OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Assoc. Dir. ____
Dep. AD Adm. ____
Dep. AD Inv. ____
Asst. Dir.:
Admin. ____
Comp. Syst. ____
Ext. Affairs ____
Files & Com. ____
Gen. Inv. ____
Ident. ____
Inspection ____
Intell. ____
Laboratory ____
Legal Coun. ____
Plan. & Eval. ____
Spec. Inv. ____
Training ____
Telephone Rm. ____
Director Sec'y ____

TO : Mr. Cochran

DATE: 3/2/76

FROM : J. J. McDermott

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA)
OF JAMES H. LESAR

Copies of letters of James H. Lesar dated 4/15/75, 12/29/75, 2/23/76, the Deputy Attorney General's (DAG) letter of 12/1/75, and SA J. W. Kilty's Laboratory addendum dated 11/14/75 are attached.

As indicated in the DAG's letter of 12/1/75, Lesar's request in his 4/15/75, letter numbered 1 and 6 were narrowly construed in the interest of saving his client undue expense. As Lesar indicates in his recent letters he desires to inspect the material within the scope of his requests 1 and 6 which has not been furnished him.

This request is currently in litigation and the Department of Justice has asked us to accomodate the 3/15/76 date for inspection, if reasonably possible.

RECOMMENDATION:

That the Laboratory Division accumulate the photographs of the scene of the Murkin and any ballistics tests conducted in the Murkin and advise SA Wiseman Freedom of Information-Privacy Acts Section, Files and Communications Division, when they are ready for the requester's review.

Enclosures (5)

1 - Mr. Mintz
Attention: Mr. Blake

1 - Mr. Cochran
Attention: Mr. Kilty

TLW:mjs (5)

(see LABORATORY ADDENDUM PAGE 2)

SEE ADDENDUM OF GENERAL INVESTIGATIVE DIVISION, PAGE 3.

5010-108

JWK

LABORATORY ADDENDUM, JWK:fdb (5) March 5, 1976

With testimony and work commitments already made, it is not possible to conduct a complete search of the MURKIN file and gather the pertinent information by March 15, 1976. A realistic date is March 22, 1976, and SA John W. Kilty will keep SA Wiseman advised concerning his progress in the file search. The Laboratory Division will be responsible for Item 1 in the request. The General Investigation Division should gather and evaluate the photographs of the scene as described in Item 6 of the request.

ADDENDUM GENERAL INVESTIGATIVE DIVISION HNH:bap 3/8/76

The FOI-PA Section should handle Item 6 of this "Freedom of Information Request" pertaining to all photographs from whatever source taken at the scene of the crime on 4/4 or 4/5/68.

Martin Luther King, Jr., was killed on 4/4/68 and a Civil Rights investigation was immediately instituted. Any photographs of the crime scene as requested would be located somewhere in our voluminous files either here at FBIHQ or in our Memphis Field Office, the office of origin, in the King civil rights case. The General Investigative Division has no intricate knowledge as to where these photographs are located in these voluminous files which were compiled nearly 8 years ago. The only way to retrieve these photographs would be for a complete file review. This file review is clearly a clerical function of the FOI-PA Section.

The General Investigative Division is referring this matter back to the FOI-PA Section. The FOI-PA Section will handle Item 6 of this request.

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

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

select 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

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

APR 17 1975

DEPUTY
ATTORNEY GENERAL

April 15, 1975

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

LABORATORY ADDENDUM J. W. Kilty:rlc 11/14/75 (Enclosures 8)

It appears that Items 1 through 4 of Lesar's letter of April 15, 1975, and all four items in Leiser's letter of September 5, 1975, are Laboratory matters.

Two copies of each item are being enclosed with this addendum.

The items are as follows:

(1) Laboratory report dated April 17, 1968, which sets out results of firearms examinations mentioned in Lesar's and Leiser's letters.

(2) Laboratory worksheet containing notes concerning the firearms examinations.

(3) Laboratory report, worksheet and notes containing the results of spectrographic and neutron activation examinations of bullets.

(4) Worksheet and notes concerning the spectrographic analyses of areas of clothing.

(5) Worksheet and notes concerning the firearms examinations conducted on clothing.

(6) Laboratory report, airtel, worksheet and notes concerning the examination of a portion of windowsill.

(7) Laboratory report dated April 19, 1968, which lists items recovered during search of 1966 white Mustang.

(8) Eleven photographs and photomicrographs of the windowsill area, the muzzle of a weapon and mechanism markings.

None of these items has been released to the public.

Item 4 in Lesar's letter asks for "the results of any scientific tests performed on the butts, ashes or other cigarette remains found in the white Mustang..." Review of the pertinent worksheets and reports has determined that no cigarette butts were recovered during the search of the Mustang. The report dated April 19, 1968, sets out the items that were recovered.

