UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG
Route 8
Frederick, Maryland
Plaintiff

v.

Civil Action No. _____

U.S. DEPARTMENT OF JUSTICE
10th and Constitution Ave., N.W.
Washington, D. C.

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

C O M P L A I N T

(Pursuant to Public Law 89-487; 5 U.S.C. 552)

1. Plaintiff brings this action under Public Law 89-487; 5 U.S.C. 552.

2. Plaintiff is a professional writer, living and working in Frederick County, near the city of Frederick, in the State of Maryland. Plaintiff has published a number of books dealing with political assassinations and currently is devoting his full time efforts to researching and writing additional books on this same subject.

3. The Defendants are the U.S. Department of Justice and U.S. Department of State which are charged with the duty of obtaining (on behalf of the proper authorities in the fifty States of the Union) the extradition to the United States under international law and treaty of persons from foreign countries

who are charged with having committed extraditable crimes within one of the fifty States of the Union.

4. On June 11, 1968, the Honorable Buford Ellington, Governor of Tennessee, formally requested of the U.S. Government that it obtain the extradition from the United Kingdom of James Earl Ray for the murder of Dr. Martin Luther King in Memphis, Tennessee, on April 4, 1968. Governor Ellington stated that the requested extradition came within the terms of the treaty existing between the United Kingdom and the United States, which was signed on December 27, 1931, and which entered into force on June 24, 1935 (47 Stat. 2122).

5. The State of Missouri made a similar application for extradition of the said James Earl Ray as an escaped prisoner and fugitive convicted of robbery.

6. Pursuant to these two requisitions, the Department of State, acting through the U.S. Ambassador to the United Kingdom, made a formal request of the British Secretary for Foreign Affairs on June 12, 1968, for the extradition of Ray. This request had attached to it an unknown number of supporting documents.

7. A public hearing on the requisition was held in the Bow Street Magistrate's Court in London on June 27, 1968, Magistrate Frank Milton presiding. At that hearing the United States was represented by Mr. David Calcutt, a British barrister.

8. At the hearing, in addition to several witnesses called to the stand, Mr. Calcutt presented to the Court on behalf of the United States an unspecified number of affidavits,

depositions, certifications, pictures, fingerprints, and other identifiable records in support of the requisition.

9. On July 2, 1968, James Earl Ray was ordered extradited to the State of Tennessee to stand trial in Shelby County for murder. Pursuant thereto, he arrived in Memphis, Tennessee, before dawn on July 19, 1968.

10. Subsequent to the extradition of Ray, the supporting documents and other records (referred to in Paragraph 8, above) were returned by the Magistrate's Court to the British Home Office, thence to the United States Embassy in London, thence to the defendant U.S. Department of State in Washington, and finally to the defendant U.S. Department of Justice in Washington.

11. By letter dated August 20, 1969 [Exh. A], a request was made to Attorney General John Mitchell on behalf of the Plaintiff for access, inter alia, to "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." Reference was made to P.L. 89-847, Section 3(c).

12. No written answer was received after a number of weeks. However, a telephone call was received in early October from Mr. Joseph Cella, Trial Attorney, Room 2229, Department of Justice. Mr. Cella said "we are working on Mr. Weisberg's request." As a result, a letter, dated October 9, 1969, was sent to Mr. Cella on behalf of Plaintiff; the letter [Exh. B] indicated a willingness to wait a while longer.

13. By letter, dated November 13, 1969 (Exh. C] Mr. Richard C. Kleindienst, Deputy Attorney General, refused Plaintiff's various requests. Following are the two paragraphs pertinent to documents at issue in this complaint:

> 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 disclosures 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.

14. Another attempt to persuade the Department of Justice to make the records available was made in a letter dated November 26, 1969. [Exh. D].

15. The Department's reply of December 15, 1969 [Exh. E], again over the signature of the Deputy Attorney General, stated "we adhere to the views expressed in our prior communications."

16. As the Department of Justice had averred that it was unable to find the documents sought, a letter dated November 26, 1969 [Exh. F] was sent to the Secretary of State on behalf

of Plaintiff, asking if the Department of State "either in its files in Washington or London or elsewhere, have such documents or copies thereof, and will they be made available promptly to Mr. Weisberg per this request?"

17. On December 10, 1969, the Department of State replied [Exh. G] it had had the originals of the documents at one time but had returned them to the "originating agency," the Department of Justice. The Department of State neither confirmed nor denied whether it had retained copies of the documents in question.

18. In view of the regulations of the Department of Justice and in an excess of caution, another letter, dated February 2, 1970 ([Exh. H] was sent to the Attorney General in order that there would be no question of exhaustion of administrative remedies. At the time of filing of this complaint, no reply to this letter has been received.

19. The request remaining denied after exhaustion of administrative procedures, Plaintiff files this complaint pursuant to Public Law 89-487, further alleging that, pursuant to this law, the Court shall determine the matter de novo and the burden is on the agencies to sustain their refusal.

