

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- x
MICHAEL MEEROPOL, et ano.,

Plaintiffs

Civil Action
No. 75-1121

-against-

EDWARD J. LEVI, et al.,

AFFIDAVIT

Defendants
----- x

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and
says:

1. I am one of the attorneys for the plaintiffs
and submit this affidavit in support of plaintiffs'
motion for an order finding and punishing for contempt
defendant Clarence M. Kelley, Director of the Federal
Bureau of Investigation (FBI), as well as Thomas H.
Bresson and Cornelius G. Sullivan, special agents of
the FBI assigned to the Freedom of Information Section
of the FBI and who have engaged in the preparation of the
inventories and justifications in this proceeding
which were filed over a period of time from October
1, 1975 through November 17, 1975.

2. This affidavit sets forth facts establish-
ing that defendant Kelley and the other designated in-

dividuals and other employees of the FBI, to the plaintiffs unknown, have failed to comply with the orders of this Court dated August 1, 1975 and August 27, 1975. The facts set forth herein further establish that the aforesaid individuals have engaged in wilful misconduct in failing to obey, comply with, or carry out the provisions of the aforesaid orders of this Court and have acted knowingly and negligently in disregard of said orders and have refused to comply with the provisions of the FOIA.

3. This action was instituted on July 14, 1975 and, concurrently, plaintiffs moved for an order restraining the FBI and all the rest of the defendants from destroying, pulping, altering, or disposing in any way of any records requested by plaintiffs, and directing that the defendants serve and file an inventory of each and every document in their custody, possession and control. The purpose of this motion was to secure the integrity of the files and records requested, the injunction and the inventory. Further, such relief would form the essential base upon which the rest of the action could proceed.

4. On August 1, 1975, this Court issued an order, the first paragraph of which provided that all

the defendants, their agents, representatives and servants:

Moved
to
FBI D37

"be enjoined during the pendency of this action from destroying, pulping, altering, or disposing of in any way any of said files, records and documents as specified and set forth in Exhibit A attached hereto." *

5. This Court further directed that the FBI, among others, submit a schedule for the filing of a complete inventory of all of the documents requested by plaintiffs in the letter of February 20, 1975 in its custody, possession and control.

6. To further implement the statute and establish the basic fact of what papers are in the custody, control or possession of the FBI and to provide for a complete accounting thereof, over the vigorous opposition of the defendants, this Court entered an order on August 27, 1975 which provided, in part, that by October 1, 1975 the FBI, its agents, representatives and servants:

"shall file in this court and deliver to plaintiffs. . . an itemized inventory of each and every document not heretofore provided to plaintiffs, and in defendants' custody, possession and control . . . including all 'main' files."

With respect to the plaintiffs' request as set forth in subparagraph (d) of their letter of February 20, 1975, the FBI was directed to inventory as well "All records pertaining to any of the witnesses called. . .

*Exhibit A is the plaintiffs' request for documents under the FOIA, dated February 20, 1975.

and those included in the list of witnesses by the government." That list of witnesses was attached as Exhibit 1 to the order of August 27, 1975. This paragraph 2 of the order provided that the inventory be "of each and every document in defendants' custody, possession and control as requested and set forth in Exhibit A. . . as to those persons on the government's list of witnesses in the aforementioned case, and attached hereto as Exhibit 1."

7. In response to the defendants' argument that there might be some exempt documents of such claimed great secrecy and import which the defendants would be "unable to identify and set forth in the inventory. . . without disclosing alleged secret information. . ." the Court's order provided that, in the event a claim be made, it was to be by motion and affidavit to be served and filed on or before October 11, 1975. No such motion was ever made by the FBI.

8. Paragraph 8 of the order of August 27, 1975 provided that the FBI was to file and serve by November 15, 1975:

"an itemization with detailed refusal justification and with indexing and cross referencing that correlates the statements in defendants' refusal justification with the documents or portions of those documents which defend-

ants claim to be exempt from disclosure under the FOIA, in accordance with the procedures and requirements set forth in Vaughn v. Rosen . . ."

and further the FBI was required to:

"make available to plaintiffs for examination, as well as provide copies of the remainder of the documents and portions of documents in its custody, control and possession, for which no claim is made by defendants. . . "

9. Had the order of this Court been complied with, the next stages of the litigation, the completion of necessary discovery and then the resolution of the factual and legal questions by de novo consideration, the Court could proceed with evidentiary hearings where necessary. Two preconditions had first to be met: 1) the complete itemized identifiable inventory, and 2) the itemized detailed justifications for refusal with cross-indexing and referencing, etc. This the FBI refused to do.

10. Defendant Kelley and Messrs. Bresson and Sullivan and other employees of the FBI have failed and refused and wilfully neglected to abide by, obey, or comply with the terms of this Court's orders of August 1, 1975 and August 27, 1975 and by such action and refusing to act they have frustrated the purposes of this Court's order, all to the prejudice of the plaintiffs herein. The violations and non-compliance of the aforesaid defend-

ant and individuals consisted inter alia of the following:

(a) The failure to make and file a complete inventory of each and every document in their possession, custody and control and in its stead filing an incomplete, inaccurate and misleading inventory;

(b) Omitting from the inventory and removing from the documents not claimed to be exempt all FBI numbers and references and failing to identify the documents inventoried, as well as omitting all section and volume references, thus making it impossible for the plaintiffs or the Court to determine the extent of non-compliance in failing to inventory all of the documents;

(c) Unilaterally withholding identification of documents without seeking or obtaining leave of the Court as required pursuant to paragraph 4 of this Court's order of August 27, 1975;

(d) Tendered copies of claimed original copies which were, in fact, altered and different from the actual

originals in the absence of
claimed exemptions; where exemptions
were invoked and partial deletions
made, the copies were altered
beyond the claimed deletions;

(e) Refused to permit
plaintiffs to examine the originals
of non-exempt documents from which
no deletions were originally made,
as well as those portions of the
original documents from which there
were partial deletions and thereby
defendant Kelley and others tendered
documents as true copies which were,
in fact, false, altered, and forged
copies;

(f) Discriminatorily imposed
upon plaintiffs only conditions
precedent for plaintiffs to obtain
copies of the tendered non-exempt
documents

(g) Failed to give the justifi-
cations for the claimed exemptions as explicitly

required in this Court's order of August 27, 1975 and supplied no details, itemization, indexing, or cross-referencing to those documents or portions thereof claimed to be exempt, nor supplied any factual grounds for the claimed exemptions.

