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

EXHIBIT G

Mr. Jenkins 12/29/75

J. Cochran, Jr.

FREEDOM OF INFORMATION ACT (FOIA) REQUEST
OF ERNEST S. LEISER OF CBS NEWS

By memorandum J. J. McDermott to Mr. Jenkins captioned as above dated 12/24/75, it was recommended the Laboratory Division consider contacting Ernest S. Leiser of CBS News to offset any possible misinterpretations of the FBI Laboratory's findings regarding firearms examinations conducted which were related to the assassination of Martin Luther King, Jr.

Pursuant to your contact with Deputy Attorney General Harold R. Tyler, Jr., I placed a long distance telephone call to the office of CBS News in New York City and spoke with Mr. Leiser this morning explaining to him the general procedure encompassing a firearms examination. I emphasized to him that it was not a part of a firearms examination to photograph the tests. He indicated there was to be nothing in the January 2nd CBS show relating to the use of photographs and why the FBI did not make any during the course of its examinations of the fatal King bullet, as well as the suspected murder rifle. I again pointed out to him that such photographs are meaningless since no competent firearms man would conduct a bullet comparison on the basis of photographs. It was emphasized to him that photographs are taken during the course of bullet comparisons when an identification is effected and only for the purpose of demonstrating pictorially the type of marks upon which the examination is based. Such photographs do not prove the identification and are used only as a supplement to testimony as an aid to the lay person in understanding the basis for the examination.

During the course of the discussion, Mr. Leiser advised serious questions arose as to the validity of the bullet comparison conducted by former SA Robert A. Frazier. The files show that Frazier's report stated the bullet from King's body

1 - Mr. Gallagher
1 - Mr. McDermott
1 - Mr. Moore
1 - Mr. Cochran

CONTINUED - OVER

JC:bms
(5)

lacked sufficient microscopic marks to be of value for identification purposes. Leiser stated several people disagreed with this conclusion after having viewed the evidence bullet. He quoted Arthur Haynes, Jr., retired Bureau Agent and former attorney of James Earl Ray, as stating that the bullet in question was "a perfect evidence bullet." Leiser stated the judge in Shelby County, Tennessee, had been very cooperative with CBS in allowing them to film the evidence and test bullets; however, he did not permit a microscopic examination to be conducted. I advised Leiser that the evidence in this case is in the custody of Shelby County and that the FBI, under no circumstances, would enter into the dispute as to whether or not a new examination should be made. He was told it was the FBI's position that any such additional examinations were strictly within the purview of the court of jurisdiction.

It is apparent Leiser lacks any kind of technical basis for discussion of this subject matter and for that matter I doubt Arthur Haynes, even though he was a former Bureau Agent, could without benefit of a microscope adequately comment on the quality of marks on a given bullet. I have complete confidence in the quality of Mr. Frazier's examinations. His ability in the firearms field, demonstrated time and again in the past, is without peer. I feel quite certain that any independent expert who is qualified to carry that title will arrive at the same conclusion.

In terminating my conversation with Leiser, I advised him to feel free to contact me should he have any questions in this matter. I assured him that we were only concerned in seeing that the truth is aired and that if we could be of any assistance to him in that regard we would.

ACTION:

None. For information only.

Assistant Attorney General
Civil Division
Attn: R. E. Greenspan

December 19, 1975

Director, FBI

1 - Mr. Cochran
Attn: Mr. Kilty
1 - Mr. Gallagher
Attn: Mr. Lawn
1 - Mr. McDermott
Attn: Mr. Wiseman
1 - Mr. Moore
Attn: Mr. Gunn
1 - Mr. Mintz
1 - Mr. Blake

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

Reference is made to your memorandum dated December 5, 1975, your reference REGreenspan:wr 145-12-2521, which enclosed a copy of the complaint filed in captioned matter and requested a litigation report.

Enclosed for your information and assistance are two copies each of the following, which with the exception of the exhibits attached to the above-mentioned complaint (which are not enclosed), comprise all correspondence in our possession concerning captioned matter:

(1) Memorandum from the Staff Assistant to the Deputy Attorney General to our Freedom of Information Act Unit dated April 18, 1975, referring plaintiff's Freedom of Information Act request to the Federal Bureau of Investigation (FBI);

(2) Letter from me to plaintiff's attorney dated June 27, 1975, denying plaintiff's request on the grounds that release of the material plaintiff sought could have a harmful effect on the government's position concerning James Earl Ray's pending judicial appeal;

(3) Letter from the Deputy Attorney General to plaintiff's attorney dated December 1, 1975, modifying my denial to the extent of granting access to all material within the scope of plaintiff's request;

(4) Letter from me to plaintiff's attorney dated December 2, 1975, enclosing copies of the records he had requested.