WHEREFORE, Plaintiff prays this honorable Court for the following relief: that Defendants be ordered to produce and copy or make available for copying the original or copies of all documents filed by the United States with the Bow Street Magistrate's Court in London, England, in June-July, 1968, in the extradition proceeding in which James Earl Ray was returned to

the United States to stand trial for the murder of Dr. Martin Luther King, and such other relief as this Court may deem just and equitable.

Bernard Fensterwald, Jr.

BERNARD FENSTERWALD, JR.
927 15th St., N.W.
Washington, D.C. 20005
Tel: 347-3919

Attorney for Plaintiff

Dated: March 11, 1970

[EXHIBIT A]

August 20, 1969

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

[EXHIBIT B]

October 9, 1969

Mr. Joseph Cella
Trial Attorney
Room 2229
Tenth and Constitution Ave.
Washington, D. C. 20530

Dear Mr. Cella:

I deeply regret the continuing delay in the matter of government records Mr. Harold Weisberg is entitled to and seeks. Because we are anxious to be as cooperative as possible, we will further delay for a short time the filing of an action in the hope that the need for it may yet be eliminated.

This also provides an opportunity for your supplying my client with two other government records he has requested and has not received. These are (1) the spectographic analyses of the bullet (Warren Commission Exhibit No. 399) and fragments of the bullet as said to have figured in the assassination; and (2) all records relating to the weight and weighing of this bullet and these fragments at various stages of the preparation of the evidence for the Warren Commission. These records are in possession of the FBI.

Sincerely yours,

Bernard Fensterwald, Jr.

BF:crr

[EXHIBIT C]

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

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

Richard G. Kleindienst
Deputy Attorney General

[EXHIBIT D]

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 E]

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

DEC 15 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 letter of November 26, 1969 with attachment relative to the request of Mr. Harold Weisberg for disclosure of certain documents which you have stated are in the possession of the Department.

Please be advised that while we have noted and have given careful consideration to the statements in your letter we adhere to the views expressed in our prior communication.

Sincerely,

Richard G. Kleindienst

Richard G. Kleindienst
Deputy Attorney General

[Exhibit F]

November 26, 1969

Honorable William P. Rogers
The Secretary of State
Washington, D. C.

Dear Mr. Secretary:

For some months now, on behalf of my client, Mr. Harold Weisberg, I have been seeking to get from the Department of Justice a copy of all documents supplied to the Bon Street Magistrate's Court in London by Mr. David Calcutt on behalf of the U.S. Government in the public proceeding to require the extradition of Mr. James Earl Ray in June-July, 1968. (See attached correspondence).

The Department of Justice has replied (evasively) that it does not have copies of such documents and (unevasively) that, even if it did have copies, they would not be made available under the Freedom of Information Act, despite the fact that the London proceeding was public.

Does the Department of State, either in its files in Washington or London or elsewhere, have such documents or copies thereof, and will they be made available promptly to Mr. Weisberg per this request?

As the Freedom of Information Act calls for prompt responses on requests for information, I sincerely hope you will favor us with a prompt and unequivocal reply.

Most respectfully yours,

Bernard Fensterwald, Jr.

BF:crr
Encl.

[Exhibit G]

DEPARTMENT OF STATE

Washington, D.C. 20520

December 10, 1969

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

Dear Mr. Fensterwald:

I have been asked to reply to your letter to the Secretary of State, dated November 26, 1969, requesting certain documents in connection with the extradition of Mr. James Earl Ray.

Affidavits submitted to a foreign court in support of a request for extradition become part of the records of that court. Mr. Ray himself, however, made a similar request some time ago, and the Department was able to have the affidavits returned to the United States by British authorities. Since the affidavits were originated by the Department of Justice, we asked that Department's views on their release to Mr. Ray. The Deputy Attorney General advised us that the affidavits were considered to be investigative files of his Department and exempt from disclosure under subsection (e)(7) of section 552 of Title 5 of the United States Code. In view of this advice, the Department of State returned the affidavits to the originating agency and so informed Mr. Ray.

Since the Department of State no longer has custody of the affidavits you have requested, we are unable to comply with that request. I regret that we cannot be of assistance in this matter.

Sincerely yours,

J. Edward Lyerly
Deputy Legal Adviser

[Exhibit H]

February 2, 1970

The Attorney General
Department of Justice
Washington, D. C.

Dear Mr. Attorney General:

Under letter of August 20 and October 9, 1969, on behalf of our client, Mr. Harold Weisberg of Frederick, Maryland, we requested access to certain documents under section 3(c) of the Freedom of Information Act, P.L. 89-487. The request related to "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.

In letters dated November 13 and December 15, 1969, this request was refused by the Deputy Attorney General, Mr. Richard G. Kleindienst. Copies of this correspondence are enclosed for your perusal.

Under the regulations of the Department of Justice, our client's administrative remedies will not have been exhausted without a reply to the request over your signature, as head of the Department. Therefore, we renew our request for access to the above specified documents.

Sincerely yours,

FENSTERWALD & OHLHAUSEN

BERNARD FENSTERWALD, JR.

BF:crr
Encl.
cc: Mr. Harold Weisberg
Route 8
Frederick, Maryland