Twenty hours of agent time were utilized in this matter. The cost of printing the photographs is approximately $20.00, which is the cost of 46 photographs some of which are being retained for future requests. This is .40 per photograph.
Mr. Kilty advised 11/20 - 464 photos are 3.00 per. JWK

Mr. J. B. Adams 2/20/76

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 2/10/76, which indicated that defendants would move for a protective order as regards Plaintiff's First Set of Interrogatories, which plaintiff had apparently filed in order to receive answers which he felt would support his position that he has not been furnished all information he requested from us pursuant to the FOIA.

Referenced memorandum attached a copy of an affidavit to be utilized by the Department in support of a motion to dismiss, or in the alternative, for summary judgment on the grounds of mootness.

On 2/11/76, Assistant United States Attorney (AUSA) Dugan, District of Columbia, telephonically advised Special Agent Parle Thomas Blake of our Legal Counsel Division that on that date the court had denied our motion for a protective order, and had given us 10 days within which to answer the interrogatories. Dugan indicated that he had not yet received the affidavit, a copy of which had been enclosed with referenced memorandum. He stated that, as soon as he received it, he would make a determination as to whether

Enclosure

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)

we could utilize it in support of a motion for summary judgment or dismissal, and thus still avoid having to answer the interrogatories. Special Agent Blake advised him that a great deal of work on our part would be necessary in order to answer the interrogatories, and therefore we would have to be advised of his decision as soon as possible. Dugan indicated understanding of this problem and stated that he would immediately advise Special Agent Blake upon reaching a decision.

Not having heard from Dugan by 5:00 p.m. on 2/13/76, Special Agent Blake called his office, and was advised by Dugan's secretary that Dugan had received the affidavit on 2/12/76, but he had left his office and would not be back until the morning of 2/17/76. Special Agent Blake left a message for AUSA Dugan to call him as soon as he arrived in his office on the morning of 2/17/76. Still not having heard from AUSA Dugan by 10:00 a.m. on 2/17/76, Special Agent Blake again called his office, at which time Dugan advised him that he and Department Attorney Richard Greenspan felt the interrogatories would have to be answered despite the objections raised to them in the affidavit.

Attached hereto is one copy of Defendant's Answer To Plaintiff's First Set Of Interrogatories, which must be filed with the United States District Court for the District of Columbia by Monday, 2/23/76, but which Greenspan and Dugan indicated they need by Friday, 2/20/76, in order to prepare their brief.

RECOMMENDATION:

That approval be given for immediate hand-carrying of the original of Defendant's Answer To Plaintiff's First Set Of Interrogatories to Departmental Attorney Greenspan so that he also may sign it, and then furnish the original and the appropriate number of copies to AUSA Dugan.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v. Civil Action No. 75-1996

U. S. DEPARTMENT OF JUSTICE,

Defendant

DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Thomas L. Wiseman, Special Agent, Federal Bureau of Investigation (hereinafter FBI), being duly sworn, pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby answers the following interrogatories dated January 8, 1976. These answers are based on information available to a party within the meaning of Rule 33.

Interrogatory No. 1 What are the kinds of scientific tests and examinations, physical, chemical, microscopic or otherwise, which would normally be conducted to determine:

(a) whether or not bullets or bullet fragments have a common origin;

(b) which bullet or bullet fragment struck which person or object or which particular part of a person or object;

(c) whether a specific bullet or remnant thereof can be identified as having been fired from a particular rifle;

(d) whether a specific bullet or remnant thereof can be excluded as having been fired from a particular rifle;

(e) whether a specific bullet or remnant thereof can be identified as having been fired from a particular cartridge case;

(f) whether a specific bullet or remnant thereof can be excluded as having been fired from a particular cartridge case;

(g) whether a specific bullet or remnant thereof struck an object; and

(h) whether a specific bullet or fragment thereof could not have struck another object.

Answer to Interrogatory No. 1: Object. Interrogatory is irrelevant to the issue in this FOIA suit.

Interrogatory No. 2: Which of the tests and examinations listed in response to the above interrogatories were performed on the evidence pertaining to the assassination of Dr. Martin Luther King, Jr.?

Answer to Interrogatory No. 2: Plaintiff has been provided all tests and examinations with respect to death bullet and Mr. Ray's rifle. Deputy Attorney General Harold R. Tyler, advised plaintiff in his letter of December 1, 1975, that if plaintiff wishes access to other tests, Mr. Weisberg 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 same.

Interrogatory No. 3: List each item of evidence subjected to any of the tests or examinations enummerated in response to the above interrogatory and state all tests or examinations which were made on each such item of evidence and the date on which each was made.

Answer to Interrogatory No. 3: See my answer to Interrogatory No. 2.

