

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant
.....

Civil Action No. 75-1996

SEP 1977
[Stamp]

MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO
CRIME SCENE PHOTOGRAPHS TAKEN BY JOSEPH LOUW

Comes now the plaintiff, by and through his attorney, and moves the Court for summary judgment in his favor with respect to prints of crime scene photographs taken by Mr. Joseph Louw which are being withheld from him, on the grounds that there are no genuine issues as to any material fact and plaintiff is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

In support of this motion, plaintiff submits herewith a statement of material facts as to which there is no genuine issue and the affidavit of plaintiff Harold Weisberg.

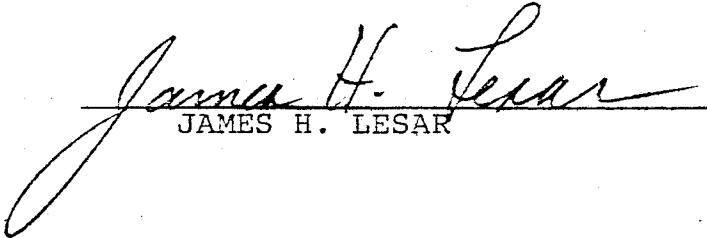
Respectfully submitted,

James H. Lesar

JAMES HIRAM LESAR
910 16th Street, N.W., Suite 600
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of September, 1977, hand-delivered a copy of the foregoing Motion For Summary Judgment With Respect To Crime Scene Photographs Taken By Joseph Louw to the office of Assistant United States Attorney John R. Dugan, Room 3419, United States Courthouse, Washington, D.C. 20001, attorney for the defendant.


JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

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Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant
.....

STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

In support of his motion for summary judgment with respect to the release of prints of the photographs taken at the scene of Dr. Martin Luther King's assassination by Mr. Joseph Louw, and in conformity with Local Rule 1-9(h), plaintiff submits herewith a statement of material facts as to which he contends there is no genuine issue:

1. Plaintiff seeks under the Freedom of Information Act to have the FBI provide him with prints of photographs taken at the scene of Dr. Martin Luther King's assassination by Mr. Joseph Louw.

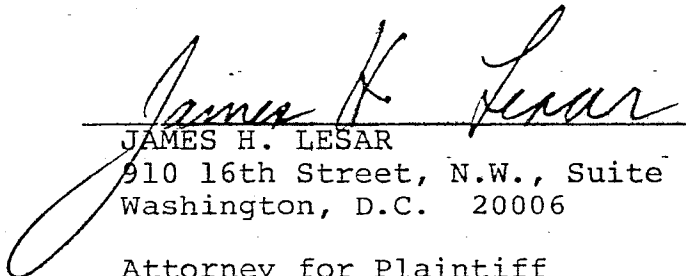
2. Plaintiff seeks to obtain prints of Mr. Louw's photographs for purposes of scholarly study of Dr. King's assassination and the FBI's investigation of it.

3. The photographs taken by Mr. Louw moments after the assassination of Dr. King constitute basic evidence of a crime of great historical interest.

5. Making prints of the Low photographs available to plaintiff will not impair the government's ability to obtain necessary information in the future.

6. Making prints of the Low photographs available to plaintiff will not cause substantial harm to the competitive position of Time, Inc., the alleged copyright holder of these photographs.

7. The cost to plaintiff of obtaining the Low photographs from the FBI is more than \$1,000 less than the sum he would have to pay for the same prints if he could afford to purchase them from Time, Inc.



JAMES H. LESAR
910 16th Street, N.W., Suite 600
Washington, D.C. 20006

Attorney for Plaintiff

the FBI is exempted under the provisions of 5 U.S.C. § 552(b)(3) and (b)(4). (See Attachment 6 to Affidavit of Harold Weisberg)

The government is compelled to release copies of the Low photographs to plaintiff unless they clearly fall within the scope of one of the exemptions to the Freedom of Information Act. The Act's exemptions are to be narrowly construed. Bristol-Myers Co. v. F.T.C., 424 F. 2d 935 (C.A.D.C. 1970), cert. denied, 400 U.S. 824.

The first of the two exemptions invoked by the FBI, Exemption 3, creates an exception for: "information specifically exempt from disclosure by statute." However, the defendant has not yet cited any statute which specifically exempts the Low photographs from disclosure. Until defendant does so, plaintiff need not address this claim. Defendant's claim that the photographs are exempt from reproduction under Exemption 4 will be dealt with below.

Plaintiff seeks these photographs for scholarly study, not for purposes of publication or commercial gain. The FBI's charge for reproducing black-and-white photographs is \$0.40 a print. At this rate it would cost plaintiff \$42.80 to purchase prints of the 107 Low photographs which the FBI says it has. Time, Inc., which has a long history of exploiting vital evidence relating to political assassinations for profit, and suppressing equally vital evidence which it has purchased, would charge plaintiff \$10.00 a print to obtain the Low photographs from it, without allowing any copyright use for that price. The difference in price amounts to \$1,027.20. The price at which Time, Inc. offers prints of the Low photographs is prohibitive. Plaintiff simply cannot afford

II. THE LOUW PHOTOGRAPHS ARE NOT PROTECTED BY EXEMPTION 4

Defendant alleges that the photographs taken by Mr. Louw and obtained by the FBI from Time, Inc. are not subject to disclosure by virtue of 5 U.S.C. § 552(b)(4). Exemption 4 makes an exception to the mandatory disclosure requirements of the Freedom of Information Act for: "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

The leading cases in the District of Columbia Circuit on the interpretation of Exemption 4 are National Parks and Conservation Ass'n v. Morton, 498 F. 2d 765 (C.A.D.C. 1974) and Petkas v. Staats, 501 F. 2d 887 (C.A.D.C. 1974). In National Parks, the Court of Appeals held:

To summarize, commercial or financial matter is "confidential" for purposes of this exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain the necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. National Parks, supra, at 770.

In Petkas the Court of Appeals reaffirmed this holding. It also added: "Nor can a promise of confidentiality in and of itself defeat the right of disclosure." Petkas, supra, at 889, citing Robles v. Environmental Protection Agency, 484 F. 2d 843 (4th Cir. 1973); Getman v. N.L.R.B., 450 F. 2d 670 (C.A.D.C. 1971); Ackerly v. Ley, 420 F. 2d 1336, 1339-1340, n. 3 (C.A.D.C. 1969).

Defendant's claim that the Louw photographs are exempt from disclosure under Exemption 4 does not meet the objective standards

the future. Regardless of who takes them, crime scene photographs are subject to subpoena by the appropriate governmental authorities. The availability of compulsory process to obtain information has been recognized as itself being sufficient grounds for presuming that public disclosure will not impair the government's ability to obtain such information in the future. National Parks, supra, at 770; Save The Dolphins v. United States Dept. of Com., 404 F. Supp. 407, 412-413 (N.D. Calif. 1975).

Nor can defendant successfully maintain that release of prints of the Louw photographs to plaintiff would cause "substantial harm" to the "competitive position" of Time, Inc. Time, Inc. is a very wealthy corporation. The Louw photographs represent a miniscule portion of its assets. In fact, after plaintiff examined contacts of the Louw photographs and expressed to Time's representative his opinion that there could be some commercial value in some of these photographs which Time had not recognized, Time remained disinterested. (See attached Affidavit of Harold Weisberg, ¶¶16-17) Nor is there any question of damage to "competitive position here. The simple fact is that Time, through its wealth, has a monopoly on basic photographic evidence pertaining to Dr. King's assassination. By not publishing most of this photographic evidence over the years and by refusing to make it available to scholars of the King assassination at a reasonable rate, Time has effectively suppressed it. Now that plaintiff seeks it under the Freedom of Information Act, defendant proposes that the government team up with Time, Inc. in further suppressing it. Such a position is inconsistent with the spirit and letter of the Freedom of Information

III. IF THE LOUW PHOTOGRAPHS ARE EXEMPT UNDER EXEMPTION 4, DEFENDANT HAS NONETHELESS ABUSED ITS DISCRETION IN REFUSING TO MAKE PRINTS OF THEM AVAILABLE TO PLAINTIFF

Plaintiff strongly urges that the Louw photographs are not exempt from the Freedom of Information Act's mandatory disclosure requirements because of Exemption 4. However, if the Court should determine that they do fall within the ambit of that Exemption, then the Court must next consider whether the defendant, in refusing to make prints available to plaintiff, has abused its discretion. Charles River Park "A", Inc. v. Department of H. & U.D., 519 F. 2d 935, 943 (C.A.D.C. 1975)

Plaintiff contends that the FBI's refusal to provide him with prints of the Louw photographs is an abuse of agency discretion. Insofar as any justification for the FBI's refusal may be gleaned from Director Kelley's May 11, 1976 letter to plaintiff's counsel, it is simply that these photographs are the "property" of Time, Inc., and Time, Inc. has refused to authorize the government to make prints of them available to plaintiff.

