

see my 7/10/78 to Paul Hoch, JFR Releases

___ After this affidavit was drafted, in the mail of July 10, 1978, I received two relevant communication. The first, dated July 7, ^{reports} ~~is~~ the Deputy Attorney General's action on my appeal. (Exhibit 11). The second, from Paul L. Hoch, of Berkeley, California, provided me with several examples of frivolous FBI claims to "national security" exemption. (Exhibits 12 A and 12 b and 13 A and 13 B.

___ The July 7 action on appeal by Mr. Shea confirms my prior statement that the appeals machinery is limited to determining only that the excisions in the worksheets are "compatible with the excisions made from the actual records," the underlying records. Thus the review does not address substance. It does not determine whether or not the excisions are in fact either justified or necessary.

___ From Mr. Hoch I obtained "before" and "after samples" of several of the FBI's "national security" claims with regard to the underlying JFK assassination records.

___ Mr. Shea also states that "The classified materials have been referred to the Department Review Committee for determination whether they warrant continued classification under Executive Order 11652."

___ Each of these matters reflects the fact that the rest of the Department is largely the captive of the FBI in FOIA matters. If review shows the excision in the worksheets to be "compatible" with the excisions on the original documents then the review process in this instant cause in this respect is completed. ~~It~~ Whether or not the withholding is justified, even ~~if~~ reasonable, is not review. The review authority is limited to the FBI's representations. This also is true of the classification review committee. Neither reviewing authority has any independent knowledge. The FBI has each in the position of rubber stamping the withholding of what is within the public domain.

___ The two examples I received from Mr. Hoch reflect this and with regard to "national security" claim.

___ Exhibit 12A is an FBI copy of an FBI memorandum with three paragraphs deleted. Exhibit 12B is the identical memo without these excisions. (Notations identified "PLH" were added by Mr. Hoch.) All the content of the excised three paragraphs except for a single ^{word}

sentences ~~was~~
~~was~~ was published by the Warren Commission. These two sentences, the first two on page two, became public domain more than a year ago. The only content of those two sentences then not within the public domain is the reference to FBI agents. The photographs are in the Warren Commission material. The Commission published one of the photographs. The fact of the tape records has been within the public domain for from three to five years. All that was new when the content of this memo was released by the Secret Service is the negative identification. This, of course, is contrary to earlier official representations going back to representations made to the Commission itself by the agencies.

____. Knowing none of this and finding the traditional references to the most "extremely sensitive" sources ~~published~~ ^(made public) in the Warren "report itself" the "department's" classification review committee might be persuaded that "an extremely sensitive source" and a "highly confidential source of this Bureau" (paragraph 2, page 2) require (b)(1) protection. If the classification review committee so determines it will be preserving the unjustified "secret" classification of what is within the public domain and has received the most extensive coast-to-coast ^{-press} print and electronic press attention.

____. I ~~do not~~ do not violate "national security" in informing the Court that the "highly confidential source of this Bureau" is the Central Intelligence Agency. The CIA itself made ~~this~~ ^{this public} ~~time-records-available~~ several years ago.

____. There likewise is no genuine issue of "national security" in my informing the Court of the yearning by the intelligence agencies to withhold what the FBI still has classified as "secret." The official story of the CIA is that it destroyed this tape recording by reusing it prior to the assassination of President Kennedy. If ^{October} this were untrue there would be no way the FBI agents could have listened to that tape recording in November 1963.

____. Exhibit 13A is the ~~ix~~ change of address card Lee Harvey Oswald sent to the Communist newspaper The Worker. It was intercepted, made public domain by the Warren Commission. Exhibit 13B is the unexcised card. (D-21 is an FBI identification. Notations

identified FBI are by Mr. Hoch.) Here again the "national security" is the public domain.

____. These are not exceptional instances, as my prior paragraphs reflect and as could be established by many more illustrations.

____. If ~~by~~^{by} any remote chance there is an FBI agent who does not know that such mail was being intercepted and that the interception is public knowledge, even the subject of testimony before a Senate committee, I believe good faith and minimal diligence required some effort to determine whether or not what is clearly marked as having ~~been~~ been given to the Warren Commission and having been transferred to the National Archives under the Executive Order of October 31, 1963, the D-21 marking, was within the public domain.

____. There is more that is relevant to FBI efforts to hide what is embarrassing by classification and relating to Exhibit 12A. From prior experience I believe that if I disclose this information now ~~the~~ possibility of disclosure will be reduced. For now I state that the FBI has and withhold other relevant records ~~by~~ in part by improper classification of a nature that almost certainly will deceive and mislead the Department's classification review committee, if the withheld information ever reaches it. I state also that the FBI has taken steps to reduce the possibility of that record reaching this committee.

____. Other relevant public knowledge that the ~~classification~~ classification review committee and the Court may not possess is that the intelligence agencies represented to the Warren Commission that the CIA, by clandestine means, obtained photographs of Lee Harvey Oswald and tapes records of a phone call he made when he approach the Cuban and Russian embassies in Mexico City almost two months before President Kennedy was killed. Immediately after the assassination an FBI agent in Mexico City flew the photographs and the tapes to Dallas. Other FBI agents had interviewed Oswald. ^he face and voice were known to the FBI. The withheld part of Exhibit 12A reflects that these FBI agents made negative identification. This negative identification was incorporated in a letter Director Hoover wrote the Secret Service on November 23, 1963. The Secret Service has

made a copy of this letter available and I have it. The problem all of this makes for the FBI comes from its pre-determination of a no-conspiracy assassination, a pre-determination reflected in its first report, ordered by the President, and fixed upon the Commission. If there was someone other than the real Lee ^{Harvey} Oswald representing himself as Lee Harvey Oswald so long before the assassination and in associations with the Russian and Cuban embassies there is a strong suggestion of either a conspiracy or of someone setting up the official lone assassin, ~~Lee~~ Harvey Oswald. There is further potential embarrassment for the FBI in this because ~~it~~ in this supposed definitive five-volume report the President ordered of it prior to creation of the Warren Commission the FBI withheld all mention of the foregoing information.

____. From extensive personal experience and from personal examinations of many thousands of FBI records I state that the first law of the FBI is "Don't embarrass the Bureau," not FOIA.