

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRANK WILKINSON, et al.,)
)
Plaintiffs,)
)
v.)
)
FEDERAL BUREAU OF)
INVESTIGATION, et al.,)
)
Defendants.)
)

DECLARATION AND
CLAIM OF STATE
SECRETS PRIVILEGE

NO. CV 80-1048 AWT

DECLARATION OF THE UNITED STATES ATTORNEY GENERAL

Attorney General WILLIAM FRENCH SMITH, declares:

1. I am the Attorney General of the United States, and head of the Department of Justice, an executive department of the United States Government. As part of my duties as Attorney General, I am responsible for the supervision of the Federal Bureau of Investigation. I have official custody and control of the files and records of the United States Department of Justice, including the Federal Bureau of Investigation. Before making this declaration, I reviewed the documents which are encompassed by this claim of privilege and considered the classified, in camera declaration of Edward J. O'Malley, and other information provided to me at my request in my official capacity.

(aff. daut)
2. I make this declaration in support of the Government's claim of state secrets privilege for the materials described in the in camera declaration of Edward J. O'Malley which consists of material in the FBI's Headquarters main

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Authority NND 30730
By AL NARA Date 11/13/09

DECLASSIFIED
Authority NND 30730
By AL NARA Date 11/15/09

~~refers to~~ ^{(refers to plaintiff (NLG))}
file and certain Field Office files on the National Committee
Against Repressive Legislation and its predecessor organization,
and on plaintiff Frank Wilkinson, who, I am informed, is one
of NCARL's founders and prime movers.

3. The documents and information as to which state
secrets privilege is being asserted fall into ^{three} two categories:
(1) ^{(1) foreign government information} information relating to or affecting the foreign relations of foreign activities
of the United States; (2) information concerning intelligence
activities, sources, and methods; both derived from Executive
Order 12356, § 1.3(a). (See 47 F.R. 14874 (1982) and 47 F.R.
15557 (1982)). This claim of privilege includes information ^{does not include human sources}
emanating from human sources, which may also be encompassed
by a claim of informant privilege.

4. I am satisfied that all information covered
by the O'Malley declaration, ^{NLNG didn't have representative sample} and similar information in other ^{list}
documents of which those attached to the O'Malley declaration
are a representative sample, is properly classified under
^{NLNG had 3 categories} one of the categories set forth in paragraph 3 above, and
that after personally reviewing these materials, in each
instance, the withheld information "concern[s] one or more of
the [referenced] categories" and that its "disclosure,
either by itself or in the context of other information,
reasonably could be expected to cause damage to the national
security." EO 12356, § 1.3(b). This process required con-
sideration of information already in the public domain and
information which is likely to be known or suspected by
foreign powers or their intelligence services which could

permit them to place discrete items of information in context and thereby increase their overall knowledge of the existence, scope, and extent of operations conducted by the FBI in the foreign counterintelligence field.

5. I am informed that the information that is the ^{and the in camera interrogatory responses} subject of the O'Malley declaration was obtained by the FBI through numerous intelligence gathering activities, sources, and methods. I understand that these include but are not limited to microphone and telephone interceptions, ^{foreign government sources and physical surveillance.} mail and trash covers on organizations or persons other than the plaintiffs in this case; and human sources of information.

I am satisfied that disclosure of the information would ^{reveal this Nation's confidential} affect this Nation's relationships with particular foreign governments and the legitimate ongoing investigative interest of the FBI in United States citizens in their contacts with agents of or collaborators with foreign powers.

^{NLG contains on pp. 3-4 a paragraph that disclosure would affect cooperative intelligence gathering with other countries.} 6. Similarly, I am persuaded that disclosure of intel- ^{slur} ligence activities, sources, and methods, /including the identity of human sources, has several harmful effects on the national security. By revealing current investigative interests, such disclosures can prejudice ongoing investigations. Such disclosure, even if innocuous in isolation, also can expose sources and thereby lead to a reduction in the effectiveness of those sources and to the loss of confidence and trust and therefore willingness to furnish information, on the part of other present and potential sources. By permitting a subject

of an investigation to piece together a broader picture of United States intelligence activities, disclosure of such activities can enable the subject to take countermeasures which can also lessen the effectiveness of the United States' intelligence efforts.

7. Material under the heading of foreign relations or foreign activities of the United States has a self-evident relationship to the national security. It is obviously in the interest of the country to maintain as sound foreign relations as possible, and diplomatic relations with other countries are often delicate and sensitive. I am satisfied that release of certain information (such as the disclosure of intelligence activities directed against, or in, a foreign country) can reasonably be expected to harm those diplomatic relations and thereby the national security.

8. I am informed that prior to preparation of the O'Malley declaration, the ¹³⁴ volumes of the FBI's main investigative file on the NCARL were reviewed for classification purposes under EO 12356. ^{NLG} I understand that all documents and information subject to this claim of privilege have been reviewed de novo, and I am satisfied that all are appropriate subjects of the state secrets privilege. ^{NLG contains full page d. 3035 in on efforts to avoid having these documents released elsewhere}

9. After carefully considering this matter, I am satisfied that no more specific information about the content of this material can be released to the plaintiff or the public without risk of disclosure of the very information this claim of privilege is seeking to protect and without

causing the very consequences the privilege exists to avert, and that the material for which privilege is claimed constitutes secrets of state that should not be publicly disclosed. In reaching this conclusion, I have relied on the reasons stated in the O'Malley declaration, which I find persuasive. Based on the foregoing, it is my own judgment that the information is privileged, and I hereby assert state secrets privilege.

10. In view of the sensitivity of the information contained in the in camera submissions, I ask that the Court treat the documents in accordance with their security classifications ^{and, once the court completes its review, return the material to} and the parties' agreement that it be retained in the custody of the Department of Justice, in the FBI Los Angeles Field Office's secure storage facility, under the Court's seal, to be made available for such in camera review as this Court or a reviewing Court may require.

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

DATED: _____

WILLIAM FRENCH SMITH
Attorney General of
the United States

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