This is not a satisfactory employment of the agency's discretion. In the first place, it makes no attempt to take into consideration the great historical interest in the assassination of Dr. King. Yet the Department of Justice is already on record as stating that, because of its great historical importance, the maximum possible number of records pertaining to it will be disclosed.

Secondly, the deference to Time, Inc. because the Louw photographs are its "property," while appearing legalistic, does not reflect the actual state of the law because it fails to take into account the venerable doctrine of fair use. As one court has

in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner." Meeropol v. Nizer, 417 F. Supp. 1201 (S.D.N.Y. 1976), citing Ball, Copyright and Literary Property 260 (1944); Rosemont Enterprises, Inc. v. Random House, Inc., 336 F. 2d 303 (2d Cir. 1966), cert. denied, 385 U.S. 1009 (1957).

The case law developed four general criteria to aid in determining when the doctrine of fair use applied. The new Copyright Act, Public Law 94-553, adopt these criteria. Section 106 of the Act (17 U.S.C. § 106) defines the exclusive rights which go with copyright ownership. Section 107, however, limits those rights in accordance with the doctrine of fair use:

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Under these provisions it is quite clear that the Louw photographs are subject to the doctrine of fair use. Time, Inc., is doubtless well aware of this, since it once brought suit for copyright infringement of the Zapruder film of President Kennedy's assassination. Time Incorporated v. Bernhard Geis Associates, 293 F. Supp. 130 (S.D.N.Y. 1968) Although Time, Inc. had complied

In reaching its decision, the court gave primary importance to the fact that "There is a public interest in having the fullest information available on the murder of President Kennedy." In addition, the court concluded that there would be little, if any, economic injury to Time, Inc., and suggested that reproduction of frames of the Zapruder film in this book would be more likely to enhance the value of the copyrighted work than diminish it. Geis, supra, at 146.

The instant case presents even stronger arguments for the fair use doctrine than did the Geis case. Unlike Geis, where the author surreptitiously copied the Zapruder film and deliberately appropriated it for use in a commercial work, plaintiff has openly stated that he wants the Louw photographs for scholarly study, and if he should ever contemplate publishing them, he would honor Time's copyright and pay for such usage. In addition, the value of the Louw photographs is commercially much less than the value of the Zapruder film. Like Geis, however, the Louw photographs do present a case in which there is a paramount public interest in having the fullest information available about the assassination of Dr. King. There is no possible economic injury to Time, Inc. from plaintiff's use of these photographs. If anything, his study of them can only enhance their value to Time, Inc.

In short, the justification which the FBI has given for withholding these photographs from plaintiff cannot pass critical scrutiny. Weighed against the public importance in having all possible information about the assassination of Dr. Martin Luther King made public, and considering that there is no detriment to Time, Inc. in making these prints available to plaintiff, it is an

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U.S. DEPARTMENT OF JUSTICE, :
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Defendant :
: :
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O R D E R

Upon consideration of plaintiff's motion for summary judgment with respect to the crime scene photographs taken by Mr. Joseph Louw, and the entire record herein, it is by the Court this _____ day of _____, 1977, hereby

ORDERED, that plaintiff's motion is hereby GRANTED; and it is further

ORDERED, that the Federal Bureau of Investigation shall promptly provide plaintiff with prints of all photographs taken by Mr. Joseph Louw at the scene of Dr. King's assassination.

UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF COLUMBIA

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: :
HAROLD WEISBERG, : :
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Plaintiff, : :
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: :
U.S. DEPARTMENT OF JUSTICE, : :
: :
Defendant : :
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AFFIDAVIT OF HAROLD WEISBERG

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

1. I am the plaintiff in the above-entitled cause of action.

2. By letter dated May 11, 1976, FBI Director Clarence M. Kelley advised my attorney that the FBI would not provide me with copies of the crime scene photographs taken immediately after Dr. King's assassination by Mr. Joseph Louw because Time, Inc., the alleged copyright holder, had not authorized the FBI to do so.

(See Attachment 6) Director Kelley claimed that these photographs are exempt from disclosure under two exemptions to the Freedom of Information Act:

(b) (3) information specifically exempt from disclosure by statute;

(b) (4) commercial information obtained from a person and privileged and confidential

4. With respect to the Exemption 4 claim, no evidence has been produced to show that the Louw photographs constitute "commercial information," within the meaning of that term as it is used in Exemption 4, or that the Louw photographs are "privileged and confidential."

5. The FBI has not claimed that the Louw photographs were made available to it on the basis of a promise that they would be kept confidential. These photographs are part of the basic evidence of Dr. King's murder. They were, and are, subject to attempts to subpoena them at any trial in connection with Dr. King's death. At the time they were obtained by the FBI their existence was public knowledge and some of them had been published.

6. The facts indicate not that Time, Inc. made these photographs available to the FBI as a result of a promise that they be kept confidential, but rather that Time refused to authorize the FBI to release them to me only after the FBI itself had suggested this.

7. In court, by correspondence, and at a meeting in the J. Edgar Hoover Building on March 23, 1976, I insisted that the FBI had not given me crime scene photographs which it possessed. Ultimately the Bureau searched its Memphis Field Office files and came up with many crime scene photos, including those taken by Mr. Louw. In his airtel to the Director of the FBI dated April 9, 1976, the SAC, Memphis stated:

The photographs taken by JOSEPH LOUW of Life Magazine were furnished to SA VINCENT DOHERTY on 4/18/68. These were transported to the Bureau and the Bureau subsequently furnished them to the Memphis Office, some of which were re-

Magazine. The Memphis Office suggests that the Bureau without clearance of the photographer or the firm, may not desire to furnish copies of these photographs if requested to WEISBERG, since they were taken by a commercial photographer and furnished to the Bureau by either the photographer or his firm. (Emphasis added. See Attachment 4)

8. Subsequent to the "suggestion" of the Memphis Field Office, the FBI contacted Time and was informed that its Director of Editorial Services, Mr. Richard Seamon, had no objections to the photographs being viewed on request under the FOIA, "but would object to having them removed from FBI files or copies being made." (See Attachment 5)

9. Time, Inc. has a history of publishing what is consistent with the official accounts of the political assassinations of President Kennedy and Dr. Martin Luther King, Jr. To a large degree it has suppressed what is not consistent with the official accounts of these assassinations and deprecated those who are not in accord with the official mythologies. It has also used its considerable wealth to buy up photographs which constitute basic evidence of these crimes and then neither published these photographs nor let others have them. At the time in question there were reports that officials and employees of this corporation had intelligence-agency connections. One of the persons named in this respect was Mr. Hedley Donovan, one of the top people in the publishing enterprise.

10. In 1963 Time-Life, Inc. purchased crucial photographic evidence of President Kennedy's assassination when it bought the motion picture film taken by witness Abraham Zapruder. For many

inal film on one occasion, the Commission had only a copy of a copy for its work.

12. The official account of President Kennedy's assassination is that he could not have been shot before a certain point in the Zapruder film indentified as Frame 210. Frame 210 and a few frames before and after it are missing in the original. In its serial reproduction of some frames of the Zapruder film, the Warren Commission did not publish these missing frames or mention them. The fact that these crucial frames are missing is not mentioned in the Warren Report, the 26 volumes of exhibits and testimony appended to the Report, nor in any Commission record of which I know.

13. When 8 mm. motion picture film is exposed it captures an image on all the film. When the processed film is projected or duplicated, all the image around the sprocket holes by which the film is moved is masked. Thus about 20 percent of the Zapruder film at this crucial point no longer exists and was never available for the study of the Warren Commission.

14. After I exposed this, Life announced that it was making copies of these frames available to the news agencies. When I was not able to obtain a copy from any news agency, I wrote Life asking for copies. I never received an answer.

