No. 71-1026

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HAROLD WEISBERG,

Plaintiff-Appellant

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

PLAINTIFF'S MEMORANDUM TO THE COURT

BERNARD FENSTERWALD, JR.
905 16th Street, N. W.
Washington, D. C. 20006
Attorney for Plaintiff

Of Counsel:

James H. Lesar
905 16th Street, N. W.
Washington, D. C.

PLAINTIFF'S MEMORANDUM TO THE COURT

This court has requested that counsel in this case submit any materials which would aid in clarifying certain statements made by Attorney General John Mitchell in letters reprinted at pages JA-23 and JA-43 of Plaintiff's Brief and Joint Appendix. Each of these letters contains a reference to a case litigating the question of whether or not certain materials in the Justice Department files are exempt from disclosure under the investigatory files exception to the Freedom of Information Act.

Upon research counsel for Plaintiff have concluded that the assertion in Attorney General Mitchell's letter of June 4, 1970 that "at present this issue is being litigated in the federal courts" probably refers to Nichols v. United States of America, et al, Civil Action No. 4761, United States District Court for the District of Kansas. Counsel for Plaintiff have reached this conclusion because there is no other case known to them which seeks access to the type of records--bullet, bullet fragments and items of clothing--described in the third paragraph of the Attorney General's June 4 letter. (See JA-23-24)

The reference in the Attorney General's letter of May 6, 1970 is to documents which were obtained after Plaintiff Harold

Weisberg instituted a suit for them. This suit is Weisberg v. Department of Justice and Department of State, Civil Action No. 718-70, United States District Court for the District of Columbia.

These two suits are of a quite different nature and achieved opposite results. The Nichols suit sought, among other things, to inspect, study, examine and subject certain items of evidence connected with the assassination of President Kennedy to neutron activation analysis. The items of evidence to be subjected to examination and scientific testing included the bullet, bullet fragments, and items of the President's clothing.

The court in Nichols held that physical objects such as these are not "records" under the terms of the Freedom of Information Act. On this ground the court awarded summary judgment to the Government. The court did not determine whether such items were exempt under the investigatory files exception to the Act. (A copy of Judge Templar's opinion in Nichols is attached as Exhibit A) The Nichols case is currently on appeal to the United States Court of Appeals for the Tenth Circuit (No. 71-1238).

The Weisberg case, on the other hand, bears directly on the question of whether any material which the FBI or the Justice

After his conviction, James Earl Ray himself tried to obtain the court records which had been introduced into evidence in London. Nearly four months later the State Department replied to Ray's request by stating that it had returned these documents to the Justice Department, which had advised the Department of State "that these documents are considered part of investigative files of the Department of Justice and are exempt from disclosure under subsection (b)(7) of section 552 of Title 5 of the United States Code." (Letter of December 10, 1969 from J. Edward Lyerly to James Earl Ray attached as Exhibit D)

Invited by the Department of State to apply to the Department of Justice, Ray did so. The reply by Richard G. Kleindienst, then Deputy Attorney General, denied possession of some of the documents and then asserted that ". . . such records pertaining to your extradition as may be in our possession are part of the investigatory files compiled for law enforcement purposes and, as such, are exempt from disclosure under . . . 5 U. S. C. 552 (b)(7)." (Letter from Kleindienst to James Earl Ray attached as Exhibit E)

The same response was made to the identical requests by Mr. Harold Weisberg. On August 20, 1969 Weisberg's attorney wrote Attorney General Mitchell on his behalf and requested

"all documents filed by the United States with the Court in England in June-July, 1968, in the extradition proceeding by which James Earl Ray . . . was returned to this country." (See Exhibit F) On November 13, 1969, Deputy Attorney General Richard G. Kleindienst replied to this request by claiming that "no documents in the files of this Department are identifiable as being copies of the documents transmitted to British authorities through diplomatic channels at the request of the States of Tennessee and Missouri and presented to the Bow Street Court by officials of the United Kingdom." (Letter from Kleindienst and response to it by Bernard Fensterwald, Jr. are attached as Exhibits G and H) This Justice Department untruth was truth for a limited period of time only. By May 6, 1970 Attorney General Mitchell was indulgently granting Weisberg access to the documents which Kleindienst, his Deputy, had said were not in Justice Department files. (See JA-43)

Ultimately, access to the extradition documents was gained, though at a tremendous cost. Among the documents submitted at the London proceedings was an affidavit by FBI ballistics expert Robert A. Frazier which addresses itself to the question of whether there was any evidence connecting the bullet found in Dr. King's body with the rifle allegedly used by James Earl Ray and then placed

Department says is part of an investigatory file is ipso facto exempt from disclosure. The only issue before the court was a claim that the documents sought were part of an investigatory file compiled for law enforcement purposes. Chief Judge Edward M. Curran ultimately awarded Summary Judgment in favor of Plaintiff Weisberg and ordered that all documents which he had requested be produced. (Judge Curran's order is attached as Exhibit B)

A closer look at Civil Action 718-70 may illuminate what the Justice Department regards as part of a forever suppressible "investigatory file".

The documents which Mr. Weisberg sought in that case were the documents which the United States Government had filed with the Court in London, England in connection with the proceedings to extradite James Earl Ray, the alleged assassin of Dr. Martin Luther King. After Ray's extradition and before his trial, his attorney Percy Foreman attempted unsuccessfully to obtain copies of the documents submitted at the London extradition proceedings. Less than three weeks before the trial date Ray's attorney requested a continuance on grounds that he had not been able to secure a copy of the extradition documents. (Transcript of February 14, 1969 hearing attached here as Exhibit C)

in the doorway to Canipe's Amusement Center. Paragraph 6 of the Frazier affidavit says:

> Because of distortion due to mutilation and insufficient marks of value, I could draw no conclusion as to whether or not the submitted bullet was fired from the submitted rifle." (The Frazier affidavit is attached as Exhibit I)

This fact constitutes important exculpatory evidence vital to Ray's claim that he did not shoot Dr. King. Had the Justice Department prevailed in its interpretation of what is exempt from disclosure as part of an investigatory file, this information might never have become known to Ray's attorneys seeking post-conviction relief. Author and journalist Fred J. Cook has compared the use of the ballistics evidence in the James Earl Ray prosecution to the manner in which the ballistics evidence was used "by a corrupt prosecution in the Sacco-Vanzetti trial". (Review of Frame-Up by Fred J. Cook attached as Exhibit J)

The record of the Justice Department in willfully denying both the defendant and the public access to public court records dealing with the extradition of James Earl Ray illustrates several important points. First, it shows the consequences of allowing the Justice Department to arrogate to itself the right to determine what constitutes an investigative file which is exempt from dis-

closure. In effect, permitting the Justice Department to label any document it pleases part of an investigatory file converts exemption (7) into a kind of executive privilege exercisable at the whim or caprice of the Director of the FBI or the Attorney General.

