UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

SECOND AFFIDAVIT OF HAROLD WEISBERG

I, Harold Weisberg, being first duly sworn, depose as follows:

I am the plaintiff in the above-entitled action.

2. I have spent a major part of the last eight years of my life investigating the assassination of Dr. Martin Luther King, Jr. and the framing of his alleged assassin, James Earl Ray. I am a recognized authority on this crime, which the Department of Justice has declared was the costliest in our history. The work which I have done on it is not duplicated by anyone else.

3. In Weisberg v. Department of Justice, Civil Action No. 75-226, my suit for disclosure of the FBI's reports on the spectrographic and neutron activation analyses it performed on the items of evidence in the assassination of President Kennedy, the United States Court of Appeals for the District of Columbia recently stated: "The data which plaintiff seeks to have produced . . . are

lieve that disclosure of the information which I seek in this suit is also in the national interest. The assassination of Dr. and its aftermath, including the coerced guilty plea of James Earl Ray, raises profoundly disturbing questions about the integrity of such basic institutions as the Federal Bureau of Investigation, the judiciary, and the legal profession. The national interest can only be served by the fullest possible airing of the facts of that assassination and the investigation of it.

5. I have already written one book about the assassinatiln of Dr. King, Frame-Up. I plan to publish a second as soon as possible. I have virtually completed the manuscript for this second book. All that remains to be written are the chapters on the new evidence obtained as a result of this lawsuit. This book will, of course, make available to the public much information which is not publicly known or, if public, has not been properly evaluated.

6. I intend that my extensive files on the assassinations of President Kennedy and Dr. King will become part of an historical archive in a university and I have made arrangements for this. Whatever records I obtain as the result of this lawsuit will become part of that archive and thus a permanent and public record.

7. I have, at my own cost, published extensively the records which I have obtained from the government. In addition, it has been my pratice to make available to the press and to authentic scholars in the field copies of what I obtain in my various Freedom of Information cases, whether or not I also publish them myself.

8. I am 63 years old. Last year I suffered a serious attack of phlebitis which hospitalized me for several days. This has cur-

for more than half an hour at a time. When seated I should keep my legs horizontal to the degree possible.

9. Because of my medical condition I cannot predict how much longer I will live or can continue to work effectively. This means that time is of the essence for me and the work I do.

10. On April 15, 1975, sixteen months ago, I filed a Freedom of Information request for certain categories of records pertaining to the assassination of Dr. King. There still has been only partial compliance with that request. The compliance with my subsequent request of December 23, 1975, is virtually nonexistent.

11. The government has employed a variety of strategems to stonewall my requests for information in this case. Its initial ploy in court was to assert that the case was about to be mooted. Thus, at the first calendar call on February 11, 1976, the government attorney, Mr. Dugan, stated:

> I am informed by my client that they are preparing an affidavit that will, I think, convince the Court and the plaintiffs that this case is moot. (Transcript, p. 2)

This was repeated at the next calendar call on March 26, 1976:

> Subsequent to our last calendar call we have had discussions with the plaintiff and the plaintiff's counsel and the reason we did not file our motion was because it was my understanding on the assurances given--well, I felt that the case would be mooted out. (Transcript, p. 2)

12. At the third calendar call on May 5, 1976, Mr. Dugan dropped the mootness argument and asserted that if the Court was not disposed to dismiss plaintiff's amended complaint,

> we are prepared to support the motion

13. At the fourth status call on May 18, 1976, Mr. Dugan claimed that the FBI was then processing requests made in September 1975, and repeated his oral plea for more time:

> I am prepared to indicate to the Court today that within the three-week period of time we will attempt to demonstrate to the Court why the FBI can't reach the December 23 request out of turn. (Transcript, p. 13)

14. At the June 10, 1976, calendar call, Mr. Dugan suggested both that he was going to file a motion to dismiss (transcript, p. 10) and that he was prepared to file an affidavit in support of further delay on behalf of the FBI. (Transcript, pp. 14, 18) He stated he already had the affidavit but had not filed it because of the "rush of business":

> I think in the affidavit we indicate when it was filed that we would be able to reach this by September, I think, in three or four months. (Trascript, p. 18)

