

of the Criminal Division files for additional records responsive to plaintiff's request. The Declaration states that no additional records were found in the second search. Mr. Wood further states that the Criminal Division has produced all records responsive to plaintiff's request which were located during the initial search.

Plaintiff makes reference to a letter of Robert I. Keuch, Special Counsel to the Attorney General,^{2/} dated November 8, 1979. As we have noted, Mr. Wood's Declaration states that no additional responsive documents were located.

In addition, we note that, in response to plaintiff's opposition as to the FBI's motion for summary judgment, the FBI located that letter, and has referred it to the Department of Justice for direct response to plaintiff. Phillips affidavit, June 3, 1982 (filed with FBI's reply papers), ¶ 5(a).^{3/} The FBI has furnished to plaintiff, by letter dated May 18, 1982, its response to the DOJ letter. Phillips affidavit, ¶ 6(a). In addition, we note that, in the case of a prior referral to the Department of Justice, of a letter from Mr. Keuch to the FBI dated January 26, 1981, the Department of Justice provided the letter to plaintiff. Attachment 1 hereto.^{4/}

^{2/} Mr. Keuch's assignment as Special Counsel was in addition to his regular position as Associate Deputy Attorney General. Neither of these positions was in the Criminal Division. Fogel Declaration, filed herewith, ¶ 4.

^{3/} Mr. Phillips' affidavit fully explains why, based on additional information provided by plaintiff, additional documents have been located. This results from the nature of the FBI's indices and their use in a search. Phillips affidavit, ¶ 5, 6, 9. This is also discussed in the FBI's reply memorandum of points and authorities, filed contemporaneously with this memorandum. Moreover, Mr. Phillips' affidavit notes that the Keuch letter, requesting the FBI to conduct a review of the acoustical analysis of the Dallas Police Department tape recording, contains no background material (i.e., instrumental analysis, graphs, calculations, etc.). Phillips affidavit, ¶ 5(a). Plaintiff's October 29, 1980 letter (Exhibit 5 to the Complaint) had sought (so far as pertinent here) a copy of the FBI review of the acoustics, and in a handwritten asterisked note, "all supporting documents, data and calculations." The Criminal Division furnished a copy of the FBI review in late 1980. The request that a review be conducted cannot fairly be considered within plaintiff's FOIA request for "supporting documents, data and calculations." Nevertheless, as stated in the text, now that plaintiff has expressed an interest in the November 8, 1979 letter, the FBI has referred it to the Department for direct response to plaintiff.

^{4/} The referral was made to the Office of Information and Privacy Appeals, which released the document. Attachment 1 is the letter providing the document (without its enclosure).

Plaintiff asserts that "[a] Bureau memorandum of January 14, 1981, makes reference to a letter of January 7, 1981, of Jeffrey I. Fogel, a copy of which, according to my records, I have not yet received." Blakey affidavit (filed with his papers dealing with the FBI branch of the case), March 17, 1982, ¶ 13 (Emphasis added.) This is a careless reading by plaintiff. The January 14, 1981 FBI memorandum states:

On 1/7/81, Jeffrey I. Fogel, Attorney,
General Litigation and Legal Advice Section,
DOJ, requested the Technical Services
Division (TSD) to provide background information
. . . . Exhibit B to Phillips affidavit.
(Emphasis added.)

Obviously, it is quite inaccurate to translate the term "requested" into "letter." It is inappropriate to use the transformation as the basis for a claim that there may be a record in existence that calls the adequacy of the search into question.

Moreover, Mr. Fogel states, in his Declaration filed herewith, that, during that period he did not send out letters under his own name; that he has searched but cannot find a copy of any such "letter;" and that he concludes, therefore, that the request must have been by telephone. Moreover, Mr. Phillips states that "[a] search of the FBI central indices and a review of the appropriate date span of the JFK assassination file does not reveal any letter or other communication containing such a request." Phillips affidavit, ¶ 6(b).

Plaintiff also complains that he has not received any documents showing an FBI response to a January 26, 1981 Justice Department request for action. A Department of Justice letter of January 26, 1981 requested the FBI to attend a meeting of the National Academy of Sciences (NAS) on January 31, 1981. Details of FBI participation at this meeting are contained in the memorandum dated February 13, 1981, which is FBI document 7 and which plaintiff has called the Bayse memorandum. Plaintiff obviously knows of the existence of this document, which was accounted for in the FBI's Vaughn index, because plaintiff moved for summary judgment to compel its disclosure.^{5/} Plaintiff's invocation of the alleged nonexistence of

^{5/} That aspect of plaintiff's motion has become moot, as is explained in the FBI's reply papers.

a response to the Department's memorandum of January 26, 1981 is self defeating.