The arbitrariness of the Justice Department in determining what records it will disclose is notorious. Literally thousands of pages of FBI records were published in the 26 volumes which comprise the Warren Commission's Hearings and Exhibits. In fact, more than a thousand pages of FBI reports not published in the Warren Commission volumes or otherwise available to researchers have recently been made public. These records run the gambit from some 40 pages of medical records kept during Marina Oswald's pregnancy stay at Parkland Hospital to the reports of confidential FBI informants. Thus, at the same time the Justice Department has been releasing to the public reams of FBI reports--many of which should more properly have been withheld--Justice has also steadfastly refused to release such documents as the public court records in regard to James Earl Ray's extradition and scientific tests such as the spectrographic analyses performed during the investigation into President Kennedy's assassination.

The arbitrariness with which the Justice Department makes such determinations is exceeded only by the arrogance with which the Department presumes it can refuse to comply with court-ordered disclosure of information. Thus, 28 CFR 16.14 states:

> ". . . if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Attorney General not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand . . . ."

In its arbitrary disclosure of Warren Commission materials, the Justice Department has violated the terms of a White House directive pertaining to the "Public availability of materials delivered to the National Archives by the Warren Commission." Those terms are stated in a memorandum for McGeorge Bundy, Special Assistant to the President, dated April 13, 1965. In regard to "investigative reports and related materials furnished to the President's Commission" by the FBI and most other federal agencies, the guidelines state:

> 2. c. All unclassified material which has been disclosed verbatim or in substance in the Report of the President's Commission or accompanying published documents would be made available to the public on a regular basis .....
>
> d. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure

1) will be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;

2) may reveal the identity of confidential sources of information or the nature of confidential methods of acquiring information, and thereby prevent or limit the use of the same or similar source and methods in the future;

3) may lead to the incorrect identification of sources of information and thereby embarrass individuals or the agency involved;

4) would be a source or embarrassment to innocent persons, who are the subject or source of the material in question, because of the dissemination of gossip and rumor or details of a personal nature having no significant connection with the assassination of the President;

5) will reveal material pertinent to the criminal prosecution of Jack Ruby for the murder of Lee Harvey Oswald, prior to the final judicial determination of that case.

Where one of the above reasons for nondisclosure may apply, the agency involved should weigh such reason against the "overriding consideration of the fullest possible disclosure" in determining whether or not to authorize disclosure. [Emphasis added]

Even if there were no Freedom of Information Act, the spectrographic analyses sought by Plaintiff Weisberg ought to be made available to him under the terms of this White House directive cited above. However, since there is a Freedom of Information Act, all the needs to be said about the Government's attempt to invoke the investigative files exemption in this case is what this Court said in a recent case:

"The Excelsior" lists are not files prepared primarily or even secondarily to prosecute law violators, and even if they ever were to be used for law enforcement purposes, it is impossible to imagine how their disclosure could prejudice the Government's case in court." Getman v. NLRB No. 71-1097, United States Court of Appeals for the District of Columbia. Slip opinion at p. 7.

Respectfully submitted,

Bernard Fensterwald, Jr.

BERNARD FENSTERWALD, JR.
905 16th Street, N. W.
Washington, D. C. 20006

Exhibit A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

JOHN NICHOLS, Plaintiff,	)	
vs.	)	Civil Action
UNITED STATES OF AMERICA, et al., Defendants.	)	No. 4761

RULING ON MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT

Plaintiff is a physician duly licensed in Kansas to practice as such and, for the purpose of considering the motion filed by defendants to dismiss or in the alternative for summary judgment, is presumably a qualified pathologist with experience in examining gunshot wounds including their interpretation by X-ray. Plaintiff has instituted this action against the United States of America, the Archivist of the United States, the General Services Administration and the Secretary of the Navy.

The action is brought under provisions of the Federal Public Records Law, being 5 U.S.C. Sections 551-552 (80 Stat. 250, 1966), and venue is claimed under provisions of 28 U.S.C. Section 1391(e)(4). Defendants included are General Services Administration, National Archives and Record Service, and the Department of the Navy.

Plaintiff alleges a general interest in scientific matters and particularly in the areas of pathology and related research. He alleges that he wishes to study certain items of evidence, in custody or in possession of the defendants, which will afford him an opportunity to resolve conflicting opinions, conclusions and uncertainties concerning the death of the late President John F. Kennedy. He alleges, in substance, that

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CHARLES W. CAHILL, Clerk

By Sharon L. Pratt Deputy

following proper request to them, defendants have either refused him permission to examine the materials described in his complaint or have ignored his requests for such permission.

Briefly stated, plaintiff desires to inspect, study, examine and, as to some materials, submit described material to "neutron activation analysis." He also wishes to see and examine X-rays and photographs made at the autopsy of President Kennedy, various Warren Commission exhibits and the President's clothing worn at the time of the assassination.

Defendants have filed a motion to dismiss or in the alternative for summary judgment. Since affidavits and evidence outside the pleadings have been submitted in support of the motion, under the direction of Federal Rules of Civil Procedure 12(c), the issues raised should properly be considered under Federal Rules of Civil Procedure 56. The Court has been provided with extensive briefs by all parties and assumes that all parties have presented all material they deem pertinent under that rule.

> "The rule followed by this Circuit in regard to motions for summary judgment is clear and while it is the duty of the trial court to grant a motion for summary judgment in an appropriate case, the relief contemplated by Rule 56 is drastic, and should be applied with caution to the end that the litigants will have a trial on bona fide factual disputes. Under the rule no margin exists for the disposition of the factual issues, and it does not serve as a substitute for a trial of the case nor require the parties to dispose of litigation through the use of affidavits. The pleadings are to be construed liberally in favor of the party against whom the motion is made, but the court may pierce the pleadings, and determine from the depositions, admissions and affidavits, if any, in the record whether material issues of fact actually exist. If, after such scrutiny, any issue as to a material fact dispositive of right or duty remains the case is not ripe for disposition by summary judgment, and the parties are entitled to a trial."
>
> Machinery Center v. Anchor National Life Insurance Company, 434 F.2d 1, 6, 10th Cir.