The Incomplete Inventory

11. In the statements given prior to the institution of this action, as well as in the affidavits submitted by employees of the FBI in this action under the broadest definition of the term, the "main files" encompassed in paragraph 1 of this Court's order, as it relates to the FBI, includes FBI inventory Exhibits A through I.* The total number of pages itemized in inventories A through I (pages inventoried, both exempt or not exempt, in whole or part) total 39, 377 pages.

12. By letter from defendant Tyler dated May 16, 1975 (Exhibit H to the complaint), the main files "involve 240 sections of records, an estimated 48,000 pages." The Bresson affidavit of July 23, 1975 states that there are 44 sections. Based on 200 pages per section, this would total 8800 pages.**

*Julius and Ethel Rosenberg, David and Ruth Greenglass, Morton Sobell, Klaus Fuchs, Harry Gold, Anatolai Yakovlev, Max Elitcher, Abraham Brothman and Oscar Vago. Vago was neither a proposed or actual witness. His sole relationship to the case was as a former business partner of Brothman.

**We assume that this was relating solely to those sections of the file dealing with Julius and Ethel Rosenberg only.

Bresson went on to state that there were 4,000 other "sections" or "volumes". This would total 800,000 additional pages. In the August 7, 1975 Bresson affidavit, the total sections now have been increased to 244 sections, 44 to the Rosenberg's only and 200 additional "main files" relating to the key witnesses who actually testified. Further, Bresson states there are 68 additional sections, as well as the 4,000 other files referred to in his first inventory.

13. On September 25, 1975, after Bresson had prepared the first inventory filed on October 1, 1975, he stated that the "main file" sections totalled 363 in number, or 72,600 pages. This does not include the 4,000 other files (800,000 pages).* The aforesaid 363 sections totalling 72,600 pages does not include the files of the government's list of witnesses who were not called to testify in the trial. By the most charitable interpretation of the Bresson affidavit, this would add up to a minimum of 200 additional sections for a total of 40,000 pages in addition to the 72,600 pages, for a total of 112,600 pages.

14. There is obviously a basic contradiction between the quantity of the tendered inventory and

*The 4,000 other sections were increased to 9,000 sections in the Bresson affidavit of October 6, 1975.

the files and records actually in the possession of the FBI and requested by plaintiffs. We deal here with not a minor variance, but a large significant discrepancy varying between 34,000 to 70,000 documents.

15. An examination of the inventories gives some example of the manner in which the FBI has constructed what amounts to a false set of books, a false inventory. They, the defendant Kelley and the employees of the FBI, without Court sanction, determined to reconstruct and reconstitute the files requested and submit an abridged version of their files and records. The abridgement was effected by various devices, some of which can be found in the Bresson affidavits and others, which I learned of, in the course of my attempts to examine the non-exempt documents at the headquarters of the FBI on December 3, 1975.

16. After continuous reference to sections and volumes varying in number between 244 and 363, said to be the "main files" of the Rosenberg - Sobell case, the FBI chose not to inventory these sections and files, but, rather, to "select portions thereof" on the basis of their unilateral determination as to what might be "pertinent" or "relevant". Thus, they acknowledged to me that these sections were not fully in-

ventoried and thereby they tendered this as one reason why it would be impossible, administratively or logistically, for plaintiffs to examine the originals. Whether the 363 sections referred to by Bresson, in fact, constitute all of the sections making up the "main files", we cannot tell or determine, but based upon their own observations, their own representations and statements of fact in the Bresson affidavits, there is an absolute minimum of 34,000 missing documents without considering those files relating to the uncalled witnesses.

17. On the morning of December 3, 1975 at FBI headquarters, I examined one group of documents numbering about 100 pages itemized in the Sobell inventory and found a five-page document which I attach hereto as Exhibit 1. This purports to be a duplicate copy of the original FBI memorandum dated July 27, 1950. On the top of page 2 of that memorandum, there is the following statement:

"A letter from the New York Office, dated August 23, 1948, captioned 'Morton Sobell; Security Matter-C' advised that Sobell was alleged to have signed a communist party petition. . ."

I asked Mr. Bresson for a copy of the August 23, 1948 letter, as I noted it was not in the inventory. Bresson acknowledged its absence but had no explanation.

Undoubtedly, examination of the other tendered documents will reveal hundreds and thousands more (provided the deletions under varying pretexts of exemptions do not hide the extent of the false inventory given by the FBI).

18. The document inventories were under the August 27, 1975 order to include all of the files and records of the government witnesses called or uncalled (see paragraph 2 of the order). That inventory of all of the files and records purported to be set forth in the inventory identified as "Exhibit L" subsequently refiled in identical form on November 17, 1975 as Exhibit "L-1", bears the marking "REFERENCES OF GOVERNMENT WITNESSES."

19. The examination of that inventory reveals not a single inventory of a single file of a single witness. The sole references in that inventory were those relating back to the "main file" inventory, Exhibits "A" through "I". This was no oversight. Defendant Kelley and his employees chose to disobey the clear mandate of this Court.