15. On July 1, 1976, another calendar call was held. Again Mr. Dugan promised to file a motion for a stay supported by affidavit:

> It is our intention with respect to the amended complaint and insofar as it relates to the F.B.I. to file a formal motion to stay. It will be documented not only by the F.B.I., but by the individual who is in charge of the review of the Department of Justice Freedom of Information Act section. (Transcript, p. 2)

It sounded as if the filing were imminent: "I suspect I will be able to file that by Tuesday, Your Honor." (Transcript, p. 3) Mr. Dugan was emphatic about his intention to file his motion and supporting affidavits:

> I would want the Court before it orders

16. In the six weeks since the July 1 calendar call, no motion for a stay has been filed by the government, nor has any affidavit. Nor has the FBI provided me with a single additional page of documents on the assassination of Dr. King.

17. By alluding to affidavits and motions which he says he is going to file but never does, Mr. Dugan has managed to delay this case time and again. He asserts that the Court should not issue any orders until he files his motions and affidavits, then does not file them. This prevents me from effectively challenging the unsupported oral claim of "due dilligence" which Mr. Dugan has made on behalf of the FBI and postpones both the resolution of this issue by the Court and my access to documents I vitally need.

18. Yet when my attorney read to this Court from documents which he had obtained from the Department of Justice a few days previously, Mr. Dugan roared that Mr. Lesar was guilty of unprofessional conduct because he had not first filed these documents so Mr. Dugan could respond to them. I doubt Mr. Dugan was really unfamiliar with the documents read to this Court by Mr. Lesar. I have twice sat in the courtroom prior to the call of this case and seen him go over xeroxes of records that had been supplied me by his client.

19. At the June 10 calendar call Mr. Dugan informed the Court that:

> It is the Department's position that cases of historical importance are not processed out of turn, they are not expedited in a sense that they would rush through it, rather they take more time in historical cases to make sure that all is releasable. (Transcript, pp. 2-3)

his April 23, 1976, affidavit that requests are handled out of order "where an appellant can demonstrate a real and substantial need for preferential handling." (p. 7) and that there are cases "where, under the standing guidance of the Deputy Attorney General the Department recognizes the historical interest that exists and attempts to effect the maximum possible disclosure of records." (p. 9)

20. In this case it is obvious that is spite of this historical interest the Department of Justice is not attempting to effect the maximum possible disclosure of records. In fact, the reverse is true. Suppression is the name of the game.

21. One indication of this is the unjustified masking of those few documents which have thus far been provided me. On my first meeting with Special Agent Wiseman I kidded him about the masking of names published countless times in the press, including the names of those subpoenaed as witnesses for James Earl Ray's trial. Mr. Wiseman was embarrassed.

22. During my second meeting with Mr. Wiseman I asked him for unmasked copies or a justification of the masking. I reminded him that this Court had said that any masking must be justified. His response was simple and direct: "I'll see you in court first."

23. To this day I have not received a single record restoring the names masked from the documents given me. Yet the masking done is totally unjustifiable. For example, one document which is masked is the Birmingham Field Office's telegram of April 5, 1968. I can identify the names which are masked from that document and did so when I ridiculed this unjustifiable masking to Mr. Wiseman.

were published in my book Frame-Up more than five years ago and have been printed and broadcast countless times in the press. In fact, all of the names which are masked in this document are contained in unmasked copies of the documents filed in Ray's extradition proceedings which I obtained in a 1970 lawsuit against the Department of Justice.

24. Another indication of the government's obstruction of my information request is its refusal to respond to the request for production of documents which I filed on May 4, 1976. That request asked for the "three boxes of indices" referred to in the October 22, 1968, letter from District Attorney General of Shelby County Phil M. Canale. These indices have not yet been provided. They are essential because they will help me prove that the Department of Justice has not complied "in good faith" or with "due dilligence" to my April 15, 1975, request, much less that of December 23, 1975.

25. As the attached copy of Mr. D. Robert Owen's October 18, 1968, letter to Mr. Canale makes clear, these three boxes of indices are of 25 volumes of evidence compiled by the FBI during its investigation of Dr. King's assassination and made available to the prosecution for use at the scheduled trial of James Earl Ray.