With this guideline to follow in considering defendants' motion, the several grounds advanced by them will be considered to the extent necessary for ruling on the motion as one for summary judgment.

JURISDICTION OF THE COURT -- MATERIAL REQUESTED AS "RECORDS"

Defendants question the Court's jurisdiction over the subject matter because plaintiff's demands do not constitute requests for any "identifiable records."

The items requested by plaintiff could scarcely be more clearly identified by him, but a more substantial issue is raised by defendants under their contention that much of the material requested does not fall within the classification of "records" within the purview of the statute.

That the Federal Public Records Law or Information Act, through which plaintiff seeks to obtain information denied him by agencies of the United States, was intended to require disclosure of government records to any person on proper application is clear, and in considering the issues raised under a motion for summary judgment should be liberally construed to carry out the express purpose of the act, which is discussed by Judge Croake in Consumers Union v. Veterans Administration, 301 F.Supp. 796, at 799.

> "Consumer Union's request for VA records came in the wake of the passage of the Freedom of Information Act. The key portion of that Act, now codified, is as follows:
>
> > * * * each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. * * *
>
> The purpose of the Act, seen in the statutory language and the legislative history, was to reverse the self-protective attitude of the agencies under which they had found that the public interest required, for example, that the names of unsuccessful contract bidders

> be kept from the public. The Act made disclosure the general rule and permitted only information specifically exempted to be withheld; it required the agency to carry the burden of sustaining its decision to withhold information in a de novo equity proceeding in a district court. Disclosure is thus the guiding star for this court in construing the Act. Because portions of the Act are patently ambiguous, its illumination will be most useful."

And so, in considering this matter under a motion for summary judgment, unless the material sought cannot be described as a "record" required to be produced within the meaning of the Act, or if a record, does not fall within the numerous exemption provisions of the Act, then as to such a specific record, the motion must be denied.

Under Federal Rules of Civil Procedure 56(d), the Court is authorized to ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. An order may then be made specifying facts that appear without substantial controversy and directing such further proceedings in the action as are just.

Because the term "records" is not defined in the Act, the Court is initially put to the task of deciding which of the items requested by plaintiff may be so classified within the contemplation of the statute. It is unfortunate that attention was not given to this point when the law was enacted since the positive provisions of the Act are all but smothered by some nine broad and generalized statements providing for many exemptions.

Efforts have been made to classify the material which may be considered as a record under the Act, e.g., the General Services Administration adopted the following definition in 41 C.F.R. 105-60.104(a):

> "(a) Records. 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, policies, decisions, procedures, operations, or other activities of GSA or because of the informational value of data contained therein."

Again, this definition is followed by several general statements of what the defined term does not include.

Not included is library and museum material made or acquired and preserved solely for reference or exhibition purposes; objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles or equipment (not defined), and donated historical materials (as defined in 105-61.001-4), accepted by GSA from a source other than an agency of the United States Government in accordance with provisions of 44 U.S.C. 397 (now 44 U.S.C. 2107 and 2108).

Then, paragraph (b) of the section states:

> "(b) Availability. The term 'availability' signifies the right of the public to obtain information, purchase materials, and inspect and copy records and other pertinent information."

If these regulations were designed to be a clarification of what was intended by the term "record," a failure of purpose must be registered. Nor do the declarations of the General Services Administration subtract from the confusion. The Attorney General's memorandum on the Public Information Section of the Administrative Procedure Act offers little help but simply quotes 44 U.S.C. 366, now 44 U.S.C. 3301, stating what material is included by the term "records," and specifically excluding "library and museum material made or acquired and preserved solely for reference or exhibition purposes * * *." Just what constitutes "library and museum material" is not designed or defined.

44 U.S.C. 3301 offers some illumination when it declares that the word "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of form or characteristics. (Emphasis added.) But again comes the question, what are "documentary materials"? In Jones on Evidence, 5th Ed., Vol. 3, p.1043, §535, is found this helpful statement:

> "For all practical purposes the term 'document' may be considered as synonymous with 'writing.' A document has been defined as 'any substance having any matter expressed or described upon it by marks capable of being read.' A writing or document, in addition to handwritten or printed or typewritten instruments, which first come to mind, should include inscribed chattels, photographic or other mechanical reproductions and sound recordings--even though in the case of sound recordings the inscribed marks may not be visible to the eye and may be read only with the use of mechanical devices."

This Court must assume that since no better definition of the term,"record," is provided by legislative enactment, executive order or controlling judicial determination, reliance may be placed on a dictionary of respected ancestry for a reasonably accurate meaning of the word. In Webster's New International Dictionary, this definition appears:

> "That which is written or transcribed to perpetuate knowledge of acts or events; also, that on which such record is made, as a monument; a memorial."

Again, in Webster's New Collegiate Dictionary, the word record is defined as ,

> "That which is written to perpetuate a knowledge of events * * * that on which such a record is made, a monument."

Though the word "records" was used in the United States Constitution, Article IV, Section 1, in which full faith and credit is required to be given in each state to the public records of every other state, I am unable to find a judicial interpretation of what is intended by the use of the word "records," nor is one shown to me. An examination of Words and Phrases likewise has offered little aid in defining the term.

A record is intended to serve as evidence of something written, said or done and is not kept to gratify the curious or suspicious. Owens v. Woolridge, 22 Pa. Co. Ct. Rep., 237, 240.

Thus, under any reasonable calculation of what is intended to be covered by the congressional enactment referred to as the Information Act, it seems clear that the provisions of 5 U.S.C. 552, under which plaintiff seeks relief, limits the authority of a district court to enjoin an agency from withholding records and to order production of any agency records improperly held from complainant.

Without being concerned with the numerous exemptions provided in the Act under which defendants seek to avoid compliance with the general terms of the Act, we might consider the items for which request was made and to which the statute in its present form could not apply.