20. Exhibit "L" or "L-1" omits at least ten witnesses, not government employees. The names of Vivian Glassman and Max Miller are not found in the inventory. Glassman was called before the

Grand Jury. She was interviewed by the FBI on many occasions. Her name appears in the trial record in association with the Rosenbergs, as well as other persons, such as William Perl, who also figured prominently in the trial.

21. In 1957, the FBI was still seeking to implicate her as a party to the alleged "Rosenberg Ring". Max Miller was, according to the government's claim, an important source of an exhibit used in the trial. Miller gave them photographs that were used as exhibits in the trial. FBI agent, William F. Norton, Jr. (also on the list of witnesses), on January 19, 1951 gave him a signed receipt for the exhibits. The FBI chooses not to be able to find his record.

22. Among the government's witnesses found in Exhibit L-1 are Elizabeth Bentley, O. John Rogge, J. Robert Oppenheimer. Bentley testified at the trial and referred to speaking to a "Julius". Bentley was giving statements and being interviewed by the FBI from 1945 to the time of her death around 1960. Yet, there is no inventory of a single file or document. O. John Rogge was on the witness list. He was also the attorney for the Greenglasses and Elitcher. He was under investigation. He testified as a government

witness in this District in 1952. The Department of Justice, Criminal Division, in their inventory itemized at least some of the Rogge records, including those emanating from the FBI. Yet Exhibit "L-1" contains no inventory of any documents which the FBI has. The FBI files on J. Robert Oppenheimer are quite voluminous. There is not an inventory of a single document of the Oppenheimer papers in Exhibit "L-1".

23. In the Bresson affidavit of October 6, 1975, he admits that the FBI refused and failed to check the existence of the requested documents in any of the FBI field offices, but limited its search to its Washington headquarters. Bresson "assumes" that the central headquarters has all the files. We know that records in the United States Attorney's office in Albuquerque were destroyed. The Albuquerque records in the FBI office would be most necessary for a complete inventory. The failure to check their field offices, in effect, gives the defendant Kelley and his employees an "explanation" for the incompleteness of the files, but not one that can condone the incompleteness of the inventory or the violation of this Court's orders. Rather, it establishes the utter lack of good faith

or any intention on the part of the FBI to comply with the Court's order. It further indicates the FBI's determination to flout the FOIA and ignore judicial mandates when it is directed to account and disclose its files.

The Alteration of the Documents
without Claim of Exemption

24. Every FBI document inventoried has an official file number placed thereon. The manner of comparing the file number is set forth in the Bresson affidavit of September 25, 1975. The file number indicates the nature of the offense, the particular case, the particular individual, followed by numbers in series, i.e., 1, 2, 3, et cetera. By this means, one can determine the number of documents in files and sections as well as determine whether any have been omitted. For that very purpose, the FBI and its employees have chosen to remove and delete the file numbers of every copy of every document claimed to be non-exempt in whole or in part. The inventories do not contain a single file number.

25. Every document received by the FBI has a time stamp, indicating date and time of receipt at the central or field office, as well as routing slips and written notations by those reviewing the document. Every one of the receipt and routing slips

have been deleted. Handwritten notations have been removed and the documents have been sanitized in other respects -- and not under a claimed exemption.

26. Thus, the tendered documents have deletions and alterations not under any claimed exemptions and the purported copies are not true copies of any of the original documents. The alterations and removals make it impossible to verify or cross-check the inventories, as the FBI well knows.

27. The identification of documents in the "description column" of the inventories are equally misleading and uninformative, even when purported description is given. In many hundreds, if not thousands of cases, the inventory has notations, such as use of the phrases "Not Pertinent" or "Not Relevant."

The Unidentified Documents

28. Pursuant to the provisions of Paragraph 4 of the Court's order of August 27, 1975, if the defendants were to claim to be able to identify any document in the inventory "without disclosing allegedly exempt information", they were required, by motion and affidavit, to move on or before October 11, 1975 for leave to exempt such documents from identification in the inventory. None of the defendants, including the FBI, made any such motion or sought such relief.

Unilaterally the FBI determined, without Court sanction, to refuse to identify documents. The FBI arrogated to itself the right to make an entry in the inventory such as: "A document relating to foreign intelligence," "Classified documents not capable of being further described", and then using other cover phrases as "Not Pertinent" or "Not Relevant". The fact is the FBI chose to flout the Court order. Under general equity powers and under §552(a)(4)(G) of the FOIA, the contemptuous acts must be punished and the defendant with his employees held in contempt.

The Deceptions Practiced Upon the Court and the Plaintiffs

29. The sum total of the devices set forth above indicates a flagrant, wilful plan to disobey and violate this Court's mandate. The FBI has filed an inventory which it knows to be incomplete but nevertheless represents to be complete and in compliance with the Court's order. It tenders copies of documents which is represented as being true copies of originals when in fact they are not. The FBI has gone to such lengths as to hide its true file numbers and to compose new "serial numbers" which the documents at issue never previously had and in fact do not bear to this day.

The Refusal to Permit Plaintiffs
to Examine the Originals of
the Non-exempt Documents

30. On December 1, 1975 I communicated with Mr. Bresson of the FBI advising that I would be appearing at headquarters to examine some of the tendered copies of the inventories. I further requested the opportunity to compare and spot check those copies which contained no deletions with the originals. This was agreed to. When I appeared on the morning of December 3, 1975 and selected a series of undeleted documents for such purposes, I was advised by Bresson that he had no authority to do so and since we last talked a decision was made by higher authority that no originals could be seen.