Interrogatory No. 4: Item No. 1 of Mr. Weisberg's April 15, 1975, Freedom of Information request [Complaint Exhibit A] asks for "The results of any ballistics tests." Mr. Harold Tyler's December 1, 1975, letter to Mr. Lesar announces the release of the results of all ballistics tests "as performed on either the death bullet or Mr. Ray's rifle." Were any ballistics tests conducted on any other bullets or rifles or upon any cartridge

cases?

Answer to Interrogatory No. 4: See my answer to Interrogatory No. 2.

Interrogatory No. 5: Please list all items tested ballistically in connection with the investigation into Dr. King's assassination and state:

(a) the date of any such test; and

(b) the person or persons conducting the test or examination.

Answer to Interrotatory No. 5: Object to furnishing identity of person or persons conducting the test or examination as this would be exempt from mandatory disclosure as it would constitute an unwarranted invasion of personal privacy pursuant to Title 5, United States Code, Section 552 (b)(7)(C).

Interrogatory No. 6: In connection with Mr. Weisberg's information request, the Department of Justice has furnished him three color photographs of the murder bullet. Please state the date each of these photographs was first taken, the date each was developed, and by whom each photograph was taken.

Answer to Interrogatory No. 6: Inasmuch as an answer to this Interrogatory would necessitate additional search time, refer to my answer in Interrogatory No. 2. Object to identifying identity of the individual who took the photograph on the basis of Title 5, United States Code, Section 552 (b)(7)(C), and for the reasons set forth in my answer to Interrogatory No. 5.

Interrogatory No. 7: Were the three color photographs referred to in the preceding interrogatory the only photographs taken of the murder bullet?

Answer to Interrogatory No. 7: Yes.

Interrogatory No. 8: Were these three color photographs taken for CBS or as part of the FBI's ballistics investigation?

Answer to Interrogatory No. 8: Object. Interrogatory irrelevant to issue in this FOIA suit.

Interrogatory No. 9: Were photographs taken of any bullets which the FBI test-fired? If so, please list all such photographs, the date on which each was taken, and by whom they were taken.

Answer to Interrogatory No. 9. See my answer to Interrogatory No. 2.

Interrogatory No. 10: Were comparisons made with any other bullet or bullet fragment?

Answer to Interrogatory No. 10: See my answer to Interrogatory No. 2.

Interrogatory No. 11: Were any bullets or bullet fragments photographed with the aid of a comparison microscope? If so, please list all such photographs.

Answer to Interrogatory No. 11: See my answer to Interrogatory No. 2.

Interrogatory No. 12: In performing spectrographic and neutron activation testing on evidentiary specimens, the commonly accepted practice includes the identification and measurement of each element or trace element present. Was each element or trace element present in each of the following items of evidence identified and measured?

(a) the jacket of the murder bullet?

(b) the core of the murder bullet?

(c) the empty shell and the powder remaining in it?

(d) Dr. King's jacket?

(e) Dr. King's shirt?

(f) Dr. King's tie?

Answer to Interrogatory No. 12: Plaintiff received the results of the FBI's neutron activation and spectrographic analysis. This Interrogatory goes beyond plaintiff's initial FOIA inquiry and if he wishes any additional information, he should direct a request to the FBI for same agreeing to pay cost of any additional search and reproduction fees in accordance with the letters of Deputy Attorney General Tyler as set forth in my answer to

Interrogatory No. 2.

Interrogatory No. 13: In subjecting evidentiary specimens to neutron activation analysis, normal practice includes the making of a full and complete tabulation of all results. Was the tabulation of the results of the neutron activation testing of items of evidence pertaining to the assassination of Dr. King full and complete in accordance with normal standards?

Answer to Interrogatory No. 13: See my answer to Interrogatory No. 12.

Interrogatory No. 14: In making a spectrographic or neutron activation analysis, is it normal to reach stated conclusions as to whether the various evidentiary specimens are or could be identical, close to identical, or not possibly identical in chemical composition?

Answer to Interrogatory No. 14: See my answer to Interrogatory No. 12.

Interrogatory No. 15: Were any such stated conclusions made with respect to the items of evidence tested by spectrographic or neutron activation analysis in this case?

Answer to Interrogatory No. 15: See my answer to Interrogatory No. 12.

Interrogatory No. 16: In a normal murder case, how much time would usually elapse between the time a murder bullet or other evidentiary specimen such as the victim's clothing is received by the FBI Laboratory and the time it is subjected to spectrographic or neutron activation analysis? How much time elapsed in this case?

Answer to Interrogatory No. 16: See my answer to Interrogatory No. 12.

Interrogatory No. 17: How many photographs were made of the bathroom windowwill (sic)?

Answer to Interrogatory No. 17: Plaintiff has received all photographs which were made of the bathroom windowsill.

Interrogatory No. 18: Has Mr. Weisberg been given copies of all photographs of the bathroom windowsill either made by or in the possession of the FBI?

Answer to Interrogatory No. 18: Mr. Weisberg has been given copies of all photographs of the bathroom windowsill either made by or in the possession of the FBI.

