UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant

OPPOSITION TO DEFENDANT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

In this action plaintiff invokes the Freedom of Information Act to obtain copies of Department of Justice records pertaining to the assassination of Dr. Martin Luther King, Jr. Since March 24, 1969 plaintiff has sought to obtain copies of crime scene photographs in the possession of the FBI. After plaintiff instituted this action on November 28, 1975, the FBI initially denied plaintiff's assertions that it possessed crime scene photographs which had not been given him. Ultimately, however, the FBI did locate crime scene photographs in its Memphis Field Office which were not contained in the Central Headquarters' Murkin file to which it had originally confined its search. Among these crime scene photographs were about 107 pictures taken by Mr. Joseph Louw, a photographre on assisgnment for Public TV.

By letter from FBI Director Clarence Kelley dated May 5, 1976, the government claimed that the Louw photographs are exempt from disclosure by virtue of Exemptions 3 and 4 to the Freedom of Information Act. Plaintiff has moved for summary judgment with respect to the Louw photographs, contending that the government has not

met its burden of demonstrating entitlement to the claimed exemptions. Defendant also has moved for summary judgment, arguing that the Louw photographs are not agency records subject to the Freedom of Information Act and, if so, are protected by Exemptions 3 and 4. Aside from legal citations and arguments, the only material offered in support of defendant's motion is the letter of Mr. Harry M. Johnston, Associate Counsel for Time, Inc., to FBI Special Ageny Charles Matthews, which, in addition to being self-serving, is hearsay.

For the reasons state below, plaintiff opposes defendant's motion for partial summary judgment.

ARGUMENT

I. THE LOUW PHOTOGRAPHS ARE AGENCY RECORDS THAT ARE SUBJECT TO THE FREEDOM OF INFORMATION ACT

Defendant contends that the Louw photographs do not come within the purview of the Freedom of Information Act because they were "lent" to the FBI by Time, Inc. While plaintiff contends that whether or not records are "loaned" to an agency does not determine whether or not they are subject to disclosure under the Freedom of Information Act, he also disputes the claim that Time, Inc. loaned them to the FBI. There is no contemporaneous record which indicates that Time, Inc. "loaned" rather than "gave" the Louw pictures to the FBI. At least no such record has been produced. In view of the fact that plaintiff has repeatedly asked both Time, Inc. and the government to provide him with copies of all contemporaneous communciations relating to the Louw photographs and neither has responded, it seems unlikely that any such records exist that would tend to support this claim.

Moreover, the surrounding circumstances do not indicate that the photographs were a loan. Allegedly Time, Inc. loaned them to the FBI for purposes of investigating the murder of Dr. Martin Luther King, Jr. Yet eight years after the FBI's investigation ended in the conviction of James Earl Ray as the assassin, the FBI still kept them, and Time, Inc. never requested in all these years that they be returned. In fact, if Time had requested them, the FBI, on the basis of its own sworn statements, would have been unable to locate them in its Central Headquarters' Murkin file, where everything pertinent to the crime is supposed to be kept, and would have failed to locate them at all unless Time, like plaintiff, had insisted that the Memphis Field Office also be searched.

Even if Time, Inc. had merely loaned the Louw photographs to the FBI, this still would not render them immune to the mandates of the Freedom of Information Act. The cases cited by defendant, while presenting very different circumstances than are present here, are nonetheless quite helpful to plaintiff. For example, Ciba-Geigy Corp. v. Matthews, 428 F. Supp. 523 (S.D.N.Y. 1977), which defendant relies upon, notes that the General Services Administration has adopted a working definition of official records to implement the Freedom of Informaton Act. That definition, contained in 41 C.F.R. § 105-60.103, provides:

> The term "records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by GSA in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation as evidence of the organization, functions, or other activities or GSA or because of the informational value of data contained therein. (Emphasis added)

It is quite clear that under this definition the Louw photographs qualify as records. They were undeniably received by the

FBI "in furtherance of Federal law," as well as "in connection with public business." Obviously they constitute records which were "preserved because of the informational value of the data contained in them," and are "appropriate for preservation as evidence of the . . . functions, policies, decisions, procedures, operations, or other activities" of the FBI.