31. I was nevertheless able to elicit facts which establish why the FBI is reluctant to show the originals. Such exposure would establish that the originals and the copies were not the same. The presence of file numbers would reveal the incompleteness of the inventory. Bresson further acknowledged that the inventories assembled do not correlate or comport with the files and assemblage of documents as they actually exist.

32. Paragraph 8 of this order explicitly gives plaintiffs the right to examine the document, and surely those documents where there have been no deletions and

exemptions claimed. Original documents partially deleted and tendered could be verified as well as to those portions remaining without disclosing the information desired to be withheld.

33. Plaintiffs have good reason to verify "copies" of any tendered document. Only thus can the integrity of the inventory and documents be established. The numerous violations of the Court's order, the unlawful practices of the FBI, of which we are all well aware, only serves to underline the need for such verifications and makes the FBI's refusal more contemptuous.

34. Plaintiffs originally moved for an order directing the FBI to place all their files and records in the custody of the Court. The clear violations of this Court's orders in this action serve to establish the need for such affirmative step to insure the integrity of the files and the means of obtaining an honest and complete inventory. Regardless of claimed burdens and inconveniences, the public interest in this case of historical importance makes such protective steps necessary.

The FBI's Discriminatory Refusal
to Make the Tendered Copies
Available to Plaintiffs

35. On November 17, 1975 the FBI filed their final inventory and "justifications". Simultaneously they disseminated and commented upon a letter to plain-

tiffs bearing that same date (not received by plaintiffs until November 20, 1975), which stated in effect that the precondition for plaintiffs' obtaining the documents was the payment of a search fee of \$20,458 plus copying charges for a total of \$23,451.80. Plaintiffs first heard of this letter in the evening of November 17, 1975 from various newsmen.

36. The FBI and defendant Kelley failed to advise this Court and plaintiffs that in an affidavit dated November 14, 1975 in another FOIA action in this district court - Weinstein v. Levi, the FBI stated it would make the same documents available to Dr. Weinstein without any search charge (Affidavit of Harvey Kittel, a special agent of the FBI).

37. The decision to release the documents to Dr. Weinstein without a search charge, while charging plaintiffs, has never been explained or justified. The statement of December 1, 1975 by defendant Harold R. Tyler, Jr. thus reflected a decision that the FBI previously made prior to December 1, 1975, except as it pertained to the plaintiffs in this action.

38. After having notified the FBI by wire, I appeared at the FBI headquarters on November 24, 1975 for the sole purpose of examining the copies of the documents which the FBI said were releasable. I was advised by Bresson and Jeffrey Axelrad, Esq. that

neither plaintiffs nor I as their counsel could examine the documents without making the requisite payment of \$23,451.80, including the search charges.

39. On December 10, 1975 I learned that the FBI was sending its "copies" of the released documents to Weinstein upon his undertaking to pay for the cost of reproduction by January 31, 1976. Weinstein's counsel reserved the right to move the Court to waive such fees. I communicated with Bresson on December 10, 1975 and stated that the plaintiffs were prepared to make an identical undertaking, explicitly reserving to themselves the right to move this Court to relieve them of any obligations to pay and that if this Court either denied that application or had not determined the issue by January 31, 1976 the plaintiffs would pay, reserving the right to seek recoupment pursuant to future Court order (Exhibit 2). The letter was read to Bresson over the telephone and was sent to him that very same day. To this date, December 18, 1975, I have not received an answer or copies of the documents from Bresson or his attorneys in spite of repeated phone calls. I was told the matter is under consideration. Dr. Weinstein has the documents.

40. We do not of course, object to Dr. Weinstein's getting the file without search or copying charge. We wish the files to be available in totality to everyone. Nevertheless the conduct of the defendant Kelley's

employees indicates bad faith and a desire and a plan to flout the FOIA and Court orders to impose every possible obstacle in the way of plaintiffs. Defendant Tyler's statement of December 1, 1975 that plaintiffs' parents' case is unique "in terms of both current public interest and historical significance" notwithstanding, the defendants and their counsel choose to follow a course of conduct which disregards the statute and orders of this Court and to make enforcement of the FOIA more burdensome and expensive to plaintiffs.

The Absence of Refusal Justifications

41. The "justifications" presented by the FBI to sustain their claimed exemptions of documents in whole or in part are to be found in the affidavits of Thomas H. Bresson, Cornelius G. Sullivan and Leon Ulman, all sworn to on November 17, 1975. The exemptions in the inventories just cite, under the heading entitled "Exemptions 5 U.S.C. 552", one or more provisions of the FOIA. Other "exemptions" are indirectly achieved by the notations in the inventory "Not Relevant", "N.R." or "Not Pertinent", "N.P."

42. In not one of the affidavits or one of the notations is there a single verifiable fact nor any itemized detailed justifications set forth to justify the exemptions, whether

it be (b) (1), (b) (2), (b) (5), (b) (6), or (b) (7), (C), (D), (E), or (F).

43. The Bresson affidavit purports to contain "itemized detailed justifications" for withholding all or part of 2,600 documents approximating 7,000 pages under a blanket claim of "unwarranted invasion of personal privacy" (subsection (b) (7) (C)). The justification is set forth in paragraph 11 of the Bresson affidavit of November 17, 1975. It is his claim that all of these 2,600 documents or portions thereof are exempt because they contain information of "an intimate or other personal nature and is wholly unrelated to the Rosenberg case." To contend that this bald statement constitutes the justification mandated by this Court and as articulated in the decision of the Court of Appeals in this circuit is absurd. Defendant Kelley and his employees clearly know they are willfully disobeying the Court's order. The lack of good faith in claiming privacy exemptions is evident from scanning just a few of the documents I have had an opportunity to see. They are full of names with "derogatory" information which have not been deleted (see Exhibit 1). The privacy exemption is invoked by the FBI in hundreds of instances accompanied by other claimed exemption. This thus provides the FBI the device to hide documents and portions thereof under their broad brush invocation of privacy.

