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March 25, 1977

Michael Ryan, Esquire
Assistant United States Attorney
United States Courthouse
Third and John Marshall Place, NW
Washington, DC 20001

Subject: Harold J. Weisberg v. Department of Justice, et al.,
USDC DC, Civil Action No. 226-75

Dear Mike:

In accordance with our telephone conversations, I enclose an executed original and four copies of an affidavit dated today and signed by me for your use in objecting to that aspect of plaintiff's subpoena to the Archivist of the United States in the above-captioned complaint in which he seeks production of the tie worn by President Kennedy at the time of the assassination. Please advise me if additional materials are necessary in order for you to file an objection and/or motion to quash.

Assuming we are in receipt of the delinquent witness fee by Monday morning, Trudy Peterson and Marion Johnson of the Archives will appear with the remainder of the subpoenaed items and records. If possible, I will also try to make it to the deposition. With respect to the items and records that we plan to produce, you should be aware that while we have no objection to the visual examination of photographs of President Kennedy's clothing, plaintiff is not entitled to retain copies of these photographs. This is in accordance with our regulations designed to prevent commercial or sensationalistic reproduction of these photographs. Finally, we would object to any testimony by Ms. Peterson or Mr. Johnson on any subject other than verification of the items and records being produced.

Sincerely,

(signed) Steven Garfinkel

STEVEN GARFINKEL
Chief Counsel
Records and Archives

Enclosure

Official File - LR
Reading File - LR
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Civil Action No. 226-75

HAROLD J. WEISBERG,	Plaintiff,
v.	
DEPARTMENT OF JUSTICE, et al.,	Defendants.

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss.:

I, STEVEN GARFINKEL, Chief Counsel, National Archives and Records Service, United States General Services Administration, do hereby solemnly swear:

1. On March 23, 1977, James B. Rhoads, Archivist of the United States, was served with a subpoena in the above-captioned complaint. The subpoena, issued by plaintiff's counsel, commanded Dr. Rhoads to appear at the office of plaintiff's counsel on March 28, 1977, and to bring with him a number of items, including the tie worn by President John F. Kennedy at the time of his assassination.

2. President Kennedy's tie was among a number of historical materials donated to the United States for preservation in the National Archives by the family of the late President in a letter instrument dated October 29, 1966. A copy of that instrument is attached as an exhibit to this affidavit. The donation was made in accordance with the provisions of what is now codified as positive law as section 2107 of title 44, United States Code. That statute provides in pertinent part: "When the Administrator of General Services considers it to be in the public interest he may accept for deposit the papers and other historical materials of a President or former President of the United States . . . subject to restrictions agreeable to the Administrator as to their use"

3. In accordance with the instrument of gift (Exhibit A, Part I(2)), access to

any other official agency of the United States Government, having authority to investigate matters relating to the death of the late President, for purposes within the investigative jurisdiction of such committee, commission or agency.

(b) Any serious scholar or investigator of matters relating to the death of the late President, for purposes relevant to his study thereof. The Administrator shall have full authority to deny requests for access, or to impose conditions he deems appropriate on access

4. Pursuant to his authority under the aforesaid instrument, and other statutes and legal instruments pertinent to the investigation of the President's Commission on the Assassination of President Kennedy (the Warren Commission), the Administrator of General Services, acting through the Archivist of the United States, has issued "Regulations Concerning Procedures for Reference Service on Warren Commission and Related Items of Evidence," the most recent version of which are attached as Exhibit B to this affidavit. With respect to three-dimensional objects and materials, the regulations provide in pertinent part:

Three-dimensional objects and materials that have been subjected to techniques of detailed scientific examination . . . will be withheld from researchers as a means of protecting them from possible physical damage or alteration and in order to preserve their evidentiary integrity in the event of any further official investigation of the assassination of President John F. Kennedy.

Researchers will not be permitted to view the items unattended or to touch or handle in any way the items themselves, either manually or with instruments. To the extent possible, photographs of these materials will be furnished to researchers as a substitute for visual examination of the items themselves.

The clothing of President Kennedy will not be shown to private researchers, except those researchers whose applications to examine the X-rays and photographs relating to the autopsy of President Kennedy are approved by the Kennedy family representative.

5. In view of the instrument of gift and regulations quoted above, upon receipt of a copy of the subpoena served upon Dr. Rhoads, I telephoned Burke Marshall, the Kennedy family representative, on March 23, 1977. After I had read Mr.

1 /
John Edgar Hoover
NOTARY PUBLIC

D. C., on this twenty-fifth day of March, 1977.

Subscribed and sworn to before me at Eighteenth and F Streets, N. W., Washington,

Steven Garfunkel
STEVEN GARFUNKEL

to the best of my knowledge and belief.

I have read the above statement, consisting of 3 pages, and it is true and complete

Representatives.

by the new inquiry into the assassination to be conducted by the House of

President Kennedy's clothing is self-evident at any time, our rationale is highlighted

7. While we maintain the reasonableness of the regulations restricting access to

460 F.2d 671, 674-75 (10th Cir. 1972)).

of that gift (Nichols v. United States, 325 F. Supp. 130 (D. Kan. 1971), aff'd

to the United States and in accordance with the regulations implementing the terms

above, as that statute had been invoked in the making of the gift of the clothing

(5 U.S.C. § 552(b)(3)). The pertinent statute was 44 U.S.C. § 2107, as quoted

would be exempt from mandatory disclosure based on the third statutory exemption

was "records" for purposes of the Act (which question the Court did not reach), they

Court of Appeals for the Tenth Circuit ruled that if President Kennedy's clothing

access to, among other things, President Kennedy's clothing, the United States

6. In another Freedom of Information action in which plaintiff pathologist sought

is not a researcher who may be shown the clothing of President Kennedy.

Kennedy, and, therefore, in accordance with the regulations quoted above, plaintiff

to examine the X-rays and photographs relating to the autopsy of President

of Kennedy family representative, has never approved plaintiff's application

the present wishes of the Kennedy family. Further, Mr. Marshall, in his capacity

United States District Court
for the
District of Columbia

Harold Weisberg,
Plaintiff.

vs.

CIVIL ACTION No. 75-0226

Dept. of Justice, et al.
Defendant.

To: Dr. James B. Rhoads, Archivist of the United States

YOU ARE HEREBY COMMANDED to appear in (this court) (the office of Mr. James H. Lesar, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006) to give testimony in the above-entitled cause on the 28th day of March, 1977, at 10:00 o'clock a.m. (and bring with you) the bullet depicted in Warren Commission Exhibit 399; the curbstone depicted in Shaneyfelt Exhibit 34; the President's tie; the pictures of the President's clothing taken for Mr. Weisberg pursuant Civil Action 2569-70; all records relating to the unknotting of the President's tie. and do not depart without leave.

JAMES F. DAVEY, Clerk

By Robert R. Lene
Deputy Clerk.

Date March 21, 1977

Attorney for { Plaintiff.
Defendant.

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to him and tendering to him the fees for one day's attendance and mileage allowed by law, on the 21 day of March, 1977, at

Subscribed and sworn to before me, a _____ this _____ day of _____, 19 _____

oath required only if service is made by a person other than a U.S. Marshal or his deputy.