Interrogatory No. 19: Has Mr. Weisberg been given all blowups made of photographs of the dent in the bathroom windowsill?

Answer to Interrogatory No. 19: Mr. Weisberg has been given all blowups made of photographs of the dent in the bathroom windowsill.

Interrogatory No. 20: Were any photographs of the bathroom windowsill or the barrel of the alleged murder rifle taken with the aid of a comparison microscope?

Answer to Interrogatory No. 20: All photographs responsive to this aspect of plaintiff's request have been furnished and therefore, this Interrogatory is outside the scope of this suit. If plaintiff requires this additional information, he should make his desires known to this Bureau and agree to pay the additional search and reproduction costs.

Interrogatory No. 21: Was any study or examination made with the aid of a microscope to compare the markings on the rifle barrel with any markings in the dent in the bathroom windowsill?

Answer to Interrogatory No. 21. See my answer to Interrogatory No. 20.

Interrogatory No. 22: Was any study or examination made to determine whether the dent in the bathroom windowsill fit the imprint made by some common tool or object such as a hammer?

Answer to Interrogatory No. 22: See my answer to Interrogatory No. 20.

Interrogatory No. 23: Mr. Tyler's December 1, 1975, letter to Mr. Lesar states that the photographs and sketches released to Mr. Weisberg "portray only Mr. Ray, as there never were any other suspects in the case." Was this true on April 17, 1968, when Special Agent Joseph Gamble filed a conspiracy charge with the U. S. Commissioner in Birmingham, Alabama?

Answer to Interrogatory No. 23: There were no other suspects in the case in addition to James Earl Ray.

Interrogatory No. 24: Were any other arrests made in connection with the assassination of Dr. Martin Luther King, Jr.?

Answer to Interrogatory No. 24: No other arrest were made in connection with the assassination of Dr. Martin Luther King, Jr.

Interrogatory No. 25: Were any arrests made by any authority prior to the arrest of James Earl Ray? On what basis?

Answer to Interrogatory No. 25: Based on information available to me, through the files of the Federal Bureau of Investigation, no other arrests were made by any authority prior to the arrest of James Earl Ray.

Interrogatory No. 26: If there were no other suspects and the rifle was found immediately, why was it necessary to test fire so many other rifles?

Answer to Interrogatory No. 26: Object. Interrogatory is irrelevant to any issue raised by this lawsuit and therefore, not a proper interrogatory.

Interrogatory No. 27: News accounts refer to cigarettes and ashes found in the Mustang abandoned in Atlanta. Did the FBI perform any scientific tests or examinations on any cigarette butts, ashes or other cigarette remains in connection with its investigation into the assassination of Dr. King?

Answer to Interrogatory No. 27: As plaintiff's attorney was

advised in the Deputy Attorney General's December 1, 1975, letter, "the Department of Justice never received any 'butts, ashes or other cigarette remains' from the "white mustang abandoned in Atlanta."

Interrogatory No. 28: Where were these cigarettes sent for testing? Why?

Answer to Interrogatory No. 28: See my answer to Interrogatory No. 27.

Interrogatory No. 29: Do the FBI's files on the assassination of Dr. King contain photographs and sketches of suspects which were compiled, obtained or circulated by any state, local, or Federal law enforcement agency prior to James Earl Ray's arrest?

Answer to Interrogatory No. 29: [redacted] photographs or sketches of any suspects in the assassination were released to plaintiff. Information concerning the dissemination of circularization of the photographs and sketches in question may be a part of the FBI file; however, that information pertains to the internal practice and procedure of the Federal Bureau of Investigation and therefore, I object to answering that portion of this interrogatory.

Interrogatory No. 30: Did the FBI obtain photographs of the scene of the crime taken by Mr. Ernest Withers?

Answer to Interrogatory No. 30: The Deputy Attorney General advised plaintiff's attorney in his letter of December 1, 1975, that " . . . In an effort to save your client considerable expense, I have costrued item No. 6 (of plaintiff's FOIA request) 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, you should make a further request for them and agree to pay the reproduction and special search cost which will be involved." Plaintiff has never given the Department of Justice or the Federal Bureau of Investigation any assurance that he is willing to pay the necessary search fees.

Interrogatory No. 31: Did the FBI obtain photographs of the scene of the crime taken by or for the St. Louis Sentinel?

Answer to Interrogatory No. 31: This interrogatory concerns the source of certain photographs which may or may not be in the possession of the FBI. If plaintiff wishes this information, he should comply with the Deputy Attorney General's letter of December 1, 1975, pertinent portions of which are set forth in my answer to Interrogatory No. 30.

Interrogatory No. 32: Did the FBI obtain any photographs of the scene of the crime from AP, UPI, the Memphis Commercial Appeal or the Memphis Press-Scimitar?

