IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 718-70

AFFIDAVIT

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

I, DAVID J. ANDERSON, being duly sworn, hereby depose and say as follows:

1. I am an attorney in the Civil Division of the Department of Justice and in the course of my official duties I have been assigned to prepare the defense of the within action. I am, therefore, fully familiar with the files of the Department of Justice relating to this matter.

2. On May 6, 1970 the Attorney General wrote to plaintiff's counsel advising him that plaintiff would be granted access to "[a]ll 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." A true copy of this letter is attached hereto as Exhibit 1 and made a part hereof.

3. On May 15, 1970 plaintiff was given access to the documents referred to in paragraph 2 above, and examined said documents in the offices of the Civil Division of the Department of Justice.

4. On June 2, 1970 plaintiff wrote to an official of the Department requesting notification that he had been given access to all the papers involved in this action and further requested to see the file cover in which the documents had been kept. A true copy of this letter is attached hereto as Exhibit 2 and made a part hereof.

5. On June 26, 1970 a letter was sent by the Department to plaintiff's counsel advising him that plaintiff had been given access to all documents which were the subject of this action. A true copy of this letter is attached hereto as Exhibit 3 and made a part hereof.

6. By letter dated July 2, 1970 addressed to the affiant, plaintiff's counsel again requested that plaintiff be supplied with a copy of the file cover. A true copy of this letter is attached hereto as Exhibit 4 and made a part hereof.

7. On August 11, 1970 affiant advised plaintiff's attorney that a copy of the above file cover had been located and would be supplied to plaintiff. A copy of said file cover was delivered to plaintiff on August 12, 1970.

8. In the August 11 conversation between affiant and plaintiff's attorney, the latter indicated that plaintiff desired a copy of one of the photographs which was among the documents referred to in paragraphs 2 and 3 above. Affiant had been advised by the office of the Deputy Attorney General that a print is being made of this photograph for delivery to the plaintiff.

/s/ DAVID J. ARESSON

Subscribed and sworn to before me this _____ day of _____, 1970.

Notary Public

My commission expires

MAY 6

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

Dear Mr. Fensterwald:

This is in response to your letter of February 2, 1970, requesting my review of the denial by the Deputy Attorney General of your request under the Freedom of Information Act, 5 U.S.C. § 552, for access to official records of the Department of Justice. Although you requested access to several items which the Deputy declined to make available, you have appealed only his denial of the request for "[a]ll 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."

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. The exemptions do not require that records falling within them be withheld; they merely authorize the withholding of such records by exempting them from the Act's otherwise applicable compulsory disclosure requirements.

Sincerely,

John N. Mitchell

Attorney General

Exhibit 1

JUN 2 6 1970

Bernard Fensterwald, Jr., Esq.
927 - 15th Street, N. W.
Washington, D. C. 20005

Dear Mr. Fensterwald:

Mr. Rolapp has asked me to respond to Mr. Weisberg's letter to him of June 2, 1970, concerning the case of Harold Weisberg v. United States Department of Justice, Civil Action No. 718-70, U.S.D.C. D.C. A copy of that letter is enclosed herewith. I am writing to you instead of directly to Mr. Weisberg because you represent him in this litigation.

I have been assured by individuals in this department who have examined our file on James Earl Ray that Mr. Weisberg has been given access to all papers which he requested in his complaint. These papers had been forwarded to us by the State Department and were not yet in any kind of a permanent file. When our attorneys inspected them in connection with this litigation the papers examined by Mr. Weisberg were contained in a plain unmarked file folder. We are therefore unaware of what file folder Mr. Weisberg has in mind. If you have any question about this, please contact me.

We would appreciate it if you would pass this information along to Mr. Weisberg, and we assume that you will take steps to have this lawsuit dismissed before the hearing set by the Court on July 7, 1970 on all pending motions.

Sincerely yours,

CARL EARDLEY
Deputy Assistant Attorney General

Exhibit 3

LAW OFFICES
FENSTERWALD AND OHLHAUSEN
927 FIFTEENTH STREET, N. W.
WASHINGTON, D. C. 20005
TELEPHONE (202) 347-3919

BERNARD FENSTERWALD, JR.
WILLIAM G. OHLHAUSEN

NEW YORK ASSOCIATES
BASS & ULLMAN
342 MADISON AVENUE
NEW YORK, N. Y. 10017

July 2, 1970

Mr. David J. Anderson
Department of Justice
Washington, D. C.

Ref: Civil No. 718-70

Dear Mr. Anderson:

In accordance with our conversations today, we will grant you an extension until August 12th to supply a copy of the file cover.

If, however, you do not supply a copy by that date, I see no further reason to delay the matter, and believe it should be heard in Court.

Sincerely yours,

Bernard Fensterwald, Jr.

BF:crr
cc: Mr. Harold Weisberg

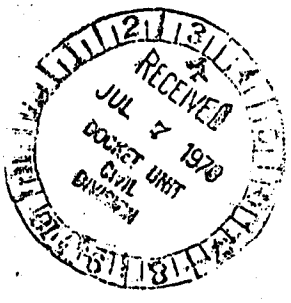

Exhibit 4

Lillian & Harold Weisberg

Coq d'Or Press ROUTE 8, FREDERICK, MD. 21701

Code 301 / 473-8186

6/2/70

Mr. H. Richards Rolapp
Room 4112
Department of Justice
Washington, D.C.

Dear Mr. Rolapp,

When you gave me the copies of the papers I had requested pursuant to Civil Action 718-70 this morning you said that while you had no personal knowledge, you assumed it included all I had requested. You also told me to write you if this were not the case.

On checking these papers against the list, I find the first and last items missing. The first is the file cover, the last a simple letter informing me that, in fact, I have been given access to the entire file that is the subject of this action. Those who showed it to me are in the same position you are, having no way of knowing. I did not ask that this be signed by anyone in the Civil Division or anyone in particular. I presume there is someone who knows that this is the case and can write the letter for his own or another signature.

Before I was shown anything your Department moved, I think prematurely, to have the case considered moot. In response, I asked my lawyer to inform the court that as soon as I had received copies of what I asked for I would move to dismiss the case. This I will still do.

I enclose 25¢ to pay for the single sheet to be copied, the indetifying cover of the file.

Sincerely,

Harold Weisberg

Exhibit 2