4/20/72 Dear Bud, Here is the draft of what I proposed this a.m. If by the time you return you have forgotten, you asked that I draft it. Please pay close attention to some of my language. If you disagree or feel it should not be used, as "liar", make any changes you see fit. I will be in DC 25, but we need not consult if there is time pressure. Do what you want. You can estimate how the court can or might react as I cannot. I do not press the point, as I did not when we discussed it, but one possibility is that Danaher knew exactly what he was asking for when he asked for it. He is, of course, but one judge, and this record will go higher. At this juncture, I am quite willing to say right out loud that Kleindienst is a deliberate, repetitive liar. That may be improper for you. When it is done, I think JER would enjoy a copy. I would suggest copies to those to whom you sent copies of our memo, which has not yet reached me (which may be reflected in this draft). It may be best to use the same procedure, use a plain letter with my name and return address and no letter. I recall Mathias, McCloskey, Martin in E,K's office, Tunney, I think Bayh (from whom I heard today). I guess Jim will send copies, but if he doesn't, I suggest PH. I'll probablt be writing JER. I'll tell him if he gets a copy without a letter it is for his entertainment, perhaps pleasure....If you elect to take out what I take as a slur on me, o.k., but let me know for in that event I will write either Rosenthal or Kleindienst demanding an apology and asking them to file a copy in court-or prove it. I never let anything like this stand unchallenged, and as a result I am never called upon to face it later. And people tend to learn to prefer to leave me alone. In fact, if I write Rosenthal, I'll send Kleindienst a copy. But I will not if you leave in what I have recommended on this. If you want to leave it out, do so. If I write a letter, it doesn't singe you...Interesting they didn't use Werdig. Anyway, he wasn't there. I hope you confirm my feeling that they have made a serious error here. From your voice I know you were ill and didn't want you to talk more than you had to. The bug we got in that court or wherever else we were together that day has not affected that part of me. But my chest sure is overloaded. Best, HW

Memo for Bud on govtts supplementary memo in 71-1026

In the hearing on this matter held Friday, April 14, 1972, Judge Donaher read from the November 13, 1968 letter by the then Deputy Attorney General Kleindienst to appellantés counsel the paragraph that includes these words: First,

~~"Further, such records pertaining to the extradition of James Earl Ray as may be in our possession or~~

First, "I regret I must (emphasis added) 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" for the extradition of James Earl Ray. Then,

"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)(c)."

Obviously, both are false statements. When, at the request of his client, appellant, counsel wrote Mr. Kleindienst to provide him the opportunity to withdraw these false statements, under date of December 15, 1969 Mr. Kleindienst replied simply "we adhere to the views expressed in our prior communication," that quoted above.

Subsequent to the filing of the Complaint, C.A. 718-70, and very on the eve of hearing, the Attorney General then wrote the letter from which Judge Donaher also read saying that the Department did possess what Mr. Kleindienst twice insisted it did not and "I have determined that you shall be granted access to them." Further, as Judge Donaher seemed to be noting and what is also at issue in this instant matter, whereas the Deputy Attorney General has said "I must (emphasis added) deny your request," the Attorney General himself said exactly the opposite, that "The exemptions do not require" (emphasis added) withholding.

Were these illustrations not enough to establish that the Department lies in invoking the exemption ~~[illegible]~~ of the law, in its memorandum filed in response to Judge Donaher the Department certifies all over again that ~~[illegible]~~ the former Deputy Attorney General is one who repeatedly speaks untruthfully for the attaining of an objective prescribed by law. Where the Deputy, without equivocation and with extreme positivitiveness, insisted that all "records pertaining to the extradition of James Earl Ray ~~[illegible]~~ as may be in our possession are part of investigative files compiled for law enforcement purposes," the Department's instant memorandum, ~~at the time~~ when the then Deputy is actually Acting Attorney General, certifies to this court that he lied in this language quoted from page

four:

"the extradition documents were, of course, not a part of a FBI investigatory file." (Emphasis added)

Either this memoraddum supplied to this court is false or those statements made by the then Deputy Attorney General are and were knowingly false. There is no doubt on this score nor can there be, as there is no doubt that the "epartment possessed what the "eputy denied possessing, repeatedly and to the point of hearing, when the face-saving letter from which Judge Danaher read was written.