Ciba-Geigy is not apposite this case on the facts. That case dealt with a situation where the records sought consisted of the underlying research data compiled and retained by private parties that had received federal funding. The underlying data was not in the possession or control of a federal agency. Here, however, there is no question but that the Louw photographs have been in the possession and control of the FBI for the past eight years. So much so that they were transferred to the FBI's Memphis Field Office without the knowledge of Time, Inc. and apparently would have been permanently lost there had it not been for plaintiff's insistence that the Memphis Field Office be searched for crime scene photographs. In fact, in asserting that the Louw photographs were lent to the FBI for purposes of its investigation of the King assassination, the FBI has conceded that they were subject to its possession and control.

While not apposite on the facts, Ciba-Geigy does establish a standard which requires the Louw photographs to be provided plaintiff:

> Implicitly, the FOIA's purpose of disclosing Government agency records reaches only those records which are owned or controlled by the Government agency and thus used in the performance of its public business.
>
> In evaluating whether these records are agency records, this Court holds that the goals and purposes of the Act would be served best by imposing a standard which calls for proof that the records were either Government-owned or subject to substantial Government control or use. In other words, it must appear that there was significicant Government involvement with the records

> themselves in order to deem them agency records. Ciba-Geigy, supra, at 529.

The Louw photographs were, without question, "subject to substantial Government control or use" during its investigation of Dr. King's assassination. There is, therefore, no basis for asserting that they are not agency records.

The government also relies upon SDC Development Corp. v. Matthews, 542 F. 2d 1116 (C.A. 9, 1976). Again, the government's reliance is misplaced. That case involved a service of the National Library of Medicine known as MEDLARS (Medical Literature Anaylsis and Retrieval System), a computerized system for storing, indexing, and retrieving medical bibliographical data. This program was expressly authorized by Congressional legislation which also provided the Secretary of Health, Education, and Welfare, with the advice and recommendation of the Board of Regents of the National Library of Medicine, to charge the public for using these services. The plaintiff in the SDC case sought to obtain the tapes of computerized information without paying the subscription price set by the government. The court found that allowing the plaintiff to use the Freedom of Information Act in this manner would substantially impair the statutory mandate of the National Library:

> Requiring the agency to make its delivery system available to the appellants at nominal charge would not enhance the information gathering and dissemination function of the agency, but rather would hamper it substantially. Contractual relationships with various organizations, designed to increase the agency's ability to acquire and catalog medical information would be destroyed if the tapes could be obtained essentially for free. SDC, supra, at 1120.

No such finding is possible in the present case. Unlike the National Medical Library, the FBI can make no claim of damage to it or its operations if it is required to copy the Louw photographs. Moreover, this is not a case where the agency is gathering materials for dissemination to the public, a purpose which the SDC court found to be consistent with the goals of the Freedom of

Information Act, but rather the FBI obtained and used these records in connection with its own functions and operations. Consequently, only by making copies available to plaintiff can the Freedom of Information Act's goal of allowing maximum public scrutiny of government business be implemented.

II. SUPPRESSION OF THE LOUW PHOTOGRAPHS BY TIME, INC. AND THE GOVERNMENT VIOLATES THE FIRST AMENDMENT

The copyright clause of the Constitution provides that Congress shall have the power:

> To promote the grogress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. U.S. Constitution, Art. I, sec. 8, cl. 8.

It has been stated repeatedly that the primary purpose of the copyright is not to reward the author, but is rather to secure "the general benefits derived by the public from the labors of authors." Fox Film Corp. v. Doyal, 286 U.S. 123, 127 (1932). In Mazer v. Stein, 347 U.S. 201, 219 (1954), the Supreme Court expressed it this way:

> The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in "Science and useful Arts."