44. The record of FBI intrusions upon the privacy and personal lives of many thousands and more people, their record of harassment of individuals and threats of personal embarrassment and exposure with resort to bugging and unlawful surveillance, makes the FBI's unsubstantiated claimed concerns for privacy in this case less than credible.

45. In this very case, after plaintiffs' request was received by the Department of Justice, it answered by letter dated March 13, 1975 signed by defendant John C. Keeney. In a memorandum to the file, George W. Calhoun, after having seen that agency's drafted response, stated:

"The attached FOI request is one of the most definitive requests I have ever seen. I have no doubt in my mind what they want--they want everything having to do with the Rosenberg case."

and further

"The approach we have adopted in our letter is that there is some confusion about one minor aspect of the request. We will not only not process it, but we will not even estimate what the rest of the request will cost to complete. It is this very type of foot-dragging that prompted revision of the FOI, and I do not believe we can treat FOI requests this way in the future in light of the new amendments."

46. The FBI, by its blatant disregard of the Court's order to justify its refusals, has engaged in more than foot-dragging. Their response represents a decision to reject and disregard the duties placed upon it under this Court's order of August 27, 1975. The FBI

is telling the Court, the plaintiffs and the public it will place every possible obstacle in the way of enforcing the FOIA and orders issued thereunder--the FBI thus arrogates to itself what will be disclosed.

47. Bresson, invoking subsection (b) (7) (D) (confidential informants), claims the right to withhold, in whole or in part, 1521 documents approximating at least 3,000 pages.* Not a single fact is given to substantiate a single exemption of a single document. The sum total of the "justification" is the conclusory statement that the deletions or withholdings "pertain to information, the release of which would disclose the identity of a confidential source."

48. Bresson invokes subsection (b) (7) (E) in withholding all or part of documents purportedly justified by the statement that he wishes to avoid "unusual or sophisticated laboratory investigations and techniques", and he is not desirous of having these techniques** become "common knowledge" among "criminals and/or foreign espionage operatives." The examples in the exhibits

* In Exhibits "A" through "G", 1046 documents are affected by this exemption. In the "reference" files on the same individuals (Exhibits "A-1" through "K-1") 471 documents are withheld in whole or in part.

** Obviously the "techniques" must have been in use for 25 years or more and no claim of newness or novelty is made.

attached to this affidavit prove the fact of deletions and nothing more.

49. Bresson next invokes subsection (b) (5) and claims the material to be of a deliberative nature, the disclosure of which would allegedly impair open and frank discussions by the personnel of the FBI. The example cited adds nothing to the stark unsupported claim* any more than the added claim that "viewed in this perspective, it is considered to be outside the plaintiffs' request."

50. Of like nature is the Bresson invocation of exemption under subsection (b) (2) of the FOIA in paragraph 17 of his affidavit on the claim that certain documents reflect personnel rules and practices that "in some instances" could hamper the Bureau.

51. In paragraph 18 of the Bresson affidavit, he seeks to justify the incompleteness of the inventories tendered as being complete and to offer some rationale for the omission of thousands upon thousands of documents not included in the inventories. Thus the sum and substance of the ramblings of paragraph 18 and its subparagraphs is that Bresson and his FBI associates unilaterally concluded that these documents were

* To the extent that the inventory purports to describe a document, it would seem that the Bresson "example" is at least misinventoried and differs from the "complete inventory" filed with the Court.

neither relevant nor pertinent. Moreover, as evidence of the propriety of their omitting documents from the inventory, Bresson notes that thousands of the inventoried documents need not be described nor need any justification for withholding under any claimed exemption be made, since these documents too are neither relevant nor pertinent, and they are so listed in the inventories by the labels "Not Relevant", "N.R.", "Not Pertinent" or "N.P."

52. While Bresson acknowledges that some of the uninventoried or undescribed documents constitute "voluminous information", he and his associates determined that even though there may be some relationship to the Rosenbergs, the Greenglasses or Sobell they are "clearly unrelated" to the Rosenberg-Sobell trial and "hence outside the scope of plaintiffs' request."*

53. Paragraph 19 of the Bresson affidavit is essentially another rationale to excuse the FBI's filing of an incomplete inventory and withholding documents for other than claimed statutory reasons. Bresson refers

* Exhibits 11 and 12 to the Bresson affidavit are described in his paragraph 18 as examples of relevant data. It would seem that as to this Fuchs material they could not claim the exemption of foreign origin of the information but elect to withhold on the grounds of lack of relevancy. It should further be noted that in the ERDA inventory 49 documents were sent by it to the FBI to determine releasability since they were FBI-originated documents. An examination of the FBI inventory discloses numerous examples of the FBI sending FBI-originated documents (which had been previously transmitted to ERDA) for ERDA to determine releasability. And so the game goes.

to the fact that some FBI documents inventoried by other agencies were withheld and refused upon the grounds that they were within the competency of the FBI, and thus concludes that these documents could be omitted for the FBI inventory. This is a violation of this Court's order which directed that there be, without exception, an inventory of each and every document in each agency's possession. Bresson, the FBI and its employees had no right to presume or do otherwise.

54. In paragraph 19(b) of the Bresson affidavit once again the FBI arrogates to itself the right to exclude documents from the inventory or withhold description of inventoried documents on the claim that in their opinion,

"In view of the very strong likelihood that the FBI system ... will result in release of relevant FBI documents to the plaintiffs, it does not appear necessary to consider the referral items as within the purview of this litigation" (emphasis supplied).*

55. Cornelius G. Sullivan's affidavit purports to give "detailed itemized justifications" for withholding approximately 2,033 documents under subsection (b) (1) of the FOIA and under Executive Order 11652. The

* Bresson reacknowledges that the field office files were not searched and only currently were they looking into portions of the New York field office files only--and that "the result will be furnished to plaintiffs forthwith." The "result" has yet to be received by plaintiffs.