Reviewing this matter, then, we find that the Criminal Division made an appropriate search and disposition of plaintiff's request. This is fully set forth in this defendant's statement of material facts, filed with its motion for summary judgment, ¶ 4. Although plaintiff overlooked the fact before he filed a motion to compel disclosure of referrals made to the National Bureau of Standards, he has even received the documents referred to the National Bureau of Standards. His challenges to the search by the Criminal Division are a combination of error and speculation. Nevertheless, the Criminal Division undertook a second search and found no additional records. Declaration of Douglas S. Wood, filed herewith.

Plaintiff's statement of genuine issues states only a legal conclusion, without more. It is insufficient to defeat the Criminal Division's motion for summary judgment, because the adequacy of the search is clearly shown by the relevant case law. Goland v. CIA, 607 F.2d 339, 353 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980); Military Audit Project v. Casey, 656 F.2d 724, 753-754 (D.C. Cir. 1981); Ground Saucer Watch, Inc. v. CIA, D.C. Cir. No. 80-1705, August 17, 1981 (Attachment 2, filed herewith);^{6/} Bast v. Department of Justice, D.D.C. Nos. 78-2195 and 79-0348, August 6, 1981 (copy filed herewith as Attachment 4).

Plaintiff has incorporated by reference the discussion of the standards generally applicable to summary judgment that is included in his papers dealing with the FBI. We respectfully do the same, incorporating by reference the discussion in Part V of our reply papers as to the FBI.

^{6/} Although the Court at first stated that Ground Saucer Watch not be published, it later ordered that it be published. Attachment 3.

Conclusion

For these reasons, it is respectfully submitted that the Criminal Division's motion for summary judgment should be granted.

Respectfully submitted,

STANELY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

Nathan Dodel

NATHAN DODELL
Assistant United States Attorney



U.S. Department of Justice

Office of Legal Policy

Washington, D.C. 20530

FEB 26 1982

James H. Lesar, Esquire
Fensterwald and Associates
1000 Wilson Boulevard
Suite 900
Arlington, Virginia 22209

Re: AG/81-TC
RLH:LE:NB

Dear Mr. Lesar:

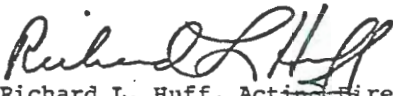
This is in response to a request by Professor G. Robert Blakey of Notre Dame Law School for access to FBI records related to the acoustical study done by the House Select Committee on Assassinations. One document from Robert L. Keuch, then Special Counsel to the Attorney General, to the Director of the FBI has been located and referred to this Office for consideration.

Enclosed is a copy of this document.

Sincerely,

Jonathan C. Rose
Assistant Attorney General

By:


Richard L. Huff, Acting Director
Office of Privacy and Information Appeals

Enclosure

✓ cc: Nathaniel Dodell
United States Attorney

C.A. 81-2174

Att. 1

NOT TO BE PUBLISHED - SEE LOCAL R 8 (f)
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1705

September Term, 1980

GROUND SAUCER WATCH, INC., Appellant ~~United States Court of Appeals~~ 78-0859
HARVEY BRODY For the District of Columbia Circuit

v.

CENTRAL INTELLIGENCE AGENCY et al.

FILED AUG 17 1981

GEORGE A. FISHER

Appeal from the United States District Court ^{CIVIL} for the District of Columbia.

Before: WRIGHT, Circuit Judge, VAN DUSEN,* Senior Circuit Judge,
and GINSBURG, Circuit Judge.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. For the reasons stated in the accompanying memorandum,

It is ORDERED and ADJUDGED by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam

For the Court

George A. Fisher

George A. Fisher
Clerk

* Of the Third Circuit, sitting by designation pursuant to 28 U.S.C. § 294(b) (1976).

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

C.A. 81-2174

Att. 2

MEMORANDUM

This case comes before us on appeal from a District Court decision to grant appellees' motion for summary judgment. It presents a single troublesome issue. Following a search of its files that resulted in release of over 900 pages of documents, the Central Intelligence Agency (CIA) filed affidavits indicating that it had conducted a thorough search for materials defined by appellant's Freedom of Information Act (FOIA) request.¹ Under the applicable legal standard, agency affidavits will ordinarily suffice to establish the adequacy of an FOIA search effort if they are "'relatively detailed' and nonconclusory and * * * submitted in good faith." Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978) (footnote omitted), quoted in Founding Church of Scientology v. National Security Agency, 610 F.2d 824, 836 (D.C. Cir. 1979). The District Court found, and appellant cannot seriously dispute, that the Agency affidavits here in issue were relatively detailed and nonconclusory. Ground Saucer Watch does, however, contest the conclusion that it failed to raise a substantial and material question about the CIA's good faith. Its argument on this point defines the issue before us: Viewing the evidence in the light most favorable to appellant, can it be said that the CIA affidavits left no substantial and material fact to be determined and that appellees were entitled to summary judgment as a matter of law?²

