., dated 4/15/75. We denied the request in its entirety by letter dated 6/27/75. We based our denial on the fact that Ray has a current appeal pending in the U. S. Sixth Circuit Court of Appeals (citing (b)(7)(A) of the FOIA). This denial was coordinated with Division 6. Lesar appealed our denial. U. S. Department of Justice, Civil Rights Division, interposed a memorandum of objection to the release of this material setting forth its position that the release could have a detrimental effect on the pending trial. This Department of Justice Memorandum was considered by the DAG, however, the DAG disagreed with the arguments therein. DAG, by letter dated 12/1/75, advised Lesar that his request would be honored. In accordance with the DAG's letter, materials were released to Lesar by letter dated 12/2/75. By letter dated 12/29/75, Lesar paid the reproduction fees of $22.10 and indicated he wished to review the remaining documents within his request that were not furnished in the interest of saving his client's expenses. However, in his 12/29/75, letter, Lesar declined to provide assurances that he would pay fees involved, which was a specific condition of further processing stated in the DAG's letter of 12/1/75. Lesar's letter of 2/23/76, provides the payment assurances.

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 484-6023

February 23, 1976

Mr. Thomas Wiseman
Information and Privacy Unit
Federal Bureau of Investigation
Washington, D. C. 20537

Dear Mr. Wiseman:

On December 22, 1975, I phoned to ask if you could arrange for Mr. Harold Weisberg to view the photographs of the scene of Dr. King's murder and the ballistics materials he had requested the following afternoon, December 23rd, when he was coming to D.C. for a medical appointment. You told me that the FBI agent responsible for assembling the King assassination documents said that it would not be possible to reassemble them in time for Mr. Weisberg to see them on December 23rd. This was the only reason given for his not being able to inspect these records on that date.

Subsequently, on December 29, 1975, I wrote Deputy Attorney General Harold Tyler a letter in which I expressed the hope that Mr. Weisberg's examination of the requested materials could be arranged to coincide with his next trip to D.C. because he suffers from a serious case of phlebitis which makes it inadvisible for him to travel frequently. Copies of this letter were sent to you and FBI Director Clarence Kelley. I received no response.

After the calendar call on February 5, 1976, Mr. Weisberg and I met briefly with Assistant United States Attorney John Dugan and sought to enlist his good offices in arranging for Mr. Weisberg's inspection of your records to coincide with his next trip to D.C.

Today I called to ask that you arrange for Mr. Weisberg to examine these materials when he comes to Washington this Thursday, February 26th. However, you called to my attention a statement in Mr. Tyler's December 1, 1975, letter to me which required that Mr. Weisberg agree to pay the "reproduction and special search costs" if he wanted the photographs which he had in fact requested. You said, correctly, that Mr. Weisberg had not written you agreeing to pay these costs.

Shortly afterwards, Mr. Dugan called. He told me that you would not institute the "search" for these photographs until you received Mr. Weisberg's written agreement to pay the search costs. He also informed me that you could not have the requested materials ready by this Thursday.

I write, first, to assure you that Mr. Weisberg will pay the necessar search and reproduction costs but he does not waive his right to recover them.

I note, however, that when CBS News requested some of the same records sought by Mr. Weisberg, the search fees were waived.

I also advise you that I know of two Freedom of Information lawsuits where well-known millionaires have not been charged a cent by the Department of Justice for searching for the records requested by them. This contrasts glaringly with the treatment accorded my client, who can ill afford such fees, and is an affront to the spirit and meaning of the Freedom of Information Act.

Secondly, I ask you to state your agreement with the assurance Mr. Volney Brown gave me last summer that Mr. Weisberg will be allowed to examine and selected those documents and photographs he wants copied; rather than your foisting upon him, sight unseen, whatever you may determine to be within the purview of his request.

Thirdly, I ask that you select a date on which Mr. Weisberg will be allowed to examine the photographs and records which he has requested. I believe Mr. Weisberg will be able examine these records on any day between March 1 and March 6, or on March 15. I would appreciate it very much if you could advise me at the earliest possible time which date you prefer.

Sincerely yours,

Jim Lesar