Answer to Interrogatory No. 32: Again, plaintiff wishes to find out whether any photographs were obtained from other sources which may or may not be in the possession of this Bureau. If plaintiff wishes to obtain this information, he should comply with the letter of the Deputy Attorney General dated December 1, 1975, pertinent portions of which are set forth in my answer to Interrogatory No. 30.

Interrogatory No. 33: Did the FBI obtain photographs of the scene of the crime from any other source, official or unofficial, such as the police, private citizens, news agencies, reporters, or any element of the media?

Answer to Interrogatory No. 33: Once again, plaintiff seeks information concerning the source of other photographs which may or may not be in the possession of the FBI. In order to search the information requested herein, plaintiff was previously requested by the letter from the Deputy Attorney General dated December 1, 1975, as set forth in my answer to Interrogatory No. 30, to advise us in writing, if such information was within the scope of his request and to provide written assurance that he would pay the cost of such a special search.

Interrogatory No. 34: Did the FBI obtain photographs or sketches of any suspects from any newspaper?

Answer to Interrogatory No. 34: Plaintiff again seeks to determine whether photographs or sketches which may or may not be in the possession of this Bureau were received from any newspaper. Plaintiff is referred to my answer in Interrogatory No. 30.

Interrogatory No. 35: In his book The Strange Case of James Earl Ray, Clay Blair, Jr. thanks the FBI for its assistance. What assistance did the FBI extend to Mr. Blair?

Answer to Interrogatory No 35: Based on an examination of the documents in question, there are no records which indicate that the FBI gave any assistance to Clay Blair, Jr.

Interrogatory No. 36: Did any agent, employee, or representative of the Department of Justice or any division thereof meet with William Bradford Huie, Gerold Frank, George McMillan, or Jeremiah O'Leary about the assassination of Dr. Martin Luther King, Jr.?

Answer to Interrogatory No. 36: Based on an examination of the documents in question, there are no records which indicate that any agent, employee, or representative of the Department of Justice or any division thereof met with William Bradford Huie, Gerold Frank, George McMillan, or Jeremiah O'Leary about the assassination of Dr. Martin Luther King, Jr.

Interrogatory No. 37: Did any agent, employee, or representative of the Department of Justice or any division thereof give copies of any records pertaining to the assassination of Dr. King to William Bradford Huie, Gerold Frank, George McMillan, or Jeremiah O'Leary?

Answer to Interrogatory No. 37: Based on an examination of the documents in question, there are no records which indicate that any agent, employee, or representative of the Department of Justice or any division thereof gave copies of any records pertaining to the assassination of Dr. King to William Bradford Huie, Gerold Frank, George McMillan, or Jeremiah O'Leary.

Interrogatory No. 38: Were William Bradford Huie, Gerold Frank, George McMillan or Jeremiah O'Leary ever permitted to copy or take notes on or read any records pertaining to the assassination of Dr. King?

Answer to Interrogatory No. 38: Based on an examination of the documents in question, there are no records which indicate that William Bradford Huie, Gerold Frank, George McMillan or Jeremiah O'Leary were permitted to copy or take notes on or read any records pertaining to the assassination of Dr. King.

Interrogatory No. 39: Did any of the writers mentioned in the preceding interrogatories gain access to FBI records on the assassination of Dr. King indirectly, as through the District Attorney General of Shelby County or the Attorney General of Tennessee or any of their agents or employees?

Answer to Interrogatory No. 39: Based on an examination of the documents in question, there are no records which indicate that any of the writers mentioned in the preceding interrogatories gained access to FBI records on the assassination of Dr. King indirectly, as through the District Attorney General of Shelby County or the Attorney General of Tennessee or any of their agents or employees.

Thomas L. Wiseman
Special Agent
Federal Bureau of Investigation
Washington, D. C.

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

Notary Public

My Commission expires 12/4/77.

Mr. J. B. Adams 2/10/76

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 our memorandum to the Assistant Attorney General, Civil Division, dated 12/19/75, enclosing copies of correspondence with plaintiff in our possession concerning his FOIA request for information regarding our investigation of the Martin Luther King, Jr., assassination, and also furnishing suggested answers to the allegations in plaintiff's complaint. Reference is also made to the 1/15/76 memorandum from the United States Attorney for the District of Columbia to the Assistant Attorney General, Civil Division, a carbon copy of which was furnished us. This memorandum enclosed Plaintiff's First Set of Interrogatories, which were apparently designed to elicit support for plaintiff's position that he has not been furnished all information he requested from us.

Attached is a copy of an affidavit executed by Special Agent Thomas L. Wiseman to be utilized by the Department in support of a motion to dismiss, or, in the alternative, for summary judgment on the grounds of mootness. In the meantime, defendants will move for a protective order as regards the interrogatories.