If the statute is to receive a broader application, Congress must enlarge its provisions to apply to items this Court does not believe were intended to be included in its provisions. The following items requested by plaintiff for examination, inspection and study, described in paragraph 5 of plaintiff's complaint may not be classified as a "record" within the meaning of the Act, to wit:

> (a) The 6.5 mm Mannlicher-Carcano rifle, C2766, formerly the property of the late Lee Harvey Oswald. This was designated as Exhibit CE139 in the Warren Report.
>
> (b) A live 6.5 mm round manufactured by Western Cartridge Company and found in the chamber of Oswald's Rifle, C2766. Warren Report Exhibit CE141.
>
> (c) The coat worn by President Kennedy at the moment of his assassination believed to contain trace metals from bullet CE399. The coat is Warren Report Exhibit CE393.
>
> (d) The shirt worn by President Kennedy at the moment of his assassination believed to contain trace metals from the bullet that penetrated the fabric. Warren Report Exhibit CE344.
>
> (e) There is no subparagraph (e).
>
> (f) The 6.5 mm bullet found on the floor of Parkland Memorial Hospital in Dallas, Texas on November 22, 1963, where the late President and Governor Connally received medical treatment, believed to be the bullet that traversed the President's neck and on through the body of Connally. Warren Report Exhibit CE399.

(g) Three empty 6.5 mm Cartridge cases manufactured by Western Cartridge Company and found on the floor of the room on the 6th floor of the Texas School Book Depository in Dallas, Texas. Warren Report Exhibit CE543, CE544 and CE545.

(h) Bullet recovered from the wall of the home of General Edwin A. Walker in Dallas, Texas. Warren Report Exhibit 573.

(i) The clip presumably from the magazine of the Oswald rifle, C2766. Warren Report Exhibit CE575.

(j) The two or three metal fragments removed from the wrist of Governor Conally. Warren Report Exhibit CE842.

(k) Fragments of metal removed from the brain of the late President at autopsy. Warren Report Exhibit CE843.

(l) A mutilated bullet recovered by United States personnel after firing through a cadaver's wrist for the purpose of weighing it. Warren Report Exhibit CE856.

Defendants also rely on provisions of 44 U.S.C. 2107 and 2108(c) to justify their refusal to produce for examination and inspection items identified and described by plaintiff in paragraph 6 of plaintiff's complaint because they are now in possession of the defendant Archivist Division of General Services Administration by virtue of their transfer to the agency by an authorized representative of the Estate of John F. Kennedy. The described property was received by the agency as a gift subject to the conditions and restrictions specified by the donor. Though plaintiff contends that the Letter of Agreement, dated October 29, 1966, executed on behalf of the executors of the Kennedy Estate, assumes that the donor had full title to the materials described therein, and is, in fact, a nullity because under a Memorandum of Transfer, dated April 26,1965, the Archivist had in his custody the items which plaintiff seeks to examine and that the rules and guidelines of the Letter of Agreement cannot be held to exclude the right of a citizen to examine property which plaintiff says was property of the United States in the first place, the Court does not believe this to be a correct conclusion.

The applicable statute does not require that the items of property deposited with the Archivist be owned by the donor if they fall within the description of those things which may

be deposited. Under the provisions of the Letter Agreement, no examination of this material may be permitted without permission of the Kennedy family representative within five years of October 29, 1966. It is not claimed by plaintiff that such permission has been obtained.

Furthermore, a review of PL 89-318, 79 Stat. 1185, enacted in 1965, discloses that Congress provided for the acquisition and preservation of certain items of evidence pertaining to the assassination of President Kennedy. Pursuant to that law, the Attorney General was given authority for one year to acquire various items. The act provided for the vesting of title and interest in the United States and provided for just compensation under circumstances requiring this. Some of the items identified in plaintiff's request were included in the acquisition of material obtained and delivered to GSA by the Attorney General. The proceedings taken for that purpose are valid. Cf. United States v. One 6.5 mm. Mannlicher-Carcano Military Rifle, etc., 406 F.2d 1170. Also, under the provisions of PL 373, 69 Stat. 695, now 44 U.S.C. 2108, the administrator of General Services was authorized to accept for deposit the papers and other historical materials of any president, and documents, including motion-picture film, still pictures, etc., from private sources. The act also provided:

> "That papers, documents, or other historical materials accepted and deposited under subsection (e) and this subsection shall be held subject to such restrictions respecting their availability and use as may be specified in writing by the donors or depositors, including the restriction that they shall be kept in a Presidential archival depository, and such restrictions shall be respected for so long a period as shall have been specified, or until they are revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf with respect thereto."

The Court can attach no significance to the fact that the material was deposited with GSA in April, 1965, while the

Letter Agreement placing restrictions on their use was not entered into until October 29, 1966.

The administrator of GSA had a continuing responsibility under the terms of the Act to negotiate and take such steps for the deposit and preservation of Presidential historical materials so as to secure for the government, as far as possible, the right to have continuous and permanent possession of such material. This was a continuing responsibility of the administrator. He was authorized to accept papers, documents or other historical materials (records are not mentioned but presumably intended to be included) subject to such restrictions as to availability and use as may be specified in writing by the donors or depositors.

The Letter Agreement of 1966 was entered into by the parties under the provisions of then existing law. Under this Letter Agreement, the items requested by plaintiff in paragraph 6 of his complaint may be withheld from disclosure or examination since the time limit of five years therein provided has not expired. Other reasons may exist for such refusal but need not now be considered.

Plaintiff, in addition to the items requested above, sought, as alleged in paragraph 8 of his complaint, three additional items specifically described as:

> (a) A grey-brown rectangular structure measuring approximately 13 x 20 mm seen in photographs of the base of the brain of the late President Kennedy.
>
> (b) Histological preparations of the margins of the bullet holes in the skin of the neck of the late President Kennedy which were part of the Bethesda autopsy.
>
> (c) The written diagnosis or findings made by the Bethesda Hospital radiologist from his X-ray study of X-ray films taken at the autopsy of the late President.

The Court believes that requests for items described in (a) and (b) above cannot be classified as records within the meaning of 5 U.S.C. 552, but that the diagnosis and findings of the radiologist is a record.

In this connection, request was made on the Secretary of the Navy for the diagnosis and findings. By positive affidavit, Mr. George M. Davis, Vice Admiral, Chief of Bureau of Medicine and Surgery of the Medical Corps, U.S. Navy, having command jurisdiction over the Bethesda Naval Hospital, denies any custody or control by that agency of the radiologist's report or of any of the other items requested of the Navy for examination. (Doc. 13.) It appears from this affidavit that the material requested was delivered to agents of the United States Secret Service on or about November 22, 1963. The accuracy of this affidavit is not challenged and the Court may not require production of records not in custody or control of an agency.

