

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

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. I have read the defendant's Motion For Partial Summary Judgment.
2. Defendant's "Response To Plaintiff's Statement of Material Facts As To Which There is No Genuine Issue" states: "In addition to plaintiff's desire to obtain these photographs for scholarly study, plaintiff has represented himself to be an investigator for the defendant convicted of the assassination of Dr. King and further that he is an author of several books, and is about to publish a second book on the assassination of Dr. King." To set the record straight, I have not represented that I am presently acting as investigator for James Earl Ray. It is also inaccurate to state that I am "about to publish a second book on the assassination of Dr. King." One of the consequences of the government's stonewalling of my Freedom of Information requests for King assassination records has been to allow a disreputable competitor, Mark

misleading account of the King assassination entitled Code Name Zorro! The effect of such irresponsible works on this subject has always been to decrease the marketability of responsible books. I do not now have a publisher for a second book on the King assassination, much as I would like one. I am writing a second book on the King assassination.

3. My first request for King assassination crime scene photos dates to March 24, 1969. As the result of a policy approved by Director FBI/J. Edgar Hoover himself there was no response to this or other of my Freedom of Information Act requests. In fact, some of my Freedom of Information Act requests were given a file number beginning with "100," a designation which the FBI uses for internal security matters.

4. On April 15, 1975 I requested all crime scene photographs taken on April 4th or 5th, 1968. After initially asserting that a search of the FBI Headquarters' files revealed that the FBI had no crime scene photographs, the FBI felt compelled to search the Memphis Field Office files where they turned up numerous crime scene photographs, including those taken by Mr. Joseph Louw. When I was shown the Louw photographs I specified that I wanted prints of some 15 of them for my immediate purposes.

5. I subsequently changed my mind and decided I wanted to obtain prints of all of them as indicated by the wording of my April 15, 1975 request for copies of all crime scene photographs. Several considerations affected this decision. First, in checking the notes I made while examining contacts of the Louw photos during my 1971 trip to Time's New York office, I became aware that the number of photographs Louw took appears to have been 180, whereas the number in the FBI's possession is variously stated at 104, 105,

4. Several years ago I viewed photographs of crime scene photographs taken by UPI. When I returned to the UPI office at a later date, I learned that UPI had destroyed most of its crime scene photographs. UPI had done this because it needed space and saw no possibility of further sales. Some of the photographs destroyed had evidentiary value, while others which were retained had none. This shows the danger of allowing Time, Inc., which apparently has no conception of the evidentiary value of these historically important photographs, to restrict access to them. By charging a price for prints that I cannot afford Time is restricting access to them.

5. Another thing also troubled me. While I cannot be absolutely certain, I believe that when I was shown the Louw prints by the FBI I did not see among them what I recall from my 1971 examination of the Louw contacts at Time's offices.

6. These considerations led to the decision to obtain all Louw photographs possessed by the FBI, use them for purposes of my own study, and save them for posterity by donating them to an archive at the University of Wisconsin--Stevens Point where they may be studied by other scholars.

7. The FBI and Time now claim that Time "loaned" the Louw photographs to the FBI for purposes of its investigation, This is a self-serving statement and is not supported by the evidence.

8. The FBI has now had the Louw photographs for nine years without returning them to Time, Inc. There is no contemporaneous evidence that Time did in fact "loan" the photographs to the FBI. Although the FBI's need for them for investigative purposes ceased long ago, there is no evidence that Time ever requested them back. In fact, it took my vigorous assertions that the FBI had crime

were found. Before this the FBI had maintained both that its Central Headquarters "MURKIN" file had been searched without finding any crime scene photographs and that all relevant records on the King assassination pertinent to my Freedom of Information requests would be found in that file. Absent my refusal to accept the FBI's assurances that it had no crime scene photographs and my insistence on a search of the Memphis Field Office, how would the FBI have been able to locate the photographs which it now claims were loaned by Time, Inc.?

9. Nor does the available evidence substantiate the claim that the FBI used these photographs for investigative purposes. With the exception of some FBI reports on scientific tests such as soil testing, I have read the entire FBI Headquarters' file on Murkin, which runs to around 20,000 pages. There is no reference in this entire file to the Louw pictures, no description of their content, no list of those whose pictures appear and who are witnesses. There is also no interview of or personal statement by Louw, even though Louw would have been an important witness had he taken no photographs at all.