As this court held in Founding Church of Scientology v. National Security Agency, *supra*, 610 F.2d at 834, "[T]he competence of any records-search is a matter dependent upon the circumstances of the case * * *." Agency affidavits enjoy a presumption of good faith, which will withstand purely speculative claims about the existence and discoverabil-

¹The CIA released the materials to appellant on December 14, 1978. Affidavits explaining its search procedures, together with indices to the uncovered documents, were filed with the District Court on February 26, 1979. The affidavits were by George Owens, CIA Information and Privacy Act Coordinator; Robert Owen, Directorate of Operations documents; Karl Weber, Office of Scientific Intelligence documents; Sidney Stenbridge, Office of Security documents; and Rutledge Hazzard, Directorate of Science & Technology documents.

²The Freedom of Information Act retains this traditional legal test of the propriety of summary judgment. Founding Church of Scientology v. National Security Agency, 610 F.2d 824, 836 (D.C. Cir. 1979).

ity of other documents. See, e.g., Goland v. CIA, supra, 607 F.2d at 355. In order to prevail on this appeal, therefore, appellant must point to evidence sufficient to put the Agency's good faith into doubt. Although Ground Saucer Watch advances numerous arguments, in none do we find a sufficient link between asserted fact and argued inference to raise a serious and material question requiring trial on the merits.

Appellant relies, first, on the search instructions that the CIA issued to the employees actually canvassing its files. Those instructions called for a search of only those files identified in a stipulation entered by the parties on August 23, 1978 and approved by the District Court on September 15, 1978³: they stated that the stipulation "so changes the [appellant's] original requests, original complaint and revised complaint that the latter have, in effect, become immaterial to the search you will conduct * * *."⁴ According to appellant, the CIA showed its bad faith by not directing a search responsive to all of Ground Saucer Watch's earlier requests. The answer to this argument appears in the plain language of the stipulation, the stated purpose of which was to "clarify and simplify the issues"⁵ arising from appellant's earlier demands for production. In addition to the amended complaint incorporating by reference the FOIA requests of various nonparties these included 635 interrogatories and 274 requests for other documents. Under the circumstances, we agree with the District Court that the stipulation contemplated "simplification" by limiting the Agency's search obligations to the files and documents defined therein.⁶ Noting that appellant drafted the terms of the stipulation that defined the files

³The stipulation, which was designed to "clarify and simplify the issues" developed in literally hundreds of document requests, pleadings, and interrogatories over a three-year period, defined the documents at issue in this case and identified precisely where the CIA would search for those documents.

⁴Quoted in Memorandum Opinion in Ground Saucer Watch, Inc. v. CIA, D. D.C. Civil Action No. 78-859, at 8 (May 30, 1980), Appellant's Appendix (App.) at 147.

⁵Stipulation and Order, Ground Saucer Watch, Inc. v. CIA, D. D.C. Civil Action No. 78-859, at 1 (Sept. 15, 1978), App. at 94.

⁶See Ground Saucer Watch, Inc. v. CIA, supra note 4, at 7-8, App. at 146-147.

to be searched, we must reject its claim in this court that a search limited to those files "ignore[d]" the stipulation's "content and intent."⁷

Appellant also purports to find evidence of bad faith in the CIA's failure to produce all of the documents "referenced" in the more than 900 pages of materials that were disclosed following the de novo search conducted pursuant to the stipulation. Yet the CIA's affidavits assert entirely plausible reasons for the absence of the missing documents. Most are old, and some naturally have become lost or illegible.⁸ Moreover, as this court held in Goland v. CIA, supra, 607 F.2d at 369, "The issue [is] not whether any further documents might conceivably exist but whether CIA's search for responsive documents was adequate." (Emphasis deleted.) Although the failure to produce identified documents might sometimes raise a substantial and material question of good faith, see Founding Church of Scientology v. National Security Agency, supra, 610 F.2d at 835, the reasonableness of an inference necessarily depends on its factual context. Id. at 834-835. Here, the missing documents can be identified almost solely through references contained in the more than 900 pages of documents that the CIA did produce. Compare Founding Church of Scientology v. National Security Agency, supra, in which NSA had produced no documents in response to the plaintiff's request. Moreover, the CIA's large disclosure occurred following a de novo search of its records, conducted pursuant to stipulated search instructions drafted