15. My interest in the photographs taken by Mr. Louw is for study, not publication. I also wish them to be preserved for the study of other scholars.

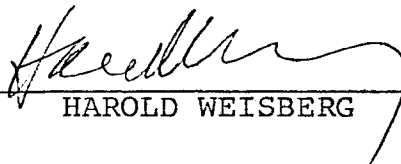
16. In 1971, by prior arrangement with Mr. Richard Pollard and his assistant Ms. Anne Drayton, I examined contact prints of the photographs taken by Joseph Louw at the time of Dr. King's

ing that these pictures could have a "second life" if the Ray appeal reached a federal court.

17. Neither then nor at any subsequent time has anyone at Time, Inc. express any interest in learning what I, from my investigations and knowledge, saw in the Louw pictures, nor has it expressed any interest in learning any information that could help Time, Inc. sell those pictures it had not published and which I believed would have made the basis for a story and the further sale or rights and copies of pictures.

18. The number^{ing}/of Mr. Louw's pictures, according to the notes I made while examining the contacts in 1971, indicates that he exposed 5 reels of 35 mm. film, each containing 36 exposures. The FBI claims to have only 107, or some 73 fewer photos.

19. The FBI's charge for black and white photographs is 40 cents. Time, Inc., is demanding an extortionate \$10.00 for each print without any reprint rights. Even assuming there are only 107 photographs involved, the difference in cost to me is more than \$1,000. And whatever it may assert, the \$10.00 per print charge which Time, Inc. would levy is not, from my experience, the normal commercial rate for such prints.


HAROLD WEISBERG

WASHINGTON, D.C.

Subscribed and sworn to before me this 2nd day of September, 1977.

My commission expires

MY COMMISSION EXPIRES DEC. 14, 1981

February 18, 1967

Mr. Herbert Orth
LIFE Magazine
Time-Life Building
Rockefeller Center
New York, New York

Dear Mr. Orth:

It has been several weeks since Life announced it was releasing those frames of the Zapruder film you are quoted as saying were inadvertently destroyed when the original was being processed in your laboratory. Since then I have seen no prints of ~~these~~ frames nor any news stories in Life or elsewhere.

I should like to obtain copies of these frames, 208 through 212 (for the Commission printed the upper half of 208 and the lower half of 212 as 212) and your related releases. As you may be aware, it is I who publicized the fact that these frames are missing in Exhibit 885. I hope you can provide copies that show the film between the sprocket holes.

For my own researches, I should like to know all the films of the assassination and that area, still and motion, that Life has obtained and whether or not they are available for examination. Also, what frames were supplied the government and are slides or prints of these or additional frames available from you for study, not for publication. I will return them in good condition on request.

I would like copies of all your releases on this film for possible publication, particularly the account of how the original was damaged.

There are published references to black and white copies made by Life. Can you confirm this and, if so, the purpose?

Sincerely,

4/25/71

Miss Anne Drayton
Photographic Department
LIFE magazine
Time-Life building
30 Rockefeller Center
New York, N.Y. 10020,

Dear Miss Drayton,

You asked that I give you at least two days' notice in advance of appearing to see the pictures Mr. Pollard so kindly agreed I may see.

I will be in New York next week. I'll phone you Monday, May 3 to set a time convenient for you.

Again my thanks to you both.

Sincerely,

Harold Weisberg

5/8/72

Dear Mr. Follard,

I'm sorry it was so busy a day for both of you when Miss Drayton showed me the contents of your film pictures on the King assassination.

In a sense it was both gratifying and disappointing. As you may realize, my interest is not a news interest. I was looking for other things and found some of them. The disappointment lies in their not having what I expected, much more than I have already obtained from other sources. However, you do have some things that I have not found elsewhere.

I presume you have no other immediate interest in these pictures. Should this change, I'll be happy to help, as I think I can.

Unfortunately, it takes a rather extensive investigation to really understand these and the other pictures, an investigation the results of which seem not to interest the major media and are disagreeable to officials.

I asked Miss Drayton if "how had given you any more on these and she replied in the negative. I should also have asked if he gave you any left-to-rights, some of which might be quite interesting.

Especially because you have given a set of prints to the FBI do I encourage you to guard this film with more security than your people did the Zapruder film. I am aware that this unsolicited advice may seem strange to you, but I make it with genuine sincerity and your and the national interest in mind. I continued my investigations after completing the book, know much more than I did during the writing, and offer this advice with every confidence I have a solid basis for it. I would go further and suggest that you duplicate your negatives and keep each set separate. There is some possibly significant evidentiary value in your film I have seen in no others. I cannot tell you this with assurance because examination of contacts makes it infinite, but this is my belief. You have some scenes not in any other film of which I am aware and you have people not in any other film. Aside from this, there may be other evidentiary values. Should you ever decide to explore this, I can bring you together with one of the world's foremost and most independent and honorable forensic pathologists who has a competent criminalist associated with him, and I can provide them with dependable

FD-36 (Rev. 2-14-74)

FBI

Date: 4/9/76

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Precedence)

TO: DIRECTOR, FBI (44-38861)
FROM: SAC, MEMPHIS (44-1987 Sub B)(C)
SUBJECT: MURKIN

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

Re Bureau airtel to Memphis, 3/31/76.

Enclosed for the Bureau under separate cover are the following:

Item #1: 47 crime scene photographs taken by the Memphis Police Department, 4/5/68, at and in the vicinity of the Lorraine Motel, Memphis, Tennessee. (MEfile 44-1987-1A-26).

Item #2: 3 photographs (2 color and 1 black and white) of ERIC S. GALT, furnished to the Memphis Office by the Los Angeles Office, 4/16/68. (MEfile 44-1987-1A-87).

Item #3: 1 photograph of JAMES EARL RAY, taken in 1966, furnished to the Memphis Office by the Kansas City Office, 4/26/68. (MEfile 44-1987-1A-124).

3-Bureau (1-package)(Encs. 168)

3517-1
UNRECORDED COPY FILED IN

ST 104 REG 4 6/11/76

ENCLOSURE

ME 44-1987 Sub B.

Item #4: 1 photograph of ERIC STARVO GALT, obtained by the Memphis Office 4/18/68. (MEfile 44-1987-1A-127).

Item #5: 1 photograph of individual purported to be JAMES EARL RAY, taken in November, 1967, furnished to the Memphis Office by the Bureau in April, 1968. (MEfile 44-1987-1A-140).

Item #6: 1 photograph of JAMES EARL RAY, taken in the fall of 1967, furnished to the Memphis Office by the Bureau, 5/3/68. (MEfile 44-1987-1A-147).

Item #7: 1 photograph of JAMES EARL RAY and WALTER T. RIFE, dated 3/28/55, furnished to the Memphis Office by the Kansas City Office, 4/20/68. (MEfile 44-1987-1A-148).

Item #8: 1 photograph of JAMES EARL RAY, furnished to the Memphis Office by the Bureau, 4/30/68. (MEfile 44-1987-1A-149).

Item #9: 2 copies of artists' conception of UNSUB, furnished the Memphis Office by the Bureau, 4/13/68. (MEfile 44-1987-1A-150).

Item #10: 1 photographic print containing three photographs of JAMES EARL RAY, taken in 1960 and 1968, furnished to the Memphis Office by the Bureau on 5/8/68. (MEfile 44-1987-1A-161).

Item #11: 1 copy of photograph of JAMES EARL RAY, dated 9/8/66, furnished to the Memphis Office by the Kansas City Office on 4/20/68. (MEfile 44-1987-1A-188).

Item #12: 1 copy of artist's conception of UNSUB, furnished to the Memphis Office by the Bureau, date not listed. (MEfile 44-1987-1A-189).

Item #13: 1 composite of UNSUB, aka ERIC STARVO GALT, furnished to the Memphis Office by the Bureau, dated not listed. (MEfile 44-1987-1A-192).

ME 44-1987 Sub B

Item #14: 105 photographs of crime scene taken at and in the vicinity of the Lorraine Motel by Life Magazine photographer JOSEPH LOUW, furnished to the Memphis Office by the Bureau on 4/24/68. (MEfile 44-1987-1B-6).

Item #15: 1 canister containing photographic negatives of aerial view of Lorraine Motel and vicinity, taken in April, 1968, by personnel of the U. S. Corps of Engineers.