26. These 25 volumes of evidence were compiled in various FBI field offices, not at FBI Headquarters. They contain relevant records which have been deliberately withheld by the Department of Justice despite sworn statements to the contrary.

27. If there is no record of these 25 volumes and their contents in the FBI Headquarters' index which Special Agent Wiseman has sworn he used in conducting his search for the documents I have

28. In my prior Freedom of Information cases it has been the practice of the government to use affidavits by officials without first-hand knowledge to attest to the government's compliance with my requests or the non-existence of the records I seek. When Mr. Dugan told the Court on February 11, 1976, that the Department was preparing an affidavit which would show that the case was moot, I informed him after the status call that day that any affidavit swearing that my request had been fully complied with would be false and a deception of the Court, and that I would prove it.

29. I told Mr. Dugan that I would insist upon first-person affidavits and could provide him with the names of those who could execute them. When he declined this offer, I told Mr. Dugan that whether or not he would be suborning perjury in filing the affidavit he described, as of the time of my informing him of the fact and making this offer, he would be in that position because he did know that any such affidavit would be falsely given. Mr. Dugan's response was: "I can't control my client."

30. On May 11, 1976, FBI Director Clarence Kelley wrote my attorney as follows:

> As you were advised at the May 5, 1976, meeting, our Memphis Field Office had been requested to search their records for any additional material which might be responsive to your Freedom of Information Act request dated April 15, 1975, not available at FBI Headquarters.

To date the FBI is virtually in total noncompliance with this representation. I have received some photographs of the scene of the crime which were allegedly located at the Memphis Office, but that is only one of seven categories of information contained in my April

tached to Mr. Owens's October 18, 1968, letter to Mr. Canale shows that by August 22, 1968, the Memphis Field Office had compiled four volumes of evidence on the assassination of Dr. King. These four volumes were compiled by Special Agent Joe Hester, who was in direct charge of the Memphis Field Office investigation of the King assassination. Yet the name of Joe Hester does not appear on a single document provided me other than this "Key to Volumes".

32. I am familiar with the FBI's practices in compiling exhibit volumes in major cases. It is not possible that these volumes do not contain materials relevant to my April 15, 1975, request which have not been given me. For example, the October 18, 1968, letter of Mr. Owen states that one of the three boxes of indices:

> . . . contains all physical evidence designated with "Q" numbers by the FBI, the chain of evidence pertinent to that item, and any laobratory examination done. There is also a section on all photographs and maps prepared, fingerprints examined, and "known" physical items used for comparison purposes.

The description of this index alone indicates the existence of documents which come within my request but which have not been given to me. I believe that when I am afforded a chance to go over these volumes and indices, I will be able to pinpoint more of what is being deliberately withheld from me.

32. The Department of Justice is claiming that my December 23, 1975, request has not been complied with because the FBI cannot process any request out of the sequence in which it was received. My own experience indicates that this is not true. My Freedom of Information Act requests of the Department of Justice are not taken in order. For example, on December 2, 1970, I requested that the

tion of President Kennedy . . ." This request was made on an official form DJ 118 and accompanied by the required $3.00 check. The Department of Justice cashed my check but never acknowledged receipt of the check or my request. Nor did it provide me with the requested records, even though it has since provided them to others.

33. The Department of Justice is stonewalling my request in this suit because it will force the disclosure of materials embarrassing to both it and the FBI. For example, my amended complaint includes a request for Cointelpro documents, particularly those related to a group of young black militants known as The Invaders. I have not been given a single piece of paper relevant to the Cointelpro/Invaders request.

34. On June 30, 1976, Mr. Lesar filed a motion and affidavit which attached two stories by Newsday reporter Les Payne. These stories reported confirmation of the Memphis Cointelpro operations by the Civil Rights Division and the retired Special Agent in Charge of the Memphis Field Office of the FBI, Mr. Robert Jensen.

35. When the first of these two Newsday articles appeared on February 1, 1976, FBI Director Clarence Kelley ordered an immediate investigation of the Memphis Cointelpro/Invaders operation.

36. This investigation was completed prior to the first status call in this case on February 11, 1976, and a report made on it. FBI Director Clarence Kelley is among the Department of Justice officials who have knowledge of this investigation and report. Yet neither that report nor a scrap of paper relevant to the Cointelpro operations has been provided to me.