There comes a point at which the limited monopoly granted by a copyright becomes so oppressive that it violates the underlying purpose of the Copyright clause and the First Amendment. That point has quite obviously been reached in this case, where a wealthy corporation has purchased vital evidence of an important historical crime and, operating in league with a powerful government agency accused of not having properly investigated that crime, claims that it has the right to dictate that information can be

withheld from the American public by charging a price which those who transmit information to the public on the subject of Dr. King's assassination cannot afford and by refusing to let such persons obtain this information from the government at a far more reasonable cost.

Because this problem is considered and brilliantly set forth in Nimmer's treatise on copyrights, that work is worth quoting in extenso:

> Consider the photographs of the My Lai massacre. Here is an instance where the visual impact of a graphic work made a unique contribution to an enlightened democratic dialogue. No amount of words describing the "idea" of the massacre could substitute for the public insight gained through the photographs. The photographic expression, not merely the idea, became essential if the public was to fully understand what occurred in that tragic episode. It would be intolerable if the public's comprehension of the full meaning of My Lai could be censored by the copyright owner of the photographs. Here it would seem that the speech interest outweighs the copyright interest. Something of the same considerations were at play in Time, Inc. v. Bernard Geis Associates, the case involving the Zapruder home movie films of the John Kennedy assassination. Though Judge Wyatt in that case did not expressly invoke the first amendment, he did justify the defendant's right to copy frames of the film on the ground of the "public interest in having the fullest information available on the murder of President Kennedy." Note that in both the My Lai situation and in the Zapruder film case, the public could have learned the facts even without recourse to the photographs thereof. Judge Wyatt made a point of the fact that Life Magazine's copyright in the Zapruder film did not result in its having an "oligopoly" on the facts of the assassination. But without access to the photographs, in Meiklejohn's phrase, "all facts and interests relevant to the problem . . . [would not be[fully and fairly presented. . . ." In the case of My Lai, a denial that in fact any deaths had occurred would have been devastatingly refuted my the photographs in a way that the verbal reports of the deaths simply could not do. Anyone who would have to pass on their "ideas,"

> i.e., the fact that dead bodies were seen sprawled on the ground, would be at least as suspect as those who originally reported the occurrence of the deaths. The photographs themselves--the "expression of the idea,"--made all the difference.
>
> Similarly, in the welter of conflicting versions of what happened that tragic day in Dallas, the Zapruder film gave the public authoritative answers th-t it desperately sought; answers that no other source could supply with equal credibility. AGain, it was only the expression, not the idea alone, that could adequately serve the needs of an enlightened democratic dialogue. Nimmer on Copyright, § 9.232. (Citations omitted)

This is exactly what is at issue in this case. The government and Time, Inc. have intolerably withheld from the public crucial evidence on Dr. King's assassination. Plaintiff states in his attached affidavit that at least one of the Louw photographs has the potential impact of the My Lai photographs. Public access to the information expressed in these photographs and to the fact that the photographs were obtained from the FBI's own files is needed in order to "adequately serve the needs of an enlightened democratic dialogue" on the tragedy of Dr. King's death and the FBI's investigation of it.

Thus, the overriding fact is not whether Time, Inc. has a copyright in the Louw photographs, but that the continued suppression of the photographs violates the First Amendment and obstructs public knowledge about this great tragedy.

III. THE LOUW PHOTOGRAPHS ARE NOT EXEMPT FROM DISCLOSURE UNDER EXEMPTION 3

The government asserts that the Louw photographs are protected from disclosure by Exemption 3 which states that the disclosure requirements of the Freedom of Information Act do not apply to matters that are:

> (3) specifically exempted from disclosure by statute (other than 552b of this title), provided that such statute (A) requires that

> the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Two points are clear at the outset. The first is that the government has managed to get itself in the ludicrous position of arguing that it cannot disclose what it in fact has already disclosed. The Louw photographs have been shown to plaintiff by the FBI. This constitutes disclosure, although not in the form requested by plaintiff. Exemption 3 addresses itself only to the question of disclosure, not whether or not copies must be made. The same is also true with respect to Exemption 4.