For the information of the Bureau, Memphis file contains black and white photographs of MARTIN LUTHER KING, JR.'s body, taken on 4/4/68, at the St. Joseph Hospital and color photographs of KING's body taken at the Office of the State of Tennessee Medical Examiner, date not indicated on photographs. It appears that the photographs taken at the Medical Examiner's Office were taken on 4/5/68 or immediately thereafter.

The photographs taken by JOSEPH LOUW of Life Magazine were furnished to SA VINCENT P. DOHERTY on 4/18/68. These were transported to the Bureau and the Bureau subsequently furnished them to the Memphis Office, none of which were retained at the Bureau. Memphis file indicates that some of these photographs appeared in the 4/12/68 issue of Life Magazine. The Memphis Office suggests that the Bureau, without clearance of the photographer or the firm, may not desire to furnish copies of these photographs if requested to WEISBERG, since they were taken by a commercial photographer and furnished to the Bureau by either the photographer or his firm.

In addition, the Memphis file contains a nude photograph of JAMES EARL RAY, which the Memphis Office is not enclosing with this communication. This photograph was taken aboard the aircraft on which he was transported from London to Millington, Tennessee, just prior to the time he left the aircraft to be transported to the Shelby County Jail, Memphis, Tennessee.

Handwritten notes:
State of US
advised
4/24/68
4/24/68
4/24/68

Handwritten notes:
ME file
44-1987-1B-6
4/24/68

FD-36 (Rev. 2-14-74)

FBI

Date: 4/22/76

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Precedence)

TO: DIRECTOR, FBI (44-38861)
(ATTN: FOIPA SECTION;
RECORDS MANAGEMENT DIVISION (SA THOMAS WISEMAN)

FROM: ADIC, NEW YORK (44-1609)

SUBJECT: MURKIN;
HAROLD WEISBERG VIA U.S.
DEPARTMENT OF JUSTICE
U.S.D.C., D.C., CIVIL
ACTION NO. 75-1996

On 4/21/76, Mr. RICHARD W. SEANON, Director of Editorial Services, Time Inc., 1271 Avenue of the Americas, New York, New York, 10020, Telephone Number 212-556-4857, advised the NYO that he has no objections to said 107 photographs of the assassination scene of MARTIN LUTHER KING taken by Photographer JOSEPH LOUW, and made available to the FBI on 4/18/68, being viewed on request under the FOIA, but would object to having them removed from FBI files or copies being made.

Mr. SEANON said that any request for copies of the photos and/or request to have them taken from FBI files, should be directed to him personally at the above address.

EX-116

REC-83

44-38861-6117X

APR 24 1976

2 - Bureau
1 - New York

May 11, 1976

- 1 - Mr. Mintz
ATTN: Mr. Blake
- 1 - Mr. Cochran
ATTN: Mr. Kiltz

R

James H. Desar, Esq.
1231 4th Street, S. W.
Washington, D. C. 20024

FOIA-GENERAL

Dear Mr. Desar:

Reference is made to the meeting of May 5, 1976, between you and your client, Mr. Weisberg, and representatives of the FBI. In accordance with your wishes expressed at this meeting, enclosed is a copy of a receipt signed by Special Agent Thomas L. Wiseman for the \$87 check for special search fees and reproduction costs. *EO*

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. At this meeting you were shown 14 photographs of suspects in the King assassination investigation; of these 14 photographs Mr. Weisberg selected five that he desired copies of which will be reproduced and furnished him. Also, a set of aerial view negatives of the crime scene and vicinity were displayed. Mr. Weisberg did not care to receive copies of any negatives viewed.

EX-115 REG 83 62-115530-17292X

Additionally, 107 photographs, the property of Time, Incorporated, but in possession of the FBI, were displayed to Mr. Weisberg and he was advised that Time, Incorporated, had not granted authority to release copies of these photographs, although they had no objection to his viewing them. Mr. Weisberg indicated that he would be interested in obtaining copies of 15 of these photographs and he was advised that he would have to request these of Time, Incorporated. The reproduction

MAILED 15
MAY 11 1976

James H. Lesar, Esq.

In addition to the above material, Mr. Waistery was advised that our Memphis Field Office had furnished a group of photographs which were provided to the FBI by a non-Federal law enforcement organization which has specifically requested that this material continue to be held confidentially. One other photograph was received from another non-Federal law enforcement organization. This photograph depicts an individual taken under circumstances implying originality and its disclosure would be an unwarranted invasion of this individual's privacy. Therefore, these photographs are exempted from disclosure by the following subsections of Title 5, United States Code, Section 552:

- (b) (7) investigatory records compiled for law enforcement purposes, the disclosure of which would:
 - (C) constitute an unwarranted invasion of the personal privacy of another person;
 - (D) disclose the identity of a confidential source, or confidential information furnished only by the confidential source.

Finally, you were given the reason why a picture of James Earl Ray was being withheld because its disclosure would be an unwarranted invasion of his privacy, and thus exempted from disclosure by the following subsection of Title 5, United States Code, Section 552:

- (b) (7) investigatory records compiled for law enforcement purposes, the disclosure of which would:
 - (C) constitute an unwarranted invasion of the personal privacy of another person.

As you have previously been advised we believe this discretionary release completes our response to your Freedom of Information Act request dated April 15, 1975.

James M. Lesar, Esq.

The 10 photographs you selected for reproduction from a review of crime scene photographs during the March 23, 1976, meeting with representatives of the FBI are available. The reproduction costs are forty cents each for the twenty black and white photographs, and three dollars each for the eight color photographs for a total of \$32.

Sincerely yours,

G. M. Kelley
Clarence M. Kelley
Director

Enclosure

- 1 - Honorable John Dugan
Assistant Attorney General
United States Courthouse
Washington, D. C. 20015
- 1 - Assistant Attorney General
Civil Division
Attention: Richard Greenspan
- 1 - The Deputy Attorney General - Enclosure
Attention: Susan M. Hauser

James H. Lesar, Esq.

NOTE: This request is currently in litigation, United States District Court, for the District of Columbia. By letter dated 4-15-75, requester asked for certain material regarding the FBI investigation of the King assassination. By letter dated June 23rd, his request was denied based on exemption (b) (7) (A) of the FOIA (interference of the enforcement procedures). This exemption was supported by the Civil Rights Division of the Department of Justice, since James Earl Ray has an appeal pending before the Circuit Court of Appeals in Cincinnati. By letter dated December 1, 1975, the Deputy Attorney General advised the requester that his request would be honored in full. By letter dated 12-2-75, requester was furnished information from our Central files in accordance with the Deputy Attorney General's letter of 12-1-75. In order not to accumulate unnecessary expense to the requester, the approximately 200 pictures of crime scene material located in central records were not reproduced and furnished requester with the December 2, 1975 release. On March 23, 1976, requester and his attorney were shown these photographs and requester selected 10 photographs which he wanted copies furnished him. During that conference requester strongly indicated that his belief that the FBI had additional information in the scope of his request, particularly crime scene photographs. To insure that we completely comply with requester's request we asked Memphis to search their files for material in its possession which might be in the scope of complainant's request which the Bureau may not possess. By airtel dated 4-9-76, Memphis furnished the photographs discussed in this letter.

Ba

TIME
INCORPORATED

EDITORIAL SERVICES

TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK 10020
JUDSON 6-1212

June 15, 1976

Mr. Harold Weisberg
Coq d'Or Press
Route 12
Frederick, Maryland 21701

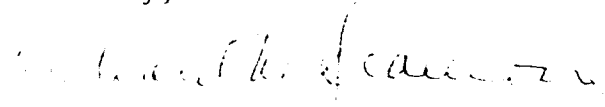
Dear Mr. Weisberg:

Thank you for your letter of June 8.

Let me assure you that you may feel free to make an appointment to visit the Time-Life Picture Agency to study its file of photographs and to select for your research any of those photographs to which we hold the copyright. Call Mrs. Hannah Bruce at (212) 556-4800 for details.

Depending upon the amount of work you require from Picture Agency personnel, there may be a charge for their time. License fees, either for publication or for prints made for your personal use, can be discussed when you visit the Agency.

Sincerely,


Richard M. Seamon
Director

6/8/76

Director of Editorial Services
Time, Inc.
Time-Life Bldg.,
Rockefeller Center
New York, N.Y.