PTB:jd
(10)

SEE NOTE LAST PAGE

Assistant Attorney General
Civil Division

Listed below, and numbered to correspond to the allegations in the complaint, are our suggested answers to these allegations as they apply to the FBI:

(1) Conclusion of law and not an allegation of fact for which an answer is required, but insofar as an answer may be deemed required, deny.

(2) Defendant lacks information and knowledge sufficient to form a belief as to the truth or falsity of this allegation.

(3) Admit.

(4) Deny except to admit authenticity of plaintiff's Exhibit A, to which the court is respectfully referred for a full and complete statement of the contents thereof.

(5) Deny except to admit authenticity of plaintiff's Exhibit B, to which the court is respectfully referred for a full and complete statement of the contents thereof.

(6) Deny except to admit authenticity of plaintiff's Exhibit C, to which the court is respectfully referred for a full and complete statement of the contents thereof.

(7) Deny except to admit authenticity of plaintiff's Exhibit D, to which the court is respectfully referred for a full and complete statement of the contents thereof.

(8) Deny except to admit authenticity of plaintiff's Exhibit E, to which the court is respectfully referred for a full and complete statement of the contents thereof.

(9) Deny.

Since, pursuant to the Deputy Attorney General's letter of December 1, 1975, and my letter of December 2, 1975, plaintiff has been furnished all material which he

Assistant Attorney General
Civil Division

requested, his complaint now fails to state a claim of a justiciable issue over which the court has jurisdiction. You may wish to request the United States Attorney to ascertain if plaintiff's attorney is interested in a voluntary dismissal without prejudice, in order to avoid unnecessary litigation. If this course of action does not prove viable, a motion to dismiss, or in the alternative, for summary judgement, supported by an affidavit, would be appropriate.

Please keep us advised of all pertinent developments in this matter, and furnish us copies of all documents filed with the court. This case is being handled by Special Agent Parle Thomas Blake of our Legal Counsel Division, and you may contact him at 175-4522 for any further information and or assistance.

Enclosures (8)

1 - United States Attorney (Enclosures - 4)
District of Columbia

NOTE: By letter of 4/15/75, plaintiff's attorney, James H. Lesar, requested certain material (primarily photographs and results of laboratory tests) concerning the Martin Luther King, Jr., assassination. The request was denied pursuant to the b(7)(A) exemption of the FOIA (interference with enforcement proceedings) inasmuch as James Earl Ray has an appeal pending in U.S. Circuit Court. Despite the objections interposed by the Department's Civil Rights Division and the FBI, the Deputy Attorney General, upon Lesar's appeal, decided to overrule our denial and furnish him all information he had requested, thereby in effect rendering moot the present litigation. Of interest is the fact that a 3/25/75 newspaper article identified James Lesar of Washington, D.C. as one of the three attorneys who are handling Ray's appeal.

1 - Laboratory Division
Attention: Mr. Kilty
1 - Mr. Moore
Attention: Mr. Gunn

December 2, 1975

1 - Mr. Gallagher
Attention: Mr. Lawn

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, $80 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)

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

TLW:car (8)

SEE NOTE PAGE 2

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

MAIL ROOM ☐ TELETYPE UNIT ☐

GPO : 1975 O - 569-920

James H. Lesar, Esq.

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 Deputy Attorney General, however, the Deputy Attorney General disagreed with the arguments therein. It is believed that the Civil Rights memorandum clearly enunciates any objection we would have to the release of these documents. Deputy Attorney General, by letter dated 12/1/75, is advising Lesar that his request will be fully honored.

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

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

UNITED STATES GOVERNMENT

Memorandum

Assoc. Dir. ____
Dep. AD Adm. ____
Dep. AD Inv. ____
Asst. Dirs.
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: 11/3/75

FROM : J. J. McDermott

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST OF JIM LESAR AND ERNEST S. LEISER OF CBS NEWS

Re letter of Jim Lesar dated April 15, 1975, and September 5, 1975, letter of Ernest S. Leiser, copies attached.

