

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RICHARD L. BAST )  
 )  
 Plaintiff, Pro se )  
 )  
 vs. )  
 )  
 U.S. DEPARTMENT OF JUSTICE )  
 )  
 Defendant )

CIVIL ACTION NO. 78-1058

RICHARD L. BAST )  
 )  
 Plaintiff, Pro se )  
 )  
 vs. )  
 )  
 FEDERAL BUREAU OF INVESTIGATION )  
 )  
 Defendant )

CIVIL ACTION NO. 78-1059

RECEIVED

FEB 26 1979

JAMES F. DAVEY, Clerk

MOTION TO STRIKE THE AFFIDAVIT OF F.B.I.  
AGENT J.F. BIEDERSTEDT EXECUTED ON SEP-  
TEMBER 20, 1978 in CIV. NO. 78-1058.

Pursuant to Rule 11 and/or 12(f), Federal Rules of Civil Procedure, Plaintiff requests this honorable Court to Strike the affidavit of F.B.I. Special Agent J.F. Biederstedt executed on September 20, 1978 in Civil Action No. 78-1058 as a sham and false.

At the outset this honorable Court is reminded that the Supreme Court's decision in Haines v. Kerner, 404 U.S. 519, 520, reh. denied, 405 U.S. 948 (1972), holds the pleadings of a pro se plaintiff to a less stringent standard than those drafted by a lawyer. Consequently, Plaintiff requests the Court to overlook any technical insufficiencies in Plaintiff's instant motion.

ARGUMENT

Inasmuch as the Plaintiff has set forth much of the relevant authorities controlling these consolidated cases in his Oppositions and Supplemental Memorandums, the Plaintiff will not repeat them herein, but rather refer this honorable Court to those documents for a more complete statement of his position. Plaintiff has recently discovered new information to support his assertions of Defendants' misconduct in both litigations.

F.B.I. Agent J.F. Biederstedt's affidavit of September 20, 1978 (hereinafter "Biederstedt Affidavit") is Attachment "J" of Defendant's Motion To Dismiss Or, In The Alternative, For Summary Judgment in Civ. No. 78-1058/<sup>and</sup>purports to itemize, index and justify the non-disclosure of all records responsive to Plaintiff's formal Freedom of Information Act (hereinafter "FOIA"), 5 U.S.C. §552, request of May 17, 1978. At p.7, ¶10 the Biederstedt Affidavit categorically states in pertinent part:

This paragraph sets forth a detailed itemization of the documents contained in FBI files pertaining to plaintiff and the justification for the FOIA exemptions asserted where the four statements and two paragraphs were withheld from plaintiff.

Pages 9, 10 and 11 of the Biederstedt Affidavit purports to reflect a document-by-document description of all records responsive to Plaintiff's FOIA request that have either been withheld from or released to Plaintiff.

Plaintiff asserts that Defendants have wilfully and knowingly either failed to release to Plaintiff responsive records or inventory and justify the withholding thereof. Plaintiff's Opposition To Defendant's Motion To Dismiss Or, In The Alternative, For Summary Judgment filed with this Court on November 2, 1978 specifically made reference to withheld and uninventoried records such as the Weissman Memorandum, inter alia.

This honorable Court, relying on the Biederstedt Affidavit, inter alia, filed its Order of January 3, 1979 on January 8, 1979 directing the Defendants to submit for the Court's in camera review what this Court apparently perceived to be the only records that the Defendants withheld from Plaintiff.

Defendant F.B.I. possesses a withheld and uninventoried memorandum, among other records, dated February 16, 1978 "To: SAC, WFO (66-5576) (P)", "From: SA Howard B. Apple". This memorandum discusses a Department of Justice opinion of February 15, 1978 not to interview U.S. District Judge John H. Pratt's former secretary, Ms. Kathleen McTiernan, because of her possible psychological problems.