"detailed itemized justifications" for the wholesale refusal to disclose over 2,000 documents approximating 5,000 pages in his brief affidavit is nothing more than a paraphrase of statutory provisions from the FOIA and the Executive Order itself. The "justifications" are:

"classified information ... furnished by foreign governments ... on the understanding that it be kept in confidence";
"Documents ... furnished by other United States Government agencies ... or ... containing information derived from the other agencies ... classified by the FBI"; documents containing "sensitive intelligence method vital to the national security."

56. In Attachment "E" to the Sullivan affidavit approximately 758 documents are claimed to be exempt in that they "involve foreign relations considerations and have been referred to the United States Department of State."

57. On December 8th, 1975 I received a letter from the Department of State, signed by Barbara Ennis, Director of the Freedom of Information Staff, Bureau of Public Affairs, a copy of which is attached hereto as Exhibit 3. The State Department, by letter dated April 18, 1975, in response to plaintiffs' request, adverted to the fact that it had referred 14 documents to the FBI for review, and in its letter of December 8, 1975 stated:

"The FBI, upon review, concluded that the 14 documents referred to them by the Department of State did not fall under their jurisdiction, and one was not relevant to the case. The Bureau, therefore, returned 13 documents to the Department of State for its determination. Responsible officers

in the Department have reviewed these documents and find them suitable for declassification and release, and I am enclosing copies." *Emphasis supplied.)

Nowhere is there any reference to 758 documents referred to the Department of State by the FBI.

The Enforcement of the Court's Orders

58. The facts set forth above establish that the FBI cannot be relied upon to account for all the files and records or supply a complete inventory of each and every document, appropriately identified, in its possession as well as provide true copies of those documents not exempt from disclosure. Judicial intervention is required to assure the needed compliance with this Court's orders, orders which are essential instruments to effect true compliance with the FOIA.

59. To this end, and upon the facts shown, it is respectfully requested that this Court order the following relief to realize the purposes of the August 1 and August 27, 1975 orders:

(a) The FBI should be directed to turn over, deliver and deposit and place in the custody of this Court all its files and documents in the form as regularly assembled, "main" files, "reference" files and others, containing documents requested by the plaintiffs, to the custody of this Court. Such files and

documents should include not merely those at FBI central headquarters but in each of its field offices as well.

(b) A master should be appointed by this Court authorized to assume the control and to effect the making of the inventories in accordance with this Court's orders. The master should be empowered to retain the services of such persons as he chooses with provision for the participation of the parties in effecting the completion of said inventories. All the costs of the same should be borne by the FBI and the named employees.

(c) The copies of the documents heretofore prepared by the FBI and tendered by it to the plaintiffs should be delivered without cost to the plaintiffs so that the same is available to aid plaintiffs in determining the completeness of the inventories and searches and the holding of such depositions as may be required in respect thereto.

(d) The originals of all documents not claimed to be exempt in whole or in part shall be available for examination by the plaintiffs and copies of the same shall be provided to the plaintiffs without search, copying or other charges.

60. The FBI and its employees knew at least since August 1, 1975 that they would be required to file itemized detailed justification to substantiate any claimed exemption or withholding of any document encompassed in

in the plaintiffs' request. They have failed and refused to do so, notwithstanding this Court's order of August 27, 1975. The Court should issue an order waiving any claimed exemptions as to any document, the refusal of which is not justified in accordance with the law and orders of this Court, within seven days of the signing of the Court's order on this motion.

61. The history of delay and gross contempt on the part of defendant Kelley, Bresson and Sullivan, and other employees of the FBI has frustrated the enforcement of the FOIA, and unnecessarily burdened the Court and the plaintiffs herein. The plaintiffs have been compelled to proceed with this motion for contempt at great cost and expense and delay. It has required plaintiffs' attorneys to expend many hundreds of hours to decipher the obfuscating inventories and extract the facts underlying this affidavit and the preparation of this motion. The defendant Kelley and the employees named should be fined and required to pay compensatory and exemplary damages to the plaintiffs and pay the costs and attorneys' fees of the plaintiffs' attorneys. The relief sought is fully commensurate with the nature and scope of the willful violations and gross disobedience of this Court's orders. In the event the disobedience of the Court's orders persists, the cited individuals should be remanded to the custody of the United States Marshal and imprisoned

until compliance with the order. For each additional day of non-compliance, a fine in an appropriate amount should be assessed against defendant Kelley, the FBI, Bresson, and Sullivan, and other employees responsible for the continuing contempt.


MARSHALL PERLIN

Sworn to before me this

22 day of December, 1975.



ISADORE NATHANSON
Notary Public, State of New York
No. 24-2851680
Qualified in Kings County
Commission Expires March 30, 1977

SAC, NEW YORK

July 27, 1950

DIRECTOR, FBI

MORTON SOBELL, wa.
Morton Sobell
ESPIONAGE - R

PERSONAL ATTENTION

Reference is made to the telephone call from the New York Office to the Bureau on July 21, 1950, in which some of the details of the interview of Max Elitcher on July 20, 1950, were set out. Elitcher advised that Morton Sobell, a close associate and neighbor of Elitcher, had been furnishing information to the Soviets, apparently through Rosenberg. A review of the Bureau's files has been made on the name Morton Sobell and the following information has been noted:

BACKGROUND

The personnel file of Morton Sobell at the Navy Department reflects that he was born April 11, 1917, in New York City. His father was Louis Sobell, who was an Engineer Draftsman at 5618 Catherine Street, Philadelphia, Pennsylvania. His mother is Rose Pasternak. Both were born in Russia.