10. Nor does the Headquarters' Murkin file contain any communications reflecting that Time loaned the Louw photographs to the FBI. As the correspondence attached to my previous affidavit on this subject shows, I repeatedly asked Time, Inc. for copies of all such communications without any response whatsoever.

11. When Dr. King was assassinated, both local papers had photographers at the scene promptly and the Associated Press and United Press International had crime scene pictures on their news wires immediately. At least one black photographer working for a black newspaper was there and took pictures. Another black pho-

FBI, and this file does not contain any photographs they took. One of the results of the FBI's failure to obtain basic photographic evidence is to give it control of what officials, including prosecutors, can know about the crime.

12. This parallels what happened in the assassination of President Kennedy. I wrote an entire book, Photographic Whitewash, on the suppression of photographic evidence in that assassination and focused on the FBI's careful avoidance of pictures. One result of this that was hurtful to establishing truth is that thousands of frames of motion pictures that were prime evidence have disappeared. Two of the many possible examples that I could give are: 1) five reels of pictures of the search of the Texas School Book Depository from which the crime is alleged to have been committed, taken by Thomas Alyea, no longer exist; and 2) another is the pictures of those leaving and entering the building seconds after the crime taken by two other TV news photographers. The FBI knew about all of these and many more essential pictures and did not obtain them.

13. While the available evidence does not show that Time, Inc. loaned the Louw photographs to the FBI, it does reflect a consistent pattern of Time's willingness to do what is in accord with the government's wishes.

14. A recent article by Carl Bernstein in the October 20, 1977 issue of Rolling Stone deals with journalists and news organizations which have allowed themselves to become arms of the government. One passage reads:

Time and Newsweek magazines. According to CIA and Senate sources, Agency files contain written agreements with former foreign correspondents and strigners for both the weekly news magazines. The same sources re-

of the crime. Time deprived Ray's defense of the basic evidence it freely gave the government. Having examined contacts of the Louw photographs, I can state that they contain evidence which competent defense attorneys could have used to exculpate James Earl Ray.

17. After becoming attorney for James Earl Ray, Mr. Bernard Fensterwald, Jr. sought to examine the Louw photographs. Time refused to let him look at them.

18. Later, in 1971, I arranged to go to New York and view them. I was allowed only to look at contacts, not prints, of the Louw photographs. Time would not let me have a set of the contacts. In fact they would not even give me a price for obtaining the Louw photographs.

19. Now that I am pressing to obtain the Louw photographs under the Freedom of Information Act, Time sends me the contacts which it originally wouldn't even let me have, but then sets a price on prints which I cannot afford. The inference that it is working hand-in-glove with the government to deny me these photographs is unavoidable.

20. As indicated above, while I have not had an opportunity to make a careful study of the Louw photographs, and cannot do so until I obtain prints, I am familiar with their content. Some of the Louw photographs do have evidentiary value. I believe there is at least one Louw photograph which, properly handled by one with my knowledge of the facts of the King assassination, could potentially have the impact of the famous My Lai photographs.

21. The fact that some of the Louw photographs could be used to exculpate James Earl Ray gives both the FBI and Time a motive for cooperating in their suppression. Both would be deeply em-

they both repeatedly proclaimed the murderer and who was convicted with the aid of the FBI.

22. Finally, with respect to the government's contention that it is barred by the Copyright Law from making copies of the Louw photographs for me is not consistent with its practice. For example, I have obtained copies of copyright photographs of the Kennedy assassination taken by Tom Dillard, James Underwood, and Abraham Zapruder from government agencies. On the basis of my knowledge of the government's files on the assassination of President Kennedy, I do not believe that the government even bothered to ask the copyright proprietor for permission before it made copies of these photographs for me. Similarly, I am aware of no evidence that the Warren Commission obtained permission from the copyright proprietor, Time, Inc., before it published frames of the Zapruder film in its exhibit volumes.

23. I also point out that in this very case the FBI has made xeroxes of copyrighted articles in newspapers and magazines available to me. In fact, the FBI has even provided me with xeroxes of some of the Louw photographs, including enlargements of them that appeared in Life magazine. According to the argument made by the government's motion for partial summary judgment, this is a violation of the Copyright Law.

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HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Subscribed and sworn to before me this 12th day of October,  
1977.