Appellant
~~Plaintiff~~ reminds this Court that ~~the~~ Appellee's entire argument was centered on this point, that the public information sought in this instant action is also part of an investigatory file all of which is and must be secret. The fact is that, as the record shows, Appellant has countless thousands of pages of this allegedly secret file, all bought from the Government, so many, in fact, that there are more than 2,000 pages of ~~on which~~ he has not yet ~~completed his indexing of them.~~ They alone take up more than an entire file drawer. ~~If the court has any doubt on this score, Plaintiff will deliver that drawer to this Court.~~

Throughout Appellee's instant memorandum there are what can be taken as repeated slurs on the integrity and motive of Appellant's counsel in this case. Appellant has asked his counsel to protest to this court the slurs inherent against appellant, all irrelevant and uncalled for, all prejudicial, and all known to Appellee's counsel to be false. The record in this case and on this point could not be any more clear or unequivocal. When Appellant asked the ~~State of Tennessee~~ for access ~~the~~ to the public evidence in the Ray/King case and was refused, he asked the Department for only that which it has used in court in Great Britain to effect this extradition. When and only when his repeated requests went without answer did Appellant engage counsel in an effort to obtain this clearly public information, ~~the evidence of the trial of an American.~~ Yet Appellee's memorandum pretends that counsel is using Appellant as a front or dupe, a defamation of both of which this court is asked to take note. Here are some examples:

"...Mr. Fensterwald's attempt to obtain access to the documents filed by the United States in the James Earl Ray extradition proceedings in Great Britain."(p.3)

"...it is obvious that the question of Mr. Fensterwald's entitlement to access to the

Ray extradition documents was entirely unrelated to the issue of whether...." to which Appellant will return (p.4). (p.4.)

~~XXXXXXXXXXXXXXXXXXXXXXXX~~ And on the same page, "...whether the Ray extradition documents would be disclosed to Mr. Fensterwald."

This misuse of a documents filed in court to cast doubt upon the integrity of any appellant with a long literary record of independent work and to slur the professional conduct of ~~a member of the bar~~ his counsel in alleging he used another ~~in~~ as a facade is protested and the slurs and inferences are denied with vigor.

The sentence quoted in part above is consistent with this misuse of a Memorandum to be filed in court. It suggests to this court a misuse by counsel for Appellant of ~~proof of falsity~~ Hoffschlag by the then Deputy Attorney General, saying, "In the first place, it is obvious that the question of Mr. Fensterwald's entitlement to access to the Ray extradition documents was entirely unrelated to the issue of whether the Freedom of Information Act required disclosure to Mr. Weisberg of the spectrographic analyses (the extradition documents were, of course, not a part of a FBI investigatory file)."

Consistent with this misrepresentation is the preceding sentence beginning on page 3:

"Nor was there any reason why the Attorney General would have raised the matter of the Ray extradition documents in discussing Mr. Weisberg's request for the spectrographic analyses."

The record is beyond question that Appellant sought these spectrographic analyses from Appellee ~~without counsel~~ going back to May, 1966, without response. It is Mr. Kleindienst, not Appellant or the Attorney General, who introduced the matter of his own false statements in the Ray extradition matter, as counsel for ~~the~~ Appellee should have known and should acknowledged to this Court rather than deceiving it and maligning Appellant and his counsel. Mr. Kleindienst's letter of November 13 addresses a number of other matters, not only that of the Ray extradition matter. ~~The~~ fourth paragrpah reads, "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 [and the court is asked to note that according to the Attorney General's letter read by Judge Danaher this is not a truthful statement] in that they are part of investigative files complied for law enforcement purposes and exempt under the provisions of 5 U.S.C.522(b)(7).)"