Dear Sir,

I am the plaintiff in Civil Action 75-1996 in federal district court in Washington, D.C.

In this action Special Agent Thomas Wiseman of the FBI has executed an affidavit dated June 2, 1976 in which he makes certain representations about you and Time and the pictures of the assassination of Dr. Martin Luther King, Jr., sworn in this cause to be the only pictures of the scene of the crime at the time of the crime in the possession of the FBI (which earlier swore that it had none at all).

Although there was no description of these pictures with them and Mr. Wiseman professed so little knowledge he did not know the name of the photographer, I knew these to be the pictures you bought from Joe Lowy.

Mr. Wiseman represents that you are at once the "proprietor" of these pictures and "agent for the photographer," unraised, on page 11 of his affidavit.

While making certain representations about Time and this correspondence Mr. Wiseman has produced none and has declined to make copies available to my attorney. I think all interests, especially Time's, are served by providing me with a copy of all this correspondence and any memoranda on any phone or personal conversations in any way relevant to this matter. I have in mind the possibility of including them in the court record in this case.

I am not without familiarity with these pictures. Those shown me by the FBI do not include all of them.

Mr. Wiseman, based on this correspondence, has sworn to the court that "if he (meaning me) desired copies of any of these photographs...he should contact Time..."

I do desire copies. I commit myself not to publish them without seeking your permission. My sole interest is scholarly. I do not want the schmalz or general Memphis shots. My sole interest is in the crime. In terms of pictures this means only those taken from or showing the Lorraine motel and the immediate surrounding area, including the area of the flophouse and of the position of the victim's body, those with or around it, etc. My interest is in the

interests of neither the country nor your corporation nor justice are served by a court record that says there are and were no copies of any of these pictures at FBI headquarters, that the pictures I was shown are all you gave the FBI (and I do know of and can describe others, as I personally told Mr. Wiseman) and that you provided these pictures while prohibiting any use of them of any nature.

With a prosecution pending.

Because of the nature of this crime and my study I think you should also know that one of the reasons Mr. Wiseman refused me copies for my own study is that "these photographs represent a definite financial asset to Time."

You can, of course, draw your own conclusions from the fact that the FBI at first swore that it had no crime-scene pictures at all and as of this writing has sworn that it has not a single one except those you bought from Louw, most of which you have not seen fit to print.

Sincerely,

Harold Weissberg

P.S. I believe you are entitled to further assurances. While I have no publication interest in these pictures, if at some time in the future that should change, I would expect to pay TIME as I have the wire services and as is normal.

June 18, 1976

Mr. Richard M. Seamon
Director, Editorial Services
TIME Incorporated
Time & Life Building
Rockefeller Center
New York, N. Y. 10020

Dear Mr. Seamon:

Your letter of June 15 is so unresponsive to mine, so at cross purposes with my clear intent and stipulates the unreasonable and unnecessary so much in a manner inviting suspicions that ought not exist, I feel I must reply at some length and with an initial explanation of a situation of which you may or may not be aware.

TIME is a wealthy, powerful corporation. It has used this wealth to acquire some of the most essential evidence in major crimes, two of the political assassinations that, regardless of what one believes of the official accountings of them, have torn this country apart. Obviously, TIME has a perfectly legitimate right and interest in acquiring whatever is of journalistic interest to it. However, in the JFK and King assassinations, what it has really bought and the right it has exercised in both cases is suppression.

TIME bought the Zapruder film. TIME kept anyone else from using it. TIME suppressed the financial arrangements with Zapruder, committing a grossly false representation of it to be made by Warren Commission counsel and to be perpetuated in the official published records of the Commission. TIME was silent about the destruction of the original frames that just happen to coincide with the point at which the Commission alleges it was first possible for the President to have been struck and at which, in the Commission's version, he was first struck. When I brought this to light and with that brought pressure on TIME, TIME announced it was releasing prints of these frames for unrestricted use. TIME refused to provide me with prints when I wrote and asked for them. I know of no picture agency to which TIME provided copies that distributed any. I know and published the fact that in the AP's files there is a note on those frames that, in effect, says, "over our dead bodies."

Meanwhile, TIME's interpretation of its journalistic interest just happened to coincide with the nonpublication of those frames of the film that are in dispute and have been for years. It coincides with official positions and preferences.

Coinciding with this TIME also bought the rights to other evidence, some quite improperly obtained and all used in prejudice to truth and national interest. 11

At a time when public opinion was being molded to accept the official conclusions that in fact were preconceptions, Oswald's "diary" was stolen. TIME, Inc., paid \$4,000.00 to the one who delivered it and a much larger sum to Oswald's widow. Early in an ongoing investigation it helped limit what that investigation might conclude while shaping public beliefs.

Joe Louw was on assignment for Public TV when Dr. King was killed. He did not, when he heard the shot, think of his assignment and any responsibilities to Public TV. He grabbed his personal still camera. It could have recorded much less and did record much less than a movie camera could and would. But if he used the movie camera the exposed film belonged to Public TV. So he became less the reporter of this great tragedy and more the money-grubber, used his own film and sold it to TIME.

TIME's interest was in schmalz, not fact, in this trauma. Having the wealth with which to buy Louw's film and the disposition to use only that which is without evidentiary value, it now claims a right to prevent meaningful study of that which it suppresses. After more than eight years TIME suppresses.

But TIME shames to say this or to admit it to itself. Instead, you insist upon abnormal and impossible conditions for my study and refuse, quite obviously, from your own words, to abide by professional and commercial norms. You are determined either to prevent my scholarly study or to squeeze the last possible commercial profit from your financial ability to claim to own the information you have steadfastly suppressed.

So that your publications could meet their journalistic responsibilities, on a number of occasions I gave copies of the results of countless hours of work, made pictures available, arranged for and conducted interviews for TIME, Inc., all without any compensation. Now you want to commercialize this subject and me? Interfere with my work, work that for all your wealth you have avoided?

When I write and tell you I will pay normal commercial rates for prints I promise not to publish, why do you pull all this fancy-ants Philadelphia-lawyer jargon on me about making a trip all the way to New York for no more than my letter and your certain knowledge tells you I have already done?

The cost in fare alone is greater than the normal commercial cost of the prints I want to study in detail and at leisure. Besides, if you have copyrighted these pictures, Washington is much closer and they are required by law to be available at the Library of Congress.

I am in a post-blebitic condition. I am 63 years old. I have my own work to do. Why should I have to spend two days just getting to see what I have already seen, or make an examination separate from the other evidence I have collected? Why should TIME want and stipulate this? What reason can TIME have other than suppression and the pursuit of official interest for not selling me copies of the prints I want at normal commercial rates?

You buy this exclusive evidence of a major crime, refuse to publish it, suppress it and tell me, after eight years, that for research only "license fees can be discussed when you (I) visit the (your) agency."

Has your corporation not been through this before, in the Geis case, and does it not have judicial guidance, whether or not it has any concern for anything other than suppression?

promised to pay normal rates for prints. In my view, if you do not accept these terms, I am satisfied you have violated your copyright, which requires publication, not suppression.

There is not now much time before this will again be in court. I therefore have requests to make of you. I want you to know that if there is any disagreement with what I regard as professional, commercial and journalistic norm, I will ask my counsel to present the entire matter to the court, which considers this again July 1.

Of those prints the FBI showed me, which are not all TIME gave the FBI, I gave the FBI a list. I ask for an 8x10 glossy of each.

The FBI did not show me all these pictures. From prior experience I know it is not wise to let those whose interest is in suppression and who have a record of it know all I know. I specified to Special Agent Thomas L. Wiseman one only of the views not shown me. You have a list of what you gave the FBI in the originals. The FBI has those pictures it showed me. I know and can give the frame identifications of what I was not shown. My request is for an 8x10 glossy of each picture the FBI did not show me and my lawyer.

Your letter of May 6 to the FBI just happens to be dated the day after I made an issue of these matters. I was permitted to see those pictures May 5. Long before this the government made certain representations in court. Mr. Wiseman made certain representations to my lawyer and me. So, I am asking TIME, as it so often asks others in its quest for information, for a complete accounting of all of this, including copies of all records and with the understanding these records can be presented to the court.