Defendant archivist offers to show the 8 mm motion picture of the assassination at the building housing the archives of the United States at Washington, and to supply a large scale map of Dealy Plaza in Dallas, Texas.

While a view of the motion picture in the federal courtroom here in Topeka would be a matter of substantial interest to this Court, under the circumstances, no useful purpose would be served by such exhibition. The assassination of President Kennedy continues to give rise to much speculation and scientific analysis by students, pathologists, historians and law enforcement agencies. Undoubtedly much more will be discussed and written about the case, the circumstances of which has aroused worldwide curiosity.

Though the Information Act, under which plaintiff seeks relief and it is only because of its terms that this Court has any jurisdiction, does by its terms require the production of all records by the agency having custody of them, the government agencies seem prone to deny disclosure and to withhold records under the many exemptions, including those enumerated in the statute, and under other statutory laws, the common law,

by reason of executive privilege, by executive orders, or by agency-made law in the form of regulations and orders.

Until Congress sees fit to wipe out these exemptions, so far as it is constitutionally able to do so, a person in plaintiff's position, though he be possessed with superb qualifications, has the purest intentions and be so ever objective in his research and entitled to pursue it, will be thwarted by the influence and pressures exerted by bureaucrats which will likely hamper his investigations, no matter how noble and patriotic his purpose.

The Information Act leaves a good many things not clearly defined. Because of this, the Attorney General issued a memorandum analyzing the act. He indicates that actions for injunctions permitted by the act should be maintained against the agency refusing to make requested agency records available to the person requesting them rather than the head of the agency or one or more of its officers. Government agencies, when notified that they are to come before the Court, should not be too technical about the manner in which they are described or served. I hold in this case that the agencies named in the pleadings are properly before the Court.

The Court must determine, from what has been said, that the exemptions provided in the Information Act leave unavailable most material sought by a citizen in situations where an agency may resort to one or more of the many excuses afforded under the exemptions provisions, as here.

After thorough consideration of the record in this case and a study of the applicable statutes and regulations, I must conclude that no material issue of fact exists, that under the law the case is ripe for disposition by summary judgment, and that the motion of defendants to dismiss, treated as a motion for summary judgment, must be sustained.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 24th day of February, 1971.

United States District Judge

Exhibit B

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AUG 19 1970

ROBERT M. STEARNS, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG
Route 8
Frederick, Maryland

Plaintiff

vs.

C. A. No. 718-70

U.S. DEPARTMENT OF JUSTICE
10 and Constitution Ave., N.W.

and

U.S. DEPARTMENT OF STATE
Virginia Ave., N.W.
Washington, D. C.

Defendants

ORDER

This cause came on to be heard before the Honrable Chief Judge Edward M. Curran on August 19, 1970 upon application of the plaintiff for summary judgment, and the Court having heard argument of counsel and examined the file in this case,

It is by the Court this 19 day of Aug, 1970.

ORDERED, ADJUDGED AND DECREED that the plaintiff's motion for summary judgment be and the same is hereby granted, and defendants' motion to dismiss is hereby denied, and it is further,

ORDERED, ADJUDGED AND DECREED that the defendant Department of Justice produce all documents demanded in Plaintiff's complaint, including all documents which the Court on the 12th day of August, 1970 ordered said Department of Justice to produce within one week.

Edward M. Curran

JUDGE

A TRUE COPY

JAMES F. DAVEY, Clerk,

By Esther E. Creeden
Deputy Clerk

4-17-72

Exhibit C

have been changed evidently since September when they were given as we understand permission. We think we have a way of getting it, your Honor, and getting it on over by an order of this Court for exploratory deposition. We think we will be able to get it including that of Mr. Holloman and of the Fire Chief and of every fireman on there. But, we are being impeded in our investigation. I don't attribute this to the prosecution but somebody is keeping us from talking to witnesses or keeping them from talking to us. It's not their individual attitude. It's orders from above, your Honor.

THE COURT: Well, I am sure you gentlemen realize that I have no rights or mandamus to make a person talk until he gets on that witness stand. Then I can do something about it. Alright, I will hear from the State.

MR. DWYER: Your Honor, as I understand from reading Mr. Foreman's motion for continuance it basically comes down to the situation he related here that he hasn't had this information pertaining to the extradiction hearing held in June as I recall in London, England. Now, your Honor, and then the

fact that he was ill for a few days and then Mr. Hanes has not cooperated with him. If the Court pleases, on November 12th, Mr. Foreman entered into this case. He was aware at that time that a hearing had been held over in London, England. I don't know when Mr. Foreman made his first effort to obtain the fruits of that hearing but as I calculate it, it's something like 90 days have gone by since he entered into this case and now for the first time he tells the Court that he can't get that information pertaining to a hearing in England and therefore the Court should continue this case. Now, your Honor, as I recall, Mr. Foreman was in here on November the 12th and he also made certain statements to the Court about what he was and would do if the Court saw fit to allow him to come into this case. If the Court will bear with me for a second here, these things come back to mind but I don't want to misquote anybody so I go to the record in this matter, if the Court pleases and see what Mr. Foreman said to the Court that he was going to do if the Court permitted him to come in here and

Exhibit D

DEPARTMENT OF STATE

Washington, D.C. 20520

December 10, 1969

Mr. James E. Ray, 65477
Station-A-West
MSB H-3
Nashville, Tennessee

Dear Mr. Ray:

I regret the delay in a further response to your letter of August 14, 1969.

The Department has recently received the transcript of the extradition proceedings, and a copy will be sent to you shortly along with the request for inspection and copy of record, a copy of which is enclosed for your information.

With respect to affidavits submitted by the United States Government to the Bow Street Court in support of the extradition request, the court has returned those documents to the United States. The Deputy Attorney General has advised the Department of State that these documents are considered part of investigative files of the Department of Justice and are exempt from disclosure under subsection (e)(7) of section 552 of Title 5 of the United States Code. Accordingly, those affidavits have been returned to the custody of the originating agency. Any further inquiries, therefore, should be addressed to the Department of Justice.

Sincerely yours,

J. Edward Lyerly
Deputy Legal Adviser

Enclosure

Exhibit E

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

February 3, 1970

Mr. James E. Ray
Station A-West
Tennessee State Penitentiary
Nashville, Tennessee 37203

Dear Mr. Ray:

This will acknowledge receipt of your letter of January 15, 1970 requesting various documents and affidavits submitted in support of the extradition request which resulted in your return to the State of Tennessee.

