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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-APPELLANT'S REPLY TO APPELLEE'S
SUPPLEMENTAL MEMORANDUM TO THE COURT

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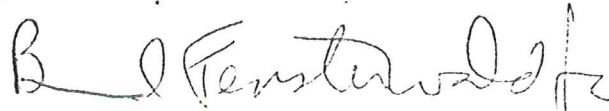
Each time the Government explains why it suppressed the public court documents relating to James Earl Ray's extradition it becomes more generous. Originally, Deputy Attorney General Richard Kleindienst maintained that "such records pertaining to the extradition of James Earl Ray as may be in our possession 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. (b) (7)." (Letter of November 13, 1969)

When faced with a lawsuit for the extradition documents and the likelihood of a summary judgment being awarded against the Justice Department, Attorney General Mitchell suddenly drew upon the Justice Department's supply of magnanimity, declaring "whether or not the documents you seek are technically exempt under one or more of the provisions of 552 (b), I have determined that you shall be granted access to them." (Letter of May 6, 1970) This carefully worded statement served to put the best possible face on the Justice Department's untenable legal position. The Attorney General posed as the bountiful dispenser of documents which, nonetheless, were still "technically exempt" under the investigatory files exception to the Freedom of Information Act. The Attorney General stated not that Mr. Weisberg should be granted access to the extradition documents, but only that he shall be.

Now, however, the Government has at long last, if only parenthetically, conceded the point. On page 4 of its Supplemental Memorandum, the Government admits, apparently without shame, that: "(the extradition documents were, of course, not a part of a FBI investigatory file)".

The obvious question presented by this history is: just how is a citizen to vindicate his rights under the Freedom of Information Act if he and the court must accept the Justice Department's characterization of what is or is not part of an investigatory file compiled for law enforcement purposes?

Respectfully Submitted,



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