⁷Brief for appellant at 17. Appellant argues in this court that the District Court misconstrued the stipulation in holding that it "did not refer to the original requests, original complaint, or amended complaint." Ground Saucer Watch, Inc. v. CIA, supra note 4, at 8, App. at 147. As appellant notes, the stipulation did, in fact, expressly adopt certain definitions—including those of "documents" and "UFOs"—contained in the interrogatories. See Stipulation and Order, supra note 5, at 1 & nn.1-4, App. at 94 & nn.1-4. But we do not understand either the District Court's opinion or the CIA's search instructions to have ignored those definitions. As we read them, they merely meant to recognize that the stipulation's request for "[a]ll documents in the possession or under the control of the CIA from wherever obtained, relating to Unidentified Flying Objects (UFOs) and the UFO Phenomena," id. (footnotes omitted), superseded the earlier requests and rendered unnecessary a separate search for materials identified therein. So understood, neither the CIA's search instructions nor the District Court's opinion can be viewed as mischaracterizing the aim of the stipulation.

⁸See Supplementary Affidavit of George Owens at 5-7 (Sept. 10, 1979), Supplementary Appendix at 48-51.

in pertinent parts by appellant's own attorneys. In the absence of other evidence, the institution of a de novo search significantly undercuts appellant's argument that earlier noncooperation by the CIA raises a substantial question of current bad faith on the part of the Agency. Indeed, if the release of previously withheld materials were held to constitute evidence of present "bad faith," similar evidence would exist in every FOIA case involving additional releases of documents after the filing of suit. See Fonda v. CIA, 434 F.Supp. 498, 502 (D. D.C. 1977).

There is, finally, no evidence whatever to support appellant's bald allegation that the CIA did not in fact conduct a de novo search of its files. Such unadorned speculation will not compel further discovery or resist a motion for summary judgment. Goland v. CIA, supra, 607 F.2d at 352 & n.78 (citing cases).

The judgment of the District Court is, accordingly,

Affirmed.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1705

September Term, 1981

Ground Saucer Watch, Inc.,
Appellant

CA 78-0859

Harvey Brody

United States Court of Appeals
for the District of Columbia Circuit

v.

Central Intelligence Agency,
et al.

FILED OCT 2 1981

GEORGE A. FISHER
CLERK

BEFORE: Wright, Circuit Judge; Van Dusen*, Senior Circuit Judge, United States Court of Appeals for the Third Circuit; and Ginsburg, Circuit Judge

ORDER

Upon consideration of the letter received from counsel for appellee (federal) requesting publication of this Court's decision issued herein on August 17, 1981, and no opposition having been received thereto, it is

ORDERED, by the Court, that appellee's aforesaid letter, construed as a motion for publication, is granted and the Clerk is directed to note the docket accordingly. And it is

FURTHER ORDERED, by the Court, that the Clerk is directed to take the appropriate steps to cause said decision, issued August 17, 1981, to be published.

Per Curiam
FOR THE COURT:

George A. Fisher
GEORGE A. FISHER
Clerk

*Sitting by designation pursuant to Title 28 U.S.C. §294(d).

C.A. 81-2174
Att. 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD L. BAST,)
)
 Plaintiff,)
)
 v.) Civil Action No. 78-2195 and
) Civil Action No. 79-0348
)
 DEPARTMENT OF JUSTICE,)
)
 Defendant.)

FILED
AUG - 6 1981

MEMORANDUM

JAMES E. DAVEY, CLERK

Plaintiff has filed these actions under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA) to compel release of all records maintained by the Department of Justice which refer to him in any way. The two cases request the same type of records, but cover different time periods: Civil Action No. 78-2195 seeks documents covering the period from October 21, 1975 to May 11, 1978; Civil Action No. 79-348 covers the period from May 12, 1978 to November 21, 1979. On June 5, 1979, the Court entered an Order consolidating these cases for all purposes.

The plaintiff's request embraced records maintained in separate sections of the Justice Department: the Civil Division, the Criminal Division, the Tax Division, and the United States Attorney's Offices for the District of Columbia and the Eastern District of Virginia. The government has filed affidavits made by officials within these sections describing the response each has made to the plaintiff's request. The affidavits reveal that only a limited amount of material has been withheld, chiefly under exemption (3) which covers material exempted by statute; exemption (5) which protects internal memoranda or letters not discoverable in litigation; exemption (6), which covers "personnel and medical and similar files"; and exemptions (7) (C) and (D), which protect the privacy of third parties and the identity of informants.