Sobell attended City College of New York from 1934 to 1938 and graduated with a BEE Degree. He was single and employed by the Navy in February, 1939, as Assistant Electrical Engineer. He resigned from the Navy October 1, 1941, in order that he might attend the University of Michigan. He went to this institution from September, 1941, to May, 1942, after which he was employed by the General Electric Company, Schenectady, New York, from June, 1942, to an unknown date. During the summers from 1934 to 1938 he was employed at Camp Unity, New York, "reportedly a Communist-controlled camp."

According to this file, he reportedly married Helen Lehitov, who was reported as the former wife of Casey Gurewitz. As of June 1, 1948, he was employed by the Reeves Instrument Company, New York, on secret work.

Exhibit 1

ACTIVITIES

A letter from the New York Office dated August 23, 1948, captioned "Morton Sobell; Security Matter - C," advised that Sobell was alleged to have signed a Communist Party petition for Isidoro Hagan on August 8, 1939, and at one time was employed at Camp Unity at Wingdale, New York.

The report of Special Agent T. W. Dawsey dated February 17, 1940, at Washington, entitled "American Peace Mobilization; Internal Security - C," stated that a highly confidential and reliable source had advised Morton Sobell, 4925 - 7th Street, N.W., Washington, D.C., an Engineer for the Navy Department, was a member of the American Peace Mobilization.

In the report of Special Agent Frederick H. Green, dated March 24, 1943, at Washington, D.C., captioned "Harold Bernard November; Internal Security, Hatch Act," it was stated that according to the drivers of two automobiles communicated with persons living at 1821 M Street, N.W., Washington, D.C., which address is the residence of Mr. and Mrs. November. The Novembers were affiliated with several front organizations in the D.C. area and reportedly associated with known and suspected Communists. The license numbers on these two automobiles, D.C. 176-698 and Maryland 77-883 (1940), were found to be held under the names of Morton Sobell, 4925 - 7th Street, N.W., and Dr. Samuel R. Boranberg, whose wife was known as Minnie Radner. Sobell's car was seen on the night of September 13, 1940, in front of Turner's Arena where it discharged passengers going to an anti-conscription rally there that evening.

The report of Special Agent M. J. Connolly, dated April 5, 1941, at Washington, D.C., captioned "American Youth Congress; Internal Security - C," set forth that according to information made available by among the paid delegates and observers at the Second Annual Youth Conference held in Washington, D.C., November 1, 2, 3, 1940, was Morton Sobell, 2225 W Street, N.W., who represented the Washington Committee for Democratic Action.

The files contain a report of an investigation conducted on Max Elitcher in 1942. This report reflects that the investigation was conducted because in January, 1941, he was living with Morton Sobell at 2225 N Street, N.W. Sobell, then employed by the Navy, was allegedly conducting subversive activities. advised that this report contained nothing of a derogatory nature relative to Elitcher other than his association with Sobell. In addition to the fact that they lived together at that time, they had previously attended the City College of New York together.

In the report of Special Agent N. P. Holman, dated March 2, 1942, at Washington in the case entitled "Anna Goodman Allon, was.; Internal Security, Hatch Act," it was set out that Anna Goodman, also known as Mrs. Benjamin Allon, had resided at 2225 N Street, N.W., Washington, D.C., for a number of

years and that two girls, namely Bernice Lovine and Rose Madison lived with her in Apartment 400. Investigation at that time indicated that Anna Goodman Allen, as well as her daughter, Beverly Goodman Goldschmidt, was an alleged Communist, and that the Allons were members of numerous front organizations in Washington, D. C.

the apartment house mentioned above, advised that Mrs. Allen held regular meetings in her apartment which she believed were Communist meetings, and mentioned that a number of Mrs. Allen's friends who lived in the apartment house then or at one time were believed to be Communists and included Morton Sobell and Max Elitcher, who shared Apartment 303, Elaine Golstein, Jacob Herman, Bernard Krug, Nettie Sucher, Irvin Keiser, Florence Hertzog, and William and Ann Remington.

Sobell was the subject of the case entitled "Morton Sobell, Internal Security - G, Custodial Detention." In this case an investigation was made inasmuch as Sobell, while in Wrens, Georgia, during July, 1941, took pictures of manufacturing plants there and wanted to know if there was a short wave radio in the town. He produced credentials showing he was employed by the Navy Yard in Washington, D.C. He was staying in a tourist home in Wrens. Another roomer in the tourist home copied the addresses on two post cards which Sobell had written while there. The addresses were as follows:

"Max Elitcher
2225 North Street, N.W.
Washington, D.C.

"L. Sobell
5018 Catherine Street
Philadelphia, Pennsylvania"

At the rooming house Sobell registered from Washington, giving the same address as Elitcher, above, which undoubtedly refers to Max Elitcher.

Sobell conversed with a minister in Wrens and advised the minister he was born in Brooklyn and was graduated from Columbia University Engineering School, New York, and had a job in the District of Columbia putting sights on the Navy Yard. He said that his father was in the drug business on Bare Island in Philadelphia. He was described (in 1942) as thirty years of age, 5' 5" tall, 165 pounds, stout build, dark complexion, heavy beard, thick black hair, and wore glasses with thick lenses.

Under date of September 15, 1941, the Washington Field Office advised that a review of their files reflected Morton Sobell was listed on

... and the other designated in-

the mailing, or membership lists of the American Peace Mobilization and the American Youth Congress. Inasmuch as Sobell was then employed by the Navy Department he was made the subject of an Internal Security-Watch Act Investigation, and the Department of the Navy was advised by letter dated September 24, 1941. No investigation was conducted of Sobell since employees of the Navy did not then come under the scope of the governmental employee investigation program.