Enclosure

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:rme
(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

RECOMMENDATION:

That approval be granted to immediately hand-carry the original and five copies of attached affidavit to Departmental Attorney Richard Greenspan, who is handling this case for the Department, and to furnish one copy of the affidavit to Assistant United States Attorney Eugene Dugan, District of Columbia, for his information in filing the motion for a protective order.

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

I, Thomas L. Wiseman, being duly sworn, depose as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information - Privacy Acts (FOI-PA) Section of the FBI, Washington, D. C.

(2) Due to the nature of my official duties, I am familiar with the procedure we follow in processing Freedom of Information Act (FOIA) requests received at FBI Headquarters (FBIHQ), and specifically the plaintiff's FOIA request in particular.

(3) By letter addressed to the Deputy Attorney General, dated April 15, 1975, plaintiff's attorney requested, pursuant to the FOIA, seven specific categories of information concerning the assassination of Dr. Martin Luther King, Jr. (A copy of this letter is attached hereto as Exhibit A and incorporated herein by reference.)

(4) For purposes of clarification, there is listed below additional correspondence in our possession concerning plaintiff's FOIA request, copies of which were not attached to the complaint:

(a) By letter to plaintiff's attorney dated June 27, 1975, Director Kelley advised that his request for the results of certain Laboratory examinations, photographs, and sketches relating to the assassination of Dr. Martin Luther King, Jr., was denied, inasmuch as an appeal was presently pending for James Earl Ray in the Federal court system. Our determination at that time was that the information which plaintiff had requested was exempt from release pursuant to Subsection (b)(7)(A) of the FOIA, which proscribes the release of investigatory records compiled for law enforcement purposes the release of which would interfere with enforcement proceedings. (A copy of this letter is attached hereto as Exhibit B and incorporated herein by reference.)

(b) By letter to plaintiff's attorney dated December 1, 1975, the Deputy Attorney General advised him that he had "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." (A copy of the December 1st letter is attached hereto as Exhibit C and incorporated herein by reference.)

(c) By letter to plaintiff's attorney dated December 2, 1975, Director Kelley furnished copies of the records plaintiff had requested which Director Kelley had been directed to release as the result of the Deputy Attorney General's consideration of plaintiff's appeal. (A copy of this letter is attached hereto as Exhibit D and incorporated herein by reference.)

(d) By letter to plaintiff's attorney dated December 23, 1975, from the Chief of the Department of Justice Freedom of Information and Privacy Unit, a misstatement in the December 1st letter from the Deputy Attorney General

was clarified. (A copy of the December 23rd letter is attached hereto as Exhibit E and incorporated herein by reference.)

(e) By letter to me dated December 29, 1975, plaintiff's attorney furnished payment for the material we had furnished him in responding to his FOIA request. (A copy of this letter is attached hereto as Exhibit F and incorporated herein by reference.)

(f) By letter to the Deputy Attorney General dated December 29, 1975, a carbon copy of which was sent to me, plaintiff's attorney registered numerous complaints concerning the manner in which plaintiff's FOIA request was responded to. (A copy of this letter is attached hereto as Exhibit G and incorporated herein by reference.)

(5) I have read and am familiar with the contents of the above-described correspondence, and I have also read and am familiar with the contents of Plaintiff's First Set of Interrogatories. It is my belief that plaintiff is attempting to obtain through his 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 we would have to create, inasmuch as we do not presently possess this information in record form. Furthermore, 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. I believe that their identities should also be protected pursuant to Subsection (b)(7)(F) of the FOIA. Furthermore, the interrogatories would require that we furnish information which plaintiff did not even request access to in his original FOIA request. Finally, answers to many 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.

(6) 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. With this in mind, set out below are the facts concerning our response to each of the seven categories of information concerning the assassination of Dr. King contained in plaintiff's original FOIA request:

(a) "The results of any ballistics test." As shown in Exhibit C, plaintiff has been furnished the results of all ballistics tests as performed on either the death bullet or Mr. Ray's rifle. Exhibit C also shows that the Deputy Attorney General advised plaintiff that if he desired the results of ballistics tests performed on rifles other than the one owned by Mr. Ray, he should make a specific written request to Director Kelley, directed to my attention, agreeing to pay both the costs of reproduction and the special search fees which would be necessary to locate and identify this material, as provided by 28 C.F.R. 16.9 (b)(6).

(i) In the more than two months which have passed since plaintiff was advised of the above, I have received no written assurance from plaintiff indicating that he will pay the necessary fees engendered by the special search we would have to conduct in order to locate this material. In his December 29th letter to the Deputy Attorney General, plaintiff's attorney stated that plaintiff desired all this material, but he did not

give his written assurance, which we feel is necessary before initiating the search, that the special fees would be paid.