This means any contemporaneous records having to do with your giving these pictures to the FBI and any restrictions then placed upon them. It also means the different kinds of prints, if any, the total number, to whom you gave them, etc. Whether or not you believe it, the FBI has actually sworn to the federal court first that it did not have these pictures and then that they exist only in its Memphis Field Office. Because I believe you do not have personal knowledge and because it is not my purpose to embarrass you or TIME - I have only the purposes I have put in writing - I want you to know that I know TIME, Inc., gave the FBI prints other than those displayed to me. By this I mean more than that I was not shown all. I mean prints of another form and size. As of now I do not want this for my writing, although it is remotely possible that the future may change my mind. I want this for presentation to the court to which the FBI has already sworn falsely on this. This is why I believe, in fairness to you, to me and to the court, it serves all interests for the court to have a full record.

Your letter of May 6 refers to a phone conversation without giving its date, saying who initiated it or whether in fact there was only that single phone conversation and no written or personal communication of any other kind. I am therefore asking, again with the understanding that it may be given to the court, for a complete accounting of all of this as it relates to my FOIA request, which dates to April 15, 1975. I mean to include copies of any and all letters in this request.

You and TIME pretend dispassion in all of this. I therefore ask you for any record showing you provided copies of these pictures or any other evidence to

You had at least one stringer in Memphis, many other sources. Those reports to you, of which I do have knowledge, have value in any investigation, either side. Your files on this are indicative of a large involvement of the underworld. You printed only a very small part of this information. Did you also provide any of this information or any other such information to either or both sides to the end that there might be a resolution of this terrible crime? Or is it only pictures you refuse to publish and refuse to sell that you suppress after eight years?

First the FBI, if more than a year later, and then you apply restrictions to me. I want you not to misunderstand my questions or their purpose. You have imposed abnormal, unprofessional restrictions upon me. I ask these questions to provide TIME with any opportunity to make a record of other than subservience to those officials who can regard it with favored treatment, practice well-known to be commonplace and now a matter of official admission before the Church committee.

I am trying hard not to even appear to be slipping up on your blind side and in fact I am not. I am being forthright. I'll add to the foregoing that your corporate structure has an entirely different record with nuts and selfseekers. It has made prints available to these types. This, I think you should understand, is not consistent with denying them to me or in there being no written record between TIME and the government from the time it made its first representations about your desires in court on March 31 until your letter of May 6.

There should be no doubt in TIME's mind about my intentions. If I do not have in my possession a set of prints of those pictures described above and if I do not have what you assure me is a full record on all TIME, Inc., dealings with the government on this matter with enough time to confer with my lawyer prior to the hearing on July 1, I will ask him to make an issue before the court of all of this, including the FBI's right to deny me prints and TIME's right to buy unique evidence in major crimes and thereafter suppress it, no matter what kind of semantics you employ to disguise what in reality is suppression.

So that there can be no question, on July 1, I am offering to pay you what I pay UPI for prints not for publication and should I later decide to publish any I will then pay what I pay UPI for the one-time use.

I close on a personal note. You are a corporate giant with interests and ownership in all elements of the media. (And I have given unpaid time to various of your corporate components, even to TV stations as far away as California.) You have a presumed interest in freedom of information and I hope a presumed interest in freedom of access to information. How would you feel if, after more than 14 months, you were being stonewalled by the government and it was using another publication giant to stonewall you, or if you had been given representations in court about what another had supposedly stipulated and then found no written record for as long a period as between March and June?

My lawyer is Jim Lesar, 1231 4th St. N.W., Washington, DC 20024, 202/484-1023.

Sincerely,

TIME
INCORPORATED

EDITORIAL SERVICES

TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK 10020
JUDSON 6-1212

June 25, 1976

Mr. Harold Weisberg
Coq d'Or Press
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

Thank you for your letter of June 18.

Let me assure you once more that Time Inc. has no desire whatsoever to suppress any of the photographs of the Martin Luther King assassination that it purchased from Joseph Louw. That is why I offered to let you study any and all of those pictures here in our Picture Collection. When I made that offer, however, I had no way of knowing the state of your health. Now that you have made clear that it would be inconvenient for you to conform to our normal rules, I am glad to send you contact sheets of all the Louw photographs in our possession. I am aware that you specifically requested 8x10 glossies of "each picture the F.B.I. did not show me and my lawyer." Since I have no way of knowing what frames the F.B.I. did or did not show you, I think it would make things easier for you to mark your requests on the contact sheets I have enclosed. I am prepared to waive our standard charges in your case and the only cost to you will be a laboratory fee of \$2.50 for each contact sheet and \$10.00 for each 8x10 print that you order. No reproduction rights of any kind are included--like anyone else, you will have to secure specific permission and meet our payment schedules should you wish to reproduce any of the photographs.

In the original agreement between Mr. Joseph Louw and LIFE Magazine, all book-publication rights to his pictures of the King assassination were reserved by Mr. Louw. Should you wish to use any of his pictures in a book at some later date, you will, therefore, have to clear such use with him. At present, Mr. Louw should be on his way to New York from Nairobi. He has promised to get in touch with my office when he arrives. As soon


Mr. Weisberg

-2-

June 25, 1976

Finally, with respect to the remaining parts of your letter, please be aware that it is Time Inc.'s policy not to volunteer the reportorial or other contents of its files in the private litigation of others.

Sincerely,


Richard M. Seamon
Director

Encs.

Rt. 12, Frederick, Md. 21701
6/30/75

Mr. Richard M. Seaman, Director
Editorial Services
Time, Inc.
Time & Life' Bldg.
Rockefeller Center
New York, N.Y. 10020

Dear Mr. Seaman,

Although the return-receipt will provide you with a record, I believe it is only fair to let you have a letter confirming receipt today of the contacts of the ~~four~~ pictures and my thanks for them.

I think your corporate interests are also served by my having received them today. I have to leave before the mail comes tomorrow and I will then be able to inform the court if this question comes up, as it may.

Because this matter is before the court as part of a larger one and because there have been representations made to the court as part of many other representations, I would appreciate your providing me with what I asked and you did not, a record of all communications between any part of your corporate structure on ^{these} pictures, beginning with any restrictions imposed at the time they were given, what was given, and a record of all communications relevant to this Freedom of Information action. There are inconsistencies I believe should be clarified. This can be done by what I ask. As I believe I informed you, I will give this to my lawyer so he can use it in court. As the record now stands there are inferences I believe Time would prefer not be drawn by me in court or in my writing or by anyone else who may become interested in this subject that is now of extensive official and unofficial interest.

Explicitly there are questions about FBI covering up of fact about this terrible crime and about its compliance with FOIA. One inference that can be eliminated by a straightforward response from your records is that of Time's complicity with the FBI in either the covering up or the stonewalling under the law that should be apparent when I tell you that as the court record will show, this FOIA request is now in its 14th month without compliance and with official insistences on the right to withhold, of which Time was made part.

Time's record also holds an inconsistency that is of no special interest to me because I have no intention of ripping you off and if I should later want to publish any of the pictures you elected not to I will write you. But after telling me that you are our's agent you now tell me that I will "have to clear such use with him." It is my understanding that this is the role of the agent and the reason one has an agent.

TIME
INCORPORATED

EDITORIAL SERVICES

TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK 10020
JUDSON 6-1212

July 6, 1976.

Mr. Harold Weisberg
Coq d'Or Press
Route 12
Frederick, Maryland 21701

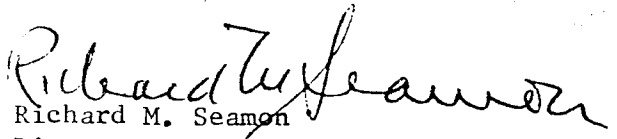
Dear Mr. Weisberg:

Thank you for your letter of June 30.

I am afraid we must decline your suggestion that we authorize Mr. Thomas Wiseman to make prints of the Louw photographs for you. As I indicated to you in my letter of June 25th, we shall make whatever prints you desire at the prices indicated therein.

I shall wait to hear from you in this regard.

Sincerely,


Richard M. Seamon
Director

Rt. 12, Frederick, Md. 21701

7/5/76

Mr. Richard Seaman, Director
Editorial Services, Time, Inc.
Time & Life Bldg.,
Rockefeller Center
New York, N.Y. 10020

Dear Mr. Seaman,

Your July 6 response to my June 30 letter is explicit in insisting on your right to commercialize the assassinations (your corporate publications have used the word "scavengers" to describe those who could not if they would) and void on a question about which you now leave me no choice: whether or not you are in fact acting as an agency of the government in violating the Freedom of Information Act.