*/ The Executive Office of the United States Attorneys (EOUSA) has filed a single affidavit on behalf of the two U.S. Attorneys' Offices responding to plaintiff's request.

C.A. 81-2174
Att. 4

Relying on these affidavits to establish the pertinent facts, the government has moved for summary judgment.

The plaintiff has not directly opposed the government's motion. Instead, he has filed a "Motion to Commence Discovery" in which he asserts that genuine material issues of fact exist and that he is entitled to discovery to draw them out. Through discovery, plaintiff states that he would attempt to discover facts which would indicate that the defendant has waived entitlement to exemption (5). In addition, plaintiff refers to incidents in other lawsuits involving the defendant where the defendant in this case has allegedly made misrepresentations concerning the contents of certain agency files. According to plaintiff, discovery is needed to determine if the agency has been untruthful in this case. Finally, plaintiff insists that discovery is necessary to determine the true activities of the National Security Agency, which plaintiff asserts has strayed from its assigned mission.

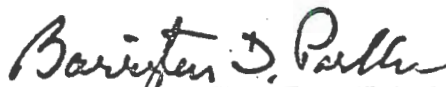
After considering the full record before it the Court has concluded that no discovery is warranted in this case. "[T]he Court has discretion in an FOIA case to forego discovery and decide the case on the basis of reasonably detailed, explanatory affidavits submitted by the agency in good faith." Exxon Corporation v. FTC, 466 F.Supp. 1088, 1094 (D.D.C. 1978), citing Goland v. CIA, 607 F.2d 339, 352 (D.C.Cir. 1978). The affidavits in this case adequately describe the limited amount of material not released to the plaintiff and properly justify its withholding. Plaintiff's attacks on the affidavits are based not on the record in this case, but on reports of incidents in other cases and on extraneous matters which have little relevance to the issues before the Court. There is nothing before the Court which indicates that the defendant has failed to make a full search for documents responding to plaintiff's request, or has misrepresented the contents of unreleased material in any way.

Not only do the affidavits survive plaintiff's efforts at impeachment, they also provide a sufficient basis for granting the government's motion for summary judgment. See Goland, 607 F.2d at 352. In assessing an agency's claim to exemptions, a district

court is to afford the agency's affidavits "substantial weight." Zesar v. United States Department of Justice, 636 F.2d 472, 481 (D.C.Cir. 1980). This means that if the affidavits contain sufficient information to place the withheld material within the exemption claimed, and if the information is not challenged by contrary evidence in the record or evidence of bad faith, then summary judgment is appropriate for the defendant. Id. Review of the Justice Department's affidavits in these cases reveals that the unreleased material here was properly withheld. Accordingly, the defendant's motion for summary judgment is granted and the complaints in these consolidated cases are dismissed with prejudice.

An appropriate Order and Judgment accompanies this Memorandum Opinion.

Entered: August ^{5th}, 1981


BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD L. BAST,)
)
 Plaintiff,)
) Civil Action No. 78-2195 and
 v.) Civil Action No. 79-0348
)
 DEPARTMENT OF JUSTICE,)
)
 Defendant.)

FILED
AUG - 6 1981

ORDER AND JUDGMENT JAMES E. DAVEY, CLERK

Upon consideration of the accompanying Memorandum, it is
this 6th day of August, 1981

ORDERED that the defendant's motion for summary judgment is
granted. Judgment is entered for the defendant and the complaints
in these consolidated cases are dismissed with prejudice.

Barrington D. Parker
BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY)
NOTRE DAME LAW SCHOOL)
NOTRE DAME, INDIANA 46556)

Plaintiff,)

v.)

DEPARTMENT OF JUSTICE)
WASHINGTON, D.C. 20530)

AND)

FEDERAL BUREAU OF INVESTIGATION)
WASHINGTON, D.C. 20535)

Defendants.)

CIVIL NO. 81-2174

DECLARATION OF DOUGLAS S. WOOD

RE: Request of G. Robert Blakey

I, DOUGLAS S. WOOD, declare the following to be true and correct:

1. I am an attorney in the Office of Legal Support Services of the Criminal Division of the Department of Justice. My specific assignment at the present time is Chief of the Freedom of Information Act and Privacy Act Unit.

2. In such capacity, my duties are to act as liaison with other Divisions and Offices of the Department of Justice in the implementation of requests pursuant to both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act of 1974 (5 U.S.C. 552a) to receive Freedom of Information Act and Privacy Act requests which are referred to the Criminal Division by the Administrative Programs Unit of the Justice Management Division and other units of the Department, to supervise the search, location of records, the preparation of responses of the Criminal Division, and the maintenance of copies of correspondence related to requests which have been assigned to the Criminal Division for determination and response.