F.B.I. agents Howard Apple and Donald W. Gavin discussed the situation with Judge Pratt on the morning of February 16, 1978, noting that Judge Pratt was upset. Judge Pratt felt the case involving himself and Ms. McTiernan was cheap and not of prosecutable merit. For the F.B.I. to interview Ms. McTiernan, Judge Pratt felt, would be needless harrassment. Judge Pratt requested that the Bureau discuss the matter of interviewing Ms. McTiernan with the Justice Department. Judge Pratt questioned F.B.I. agents Apple and Gavin about what evidence they had but the agents did not supply him with this information. "At that time, Judge Pratt stated he was very pro-Government and especially pro FBI...." Judge Pratt also stated that he took great offense at the fact that he had been given Miranda warnings, etc., during his interview on February 14, 1978.

Another withheld and uninventoried F.B.I. memorandum increasingly discusses Public Integrity Section attorney and coverup artist Eric Gisleson's suggestion that Judge Pratt be told of taped conversations prior to his (Judge Pratt's) F.B.I. interview of February 14, 1978. The F.B.I. agents correctly advised Mr. Gisleson that such disclosure could compromise the investigation. Plaintiff vigorously asserts that Mr. Gisleson's suggestion is representative of the grossest form of incompetency or a criminal overt attempt to obstruct the F.B.I.'s investigation. The FOIA gives the public the right to know whether Mr. Gisleson is merely stupid or corrupt. Had the F.B.I. been intimidated by Mr. Gisleson and acquiesced to his improper suggestion, Judge Pratt would have been forewarned and not fallen into the trap of his own making by wilfully and knowingly lying during his February 14, 1978 F.B.I. interview.

There, of course, can be no logical dissent from any right thinking quarter that the public and litigants appearing before Judge Pratt (especially criminal defendants) <sup>/have the right to know</sup> that Judge Pratt possesses a pre-disposition to favor the Government in general and the F.B.I. in particular when making judicial determinations. In the context of Judge Pratt's futile endeavor to obstruct the F.B.I. "administrative



inquiry" the illegally withheld and uninventoried memorandum clearly reflects that Judge Pratt stated "he was very pro-Government and especially pro FBI...." Judge Pratt's self-professed improper bias is frightening in and of itself, but in the context of offering this bias as a bribe to obstruct an F.B.I. investigation is reprehensible, Plaintiff vigorously asserts. The FOIA does not sanction the withholding of records that would expose this type of misconduct.

Plaintiff's information substantiates (Plaintiff possesses the dates and descriptions) that withheld and uninventoried records other than those mentioned herein exist. Plaintiff, at this time, will not go into further detail as he suspects that Defendants will practice further deception on this honorable Court (Plaintiff previously cautioned this Court that it must watch Defendants "like a hawk.") by falling deeper into the trap of their own making by not releasing, inventoring and justifying the withholding of responsive records.

Plaintiff respectfully submits that the Biederstedt Affidavit is a sham in that it falsely represents to Plaintiff and this honorable Court that it reflects all F.B.I. records released to or withheld from Plaintiff and should be stricken subsequent to this Court's investigation.

#### CONCLUSION

Plaintiff respectfully requests and urges this Court, for the foregoing reasons, to direct both Defendants to initiate a de novo search for records responsive to Plaintiff's FOIA requests of May 17, 1978. The Court further order that any records located be promptly released to Plaintiff or, in the alternative, inventoried and the withholding thereof justified in non-conclusory terms and that the Court further order that Defendants submit detailed affidavits explaining their failure to previously release or justify the withholding thereof of all responsive records.

Plaintiff further urges this honorable Court to initiate contempt proceedings if Defendants' explanations for failure to release or identify responsive records are unpersuasive.

Respectfully submitted,



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Plaintiff, Pro se  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused to be first class mailed, postage prepaid, a copy of the foregoing motion to strike the affidavit of F.B.I. agent J.F. Biederstedt executed on September 20, 1978 in Civ. No. 78-1058 to Alan J. Ferber, Esquire, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 this 26th day of February 1979. A copy of a proposed Order is also included.



RICHARD L. BAST