

The Bothwell Letter

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BOTHWELL DEFEATS CIA ATTEMPT TO DISMISS SUIT FOR KENNEDY ASSASSINATION RECORDS

Atty. Tony Bothwell defeated a motion by lawyers for the **Central Intelligence Agency** who sought dismissal of his suit for release records about persons of interest in the assassinations of **President John F. Kennedy** and **Sen. Robert F. Kennedy**. The government lawyers had argued that the case should be deemed a suit against the CIA director, **John O. Brennan**, an individual, not subject to the Freedom of Information Act. The CIA legal argument was the sort “that gives litigation a bad name,” according to the decision by **Magistrate Judge Jacqueline Scott Corley**, U.S. District Court, San Francisco. CIA even tried to evade service of summons and complaint, turning away process servers whom Bothwell sent to its headquarters in Langley, Virginia; service later was perfected by certified mail.

The CIA says whether it does or doesn't have October 1963 records about **Jean Soutre** – French assassin, reportedly in Dallas on the day JFK was killed – is a classified fact. The CIA says it cannot find requested records about **Johnny Roselli** (Mafia associate of Jack Ruby), **David Morales** (Miami CIA station chief heard boasting that “we” killed JFK and RFK), **Enrique Hernandez** (reputed CIA veteran in the Ambassador Hotel when RFK was shot), and **Thane Eugene Cesar** (gunman behind RFK when the fatal bullet entered the back of the senator's head). The CIA, having lost the key Mar. 6 decision on its motion to dismiss, has until Aug. 11 to file a summary judgment motion, on which a hearing is set for Oct. 2 under an order the judge signed July 9, 2014.

Bothwell filed suit on Nov. 22, 2013, the fiftieth anniversary of the president's assassination. “I'll never forget the sight of **Jacqueline Kennedy** and other family members, and **Charles deGaulle** and other world leaders, as they walked out from the North Portico of the White House and followed the horse-drawn cortege down Pennsylvania Avenue,” says Bothwell, who was there. “I'll never forget the sound of the drums that we still could hear, standing on the hillside at Arlington, watching the procession march over the Lincoln bridge. I'll never forget the voice of **Cardinal Cushing** leading us in prayer as the president was laid to eternal rest.”

Bothwell remembers *Washington Post* dispatches from Dallas – reporting one day that a **Parkland Hospital** surgeon saw a bullet entry wound to the throat, the next day that the surgeon was interviewed by federal agents, and on the third day that he said there was no entry wound to the throat. On Nov. 22, 2006 at Dealey Plaza, Bothwell met witnesses who told how on that day 43 years earlier they heard (some saw) gunfire from the fence behind the grassy knoll. The president’s brother was shot June 6, 1968; Bothwell interned in Robert Kennedy’s Senate office in 1966, and clerked in the *Washington Post* newsroom in 1969-70.

According to a joint stipulation filed July 1, 2014, one of the legal issues now is “whether the CIA properly issued a *Glomar* response” to Bothwell’s request for records about Jean Soutre, a.k.a. **Michel Roux**, a.k.a. **Michel Metz**. The Frenchman allegedly was a sniper for the *Organisation de l’armée secrète* (OAS), paramilitary group that unsuccessfully targeted President deGaulle for assassination. The “*Glomar* response” means the CIA cites a secrecy rule formulated in a court case involving the *Glomar Explorer*, a vessel built by **Howard Hughes** to retrieve a sunken Soviet submarine.

In *Phillippi v. CIA*, 546 F.2d 1009 (D.C.Cir. 1976), the U.S. Circuit Court for the District of Columbia said the CIA had to provide a public affidavit explaining in detail the basis for its refusal to either confirm or deny the existence of records related to the *Glomar Explorer*. The agency has not yet produced its *Glomar* affidavit in *Bothwell v. CIA*, civil no. 13-05439 (U.S. Dist. Ct., N.D.Cal.). Some of the past’s details are significant, others simply ironic:

Nobody here but us paramilitaries

In the mid 1970s Bothwell was a spokesperson for **Florida Power & Light Co.** when a *Miami Herald* reporter asked him whether the *Glomar Explorer* docked at any of the company’s large coastal power plant sites. Bothwell checked with **Al Schmidt**, FPL vice president in charge of power plants. Schmidt said the plant sites were not used by the *Glomar Explorer* – but *were* used by armed Cuban exiles who launched raids across the Florida Straits. “We always cooperate with our government,” Schmidt explained. Bothwell called back the *Miami Herald* reporter, **Tom Fiedler**, and told him that the Hughes vessel had not docked at FPL sites. The reporter didn’t ask whether anything else unusual had been going on at the plant sites. About two years ago Bothwell visited Fiedler, now dean of communications at **Boston University** (where Bothwell received an M.S. in journalism in 1968). On that visit, Fiedler learned that he could have scooped the story about anti-Castro paramilitaries’ use of FPL coastal sites. Bothwell has taught the Law of War at **John F. Kennedy School of Law**, where he earned the J.D. in 1998.