This is direct response to what is at issue before this court.

Appellant's counsel's letter of October 9, 1969 reads, "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 spectrographic analyses ..."

Every letter herein cited is a matter of court record. It is incredible to Appellant that Appellee would so distort and misrepresent the record to this court and then in a manner that can be interpreted as a reflection upon the professional behavior of appellant's counsel.

The fact is that Appellant's counsel has been careful to restrain himself. However, should Appellee elect to carry this matter further, Appellant is quite prepared to supply this court with more than mere false statements by Appellee, for there has been more than one case where it was under oath. In his own name Appellant has charged perjury to Appellee and after the lapse of a long period of time, he informs his counsel, it is without refutation. In this case, having restrained himself, should this Court so elect, Appellant's counsel would welcome an opportunity to address just these aspects of the Williams affidavit, which is before this court.

There is, in fact, no end to the sly inferences of Appellee's Memorandum. It closes with still another, "In the circumstances, Weisberg can derive little comfort from the Attorney General's statement in the June 4, 1969 letter to the effect that if 'the plaintiff in that case [i.e. Nichols] is successful...", etc., for as Appellant's Memorandum for which this court asked shows, Weisberg did not raise the question, the Attorney General did, and entirely different actions were involved, the first Nichols case having had no connection with Appellant and the second, also without such connection, having hinged on an entirely different point of law and having involved a multitude of other matters, none of which are here in issue.

Appellant has asked his counsel to ask this court to direct Appellee to withdraw the suggestion that in any action Appellant has had frivolous purposes or has been or would permit himself to be the dupe of any one. If it is demeaning to Appellee to cast such slurs when they are without basis and completely contradicted by the record, they are also defamatory and, if not rectified and withdrawn, may later be misued to Appellant's detriment.

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

SUPPLEMENTAL MEMORANDUM FOR THE APPELLEE FILED PURSUANT TO DIRECTION OF THE COURT

ALAN S. ROSENTHAL,
Attorney for the Appellee,
Department of Justice,
Washington, D. C. 20530.

Mr. Weisberg's request for the spectrographic analyses. In the first place, it is obvious that the question of Mr. Fensterwald's entitlement to access to the Ray extradition documents was entirely unrelated to the issue as to whether the Freedom of Information Act required disclosure to Mr. Weisberg of the spectrographic analyses (the extradition documents were, of course, not a part of a FBI investigatory file). Moreover, almost a month before his June 4 letter to Mr. Weisberg, the Attorney General had advised Mr. Fensterwald (by letter of May 6, 1970) that "[w]hether or not the [extradition] 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" (J.A. 43). At no subsequent point was that determination withdrawn by the Attorney General. Thus, insofar as the Attorney General was concerned, on June 4, 1970 there remained no issue whatsoever respecting whether the Ray extradition documents would be disclosed to Mr. Fensterwald.

In sum, insofar as we are aware, there has been only one other attempt to compel the disclosure under the Freedom of Information Act of the spectrographic analyses hereinvolved -- that of Dr. Nichols. That attempt was resisted on precisely the same grounds assigned by the Government in the present litigation. And while, after voluntarily dismissing his complaint, Nichols then brought a second suit, he chose not to renew his claim of entitlement to the analyses (although he did reassert an entitlement

to some of the other material associated with the assassination).[1/] In the circumstances, W[illegible]sberg can derive no comfort from the Attorney General's statement in the June [illegible], 19[illegible], letter to the effect that if "the plaintiff in that case [i.e., Nichols] is successful, the documents in question [i.e., the spectrographic analyses] would of course be made available to you also" (J.A. 24). For Nichols did not succeed and, apparently, recognized when he brought his second action that he was not entitled to the analyses in view of the seventh exemption to the Act. 5 U.S.C. 552(b)(7).

Respectfully submitted,

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1/ For example, [illegible] suits, Mr. [illegible] sought [illegible] in [illegible] of the President's clothing and X-rays and photographs taken at the autopsy.