

Mr. E. S. Miller

W. A. Branigan

1 - Mr. S. B. Donahoe  
1 - Mr. D. J. Dalbey  
(Hotis)  
6/30/72

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

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

This recommends Office of Legal Counsel expeditiously furnish Department with attached photographs urgently needed by Civil Division in connection with captioned Freedom of Information suit.

○ 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 5/2/72, 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 photographs sought by Fensterwald were obtained by Legal Attache, Mexico City, from Central Intelligence Agency (CIA), Mexico City, on 2/19/64, displayed to Gutierrez and returned to CIA. CIA, Mexico City, later sent them to CIA Headquarters. By letter 6/16/72, we asked CIA if it would object to release to Fensterwald of its photographs in form (background cropped out) in which they were shown to Gutierrez. CIA responded that under no circumstances may the uncropped photographs be released, but it has no objection to release of copies cropped as they were for Gutierrez. CIA furnished us a copy of each photograph showing only the individual in whom Fensterwald is interested, stating that these photographs are not "the actual ones shown to Gutierrez, but the description (in Fensterwald complaint) is sufficiently detailed to conclude that they are either the same photographs or copies thereof." On 6/29/72, Assistant U. S. Attorney Robert H. Verdig, Jr., USDC Washington, D. C. (SDC), contacted Supervisor John B. Potis, Office of Legal Counsel, and stated that he is representing the Government in this matter. He asked about availability of the photographs and was referred by Mr. Hotis to Supervisor J. P. Thomas, Domestic Intelligence Division, for assistance. Mr. Verdig said that

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

Court had directed him to appear in USDC, EDC, on the morning of 7/5/72, to respond to Fensterwald's Motion for Summary Judgment. Jeffrey Axelrad, Civil Division, Department of Justice, has advised that if the photographs are not produced then, there is every indication that the Court will grant the judgment. Mr. Werdig was informed that the photographs have been received. He asked that a copy of each photograph be made available to him no later than Monday morning, 7/3/72. He stated that upon receipt of the copies, he would give them to Fensterwald and have Fensterwald sign a precept dropping the suit. SA Thomas informed Mr. Werdig that every effort would be made to comply with his request.

It may be noted that Mr. Werdig, who said he is well acquainted with "Bernie" Fensterwald, called SA Thomas later on 6/29/72 to advise that he had told Fensterwald he expected to be able to give him the photographs on 7/3/72. He also said "Bernie" had asked him to ask the Bureau, as a favor, if it would also furnish him with negatives for each photograph, which Fensterwald would pay for. Fensterwald said he wanted the best negatives possible to make copies of the photographs. Mr. Werdig asked if we would do this favor for "Bernie." Werdig was informed that the FBI Laboratory does not do photographic work for private individuals and that there was no reason apparent why an exception should be made for Fensterwald. (Fensterwald's Committee to Investigate Assassinations has persistently requested material relating to the assassination which has not been released to the public. These requests have required a great expenditure of effort on the part of the Bureau to the extent that they might be considered a campaign of harassment of the Government).

ACTION:

With your approval, attached photographs will be expeditiously conveyed by the Office of Legal Counsel to the Department for transmittal to Mr. Werdig on 7/3/72. Office of Legal Counsel will coordinate this matter with Mr. Axelrad, Civil Division, and have arrangements made for a receipt for the photographs to be secured from Fensterwald. It may be appropriate to remind Mr. Axelrad that, as he previously stated, no mention is to be made in the public record of proceedings in this matter of the CIA.