(ii) Plaintiff's attorney indicated, in a telephone call to me on December 22, 1975, that he expected us to initiate and complete this special search in one day, and to have the material available for plaintiff on December 23rd. Not only did plaintiff's attorney fail to give me even an oral promise during this conversation that the special fees would be paid, but he indicated that he was not even sure that he would pay the $22.10 reproduction charges for the material we had already furnished him nearly three weeks prior to that conversation. (As we had advised him in Director Kelley's December 2nd letter which furnished this material, we had already waived $80 of special search fees which had been engendered in responding to his request.) We are not claiming that the results of these additional ballistics tests are exempt from release pursuant to the FOIA, or even that FOIA - authorized deletions would be made from this material prior to its release. Per the Deputy Attorney General's letter of December 1st, we are willing to initiate a special search for additional ballistics material after plaintiff furnishes us written assurance that he will pay the fees involved in this search, although I believe this material would actually be outside the area of plaintiff's interest. However, if he wishes to pay for it, it is available to him.

(b) "The results of any spectrographic or neutron activation analyses." Plaintiff has been furnished all information we have located which could possibly be responsive to this portion of plaintiff's request. As shown by Exhibit E, attached hereto, defendants even went so far as to write a second letter to plaintiff to ensure that he understood that which he was being furnished.

(c) "The results of any scientific tests made on the dent in the windowsill of the bathroom window from which Dr. King was allegedly shot." Again, all information responsive

to this portion of the request has been furnished plaintiff. Pursuant to the Deputy Attorney General's statement in his December 1st letter to plaintiff's attorney, "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."

(d) "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." As plaintiff's attorney was advised in the Deputy Attorney General's December 1st 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, this 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.

(e) "All photographs or sketches of any suspect in the assassination of Dr. King." As again indicated in the Deputy Attorney General's December 1st letter, all photographs or sketches of any suspects in the assassination were released to plaintiff. As the Deputy Attorney General advised, "these photographs and sketches portray only Mr. Ray, as there never were any other suspects in the case." Plaintiff appears to be under the mistaken impression that there were, in fact, other suspects beside Mr. Ray, and he apparently bases this misimpression upon the fact that, "on April 17, 1968, FBI Special Agent Joseph H. Gamble filed a conspiracy complaint with the United States Commissioner in Birmingham, Alabama." For the information

of the court, and as plaintiff is presumably already aware, the complaint mentioned above 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 the free exercise or enjoyment of a right secured to him by the Constitution or laws of the United States; namely, the right to freely travel from state to state. In furtherance of this conspiracy, Eric Starvo Galt did, on or about March 30, 1968, purchase a rifle at Birmingham, Alabama, ..." As plaintiff is also presumably aware, the above-described complaint was dismissed on December 2nd, 1971. There were no other suspects in the case in addition to James Earl Ray.

(f) "All photographs from whatever source taken at the scene of the crime on April 4th or April 5th, 1968." The Deputy Attorney General advised plaintiff's client in his letter of December 1st that, " . . . 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." As I stated when setting out the facts concerning category number 1 of plaintiff's request in this affidavit, we have still received no assurance from plaintiff or his attorney that plaintiff is willing to pay the necessary search fees. In my December 22nd telephone conversation with plaintiff's attorney, he did not indicate a willingness to pay these fees, and as I stated earlier, even said that he was not at all sure he would even pay for the material we had already furnished

him. Plaintiff's attorney in his December 29th letter to the Deputy Attorney General did indicate that his client desired this material, and we are willing to initiate a search for any additional material which might be responsive to this category of plaintiff's request, when we receive plaintiff's written assurance that he will pay the costs of this search, as provided by 28 C.F.R. 16.9.

(g) "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." As the Deputy Attorney General also advised plaintiff's attorney in his December 1st letter, ". . . 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 persons other than law enforcement or prosecutive authories, 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, the 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." We have conducted a massive and detailed review of our files concerning the King assassination, and, plaintiff's unsubstantiated assertions to the contrary, 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 29th 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 category 7) 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 requested by plaintiff in category 7 of his request, and they have all been unable to furnish any information which would be responsive to this portion of the request. My interpretation of the FOIA is that neither we nor the Deputy Attorney General are required to make "a few 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 named individuals in paragraph 7 whom he implies possess this information. It might be noted parenthetically that, in connection with category 6 of his request dealing with "photographs from whatever source," questions 30 through 34 of his First Set of Interrogatories might also be best answered by the named sources whom plaintiff apparently believes possess this material.

(7) 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 all information we could locate and release which the Deputy Attorney General deemed responsive to his request, and we had done this before we were notified by the Department of Justice that plaintiff had instituted this litigation. There is simply

nothing more we can do in response to plaintiff's request except, as stated above, that we are willing to conduct further special searches to attempt to locate any other information which plaintiff feels would be responsive to categories 1 and 6 of his request, just as soon as plaintiff furnishes us written assurance that he will pay the costs necessitated by these special searches, which he is required to do pursuant to the FOIA.