Captioned requesters have appealed the denial of requested information regarding documents relating to the assassination of Martin Luther King, Jr., in Memphis, Tennessee. To fully evaluate the legality of withholding the requested information under the FOIA, the U. S. Department of Justice, Freedom of Information Appeals Unit, has requested the Bureau to gather information pertinent to the requests.

Captioned requests are being handled concurrently by the Department of Justice, Freedom of Information Appeals Unit, and due to time pressures in this matter, it is requested the following recommendations be handled as expeditiously as possible.

RECOMMENDATIONS:

The Laboratory Division forward to the FOIPA Section, Files and Communications Division, the requested documents with any comments and/or recommendations, particularly those which would concern the dissemination of Bureau information or information which has been the subject of affidavits or court testimony.

Total agent time utilized, direct cost of service and preparation and material relating to the reproduction, be furnished.

Enc.

TLW:ms (3)

See Laboratory Addendum, page 2.

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

CBS NEWS
A Division of Columbia Broadcasting System, Inc.
524 West 57 Street
New York, New York 10019
(212) 765-4321

Dear Director Kelley: September 5, 1975

Acting under the Freedom of Information Act, I request access to the following FBI documents relating to the assassination of Martin Luther King, Jr. in Memphis, Tennessee, April 4, 1968:

1. Bullet comparison photomicrographs of the evidence bullet and the test bullets made by your ballistics expert, Mr. Robert A. Frazier.
2. Results of laboratory examinations of the evidence bullet.
3. Results of the microscopic examination of the windowsill in the bathroom at 422½ Main Street, Memphis, from which the murder weapon was allegedly fired.
4. Photographic enlargements of the dent in the windowsill and of that part of the rifle which allegedly caused the dent.

I have seen your letter to my colleague, Mr. Haley, in response to his request in the matter of George Wallace and realize you are snowed under with FOIA requests. However, I would appreciate your expediting this as much as possible. Our program is scheduled for broadcast this fall.

Sincerely,

Ernest S. Leiser

Ernest S. Leiser
Senior Producer

Clarence M. Kelley
Director, Federal Bureau of Investigation
10th and Pennsylvania Aves., N.W.
Washington, D.C. 20535

JWK file

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 48 photographs none of which are being retained for future requests. This is $.40 per photograph. If the usual 11x20 - 064 photos are $3.00 per roll

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Freedom of Information Appeal of
Harold Weisberg
Attorney: James H. Lesar
AND
of CBS; Attorney: Alen Y. Shaklan

ACTION MEMORANDUM

Background - Weisberg

Attorney James H. Lesar, for his client Harold Weisberg, requested [Tab A] the Department of Justice to provide the following records from the files of the F.B.I. concerning "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.

cc: Federal Bureau of Investigation

"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."

Mr. Lesar filed an administrative appeal [Tab B], for failure of the Bureau to respond within the period specified by the Act. Subsequently, the F.B.I. denied the request in its entirety [Tab C], citing exemption 7(A) [investigatory records compiled for law enforcement purposes the production of which would interfere with enforcement proceedings]. The application of this exemption was bottomed on the pendency of James Earl Ray's habeas corpus appeal before the United States Court of Appeals for the Sixth Circuit.

Background - CBS

CBS, through its Senior Producer Ernest S. Leiser, requested [Tab D] access to the following documents relating to the assassination of Martin Luther King, Jr., in Memphis, Tennessee, April 4, 1968:

"1. Bullet comparison, photo micrograph of the evidence bullet and the test bullets made by your ballistics expert, Mr. Robert A. Frazier.

"2. Results of laboratory examinations of the evidence bullet.

"3. Results of the microscopic examination of the window sill in the bathroom at 422 1/2 Main Street, Memphis, from which the murder weapon was allegedly fired.

"4. Photographic enlargements of the dent in the window-sill and that part of the rifle which allegedly caused the dent."

Director Kelley denied the request in its entirety [Tab E], citing two clauses of the investigatory records exemption, 7(A) and 7(B) [interference with a person's right to a fair trial or impartial adjudication]. From this denial, CBS, through its attorney Allen Y. Shaklan, has appealed [Tab F].