No documents in the files of the Department of Justice are identifiable as documents transmitted to British authorities through diplomatic channels at the request of the States of Tennessee and Missouri and presented to the Bow Street Court, London by officials of the United Kingdom. Further, such records pertaining to your extradition as may be in our possession are part of investigatory files compiled for law enforcement purposes and, as such, are exempt from disclosure under the provisions of the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552(b)(7). That Act confers upon a defendant no greater rights than those enjoyed by the public.

Sincerely,

Richard G. Kleindienst

Richard G. Kleindienst
Deputy Attorney General

August 20, 1969

Exhibit F

The Honorable John Mitchell
Attorney General
Washington, D. C. 20530

Dear Mr. Attorney General:

The undersigned have been retained by Mr. Harold Weisberg of Frederick, Maryland, to proceed under the Freedom of Information Act, P. L. 89-487, to obtain disclosure of two specific, identifiable Government records, copies of which are in the possession of the Department of Justice.

It is our view that, pursuant to Sec. 3 (c) of the Act, Mr. Weisberg is entitled to prompt access to these particular documents. However, despite numerous written requests over a period of months, not only has Mr. Weisberg been denied access to the records, he has not even received a reply to his repeated requests for the Department's rules relating to accessability of records under the Act. The files of your Department, especially these of the Criminal Division, contain copies of his various requests. After you have an opportunity to review this correspondence, you might understand Mr. Weisberg's sense of frustration, impatience, and anger, as well as his decision to file suit.

Nevertheless, it seems only reasonable that we should bring this matter to your attention before we file such a suit, in the hope that you will direct your subordinates to disclose these records to Mr. Weisberg, and thereby avoid the expense, both in time and money, of needless litigation.

The specific records requested by Mr. Weisberg are the following:

(1) All documents filed by the United States with the Court in England in June-July, 1968, in the extradition proceeding by which James Earl Ray, the convicted killer of Dr. Martin Luther King, was returned to this country. These proceedings were public, and in our

view, all documents submitted on behalf of the United States constitute public records which should be made available to any person who desires to see them.

As the attached letter of May 1, 1969, from the Chief Clerk of Bow St. Magistrate's Court states "all papers which had been sent to this Court from Washington" have been returned to Washington, and, as far as is known to the Clerk, no copies were retained in England. We realize that the original of the returned "papers" may still be in the possession of the Department of State, but, as the "papers" were prepared in the Department of Justice, we assume that copies were retained in your Department's files. It is those that Mr. Weisberg asks to see.

(2) In the District of Columbia Court of General Sessions, on January 16, 1969, in the case of State of Louisiana v. Clay L. Shaw, in response to an order to show cause directed to James B. Rhoads, Archivist of the United States, the Department of Justice filed a brief to which was appended a "1968 Panel Review of Photographs, X-Ray Film, Documents and Other Evidence Pertaining to the Fatal Wounding of President John F. Kennedy on November 22, 1963, in Dallas, Texas". A copy of this document is enclosed. Your attention is directed to page 5 of the "Review", and specifically to a reference in the middle of the page to a "memorandum of transfer, located in the National Archives, dated April 26, 1965". This memorandum refers to a transfer of the autopsy photographs and x-rays, although it is not clear from whom and to whom they were transferred. It is this "memorandum of transfer" which Mr. Weisberg is seeking, and which has been denied him by both the Department of Justice and the Archives, despite his many written requests.

It is our sincere hope that litigation will not be necessary to effect a reconsideration of Mr. Weisberg's requests. If within two weeks we do not receive a reply from you, we will assume that the Department is adamant in its present position and would prefer that we seek disclosure by filing suit in the District Court as provided in Sec. 3 (c) of the Freedom of Information Act.

Sincerely,

FENSTERWALD, BEVAN AND OHLHAUSEN

Bernard Fensterwald, Jr.

Enclosures

cc: Harold Weisberg, Route 8, Frederick, Maryland

BF: jb.
cc: Reading file

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

Exhibit G

NOV 13 1969

Mr. Bernard Fensterwald, Jr.
Fensterwald, Bevan and Ohlhausen
Attorneys At Law
927 Fifteenth Street, N. W.
Washington, D. C. 20005

Dear Mr. Fensterwald:

Reference is made to your letters of October 9 and August 20, 1969, requesting on behalf of your client, Harold Weisberg, disclosure of certain documents which you state are in the possession of the Department.

I regret that I must deny your request in all particulars. No documents in the files of the Department are identifiable as being copies of the documents transmitted to British authorities through diplomatic channels at the request of the States of Tennessee and Missouri and presented to the Bow Street Court by officials of the United Kingdom. Further, such records pertaining to the extradition of James Earl Ray as may be in our possession are part of investigative files compiled for law enforcement purposes and, as such, are exempt from disclosure under the provisions of 5 U.S.C. 552(b)(7).

The "memorandum of transfer" dated April 26, 1965, relating to the autopsy performed on the remains of President John F. Kennedy is not available for inspection for the reason that disclosure of such memorandum would constitute a clearly unwarranted invasion of personal privacy, thus being exempt under the provisions of 5 U.S.C. 552(b)(6).

Other government records referred to in your letter of October 9, 1969 and which you state are in the possession of the Federal Bureau of Investigation are not subject to disclosure in that they are part of investigative files compiled for law enforcement purposes and exempt under the provisions of 5 U.S.C. 552(b)(7).

I have also taken note of the statements in your letter of August 20, 1969, to the effect that, in your opinion, all documents submitted on behalf of the United States in the extradition proceedings constitute "public records" and that all the "papers" were prepared in the Department of Justice. Our refraining from making any comment respecting such statements should not be taken as acquiescence by the Department in your opinion and representation in this respect.

Sincerely,

Richard G. Kleindienst
Deputy Attorney General

Exhibit H

November 26, 1969

Mr. Richard G. Kleindienst
Deputy Attorney General
Washington, D.C. 20530

Dear Mr. Kleindienst:

Please refer to your letter to me of November 13th, a copy of which is enclosed for your convenience.

In the second paragraph of your letter, you state: "No documents in the files of the Department are identifiable as being copies of the documents transmitted to British authorities through diplomatic channels at the request of the States of Tennessee and Missouri and presented to the Bow Street Court by officials of the United Kingdom." (italics added).

You are correct; there are no such documents in the files of the Department of Justice or elsewhere. The documents we seek are those presented by Mr. David Calcutt, English Barrister employed by the U.S. Government.