3. The statements made herein, I declare on the basis

of knowledge acquired through the performance of my official duties.

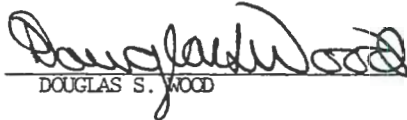
4. Pursuant to plaintiff's opposition to the motion of the Criminal Division for summary judgment dated April 9, 1982, in Civil Action No. 81-2174 (D.C. D.C.) I have caused a second search to be made of the Criminal Division files for additional records responsive to plaintiff's request pursuant to the Freedom of Information Act dated October 29, 1980.

5. No additional records were found pursuant to the second search of the Criminal Division files.

6. The Criminal Division, Department of Justice, has produced all records responsive to plaintiff's request of October 29, 1980, which were located during the initial search or that described above.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on May 26, 1983


DOUGLAS S. WOOD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY,)	
)	
Plaintiff,)	
)	
v.)	
)	
DEPARTMENT OF JUSTICE)	Civil Action No. 81-2174
)	
and)	
)	
FEDERAL BUREAU OF INVESTIGATION,)	
)	
Defendants.)	
<hr/>		

DECLARATION

1. I am Jeffrey I. Fogel, an attorney in the Criminal Division of the United States Department of Justice.

2. Government counsel in this case has called my attention to paragraph 13 of plaintiff's affidavit dated March 17, 1982, the pertinent part of which states: "A Bureau memorandum of January 14, 1981, makes reference to a letter of January 7, 1981 of Jeffrey I. Fogel, a copy of which, according to my records, I have not yet received."

3. I attach hereto a copy of a Bureau memorandum, dated January 14, 1981, to Mr. Bayse (with deletions made by the Federal Bureau of Investigation). In pertinent part, the memorandum states: "On January 7, 1981, Jeffrey I. Fogel, Attorney, General Litigation and Advice Section, Department of Justice, requested the Technical Services Division (TSD) to provide background information" (Emphasis added.) Although plaintiff quotes the memorandum as referring to a "letter," the memorandum merely states that I "requested"

4. At that time, Robert L. Keuch served as Special Counsel to the Attorney General, dealing with matters pertaining to assassinations. Although my regular assignment was in the Criminal Division, I spent much of my time during the approximate period of 1978 to 1981 detailed to work with Mr. Keuch in his capacity as Special Counsel. (Mr. Keuch's regular position was Associate Deputy Attorney General. Neither the Special Counsel nor Associate Deputy Attorney General position was in the Criminal Division.)

5. During the relevant time period, it was not my practice to send letters or memoranda, for example, to the Federal Bureau of Investigation, under my own name. I would draft letters or memoranda for the signature of someone else, such as Mr. Keuch. The practice of staff drafting communications for superior officials is a common and well known one both in and out of government.

6. I have not been able to locate a copy of any letter or memorandum of January 14, 1980 such as the one referred to as a "letter" in plaintiff's affidavit.

7. It would appear to me, based on all the circumstances I have detailed above, that the request was, in all likelihood, made over the telephone.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 4, 1982.


JEFFREY I. FOGEL

Memorandum



Exec AD Inv. _____
 Exec AD Adm. _____
 Exec AD LES _____
 Asst. Dir.:

- Adm. Serv. _____
- Crim. Inv. _____
- Ident. _____
- Intell. _____
- Laboratory _____
- Legal Coun. _____
- Plan. & Insp. _____
- Rec. Mgmt. _____
- Tech. Serv. _____
- Training _____
- Public Affs. Off. _____
- Telephone Rm. _____
- Director's Sec'y _____

To : Mr. Bayse

Date: 1/14/81

From

Subject: ASSASSINATION OF PRESIDENT
 JOHN F. KENNEDY
 11/22/63
 DALLAS, TEXAS

PURPOSE: To respond to the Department of Justice's (DOJ) request to provide background information on the FBI's review of the acoustical reports published by the House Select Committee on Assassinations.

DETAILS: On 1/7/81, Jeffrey I. Fogel, Attorney, General Litigation and Legal Advice Section, DOJ, requested the Technical Services Division (TSD) to provide background information on the TSD's 11/19/80, Review of the acoustical reports published by the House Select Committee on Assassinations to Bayse memorandum dated 11/19/80, captioned as above. Mr. Fogel stated that the background material would be forwarded to the National Academy of Sciences, who are also reviewing the acoustical reports of the House Select Committee.

Enclosed is an addendum to the 11/19/80 review. Mr. Fogel has previously been provided with a tape copy of the public hearings before the House Select Committee on 12/29/78.