Departmental Positions

The Civil Rights Division, in a very cogent memorandum, has requested me to recommend against release of all records within the scope of either request, "which (a) bear on Ray's guilt or innocence and (b) are not now themselves items of public record." The Division is concerned that, should Ray succeed in having his guilty plea set aside, (1) at a subsequent trial in a Tennessee state court he might be found to have been prejudiced by pretrial publication of the subject records, and/or (2) he might unfairly benefit from discovery more extensive than that allowed by Tennessee practice. In sum, it is contended that this Department should do nothing that might impede any possible retrial of Mr. Ray. The three page memorandum to me from Civil Rights Division F.O.I. Coordinator Walter W. Barnett is attached at Tab G. It indicates personal concern on the part of Assistant Attorney General Pottinger in this matter. The F.B.I. prefers to continue to withhold the records in accordance with its prior actions, but does not wish to make any further representations to you.

Facts

Dr. King was killed on April 4, 1968. James Earl Ray was indicted for first degree murder on May 7, 1968, by a Tennessee grand jury. He was arrested in London on June 8, 1968, and extradited after a hearing there. Mr. Ray first retained attorney Arthur J. Hanes, Sr. He was subsequently replaced by Percy Foreman, under an agreement by which author William Bradford Huie acquired exclusive rights to Ray's life story as it pertained to the killing 1/ and the attorneys undertook to represent Ray for 60% of Huie's gross receipts. 2/ Because Mr. Foreman fell ill before the trial date, the Court also appointed Public Defender Hugh Stanton to represent Ray. At least two writings of Mr. Foreman exist in which he confirmed agreements of monetary advantage to Ray in return for the latter's guilty plea and good behavior at the time of entry thereof. On March 10, 1969, Mr. Ray pleaded guilty in the state court to first degree murder, stating that he had killed Dr. King "under such circumstances that it would make * * * [him] legally guilty of Murder in the First Degree under the law as explained to him * [him] by * * * [his] lawyers." Both

---

1/ Ray v. Foreman, 441 F.2d 1266 (6th Cir. 1971).

2/ Ray v. Rose, 491 F.2d 285, 287 (6th Cir. 1974).

Foreman and Stanton were present representing Ray at the time of the plea. The defendant then was sentenced to a pre-agreed term of 99 years after a so-called "mini-trial" at which the State "introduced strong evidence indicating that on April 4, 1968, petitioner fired a rifle * * * and fatally wounded Dr. Martin Luther King, Jr. * * *." 3/ Soon thereafter, Mr. Ray attempted to repudiate his plea and assert his innocence. After his state appeals were exhausted without his having been allowed an evidentiary hearing, he petitioned the United States District Court for the Middle District of Tennessee for a writ of habeas corpus alleging, inter alia, that his plea was not intelligently and voluntarily entered, in that attorney Foreman threatened and coerced Mr. Ray and his family into the guilty plea. Foreman's threats and coercion allegedly resulted from his pecuniary interest adverse to the best interests of his client, since he would profit if details about Mr. Ray and the events in his life were released initially by the author, rather than being given away in a public forum. Without receiving any evidence, the District Court granted a Motion to Dismiss on the ground that the factual allegations of petitioner, even if taken as true, were nevertheless insufficient to justify a holding that his plea was not voluntary, knowing and intelligent. 4/ The Sixth Circuit reversed and remanded for an evidentiary hearing upon a finding that "the most egregious kind of conflict of interest is not only alleged, but is directly stated to have caused and actually induced the plea of guilty." 5/ The District Court thereafter received evidence, including an affidavit of an F.B.I. firearms expert tending to show that the death bullet was fired from a rifle purchased by Mr. Ray and from which his fingerprint was lifted. The court then held that the plea was neither coerced nor involuntary, even assuming counsel had conflicts of interest. 6/ Mr. Ray's appeal from this holding is now pending before the Sixth Circuit and is termed "viable" by Civil Rights Division attorney Stephen A. Horn. It is because of this "reasonable possibility"

3/ Ray v. Rose, 373 F. Supp. 687, 693 (M.D. Tenn. 1973).

4/ Id., page 699.

5/ Ray v. Rose, supra, 491 F.2d 285, 290-91.

6/ Ray v. Rose, 393 F. Supp. 601, 619 (W.D. Tenn. 1975).

that the Court of Appeals will set aside Mr. Ray's guilty plea, making a full prosecution necessary for the first time, that the Civil Rights Division seeks to withhold as much of the requested information as tends to show Mr. Ray's guilt and is not already in the public domain, so that the Department cannot later be accused of voluntarily contributing to adverse pre-trial publicity tending to deny Ray a fair trial.

