The withholding of FBI names

This matter is not dealt with fairly or honestly or truthfully in the breif brief(pages 30-31) except for the fact that SA Wood did file an affidavit - and contradicted himself in it.

In ca a case of this historical significance, the matter of names is not a matter of idle curiosity but has sifn significances, including the evaluation of the reports filed, The names in question are not unknown as FBI agents. Rather is it a matter of relating the names to the reports.

In the initial disclosures the withholding of the names was so amateurish and pointless that I was able to identify them. All were the names of FBI agents who testify in court proceeding and whose names had already been disclosed on the order of Director Hoover himself when they appeared in records provided to the Warren Commission. It is not a matter of idle curiosity to know what Laboratory agent supposedly conducted all tests indicated on the so-called death rifle and does not even test fire it or even seek to determine whether it had ever been fired, a simple test referred to elsewhere.

Moreover, as the case record reflects without dispute, Director Clarence Kelley stated in writing that the names of FBI agents would not be withheld in historical cases, which this is.

As the brief fials to state, prior to the processing of the MURKIN records, which are most of the records disclosed in this litigation, the courtntold the FBI to disclose the names or brief the matter. It did neither, and this after it was provided also with a copy of its own director's directive that they not be withheld.

It is not tu true, as SA Wood swore, that policy changed in historical cases because the stated policy wasnot to withhold. But is is true that at the time Wood testified they were not withheld in this litigation, in another of my cases, in which they had not been withheld, they abruptly were withheld. ~~Snd that after~~

That lawsuit is for the JFK assassinat ion records of the Dallas field office. Prior to the beginning of the withholding of FBI names in that litigation, which also was after the very names had been disclosed on the large number of records processed to that time, the FBI had actually disclosed a list of all the agents assigned to that office. Before making its privacy claim, for the period Wood swears it was policy not to withhold these names, the FBI had disclosed, in addition to the names, the home addresses and phone numbers. Only after this disclosure did it make the privacy claim - that Wood actually swore was in violation of privacy in addition.

On his part, in the very affidavit in which Wood attests that the names were not to be withheld, he actually withheld them, as the case record undisputedly shows.

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In addition, these agents were regularly witnesses in open court. There was no privacy consideration involved. What the FBI was trying to do is hide who did not do what was required to be done.

integrity of the index (see Lame v. Department of Justice, 654 F.2d 917, 928 n.11 (3d Cir. 1981)), while assuring that the overwhelming majority of the Department's exemption claims were thoroughly represented.

Plaintiff next argues that the Department improperly applied numerous exemptions, particularly 7(C) and 7(D). Pl. Br. at 40-41.[12] Regarding these exemptions, plaintiff appears to be under the misapprehension that the FBI is obligated to confirm or deny his suspicions regarding the identities of individuals for whose protection the exemptions were claimed.[13] This is

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[12] Plaintiff also faults the Department for dropping a small number of exemption claims. Pl. Br. at 27. This action was praiseworthy rather than blameworthy, and it in no way undermines the Department's exemption claims. With respect to exemption 7(A), we note that this claim was properly dropped not because it was initially invalid, but rather because the "pending enforcement proceeding" justifying use of the exemption had ended. See NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 239-240 (1978) ((7)(A) is "a prophylactic rule that prevents harm to a pending enforcement proceeding . . ." (emphasis added)). Similarly, any exemption 1 material that was released was properly disclosed as a result of the declassification of the documents in question. R. 182, MacDonald Affidavit; R. 187, Second MacDonald Affidavit.

Finally, plaintiff chides (Pl. Br. at 26-27) the Department for deleting a sentence which was released by the House Select Committee on Assassinations (HSCA). Plaintiff neglects to note that the Department properly deleted the sentence in question long before the HSCA released it. This deletion thus raises no genuine question about the validity of the Department's withholdings.

[13] Concerning exemption 7(C), plaintiff's assertion (Pl. Br. at 25) that the FBI "in effect conceded that it could not justify the excision of the names of FBI agents" is totally unfounded. It is well settled that the names of FBI agents involved in law enforcement investigations are exempt from (CONTINUED)

not the case. Plaintiff's theory obviously would undermine the very purpose of these exemptions, i.e., protection against unwarranted invasion of personal privacy and protection of confidential sources. In any event, as the district court correctly stated:

> the burden on defendant to reprocess over 50,000 pages, the defendant's good faith efforts in searching and releasing materials in general, the lack of harm to plaintiff regarding nondisclosure of names he knows, and the need to protect names which plaintiff merely suspects, persuade the Court that the equities are on defendant's side.

R. 223, p. 11 n.3.

Plaintiff's assertion (Pl. Br. at 27) that "the FBI's Vaughn index failed to state that the technique sought to be protected in Document 91 was not already well-known to the public" is equally devoid of merit. Special Agent Wood explained in his affidavit that releasing the investigative technique in question -- which is still used today--"would result in the subjects of FBI investigations taking added precautions to circumvent protection." R. 153, Seventh Wood Affidavit, p. 12. This clearly meets the standard of 7(E), since it shows that the

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13 (FOOTNOTE CONTINUED)

disclosure under 7(C). Lesar v. Department of Justice, 636 F.2d 472, 487-88 (D.C. Cir. 1980). Indeed, the FBI withheld the names of agents prior to a change in policy in this case, R. 153, Seventh Wood Affidavit, p. 7. In its motion for summary judgment, the Department expressly stated that it continued to consider its earlier withholding of agents' names valid under 7(C). R. 153, pp. 2 n.1, 4-5.