Your charge for prints is outrageous, about five times actual cost. And for pictures I was first denied entirely.

I asked you for the correspondence record between you and the FBI on this. As it exists in the records of the court there is no communication from you until the day after I was shown the pictures and denied copies. I first raised the question April 15, 1975. The end of November it was filed in court. Beginning February 11 we raised the subject in general, not mentioning your corporate name until after the government did. It then represented that the Loew pictures are the only ones it has of the scene of the crime, which is as false as it is surprising. This, of course, after insisting it had none, which the judge did not believe, either. They stonewalled this from February 11 until May 5, representing that you had written and instructed them not to let me see the pictures at all. They also claim you only loaned the pictures to the FBI, which has had them on this "loan" for more than eight years, without prosecutive use.

In writing you I was explicit in saying I desire the correspondence for the court record. You by avoidance are equally explicit: you will not stand on that record in court. If you want a court record to show that you front for the FBI in its efforts to violate the law enacted chiefly for corporations like yours in publishing and in its suppression of the same evidence you also just happened to suppress to this day, I will help all I can. I will refer this to my lawyer and ask him to make it a matter of court record that you refused repeated requests to permit the record to be clear.

If you want the stench of commercialism you perpetuate to make your suppression of what could have evidentiary value in a crime of this magnitude, I'll do my best to accommodate you.

Joe Loew was at the scene of the crime and able to take pictures only because of a commission by Public TV. He repaid them with the initial commercialization, not using his movie camera, which would have captured much more and much faster. If he had his pictures would have been the property of Public TV. He used his own 35mm camera and film and then loaned an original. He sold the pictures to me. Your editorial judgment was

On one occasion I travelled at least 150 miles and worked with one of your editors an entire day. I asked nothing for this. I was not offered even the cost of travel. I arranged for interviews and helped with them because I was the expert, ^{as} your editor and his assistant were not.

On other occasions your people took much of my time by phone, at least another working day.

I was repaid by the giving to others of what I "loaned" Time, Inc., all my work. It wasn't even returned to me!

Having portrayed me as a "scavenger" to your vast audience and all the others you influence when I've done all this work without subsidy or regular income for 23 years you first deny me these pictures I want only for research, the same pictures you have always suppressed by non-publishing and making them unavailable, and now want to extort \$10 per print.

I did tell you I had worked for you free. You asked no question and did not deny it. You sold what I helped with. I have no intention of selling this. And I did promise to pay normal commercial rates if this should change in the future. If this should become my desire eventually I'd want the best prints made from the negatives.

I also told you that the FBI FOIA office has the identification of those few pictures, about 20, of which I desire prints. I told you I do not.

The government charge for prints under FOIA is 40¢ each, not \$10.00, and they have to make negatives.

If you will obtain the identification of each print I asked from SA Wiseman and make them for me I'll pay you the government charge. Otherwise I'll refer this, too, and as a matter of principle, to my lawyer. I'll ask him to make an issue of it with the judge and then to bracket this with your identical record with the Zapruder film showing President Kennedy being killed. In that case you did not provide stills of all the frames and again prohibited any copies.

Meanwhile, aside from whatever you netted from this commercialism in which you also failed to publish the evidence you gave Zapruder sums that your own people confirmed to me ran into six figures.

I have not reread the Gais decision. But if my lawyer agrees I am more than willing to let a court decide whether a wealthy corporation can use its wealth to exercise a monopoly on evidence of major crimes and then become an adjunct of government in its lust for even greater commercialism. The choice is yours until the next hearing.

Sincerely,

Harold Weisberg

Rt. 12, Frederick, Md. 21701
7/14/76

Mr. R.M. Seamon
Time Magazine
Time-Life Bldg.
Rockefeller Center
NYC, NY 10020

Dear Mr. Seamon,

You appear a little reluctant to make a complete and accurate court record in the matter of our recent correspondence, your corporate structure, the use of its wealth to buy and suppress unique vital evidence in the political assassinations and subsequent efforts to commercialize.

Today's mail included the return of some of the files I'd forgotten I'd loaned out.

I'd also forgotten your corporate silence prior to this in the King assassination and, I regret, that this had become a matter of court record in Memphis. I should not have forgotten the last.

One of the returned records is AP's wire copy slugged "Ray 280," dated "07-25-74 16:15edt."

The opening paragraph of the lead reads:

"James Earl Ray's attorneys have asked a federal judge in Memphis to order Life Magazine and a Houston, Tex., attorney to produce photographs of the John Kennedy assassination, court documents showed Thursday."

Toward the bottom, "Ray has stated that about Feb. 3, 1969, Foreman asked him to identify photographs of some men in Dealey Plaza," Lesar said in the brief. "As best Ray recalls, Foreman had some deal cooked up with Life Magazine about these photographs," the brief said...

Foreman did testify to this in a deposition. He did not appear at the hearing. My first information on this came from James Earl Ray, who had been promised a large sum of money if he made an "identification" of these pictures on which you held. The newspaper that owned them did not have lefts-to-rights. My source is the managing editor. I had to check them out because those pictures you tried to exploit are perhaps the largest single disinformation operation in the story of the JFK assassination.

Earlier I was involved in this but in an entirely different way and for entirely different purposes. A sketch of a suspect in the King killing, attributed to the FBI, had been published. The resemblance of this sketch to one man in those pictures is remarkable. The sketch having been attributed to the FBI in April, 1968, I provided, without charge, copies of the sketch and that picture to others, including AP and the FBI, which

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EDITORIAL SERVICES

TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK 10020
JUDSON 8-1212

July 20, 1976

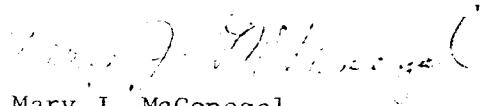
Mr. Harold Weisberg
Coq d'Or Press
Route 12
Frederick, Maryland 21701

Dear Mr. Weisberg:

We have received your letters of July 9 and July 14.

Mr. Seamon is presently on vacation and will not be back in the office until early August. I will bring your letters to his attention as soon as he returns.

Sincerely,


Mary J. McGonegal
Secretary to R. Seamon

Rt. 12, Frederick, Md. 21701
7/23/76

Ms. Mary McGonegal, Secretary
Editorial Services, Time Inc.
Time & Life Bldg.,
Rockefeller Center
New York, N.Y. 10020

Dear Ms. McGonegal,

This acknowledges receipt of your letter of the 20th. It came today.

I'm sorry you did not let me know whether Mr. Seamon received my letters of 7/9 and 14 before leaving on vacation.

If he did I'd not take the time to write now. I'd just let this work its way out in court, if it now comes up there again, as it well may.

In his absence, if the question comes up, you should know that in first denying it had the "how or any other pictures of the scene the government's untruthfulness was not accidental; in denying me copies of the pictures it represented this was at Time's request going back to 1968; yet when we asked for what Time wrote it the government produced only a single letter, dated after it was permitted to see the pictures.

I believe I suggested to Mr. Seamon that copies of the correspondence for the court's records would establish that Time is not acting as an adjunct of suppressive government if there is such correspondence. In the absence of any written record the inference is apparent.

I did raise questions about excessive charges for non-use of pictures and that the FBI, not I, has a list of the few I want to study. I would hope that in a corporation as large as Time an answer to this, to Mr. Wiseman at the FBI, carbon to me, would not have to await Mr. Seamon's return from vacation and his catching up with its accumulation. This matter is currently before a federal court. If my lawyer is willing I have no choice but to press this at the next hearing the date for which has not been set pending government response to what I believe is called a Motion to Comply and a verbal order from the Court on it.

My lawyer will be leaving the country about the time Mr. Seamon will be back. My lawyer will not return until mid-September.

If it should become necessary for me to do anything when I cannot consult with him and it relates to these pictures and what they represent in this FOIA suit I believe strongly enough in the principles involved to press them as best I may be able to. I would like someone in authority at Time to be aware of this and that as I am unhappy about the situation it has created I am also unhappy about any need to make an issue that need not and should not exist.

SA Tom Wiseman
FOIA/PA Unit
FBI
Washington, D.C.