(8) As I have stated above, we have furnished plaintiff all information located which is responsive to his request, and the only deletions in this material were made to protect the privacy of FBI personnel pursuant to Subsection (b)(7)(C) of the FOIA, where the names of FBI personnel were deleted from the documents. Pursuant to the determination of the Deputy Attorney General in his December 1st letter to plaintiff's attorney, we have released to plaintiff seventy-one pages of material for which the charge was 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, the total charges for which were $22.10. The only difference between the original documents and the copies thereof furnished plaintiff is that purely internal administrative markings which would have no meaning to the plaintiff were removed in accordance with the uniform procedures we employ in responding to all FOIA requests. These markings, exempt from release pursuant to Subsection (b)(2) of the FOIA, and which assist us in the routing, storage

and retrieval of material in our files, have no effect whatsoever on the substance of the documents, and in fact, do not appear on the documents at the time they are prepared.

Thomas L. Wiseman
Special Agent
Federal Bureau of Investigation
Washington, D. C.

Subscribed and Sworn to before me this 16th day of February, 1976.

Notary Public

My Commission expires 2-14-77.

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

April 15, 1975

FREEDOM OF INFORMATION REQUEST

ne Deputy Attorney General
. S. Department of Justice
ashington, D. C. 20531

ear Sir:

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

1. The results of any ballistics tests.

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

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

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

5. All photographs or sketches of any suspects in the assassi- ation of Dr. King.

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

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

This request for disclosure is made under the Freedom of Infor- ation Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 561.

Sincerely yours,

Jim Lesar

EXHIBIT A

June 27, 1975

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

Dear Mr. Lesar:

Reference is made to my letter of April 29th regarding your Freedom of Information Act request on behalf of your client, Mr. Harold Weisberg.

Your request for the results of certain laboratory examinations, photographs, and sketches relating to the assassination of Dr. Martin Luther King, Jr., is denied.

As you are aware, an appeal is presently pending for James Earl Ray in the federal court system. This appeal is from a denial in the United States District Court for the Western District of Tennessee of a petition on a writ of habeas corpus. The appeal is in the United States Circuit Court of Appeals, Cincinnati, Ohio. Since the information you have requested could be vital to a prosecution of James Earl Ray, the release of this information could harm a Government prosecution and subsection (b)(7)(A) proscribes the release of such information.

In connection with your request numbered 7, search of our central files reveals no information regarding Dr. King's assassination was made available to any author or writer.

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

EXHIBIT B

and the letter should be clearly marked "Freedom of Information Appeal" or Information Appeal." Following the Attorney General's decision, judicial review is available in the district of your residence or principal place of business or in the District of Columbia, where the records are situated.

Sincerely yours,

C. M. Kelley
Clarence M. Kelley
Director

EXHIBIT B

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

EXHIBIT C

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 one-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

EXHIBIT C

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 $30.00 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

EXHIBIT C

December 2, 1975

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

Dear Mr. Lesar:

Please refer to the Deputy Attorney General's letter directed to you dated December 1, 1975, regarding your Freedom of Information Act (FOIA) Appeal for access to certain materials pertaining to the assassination of Dr. Martin Luther King, Jr.

Enclosed herein are copies of the records you have requested which I have been directed to release as the result of the Deputy Attorney General's consideration of your appeal.

In accordance with the Deputy Attorney General's letter, $30 of special search fees are being waived and reproduction costs for the enclosed material amount to $22.10. Please make your check or money order payable to the Federal Bureau of Investigation.

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (31)

EXHIBIT D

DEC 2 3 1975

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

Dear Mr. Lesar:

The purpose of this letter is to correct a minor error in the letter of December 1, 1975, in which Deputy Attorney General Harold R. Tyler, Jr., informed you that materials requested by your client Harold Weisberg concerning the assassination of Dr. Martin Luther King, Jr., would be made available to him. The error occurred in the second sentence of the third paragraph of the letter, which read: "'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."

In fact, as is perfectly obvious from one page of the F.B.I. records released to your client as a result of the letter of December 1, 1975, neutron analysis of the murder and test bullets was effected. In addition, spectrographic tests were made of the bullets, as recorded on three other pages of released materials. Additional copies of the four pages in question are attached hereto.

Although our error would have been caught by anyone with expertise in this area, I nevertheless felt that I should make the actual situation a matter of record in view of the great public interest in the King case.

Very truly yours,

Quinlan J. Shea, Jr., Chief
Freedom of Information and Privacy Unit

cc: Federal Bureau of Investigation

EXHIBIT E

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

TELEPHONE (202) 484-6023

December 29, 1975

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

Dear Mr. Wiseman:

I am enclosing a check for $22.10. This is in payment for the copies of documents and photographs pertaining to the assassination of Dr. King which you made available to Mr. Weisberg on December 3, 1975.

Sincerely yours,

Jim Lesar

Jim Lesar

EXHIBIT F

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

EXHIBIT G

select 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

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