Secondly, the Copyright Laws are not (b)(3) statutes. They do not address the question of disclosure at all. In addition, defendant can point to no provision of the Copyright Laws which requires that the copyrighted materials be withheld from the public in such a manner as to leave no discretion on the issue, or which establishes particular criteria for withholding copyrighted materials. The best defendant can do is to note that 28 U.S.C. §1498 provides that the United States is subject to suit for violation of the copyright statutes in an action brough in the Court of Claims. This, however, does not prohibit the government from violating the statute or require it to withhold copyrighted materials; it merely provides a remedy for one who claims his copyright has been infringed. The primary purpose of this section was to relieve those who contracted with the United States to reproduce or manufacture patented items from liability for infringement. Bunting v. McDonell Aircraft Corp., 522 S.W. 2d 161 (Mo. 1975).

It should also be pointed out that by its terms 28 U.S.C. §1498(b) applies only to works "protected under the copyright laws

of the United States." Time claims that the photographs published in several editions of its April 12, 1968 issue of Life are protected by the copyright it has in each of those editions. This means that the remaining photographs, approximately 100 in number, are protected, if at all, only by common law copyright. But as pointed out above, §1498(b) does not embrace infringement of common-law copyright. Porter v. U.S., 473 F. 2d 1329 (5th Cir. 1972)

The government's attempt to assert a copyright claim on behalf of Time, Inc. in the Louw photographs raises a whole host of problems. To begin with, the government has not supplied proper evidence that either Time or Joseph Louw held either common law or statutory copyright in these photographs. The only evidence in the record states that Louw was in Memphis on assignment for Public TV at the time he took these photos. The general rule of copyright law is that, absent a preponderance of evidence of a contrary agreement between the parties, copyright remains in the employer, not the employee. See Nimmer on Copyrights, §62. Thus it may well be Public TV, not its employee, Joseph Louw, that held the copyright claim to the photographs he took while on assignment for it in Memphis.

But even assuming that Joseph Louw did hold the copyright in his photographs, Time, Inc. appears to have no authority to assert a copyright claim in the photographs. Only the proprietor of a copyright or an assignee has standing to sue for copyright infringement. Time claims to be agent for Louw, but "One who is merely the agent of an author does not have standing to claim copyright." See Nimmer on Copyright, § 61. In addition, because of the doctrine of the indivisibility of a copyright, it is impossible to "assign" anything less than the totality of rights commanded by copyright. "A transfer of anything less than such a totality is said to be a

"license" rather than an assignment." Nimmer on Copyright, § 119, citing Hirshon v. United Artists Corp., 243 F. 2d 640 (D.C. Cir. 1957), and numerous cases from other jurisdictions as well. In asserting that "Time has no authority to grant book publication rights to any of the Louw photographs; this right was reserved by the photographer himself," (Letter of Harry M. Johnston, Associate Counsel for Time, Defendant's Exhibit 1) defendant has revealed that Time is a best a mere licensee and thus has no standing to claim copyright infringement.

Finally, as noted above, virtually all of the Louw photographs are protected, if at all, only by common law copyright. While the protection afforded by common law copyright is in some respects broader than that given by statutory copyright, the general rule is that publication of a work divests common law rights. Wheaton v. Peters, 33 U.S. 591 (1834). The question which then must be answered is whether or not the Louw photographs have been published as that term is used in copyright cases. Because the Copyright Act does not define the term "publication," recourse must be had to the case law. Nimmer says:

> The relevant decisions indicate that publication occurs when by consent of the copyright owner, the orginal or tangible copies of a work are sold, leased, loaned, given away, or otherwise made available to the general public, or when an authorized offer is made to dispose of the work in any such manner even if a sale or other such disposition does not in fact occur. Nimmer on Copyright, §49. (Citations omitted)

Without anything else, it is clear that Time published the Louw photographs allegedly protected by common law copyright when they offered to sell prints of them to plaintiff for $10.00 each. After that, these photographs could no longer be said to be protected by common law copyright, if they ever could.