The Bow Street Court has verified that Mr. Calcutt presented certain documents to the court for a public hearing on extradition. At the completion of the hearing, the documents were returned to U.S. authorities.

From a description of the documents, it seems clear that they were either prepared by or forwarded by the Department of Justice. Under these circumstances, I am hard pressed to believe that the Department did not retain a copy for its files. As the London proceeding was public, it is equally difficult to understand how they could now be relabeled as part of an "investigative file." I therefore renew my request for copies of the documents specified above.

If, against all tradition, the Department failed to retain a copy of the documents in this important case, can you suggest any Department or Agency, other than the Department of State, which might have retained copies in their files?

Our first communication on this subject required almost three months for a reply. The Freedom of Information Act calls for prompt responses on requests for information. I sincerely hope that you will favor us with a prompt and unequivocal reply.

Most respectfully yours,

Bernard Fensterwald, Jr.

BF:crr
Encl.

Exhibit I

AFFIDAVIT

DISTRICT OF COLUMBIA) ss:

ROBERT A. FRAZIER, being duly sworn, deposes and says:

1. I am 49 years old and I reside in Hillcrest Heights, Maryland.

2. I obtained a Bachelor of Science Degree from the University of Idaho in 1940. I have been a Special Agent of the Federal Bureau of Investigation since December 1942. I am Chief of the Firearms Unit of the Physics and Chemistry Section of the Federal Bureau of Investigation laboratory in Washington, D. C. I have been assigned to the Firearms Unit continuously since June 9, 1941. I received the specialized training program in firearms identification of approximately one year duration from the Federal Bureau of Investigation when I was initially assigned to the Firearms Unit. Since being assigned to this unit I have made thousands of comparisons of bullets and cartridge cases with the firearms for the purpose of determining whether a particular firearm fired a bullet or cartridge case. I have testified on numerous occasions in federal and state courts, as well as in military courts martial, as a firearms identification expert witness.

3. On April 5, 1968, at the Federal Bureau of Investigation Laboratory, I received certain items of evidence from Robert Fitzpatrick, Special Agent of the Federal Bureau of Investigation who had brought

them by airplane from Memphis, Tennessee. These objects had been obtained in connection with the investigation of the shooting of Martin Luther King, Jr. on the previous day.

4. Among the items of evidence I received was a .30-06 Springfield caliber Remington rifle, Model 760, serial number 461476, with clip, and a Redfield telescopic sight, serial number A17350. I also received from Special Agent Fitzpatrick a .30 caliber metal-jacketed "soft-point" sporting type Remington-Peters bullet, an expended .30-06 Springfield caliber Remington-Peters cartridge casing, and a Peters cartridge box, bearing manufacturer's index number 3033 containing five unfired .30-06 Springfield caliber Remington-Peters cartridges and four unfired .30-06 Springfield caliber U. S. military cartridges containing full metal-jacketed bullets.

5. I determined from microscopic examination that the expended .30 caliber metal-jacketed rifle bullet had been fired from a barrel rifled with six lands and grooves, right twist. As a result of my examination of the submitted rifle I determined that it produces general rifling impressions on fired bullets having the physical characteristics of those on the submitted bullet. I also determined that the submitted bullet was a 150-grain soft-point bullet identical to the bullets in the five Remington-Peters cartridges contained in the submitted Peters cartridge box.

6. Because of distortion due to mutilation and insufficient marks of value, I could draw no conclusion as to whether or not the submitted bullet was fired from the submitted rifle.

7. The .30-06 Springfield caliber Remington-Peters cartridge case was identified by me as having been fired in and extracted from the submitted rifle. This determination was based on a comparison of the microscopic markings of the firing pin, bolt face and extractor left on the cartridge case by the rifle. Based on physical characteristics, I determined that the fired bullet was of a kind that the manufacturer loads into the submitted cartridge case to produce cartridges similar to the Remington-Peters cartridges in the Peters cartridge box.

Robert A. Frazier
ROBERT A. FRAZIER

Sworn to before me this
13th day of June, 1968.
ROBERT M. STEARNS, Clerk
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
By Eleanor E. Lobo
Deputy Clerk

I hereby certify that the attached three pages comprise the original affidavit of Robert A. Frazier.

Eleanor E. Lobo
Deputy Clerk

Exhibit J

FRAME-UP:
The Martin Luther King/
James Earl Ray Case

by Harold Weisberg

Outerbridge & Dienstfrey/Dutton,
518 pp., $10

Reviewed by Fred J. Cook

■ On March 10, 1969, in a Memphis courtroom, the curtain rose on one of the most brazen travesties of justice ever to disgrace America. James Earl Ray, the accused killer of Dr. Martin Luther King, Jr., was to go on trial. But there was no trial. There was instead a deal between judge, prosecutor, and defense attorney. Ray would plead guilty in exchange for a life sentence, and the court would return the verdict so much desired by the American Establishment: Ray had acted alone.

The drama ran as smoothly as a well-plotted Hollywood film—up to a point. Then James Earl Ray spoke. He did not agree, he said, with Attorney General Ramsey Clark and FBI Director J. Edgar Hoover, who had been insisting there was no conspiracy. Here was the man who had to know, and, at some risk to himself, he was telling the court that the script was phony. Defense Attorney Percy Foreman, who had had to browbeat his unwilling client into copping a plea instead of standing trial, leaped into the breach. It was not necessary, he said, for Ray to accept everything; all that mattered was that he was pleading guilty to the crime. Was he? the judge asked. Yes, Ray said, and the juggernaut of official machinery rolled over his feeble but courageous protest.

Harold Weisberg, a onetime government investigator who has devoted himself to a pursuit of the ignored or suppressed facts about political assassinations, has now turned to the case of James Earl Ray in the book he calls *Frame-Up*. He does not doubt that Ray was implicated in the King assassination, but his thesis is that Ray filled the same role Lee Harvey Oswald did in the assassination of President John F. Kennedy in Dallas. In Weisberg's view Ray, like Oswald, was not the killer; he was the decoy, the patsy, the man meant to be caught.