37. To my knowledge the Department of Justice has conducted

tion with the habeas corpus petition filed on behalf of James Earl Ray. The third followed the filing of the information request in this case. The fourth and current reinvestigation followed developments in this case. From none of these "reinvestigations" has anything "of interest . . . to the nation" been made available by the Department of Justice. From none of these "reinvestigations" have I received so much as a single piece of paper.

38. Not long after I requested the files sought in this action, FBI files publicly described as of large volume were transferred to the Civil Rights Division for its "reinvestigation". Then, on April 29, 1976, the Attorney General announced a further transfer to the Office of Professional Responsibility.

39. Before this month I had received only a few records from the Civil Rights Division, some of which were actually from the records of the Criminal Division. These records largely related to Mr. Bernard Fensterwald, Jr., who previously represented James Earl Ray.

40. On June 30, 1976, I filed a Motion for Certification of Compliance by units of the Department of Justice having records pertaining to the King assassination. None of the units named, nor any others, have since certified compliance. Neither the Criminal Division nor the Office or Professional Responsibility has made any response to this motion or provided a single record. Nor has the Department of Justice opposed or filed any response to that motion.

41. On July 16, 1976, the Deputy Assistant Attorney General in the Civil Rights Division mailed my counsel 32 documents. The plain and simple truth is that most of these documents refer ex-

Rights Division. These documents are censored and masked without warrant or sense. The masking obliterates what is publicly known, including the names of people who have gone public on their own initiative. These documents also come from the same files as those previously made available by the Civil Rights Division and it is apparent that they could easily have been available to me when those were. The fact that they were not is yet another evidence of a deliberate policy of attempting to delay and obstruct compliance with my information request so as to deny me and the public access to the records vital to understanding the performance of the FBI and the Department of Justice in investigating the assassination of Dr. King.

42. Given the importance of the issues, my age and the state of my health, I believe this is an intolerable affront to the meaning of the Freedom of Information Act which the government is supposed to uphold.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10 day of August, 1976, deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 7-1-78

Attachment 1 / C.A. 5-1996

October 18, 1968

Mr. Phil M. Canale, Jr.
District Attorney General
County of Shelby
157 Poplar Avenue
Memphis, Tennessee

Dear Mr. Canale:

Enclosed are the indices I promised you. There are three boxes. One, in alphabetical order, reflects an interview of or reference to the individual listed. The second box contains the testimony, chain of evidence, and physical evidence (when it has not been specifically designated by the FBI) relevant to each episode in the case. The third box contains all physical evidence designated with "Q" numbers by the FBI, the chain of evidence pertinent to that item, and any laboratory examination done. There is also a section on all photographs and maps prepared, fingerprints examined, and "known" physical items used for comparison purposes.

I am also sending you a key to the volumes indexed, and a more complete chronology of Ray's activities which include references to the physical proof, except for the crime scene evidence.

If there are any problems, please give me a call.

Sincerely,

D. ROBERT OWEN
Deputy Assistant Attorney General
Civil Rights Division

KEY TO VOLUMES

I	SA Hester; 4/17/68; Memphis
II	SA Snow; 4/17/68; Birmingham
III	SA Sheets; 4/18/68; Los Angeles
IV	SA Sentinella; 4/18/68; Atlanta
V	SA Callender; 4/29/68; New Orleans
VI	SA Hester; 4/30/68; Memphis
VII	SA Puddister; 5/2/68; Jackson
VIII	SA Rice; 5/13/68; Newark
IX	SA Hester; 6/10/68; Memphis (Prosecutive Summary)
X	SA Howe; 5/15/68; Kansas City
XI	SA Howe; 6/14/68; Kansas City
XII	SA Dobson; 5/10/68; St. Louis
XIII	SA Dumaine; 5/10/68; Chicago
XIV	SA Callender; 5/17/68; New Orleans
XV	SA A'Hearn; 5/17/68; Los Angeles
XVI A	SA Stinson; 5/17/68; Springfield
B	SA Jellison; 5/17/68; Miami
C	SA Weir; 5/17/68; Houston
D	SA Sentinella; 5/17/68; Atlanta
XVII	SA Snow; 5/20/68; Birmingham