A report dated December 15, 1941, related that the Bureau of Navigation Classified Civilian Personnel Records reflected Sobell was employed by the Navy Department, Bureau of Ordnance, on January 27, 1939. His resignation was accepted without prejudice on October 1, 1941, at which time his rating was Electrical Engineer, Class P-2, with the salary of \$2,600 per annum. Files reflected that Sobell was investigated by the Navy Department on January 3, 1941. His father, Louis Sobell, was reported to have been employed at the Philadelphia Navy Yard. Since Sobell was no longer employed by the Navy, they closed their investigation of him.

By letter dated February 26, 1942, the Washington Field Office advised that Navy Department records indicated that Sobell had resigned his position in order to obtain a Master's Degree at the University of Michigan, his address being given as 612 East Madison Street, Ann Arbor, Michigan. Under date of March 26, 1942, the Detroit Office verified this information and determined that Sobell was not then engaged in employment by a Federal Agency.

The details concerning Sobell's association with Max Elitcher, as reflected in the Elitcher investigation, are not being repeated here as they are available to the New York Office. A new investigation should be opened on Morton Sobell and the New York Office is the office of origin.

The Philadelphia Office should check the records at the Philadelphia Navy Yard with respect to the subject's father, Louis Sobell.

The Detroit Office should check the records of the University of Michigan with respect to Sobell's attendance there.

The Albany Office should check the employment records of the General Electric Company at Schenectady, New York, with respect to Sobell's employment.

The New York Office should review the information available concerning Bernice Levine who, according to Elizabeth T. Bentley, furnished to Bentley information during the early 1940's while Levine was employed in

Washington, D. C. Elitcher should be questioned with respect to his association with Levino and as to whether Levino could have been instrumental in recruiting Sobell into an espionage network.

All investigation in this matter must be handled in a most expeditious manner and reports submitted to the Bureau and auxiliary offices promptly.

ing that defendant Kelley and the other designated in-

MARSHALL PERLIN
ATTORNEY AT LAW
36 WEST 44TH STREET
NEW YORK, N.Y. 10036

MILTON H. FRIEDMAN

December 10, 1975

(212) 661-1086

Mr. Thomas H. Bresson, Special Agent
Freedom of Information Section
Federal Bureau of Investigation
Washington, D. C. 20535

Dear Mr. Bresson:

I am writing you this letter after our telephone conversations had today.

This letter is being sent by me, as attorney for Messrs. Michael and Robert Meeropol, plaintiffs in the action entitled Meeropol et ano v Levi et al (U.S.D.C., D.C.) Civil Action No. 75-1121. I am making the request and undertaking set forth herein with full authorization of my clients.

I request that you transmit to me copies of the 28,438 pages of documents which are available to my clients, as well as copies of any of the approximately 1,500 additional documents or any portion of those latter documents as are now available for copying and delivery, all of which are referred to in the letter of Director Kelley of November 17, 1975.

In behalf of my clients, I undertake to pay the copying charge for said documents, computed at the rate of ten cents a page, said payment to be made on or before January 31, 1976. My clients, nevertheless, reserve to themselves the right to apply to the Court for an order releasing them from any obligation to make said payment or portion thereof upon any grounds that they may wish to tender to the Court for such relief. If such determination by the Court on my clients' application is not made by January 31, 1976, my clients will pay the above designated amount, reserving any rights that they might have for recouperment of the same.

Exhibit 2

any that defendant Kelley and the other designated in-

Mr. Thomas H. Bresson

-2-

It is understood that the Federal Bureau of Investigation in making these copies available to my clients and in my clients' assuming the undertaking set forth herein, that the FBI and my clients reserve to themselves any rights, claims, or defenses they may have with respect to the matter and that the same is done without prejudice to the rights of said parties in this action.

I would appreciate your responding to this request and undertaking at your earliest possible convenience so that arrangements for the delivery of the copies can be made to our mutual convenience and the need of my clients with respect thereto.

Sincerely,



Marshall Perlin

mp/fg

ing that defendant Kelley and the other designated in-

UNITED STATES

Men

SPECIAL

MAR 10 1975

TO : Kevin :
Deputy
Crimin:

GPO : 1974 O - 530-744

FORMERLY DJ-294

FORM DOJ-294
6-11-74

FROM : George W. Calhoun, Deputy Chief
Internal Security Section

GWC:jem

SUBJECT: Proposed Response to FOI Request
for Rosenberg Files

Attached hereto is a proposed response with which I disagree. However, for reasons which follow, I am forwarding it to you for your consideration.

The attached FOI request is one of the most definitive requests I have ever seen. I have no doubt in my mind what they want - - they want everything having to do with the Rosenberg case.

When I saw our initial proposed response, I spoke with Mr. Davitt, and he agreed that we could not send it out for the scope of the request was sufficiently clear for us to make an estimate and so advise the requesters. It appears from the attached buckslip that Mr. Davitt may have changed his mind.

The approach we have adopted in our letter is that because there is some confusion about one minor aspect of the request, we will not only not process it, but we will not even estimate what the rest of the request will cost to complete. It is this very type of foot dragging that prompted a revision of the FOI, and I do not believe we can continue to treat FOI requests this way in the future in light of the new amendments. In short, I think this request is sufficiently clear for us to make an estimate of the total cost and so advise the requesters. I also believe that we should probably start re-reviewing the files for there is little doubt in my mind that the Rosenbergs' sons will not be able to afford to pay for the review. (There have been fund-raising activities for this purpose).

46-41-15-133
DEPARTMENT OF JUSTICE

Exhibit 3



*Discussed with Calhoun
& ltr. approved 3/13. Will have
w/ meeting re FOIA.*

*File
3/1*