ENCLOSURE

- 1 - Mr. Colwell
- 1 - Mr. Mullen
- 1 - Mr. Mintz
- 1 - Mr. Monroe
- 1 - Mr. Young

- 7C 1 - [Redacted]
- 1 - Mr. Bayse
- 1 - [Redacted]
- 7C 1 - [Redacted]
- 1 - [Redacted]
- 1 - [Redacted]
- 1 - [Redacted]
- 1 - [Redacted]

62 JAN 19 1981

CONTINUED-OVER

8 JAN 29 1981

C.A. 81-2174

Attachment to Fogel Affidavit

FBI/DOJ

70

Memorandum [redacted] to Mr. Bayse
RE: ASSASSINATION OF PRESIDENT
JOHN F. KENNEDY
11/22/63
DALLAS, TEXAS

This matter has been coordinated with SA [redacted] of
the Criminal Investigative Division.

RECOMMENDATION: That personnel of the Criminal Investigative
Division review and make appropriate
dissemination of the enclosure to Mr. Jeffrey I. Fogel,
Department of Justice.

JBS
Recyler
Rec

cm/ls

wor/ks

January 14, 1981, Addendum to the FBI Review of
Acoustical Reports Published by the House Select Committee
on Assassinations

1. In reference to pages 3 through 12 of the FBI Review:

All information was quoted or summarized, as accurately as possible, from a recording of the public hearing before the House Select Committee on December 29, 1978, and from the "Investigation of the Assassination of President John F. Kennedy; Appendix to Hearings before the Select Committee on Assassinations of the U. S. House of Representatives, Ninety-Fifth Congress, Second Session; Volume VIII, Acoustics, Polygraph, Handwriting and Fingerprint Reports, March 1979," pages 3-127.

2. In reference to pages 13 through 20 of the FBI Review:

The information in this section is based on the extensive expertise and experience of FBI experts in the fields of forensic acoustics, forensic signal analysis, tape recorder and microphone theory, radio communications, RF propagation, FM receivers and antennas, and forensic firearms and ballistics.

In reference to page 15 of the Review, the gunshot in the GREENKIL matter was recorded at the scene on a Sony BVM-100 Video Recorder. The original video recording was played back by the FBI on a Sony VO-2850 Video Recorder and the soundtrack was recorded on a Nagra IV-SJ recorder at 15 inches per second on the left channel (1/2 track). A time code signal (IRIG "B") from a Systron Donner model 8154 Time Code Generator was recorded on the right channel.

The GREENKIL gunshot and the time code signal were then played back on the Nagra IV-SJ into a Honeywell 2112 Visicorder, dual channel, at 500 cm/sec onto 12-inch wide paper (Kodak Linagraph direct print paper, type 2167). See Figure A for a copy of the waveform. The waveform peaks were then measured in reference to the muzzle blast, both manually and with a Decscope terminal model VT-52 connected to a Digital Equipment Corporation PDP 11/70 computer. See Figure B for table of measured waveform peaks. Peaks below the line on Figure A were not used since they were too wide to be useful.

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ENCLOSURE

The gunshot waveform from the GREENKIL matter was then compared to the waveform examined by Weiss and Aschkenasy on the Dallas Police Department (DPD) recording. Figure C is a table of the GREENKIL gunshot peaks, the DPD waveform peaks, and the peaks predicted by Weiss and Aschkenasy. One of the nonmatching DPD peaks used by Weiss and Aschkenasy could not be accurately determined by the FBI.

Weiss and Aschkenasy compared the 18 DPD peaks to their 11 predicted echoes and the muzzle blast using a plus or minus 1 millisecond window, and found 11 matches. Using the binary correlation coefficient of 0.75 (11 divided by the square root of [12 x 18]), Weiss and Aschkenasy state that "at levels greater than 0.7 with a coincidence window of plus or minus 1 millisecond, the statistical probability was 95 percent or more that the sequences represented the same source--a sound as loud as a gunshot from the grassy knoll."

The FBI first compared the 18 DPD peaks to the 14 peaks and the muzzle blast on the GREENKIL gunshot using plus or minus 1 millisecond windows, and found 12 matches. The binary correlation coefficient of 0.73 (12 divided by the square root of [15 x 18]) resulted in a statistical probability of 95 percent or more that "the sequences represented the same source--a sound as loud as a gunshot from the grassy knoll."

The FBI then narrowed the coincidence window to plus or minus 0.9 millisecond and found that Weiss and Aschkenasy's binary correlation coefficient dropped to 0.54 (8 divided by the square root of [12 x 18]), or a probability of only 44 percent that the sound pattern on the DPD recording would match the predicted echo sequence from the grassy knoll. Whereas, the GREENKIL binary correlation coefficient remained at 0.73, or a 95 percent or better probability of matching.