Requester Harold Weisberg is the author of various books, including several in which he argues that Mr. Ray did not kill Dr. King. Mr. Weisberg's attorney is the same James H. Lesar who now represents and has heretofore represented Mr. Ray in the appeals discussed herein. Mr. Lesar has orally stated to us that Mr. Weisberg is Mr. Ray's "investigator," but has not yet put that statement in writing.

CBS will air a one-hour television "Special" on the murder of Dr. King, 7/ probably during the week of November 30, 1975. Mr. Brown of my staff has consulted with CBS' attorney and Exhibits Clerk Jules Gipson of the Shelby County Criminal Court, both of whom have advised us that CBS has been allowed to examine and photograph the physical evidence submitted at the original "mini-trial," including the rifle and alleged murder bullet. 8/ CBS seeks to obtain the records it has requested before broadcast time. As you are aware, the press of media deadlines was a principal reason for the inclusion by Congress of the time limits when it amended the Act in 1974. The request of CBS is, moreover, virtually identical with certain portions of that of Mr. Weisberg, which has been considered in its proper order.

There are seventy-one pages of records and eighteen photographs within the scope of Mr. Weisberg's request and thirty-one pages of records and fourteen

---

7/ This will be one of a series of at least four. The other subjects include President John Kennedy, Senator Robert Kennedy and Governor George Wallace.

8/ CBS was not allowed to remove the fatal bullet from the transparent envelope in which it is preserved. It is, therefore, very anxious to obtain the F.B.I. photographs of the bullet included with the material proposed for release, as its own results were disappointing.

photographs within that of CBS. There are far more records and photographs of ballistics tests made on rifles other than Mr. Ray's, but I consider them as fairly outside the scope of both requests, based on Mr. Brown's conversations with both attorneys. None of the excluded tests is of any evidentiary or historical value whatsoever, in view of the virtual certainty that the death bullet was fired from Mr. Ray's weapon. The F.B.I. never received any "butts, ashes or other cigarette remains" from "the white Mustang abandoned in Atlanta." Accordingly, there are no results of scientific tests performed on such, such as would be within the scope of part 4 of Mr. Weisberg's request.

Discussion

At the threshold, it is appropriate briefly to consider whether there is any privacy interest in the essentially scientific evidence which is the subject of the requests. If there is such an interest, it must be Mr. Ray's, inasmuch as this evidence proves to a likli-hood, although not to a scientific certainty, that the rifle which he purchased and which bears only his finger-prints fired this bullet that killed Dr. King. No other person is implicated by the evidence.

Looking at the matter solely in the standpoint of privacy, I submit that this is clearly a case of "historical interest" within the meaning of 28 C.F.R. 50.8. I agree, in effect, with the editorial judgment of CBS that the assassination of Dr. King commands public interest more-or-less equally with the killings of President Kennedy and Senator Kennedy and the comparable assault on Governor Wallace. It has been proposed in Congress that a national holiday be celebrated in the name of Martin Luther King, Jr. Some localities in fact now honor such a day. It is likely that the imagination and interest of the public at large are stimulated more by the fate of Dr. King than by the events concerning the spies Gimpel and Colepaugh, the records concerning whom we processed without regard for any possible general privacy considerations. It is likely that the interest in the Ray case qquals that found to exist and to be of historical proportion regarding materials pertaining to Alger Hiss and the Rosenbergs. For historical reasons alone, then, it is my judgment that privacy should

not be viewed as a consideration in determining the appropriate action to take on the instant requests. 9/

Privacy considerations [and any need to consider the Privacy Act] being absent, the next logical inquiry is whether either of the asserted exemptions [7(A) and 7(B)] protects any of the scientific evidence requested by CBS from mandatory release. If not, essentially identical materials must, of course, be made available to Mr. Weisberg, whether or not any relationship with Mr. Ray is taken to be established.