8/1/76

Dear Tom,

When I went over the "one hour pictures Time, Inc. ^{by} bought from him I selected those of which I asked for copies you refused. You kept a record of them. You told me to write to Time without telling me to whom. As a result, as the court record you have shows, they sent me contacts.

I had offered to pay normal commercial rates, gave written assurances that I do not intend publication and a promise to pay going rates if any need later develops. They began by insisting that I go all the way to New York to talk to them first. They have not provided copies of any communications with the Department, including the Bureau, leaving this record: they did not write and ask that I not be given prints until the day after you refused them.

The result is a situation I cannot accept. It has already cost me much time and the waste of time I can't spare, none of it necessary under the law. It has burdened the Court without need. And without a Court ruling that I must I will not accept the right of wealthy corporate interests to buy up unique evidence in major crimes and suppress it to the degree possible and then attach extortionate terms for mere examination. In this case for all practical purposes also acting as an arm of the Bureau.

In court Dagan said he provides you with transcripts. You therefore know that Jim repeated the request for the relevant correspondence and that you have not provided it. (He is currently recovering from a weakening infection and facing close deadlines.) I have a special, extra reason for wanting a written record of the request. I am being and from the first have been stonewalled. If I have recourse I will seek it. Besides, I would believe that ordinarily you personally and the Bureau would want the court record to show that Time was not acting as your agent in suppressing what is embarrassing.

I am also renewing my request for 8x10 glossy of each of the pictures of which you have a list. You are not required to have payment in advance and I will pay when I know the cost.

You have alleged there is a copyright without proof. I request the proof.

In no case have I been given sequence numbers on any of my requests or appeals. My written request is without response, even acknowledgement. I know and intend to prove that my requests are not handled in sequence. One of the reasons I want the numbers is to establish this and who knows it. Another is to systematize my files and simplify correspondence, which would certainly cut down on the wasted work inside the government. And there are now a number of requests that are older in time and sequence than any representation by the government that I've seen or can be believed.

TIME
INCORPORATED

TIME & LIFE BUILDING
ROCKEFELLER CENTER
NEW YORK 10020
(212) JU6-1212
LEGAL DEPARTMENT

August 11, 1976

Dear Mr. Weisberg:

Your letters of July 9 and 14 to Mr. Richard Seamon and of July 23 to Ms. Mary Jane McGonegal have been referred to me.

I would like to reaffirm in this letter the offers that have been made to you regarding the making of prints of the Joseph Luow photographs which form the subject of your correspondence. You have already been provided with contact prints of the Luow photographs so that you may select those frames which you desire to have printed for you. By indicating those frames to us, and making a payment of \$10.00 per print, you will be supplied with an 8 x 10 print of each of your selections. No reproduction rights of any kind are purchased with the \$10.00-per-print fee.

Please be aware that the standard procedure for a customer purchasing prints from the Time-Life Picture Agency is to come to the Agency's offices and make selections here. Time Inc. has already departed from its normal business practice by sending you contact prints for your selections. As Mr. Seamon indicated to you in his letter of July 6, we must decline your request that we authorize the FBI to make prints for you. This latter step would amount to a complete abandonment of standard business procedure.

Finally, I shall reiterate Seamon's advice to you that Time Inc.'s policy is not to volunteer the contents of its files to parties engaged in private litigation.

Sincerely yours,



Harry M. Johnston

Mr. Harry M. Johnston, Editorial Counsel
 Time, Inc.
 Time & Life Bldg.,
 Rockefeller Center
 New York, N.Y. 10020

Rt. 12, Frederick, Md. 21701
 8/15/76

Dear Mr. Johnston,

Aside from the fact that your letter of the 11th does not represent "standard business procedure" in general or in your corporate practice and to my knowledge it is helpful in asserting the right of a wealthy corporation to buy up unique evidence in a major crime, suppress that evidence indefinitely and then commercialize it.

It is further helpful in that you refuse to make any change in the record that shows clearly you act as an adjunct of the FBI in this entire matter.

While I strongly dispute the relevance of what you describe as "standard procedure" it is in fact not standard procedure. There is no "standard procedure" more certain to preclude commercial sale. Time, Inc. has regularly made prints available to others of whom I know. But in this case I did go all the way to New York and I was with some vehemence denied copies of any of this pictures under any circumstances and at any price. I was not allowed to view a single decent print. I was shown a set of contacts only. I can prove this in a number of ways because I then had a different interest than I now do. Then I was James Earl Ray's investigator seeking to prepare for a habeas corpus effort. Yours is the only agency that refused me prints. Because of the role in which I then was the lawyer who happens to be counsel for me in this present case, which is my own and not that of James Earl Ray and is for other purposes, has a dated copy of my report of my visit to your offices. He is not the only lawyer to whom I then reported and I have my own notes made in your offices.

This, of course, makes Time, Inc. even more of an adjunct of the FBI and in this specific case part of what now beyond any reasonable question is a cover-up of the FBI.

It cost me much more, in 1971, to go to your offices and be refused copies of these identical pictures you now offer at extortionate rates than buying an entire set at these extortionate rates.

If making the kind of study I make were possible from contacts I'd forget this entire matter. But my interest is not in schmalz. It is in evidence. This requires the study of the minutest detail, not possible from magnified contacts.

I digress to put this in context for you, from a recent experience with other pictures I was able to obtain years ago. It was necessary to put some of these in evidence in 1974, in Memphis. I now need them for my present study. When I had to go to New York for another purpose this past March I went to that agency and let its files abound in pictures of a smiling Percy Foreman, dozens of copies of a single prints; and in other dozens of a single print of both Arthur Haneses looking at each other and nothing else in front of Westminster Abbey, there is no longer a single print or a negative remaining of any of

the clerk of the appeals court would or did lie - how many guesses do you need in limiting those who can interfere with and intercept mail? Have you a better candidate than one of the present "parties engaged in private litigation?"

Let me sit upon your use of the word "private." Are you not saying in another way that you are in this and have been an adjunct of the FBI, which is a defendant in this present "private litigation?" You were a partisan in the earlier litigation in refusing to a defendant what you "volunteered" to the FBI, which thereupon suppressed them and did not make the exculpatory evidence in them available to the defendant.

Simultaneously you did make an effort to exploit that defendant against his own interest by trying to get him to add value to pictures you did not own but on which you did have an option. Because what you wanted was false you were by that act also interjecting yourselves into that litigation. This is a matter of court record in Ray v Rose, in the deposition of Percy Foreman, through whom you made the effort.

If one were to ascribe motive to your position, the most obvious is that writing only in support of the official account of this terrible crime Time, Inc., wrote contrary to evidence it had purchased and suppressed and now, because in its commercial operations it is dependant upon official sources it continues to suppress as one means of paying for these favors from officialdom.

There really is no question your interjecting yourself into private litigation. There is, very much, a question of whether or not you have acted as an arm in the FBI in this matter. Under the processes of the Court the FBI has produced only one letter from Time asking that I be denied copies of these pictures. That letter is dated after the FBI refused me copies and that FBI refusal was after government counsel made this representation in open court.

There is also no question of this because on your own you interjected yourself into this matter at the request of the FBI. If this were not true you would have no problem providing copies of prior correspondence.

This is history in an Orwellian repetition. You did the same thing in the JFK assassination with the Zapruder film and thereby bear a major share of the responsibility for a great and lingering national trauma. When as a result of my exposure you were embarrassed you made a big deal of "releasing" the missing frames and thereupon refused to release them. My request for them is after a decade without response. And in a decade there has been no complaint about my publishing the limitation attached to the few you did let get into commercial hands. It says "over our dead bodies."

Not that these are the only missing frames or that those you released after destroying the originals are complete copies of the originals because they are not and can never be. Having purchased and exercised the right to suppress you then destroyed what cannot be replaced. And this with some of the "best evidence" relating to the murder of a President!

My counsel is now out of the country. When he returns I will give him this exchange. I will, of course, do as he recommends. But I will recommend to him that he make an issue of this before the Court. It is just to foreign to a great tradition going back to Zenger, Paine and Jefferson. It is also, as I see it, a commercial subversion of the meaning of a fine and democratic law, one valuable in giving viability to representative society.

My interest in these pictures is restricted to scholarly study. I have given you written assurance that I will not reproduce any without first paying you the going cost.