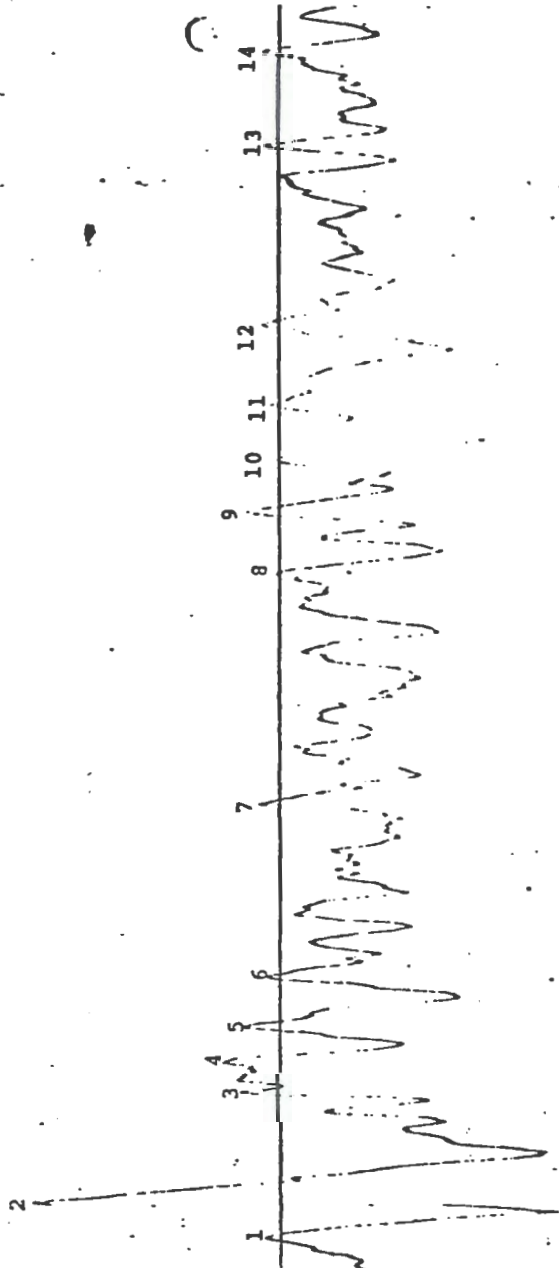


FIGURE A

FIGURE B

<u>GREENKIL Peak</u>	<u>Measured Time (in milliseconds)</u>
1	5.2
2	6.5
3	10.2
4	11.2
5	12.3
6	14.0
7	20.0
8	27.9
9	30.0
10	31.8
11	33.6
12	36.3
13	42.5
14	45.6

FIGURE C

All numbers listed below are in milliseconds.

<u>DPD Peaks</u>	<u>Weiss and Aschkenasy Predicted Peaks</u>	<u>Weiss and Aschkenasy Deviation</u>	<u>GREENKIL Peaks</u>	<u>GREENKIL Deviation</u>
Muzzle Blast	Muzzle Blast	0.0	Muzzle Blast	0.0
3.4*		NM		NM
6.3	6.5	0.2	6.5	0.2
10.5	10.9	0.4	10.2	0.3
14.7	15.1	0.4	14.0	0.7
19.3	18.8	0.5		NM
20.1	21.1	1.0	20.0	0.1
22.5*		NM		NM
27.4	28.4	1.0	27.9	0.5
30.3	29.3	1.0	30.0	0.3
31.6	31.2	0.4	31.8	0.2
34.1	34.7	0.6	33.6	0.5
37.1*		NM	36.3	0.8
40.5*		NM		NM
42.8*		NM	42.5	0.3
45.4	45.6	0.2	45.6	0.2
48.7	48.2	0.5		NM
**		NM	Unknown	Unknown

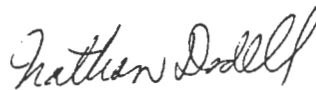
*Computed from sound pattern shown in Weiss and Aschkenasy's Report.

**One of the DPD peaks not matched by Weiss and Aschkenasy could not be accurately determined.

NM - No Match

CERTIFICATE OF SERVICE

I hereby certify that a copy of defendant Criminal Divison's memorandum and points and authorities and Fogel and Wood declarations was mailed to plaintiff's counsel, James H. Lesar, Esquire, Fensterwald & Associates, 1000 Wilson Boulevard, Suite 900, Arlington, Virginia, 22209, this 7th day of June, 1982.



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