The CBS Request Should Be Honored In Its Entirety

Unless and until the Sixth Circuit reverses the judgment of the District Court denying habeas corpus, Mr. Ray stands convicted of Dr. King's murder upon his plea of guilty entered in the Tennessee state court. The judgments of the state and federal lower courts are entitled to the same presumption of "finality" as was accorded that of the United States District Court in the appeal of Stanley Spiegel. The Tennessee judgment of conviction here is even more than ordinarily final; it has survived all available state appeals and a habeas corpus petition to a United States District Court acting in light of the earlier opinion of the Court of Appeals. It is questionable how much weight, if any, can be given to the kind of speculation necessary to create an issue in this case along this line. Even if the Court of Appeals were to reverse, and the possibility exists that it might, it can also be speculated that the Supreme Court might grant certiorari; the state prosecutor might elect not to try Mr. Ray immediately or at all, but instead might choose to deliver him to the custody of the State of Missouri to serve the thirteen years he "owes"

9/ In addition, I note in passing that Mr. Weisberg allegedly makes his request in the capacity of "investigator" for Mr. Ray, although no written confirmation of that status is on file. What is of record, however, is the fact that attorney Lesar is simultaneously acting as counsel for both Messrs. Weisberg and Ray. Having been advised by Mr. Brown that release to Weisberg could well mandate a release to the world [and, specifically, a grant of the parallel CBS request] Mr. Lesar has persisted in his demand for the records. A waiver of Mr. Ray's privacy interest could, therefore, be inferred, if any were considered to exist, although I need not find such a waiver in view of my conclusions on the merits as herein set forth.

there, plus any additional sentence which may be imposed for his escape. In my opinion, this conviction is final as a matter of logical common sense and under our own F.O.I.A. precedents. Any other conclusion simply flies in the face of the manifest intent of Congress in passing the Act. In my further opinion, therefore, exemption 7(A) cannot be asserted as to either CBS or Mr. Weisberg, for it cannot be shown that the release "would actually interfere with pending or contemplated enforcement proceedings." 10/ There simply are no collateral, pending or "reasonably certain" prospective proceedings with which to interfere. 11/

There remains for consideration exemption 7(B), which was also asserted by the F.B.I. against CBS. It must be presumed that the Bureau sought to withhold the investigatory records in order to preserve the rights of Mr. Ray. 12/ The question then becomes whether the rights of Mr. Ray might be prejudiced to any degree by release of records and/or descriptions of physical evidence gathered at the scene of the crime, and/or by scientific analyses of such evidence. I strongly suggest that the answer must be in the negative. In the first place, physical evidence, to the extent that it is relevant at all, speaks for itself without the possibility of bias. A scientific analysis of such evidence is also presumably unaffected by human motives. The technician is presumed to exercise his skills dispassionately, without bias and often without knowledge of who may suffer or benefit if the truth is ascertained. Of

---

10/ Appeal of Philip J. Goldberg.

11/ The exception indicated in the appeal of Frank E. Bachner is inapplicable. Mr. Bachner's guilty plea was "accepted," while Mr. Ray's was followed by a statutorily required "mini-trial," in which much of the prosecutor's best evidence was presented. Of even greater significance, Mr. Bachner had co-conspirators at large and under active investigation; Mr. Ray is believed to have acted alone and our investigation concerning him has long since been terminated.

12/ In the appeal of Mitchell Rogovin, we concluded that 7(B) does not apply to a situation in which the Federal Government is the party on whose behalf the exemption is sought to be asserted. If the United States is not a "person" within the meaning of the clause, neither is the State of Tennessee.

course, a laboratory expert may be mistaken. It is submitted, however, that in such a case the right to a fair trial is likely to be enhanced by the early release of scientific findings, rather than reduced; if a mistaken analysis has been made, an opportunity for other tests.. to reveal the error can only contribute to a "fair" proceeding. 13/ My second point is that release of this scientific evidence through CBS to the public would tend to deny Mr. Ray a fair retrial, if at all, only if the dissemination caused "massive, pervasive and prejudicial publicity." Sheppard v. Maxwell, 384 U.S. 333 (1966). Broadcast of the information by a major television network might, indeed, result in "massive" and "pervasive" coverage. I submit that in the circumstances of this case, however, it could not be "prejudicial." Mr. Ray's admission of guilt is recorded in the minds of nearly every adult American and is set forth in tens of millions of school history texts. Common belief in his culpability being nearly absolute, it is difficult to conceive how any evidence could now cause him significant further prejudice. Furthermore, if truly prejudicial evidence exists, it is not the subject of these requests. The ballistics test results and other scientific evidence with which we are concerned merely make Mr. Ray a likely assassin [not the certain one he made himself out to be in open court]. The Tennessee prosecutor cannot be accused of prejudicial misconduct by reason of the independent action of this Department. 14/ Our own regulations, prohibiting the release of "investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests" are applicable to the pre-trial period only. 15/ Ray's case, however, remains in post-trial