In addition to this consideration, there is also the point that the Louw photographs of the event of Dr. King's assassination

constitute the basic work for which copyright protection is claimed. The general rule is that publication of a derivitive work constitutes publication of the basic or underlying work. Nimmer on Copyright, § 57. Accordingly, plaintiff contends that in publishing certain of the Louw photographs in its April 12, 1968 issue of Life, Time divested itself or Mr. Louw of any claim to common law protection of the underlying work, the remaining unused photographs of the King assassination crime scene.

Respectfully submitted,

James H. Lesar

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Washington,D.C. 20006

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of October, 1977 delivered a copy of the foregoing Opposition to Defendant's Motion For Partial Summary Judgment to the office of Mr. John R. Dugan, Assistant United States Attorney, Room 3419, United States Courthouse, Washington, D.C. 20001.

James H. Lesar

JAMES HIRAM LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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 Lane, to co-author, with comedian Dick Gregory, a misinformed and

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 FBI Director 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, and 107. This discrepancy bothered me, particularly in light of my knowledge of lost, missing or destoyed film pertaining to the assassinations of President Kennedy and Dr. King.

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 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 scene photographs it had not provided me to prod the FBI into searching it's Memphis Field Office files where the Louw photographs

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 photographer, Ernest Withers, took pictures of the crime scene about an hour after the shooting. Nothing in the Headquarters' Murkin file shows that any of these photographers was interviewed by the

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 refused to say whether the CIA has ended all its associations with individuals who work for the two publications. Allen Dulles often interceded with his good friend, the late Henry Luce, founder of Time and Life magazines,

> who readily agreed to provide jobs and credentials for other CIA operatives who lacked journalistic experience.
>
> For many years Luce's personal emissary to the CIA was C.D. Jackson, a Time, Inc. vice-president who was publisher of Life magazine from 1960 until his death in 1964. While a Time executive, Jackson coauthored a CIA-sponsored study recommending the reorganization of the American intelligence services in the early 1950s. Jackson, whose Time-Life service was interrupted by a one-year White House tour as an assistant to President Dwight Eisenhower, approved specific arrangements for providing CIA employees with Time-Life cover. Some of these arrangements were made with the knowledge of Luce's wife, Clare Boothe. Other arrangements for Time cover, according to CIA officials (including those who dealt with Luce) were made with the knowledge of Headley Donovan, now editor-in-chief of Time, Inc.

The Bernstein article also quotes William B. Bader, the man who supervised the Senate's investigation into the CIA's use of news organizations and journalists, as telling the Senate Committee that: "There is quite an incredible spread of relationships," and "You don t need to manipulate Time magazine, for example, because there are Agency people at the management level."

15. I am familiar with Time's reportage on the King assassination. For all practical purposes, it reflects that Time has functioned as an arm of government by spouting forth propaganda in support of the official version of the crime and suppressing facts inconsistent with the predermined conclusion that James Earl Ray shot Dr. King.

16. Time's record with respect to the Louw photographs also indicates that it is acting as an arm of government in suppressing them. It has a long record on this. When Time gave the FBI copies of the photographs in 1968, it did not give them to Ray's defense attorneys. Yet under our laws the defense in a criminal case is also charged with the obligation of conducting an investigation

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 embarrassed if it became public knowledge that their files contained evidence which they had suppressed which helped to clear the man

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.

Harold Weisberg
HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

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

My commission expires July 1, 1978.

Dr. Mary Haley
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

FROM : A. Rosen

SUBJECT: MURKIN

DATE: October 20, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. McDonough
1 - Mr. Bishop
1 - Mr. W. C. Sullivan

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Tavel
Trotter
Tele. Room
Holmes
Gandy

This is the case involving the murder of Martin Luther King, Jr.

Weisberg is apparently identical with Harold Weisberg an individual who has been most critical of the Bureau in the past. He is the author of several books including one entitled, "Whitewash - The Report of the Warren Report" and has been critical of the FBI, Secret Service, police agencies and other branches of Government.

Weisberg by letter in April, 1969, requested information on the King murder case for a forthcoming book. It was approved that his letter not be acknowledged. (100-35138)

Enclosures (2)

EJM:jmv
(8)

REC-62 44-3-41-5838

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CONTINUED - OVER