

E. S. Miller

W. A. Branigan

BERNARD FENSTERWALD, JR. v. DEPARTMENT OF JUSTICE, USDC D.C., CIV. NO. 861-72

Committee to Investigate Assassinations

This proposes information be requested from Central Intelligence Agency (CIA) for use in responding to request of Civil Division, Department of Justice, regarding captioned civil suit under Freedom of Information Act.

Bernard Fensterwald, Washington, D. C., attorney associated with Committee to Investigate Assassinations, initiated civil action in U. S. District Court for District of Columbia on May 2, 1972, to obtain access to and right to copy three photographs of an unknown individual which were displayed by a Special Agent in Mexico City, Mexico, to one Pedro Gutierrez Valencia in connection with the investigation of the assassination of President Kennedy. Fensterwald involved Bureau in his complaint as a subordinate component of defendant, Department of Justice.

The specific photographs sought were obtained by our Legal Attache, Mexico City, from CIA, Mexico City, on 2/19/64 and then, when Gutierrez failed to identify the individual pictured, the photographs were returned to CIA. We have neither the actual photos displayed nor do we have copies of them in the form (backgrounds cropped out) in which they were shown. We do have copies of some uncropped photographs obtained from CIA in 11/63 in the same investigation which match the descriptions of those sought by Fensterwald. Inasmuch as we do not have those shown to Gutierrez, we cannot positively state that the pictures in our files are or are not identical with those shown to Gutierrez. The CIA pictures were classified "Secret" by CIA and are the property of CIA. We must determine whether CIA has the pictures sought, whether they are still classified and whether CIA would object to their release to Fensterwald.

Supervisors John B. Hotis, Office of Legal Counsel, and John P. Thomas, Espionage Section, discussed this matter with Mr. Jeffrey Axelrad, Civil Division, on 6/12/72 at his request. Axelrad said he does not want to publicly involve CIA in this

- 1 - 62-81830
- 1 - 62-112697

Enclosures
105-82555
JPT:pld
(9)

~~ENCLOSURE~~

62-112697-

NOT RECORDED
133 JUL 28 1972

CONTINUED - OVER

ORIGINAL FILED IN 105-82555-5684

- 1 - A. Rosen
- 1 - D. J. Dalbey
(Hotis)

6/15/72

- 1 - C. W. Bates
- 1 - E. S. Miller
- 1 - W. A. Branigan
- 1 - J. P. Thomas

Memorandum Branigan to Miller
Re: Bernard Fensterwald, Jr. v. Department
of Justice, USDC D.C., Civ. No. 861-72
105-82555

matter inasmuch as CIA is not named in Fensterwald's complaint. He expressed the opinion that if CIA will not release the photographs, he will need an affidavit from an FBI Agent familiar with the Oswald file to the effect that the photographs in FBI files are classified under Executive Order 10501, as amended, and are part of an investigatory file compiled for law enforcement purposes. As such, they would be exempt from production under the Freedom of Information Act.

ACTION:

Attached for approval is a letter to CIA requesting information necessary for our response to the Civil Division.