---

13/ Cf. appeal of Daniel Magana wherein it was said by you that "It is my opinion that, in most circumstances, the release of material which is possibly relevant to an ongoing proceeding is more likely to serve the ends of justice than to affect them adversely." Although Magana anticipated civil litigation, the basic concept is valid in the criminal case context as well.

14/ A defendant seldom succeeds in obtaining relief for alleged prejudicial pre-trial publicity, absent participation by his prosecutor in the release of the news. See cases collected at 22 ALR Fed. 560.

15/ "These guidelines shall apply to the release of information to news media from the time a person is subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise." 28 C.F.R. 50.2.

status. Most importantly, even if Ray were to be found to have been prejudiced by our release, that prejudice could be cured by an appropriate continuance. Sheppard, supra, at page 363; United States v. Pfingst (2d Cir. 1973), 477 F.2d 177, 186 ("* * * the memory of the public for such news is short").

In my judgment, then, there is absolutely no basis for saying that these releases could prevent a fair trial and nothing but unsubstantial speculation to support a conclusion that there would be any impediment to one at all. Accordingly, I conclude that the CBS request should be granted in its entirety by release of thirty-one pages at $.10 per page, eleven black and white photographs at their cost of $.40 each and three color photographs at their cost of $3.00 each. Twenty hours of special search time were expended concerning this matter, but without the prior advice to either of the requesters provided for by 28 C.F.R. 16.9(c). For this reason, and because the release to CBS will primarily benefit the general public, it is my opinion that these special search fees should be waived. Accordingly, the total charge to CBS should be $16.50.

The Weisberg Request Should Be Honored To the Extent Records Exist

The broader Weisberg request includes everything sought by CBS. Release to CBS being release "to the world," all of the records and photographs discussed above should also be given to Mr. Weisberg. In addition, Mr. Weisberg has asked for the "results of any spectrographic or neutron activation analyses." There are eight pages of such analyses made with respect to the clothes worn by Dr. King at the time of his death, concluding, in effect, that the clothes are useless as evidence. There is simply no exemption in the Act which would justify withholding these records. Accordingly, they should be released. There were no scientific tests performed on "butts, ashes or other cigarette remains found in the White Mustang," for the reason that no such materials were ever submitted to the F.B.I. Mr. Weisberg should be advised of this fact, in verification of which I consider it advisable to furnish him [without charge] with a two page listing of the evidence recovered from the Mustang. Fifteen black and white "photographs or sketches of any suspects in the assassination of Dr. King" and

"photographs from whatever source taken at the scene of the crime," for which the cost of reproduction was $.40 each, and three color photographs of the murder bullet, for which the cost of reproduction was $3.00 each, are in the files and should be released. The total charge to Mr. Weisberg should be $22.10.

Recommendation

I recommend that you reverse the actions of Director Kelley. Proposed letters to effect the results discussed herein are attached.

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

I am now advised that Mr Levi sent a note dated today, 11-24-75, to AAG Pettinger and AAG Thornburgh, as follows: "Please have the Martin Luther King assassination file reviewed at once in the light of recent testimony and make a recommendation as to whether the case should be reopened." As a result of receiving this note, Stan Pettinger sent me a message that this is now an active investigation file and should not be made public at this time. His view is that the matter under the F.O.I.A could be reconsidered when the new investigation is completed. I pointed out the obvious discrepancy between Mr. Levi's note [make a recommendation whether to reopen] and Stan's words, "going public" with a statement that were really desirous of "going public" with a statement that the King assassination investigation has been reopened, as that would almost certainly be a necessary element of any claim at 7(A) [7(B) does them no good, as Weisberg will almost certainly get a statement that he represents Ray, leaving CRS as the only victim, while letting the stuff in Ray's hands]. I have just been advised that Stan has called a meeting of all concerned CRD personnel for noon tomorrow to try and figure out what Mr. Levi's note means and a good answer to my question.

I adhere to my recommendations that both appeals be allowed.

11-24-75 J.J.S.