Weisberg shows that in the King case, just as in Dallas, a baffling use was made of doubles. Just as there is evidence that two men used the name of Lee Harvey Oswald, so is there evidence that someone besides James Earl Ray knew and used some of his various aliases. Here are a few of the points Weisberg raises:

Ray's arrest at Heathrow (London) Airport, June 8, 1968. According to Scotland Yard, Ray, traveling under the name of Ramon George Sneyd, came into the airport about 6:15 A.M. on a flight from Lisbon. While waiting for his plane to refuel and fly on to Brussels, he wandered unnecessarily into the immigration section for incoming passengers and was spotted and detained. But on that date a man using the name of Ramon George

Sneyd was living—and had been for several days—at the Pax Hotel in London. He left about 9:15 the same morning to catch a plane for Brussels. The FBI's reconstruction of the case was based upon the proposition that Sneyd No. 2 was really Ray. The landlady of the Pax was subpoenaed for possible appearance in the Memphis farce, which the press dubbed "the minitrial." She said afterwards that she had been warned by an FBI agent, accompanied by four Scotland Yard operatives, that she was only to answer the questions she was asked—she was not to volunteer anything. When she remarked that she had found a hypodermic syringe in "Sneyd's" room after he left, she was "virtually told" she must be lying because Ray was not a narcotics addict. Was this all just some kind of official foul-up in announcing the details of Ray's arrest? No; as Weisberg shows by correspondence he reproduces, Scotland Yard was insisting in November 1968—five and a half months later—that the man it had arrested arrived on a Lisbon flight. Who, then, was the man at the Pax who had been using Ray's alias?

The two white Mustangs. The official version states that after Ray shot Dr. King from the bathroom window of a Memphis flophouse, he made his escape in a 1966 white Mustang he had purchased secondhand in Birmingham, Alabama. He drove some 400 miles through the night and abandoned the car in an Atlanta parking lot, where it was not discovered for days. But there is abundant evidence that two similar white Mustangs were parked in the street near the flophouse at the time of the slaying. According to eyewitnesses, both had red and white license plates—one set were Alabama tags, the other Arkansas. Furthermore, the Mustang which Ray had purchased in Birmingham had an automatic shift, while the one abandoned in Atlanta, with Ray's license plates on it, had a stick shift. The ashtray of the abandoned Mustang was overflowing with cigarette butts—and Ray does not smoke. No mention of model or serial numbers, which would have identified the Mustang positively, was made at the Memphis minitrial, and, though the car must have been splattered with fingerprints, there was no indication that the FBI had found a single print of Ray's in this, his supposed getaway car—evidence that almost certainly would have been flaunted, if it existed, to rivet the case beyond doubt.

The duplicate driver's license. In early March 1968 Ray was in Los Angeles attending bartender's school and getting his pointed nose clipped by a plastic surgeon. Records establish his presence there beyond doubt. But, at this very time, the Alabama Highway Patrol received a telephone call from a man calling himself Eric Starvo Galt (the alias Ray had used in Birmingham). The caller said he had lost his driver's license and needed a duplicate, and gave the address of the Birmingham rooming house at which Ray had stayed. The duplicate license was mailed; the small fee required for this service was promptly paid—and Ray was not in Birmingham, but in California, nearly a continent away. The evidence seems unchallengeable that someone other than Ray—the rooming-

house proprietor could not say who—had picked up the duplicate license and mailed the fee.

The telltale bundle. According to the official version, Ray, after shooting King, walked out of the flophouse, deposited a bundle almost in the doorway of an adjacent café, strolled down the street, and drove off in his Mustang. The bundle contained the rifle Ray had purchased and which supposedly did the killing, put carefully back into its cardboard carrying case and wrapped in a green bedspread, along with a pair of binoculars which Ray had bought that very afternoon and which were decorated with his fingerprints. There was also a shaving set he had purchased the day before—and, most helpful of all, a transistor radio he had acquired while in Missouri State Prison, with his prison number stenciled on it. Weisberg holds that it defies belief that the real killer would have taken the time to insert the rifle in its case and wrap up all these articles, then just drop them on the street instead of taking them with him in the Mustang. Such an action, he argues logically, can be reconciled only with the role of a man serving as decoy in an elaborate plot.

Evidence that Ray fired the shot. There is none. The medical examiner's testimony at the minitrial failed to establish the first essential—the trajectory of the shot that killed Dr. King. *Paris-Match* tried the experiment of re-enacting the crime and found that the killer would have had to be a contortionist to have fired from the bathtub, as was alleged. Ballistics testimony was worthless. Dr. King had been killed by a soft-nosed dumdum bullet; when it struck it exploded and fragmented. The prosecution claimed the largest fragment was "consistent" with a shot fired from Ray's rifle. That is the very word used by a corrupt prosecution in the Sacco-Vanzetti trial, when a police expert who was convinced fatal shots had *not* been fired from a given revolver was asked whether it was "consistent" that they had. He could answer "Yes," since the shots had obviously been fired from a revolver. So here "consistent" means only that the bullet fragment came from a rifle. The term that so deceived press and public does not meet the first requirement of proof—that the ballistics expert be able to testify the shot came from Ray's rifle and no other.

There is more, much more, in Weisberg's book. There is the question of how Ray, alone and unaided, a stranger in Canada, managed to come up with aliases that were the real names of three living men who looked much like him, in one case even to a similar scar on the face. There is the mystery of his free-spending, cross-continental Canadian-Mexican spree, and of how a penny-ante crook like Ray came by so much money. There is the business of the phony police radio broadcast on the night of the assassination, graphically describing a gun battle with a fleeing car, which led police north out of Memphis and away from the assassin's escape route. The reek of conspiracy is on everything.

Weisberg is an indefatigable researcher. Unfortunately, he is not a skilled writer. His book suffers from lack of organization and conciseness. He mentions an issue in passing, then pages or even chapters later he goes back and worries it. He repeatedly lashes out at virtually all concerned in the minitrial as liars and scoundrels, devoting long passages to denunciation instead of the cool presentation of evidence. Though his indignation is in most instances thoroughly justified, it gets in the way of the story.

But when all this has been said, Weisberg remains invaluable. He has pursued the facts, and they are there, buried in the mass of his book. And they are facts that lay claim to the conscience of America. For it should be clear by now that, if the assassinations of some of the nation's most outstanding leaders are to be dismissed with the "one man-no conspiracy" refrain, there will be no deterrent to conspiracies in the future whenever hate may point the way and pull the trigger. And, in that event, this greatest of democracies will have been reduced to the status of a Latin American banana republic. That is the issue.

Fred J. Cook is the author of "The Troubled Land," "The Secret Rulers," and "The FBI Nobody Knows."