PLACE	NAME USED	ACTION	Physical PROOF

XIX SA Roberts; 5/24/68; Springfield

XX SA Reid; 5/31/68; El Paso

SA Hart; 5/29/68; Detroit

SA Reid; 5/24/68; El Paso

XXI SA Curtis; 6/6/68; Pittsburgh

XXII SA Dobson; 6/25/68; St. Louis

XXIII SA Callender; 7/12/68; New Orleans

XXIV SA Perry; 7/30/68; Atlanta

XXV SA Hester; 8/22/68; Memphis (Mexican Activities)

"A" and "B": Files containing letterhead memos, Hoover memos, the British Report, etc.

Attachment 2 7-7-1996

JJ-118
7-4-67)

U. S. DEPARTMENT OF JUSTICE

WASHINGTON, D. C. 20530

REQUEST FOR ACCESS TO OFFICIAL RECORD UNDER 5 U.S.C. 552(a) and 28 CFR PART 16

See instructions for payment and delivery of this form at bottom of page

NAME OF REQUESTER	ADDRESS (street, city, state and zip code)
Harold Weisberg	Rt 8, Frederick, Md. 21701
DATE: 12/2/70	
DO YOU WISH TO RECEIVE COPIES? ☒ YES ☐ NO IF YES, SO INDICATE (no more than 10 copies of any document will be furnished).	NUMBER OF COPIES REQUESTED: 1 each
	OFFICE AND CITY WHERE RECORD IS LOCATED (if known): Washington

DESCRIPTION OF RECORD REQUESTED (include any information which may be helpful in locating record)

All reports on, of or about and interviews with James Powell, Army Intelligence, who took a picture or pictures in Dealey Plaza at the time of the assassination of President Kennedy, other than Warren Commission Files CD206, pp. 19 and 20, and an 8x10 black-and-white print of the film referred to therein. I would also like to have access to any other such pictures. Letter attached with further details.

LITIGATION: DOES THIS REQUEST RELATE TO A MATTER IN PENDING OR PROSPECTIVE LITIGATION? ☐ YES ☒ NO

FILL IN IF IN PENDING → LITIGATION	COURT (check one) ☐ FEDERAL ☐ STATE	DISTRICT	NAME OF CASE	DOCKET NUMBER

Harold Weisberg
SIGNATURE

FOR USE BY DEPARTMENT OF JUSTICE ONLY

THIS REQUEST IS:

☐ GRANTED

☐ DENIED

☐ REFERRED

A MINIMUM FEE OF $3.00 MUST ACCOMPANY THIS REQUEST. OTHER CHARGES ARE AS FOLLOWS. (do not write in this box)

FOR SECOND AND EACH ADDITIONAL ONE QUARTER HOUR SPENT IN SEARCHING FOR OR IDENTIFYING REQUESTED RECORD $ 1.00 _____

FOR EACH ONE QUARTER HOUR SPENT IN MONITORING REQUESTER'S EXAMINATION OF MATERIAL $ 1.00 _____

COPIES OF DOCUMENTS:
50¢ FIRST PAGE, 25¢ EACH ADDITIONAL PAGE _____

FOR CERTIFICATION OF TRUE COPY $ 1.00 EACH _____

FOR ATTESTATION UNDER THE SEAL OF THE DEPARTMENT $ 3.00 EACH _____

GSA CHARGE _____

TOTAL CHARGE _____

12/2/70

Mr. Richard Kleindienst
Deputy Attorney General
Department of Justice
Washington, D.C.

Dear Mr. Kleindienst,

NBC's "First Tuesday" handling of Army Intelligence activities reminds me of something I've intended asking but have long forgotten. Enclosed is a DJ-118 form covering it and my check.

There should be further FBI reports on this. The two available at the National Archives are quite incomplete. For example, Powell was trapped in the Texas School Depository Building, with a camera. It seems unlikely that under such dramatic circumstances, any man, especially one of his training and experience, would have content himself with but a single picture. It also seems unlikely that, having been trapped inside the building, there was no official interest in him and his picture or pictures for so long.

So, I would like copies of any other reports on, of or about Powell and to be informed of and permitted to examine any other pictures, if he took any.

Sincerely,

Harold Weisberg