On April 15, 2014, the lawyer was considering a proposal by an assistant U.S. attorney to postpone proceedings in *Bothwell v. CIA* so the agency could reconsider its denial of his 2009 requests for JFK and RFK assassination records. That day, Bothwell happened to be trying an unrelated federal case before a judge in the federal building in Dallas. During a break he looked out the window behind the judge and saw below, directly across the street, Dealey Plaza.

NO WATERBOARDING REMORSE IN EX-CIA LAWYER’S BOOK, BUT HE VOICED ‘REGRET’ AT D.C. DINNER WITH INTEL VETS

John Rizzo, the CIA’s former chief lawyer, says in his 2014 memoir, *Company Man*, that enhanced interrogation techniques were “the necessary and right thing to do” after the Sept. 11, 2001 terror attacks. But he said something else when questioned by Tony Bothwell and other former intelligence officers four years ago in Washington, D.C. “I regret that when I was in a position to push back on enhanced interrogation, I did not do so,” Rizzo said during Q&A after

an Oct. 1, 2010 banquet at the **Army Navy Club** in the nation's capital. "We didn't press the White House hard enough to open that up to brief the full intelligence committees," he said, adding, "That, in retrospect, was stupid."

Several dozen active and retired senior military officers, civilian intelligence officials, and scholars in the field of national security law were present in the 2010 gathering. They heard Rizzo say House and Senate panels should have been briefed on "covert operations" including "the post-9/11 interrogation program." Rizzo added, "We at the CIA made a true mistake," Rizzo said, acknowledging "a major responsibility."

Just telling the "gang of 8" congressional leaders allowed insufficient oversight, he said, noting that even the "8" got no briefings on **Department of Defense** "special action" covert operations. The "8" are the House and Senate leaders of both parties and the chairs and ranking members of the intelligence committees in both houses. About two dozen members of congress serve on the select committees on intelligence. "Telling the full committees is not only good government – it's the best way to protect the agencies," Rizzo told the 2010 gathering.

Waterboarding, a form of torture developed in the Spanish Inquisition (1478-1614), violates the 1949 Geneva Convention Relative to the Treatment of Prisoners of War, and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Rizzo was invited to comment for this newsletter but did not respond by press time. Bothwell, a former U.S. House clerk and **U.S. Army Intelligence School** curriculum coordinator, says Rizzo could have forgotten his 2010 sentiment or changed his mind, or may be able to reconcile paradoxical views.

U.S. LAW PROTECTS CONTRACT WORKERS WHO BLOW THE WHISTLE – SNOWDEN'S STATEMENTS TO THE CONTRARY NOTWITHSTANDING

Edward Snowden, whose **National Security Agency** disclosures on the eve of the Obama-Xi summit took the world media spotlight off Chinese cyber attacks, has told international audiences he had to go public because he would have had no whistleblower protection as a contractor. In fact, though, both statutory law and a presidential directive may offer whistleblower protection to an NSA contractor's employee who discloses to varied federal officials what he or she "reasonably believes" is evidence of "a violation of any law, rule, or regulation."

A Feb. 18, 2013 exposé in the *New York Times* revealed **People's Liberation Army** cyber attacks on U.S. companies, organizations and government agencies. The activities of P.L.A. Unit 61398 were expected to be on the U.S. agenda of **President Barack Obama** in his summit with China's **President Xi Jinping** June 7-8, 2013 in Rancho Mirage, Calif. Two days before the summit, *The Guardian*, a daily newspaper based in London, started publishing classified NSA documents provided by Snowden. Publicity on what the *Washington Post* called "the NSA spying scandal" overshadowed concerns about China's cyberwarfare. Meanwhile Snowden fled to China, on his way to Russian asylum.

In testimony he sent to the European Parliament on Mar. 7, 2014, Snowden wrote, "As an employee of a private company rather than a direct employee of the U.S. government, I was not protected by U.S. whistleblower laws, and I would not have been protected from retaliation and legal sanction for revealing classified information....." Snowden published classified documents he accessed while employed by **Dell Inc.** and **Booz Allen Hamilton** – contractors for the NSA, an intelligence-gathering organization under the Department of Defense.

In a news conference on Aug. 9, 2014, President Obama was asked about Snowden's disclosures. The president said, "If the concern was that somehow this was the only way to get this information out to the public, I signed an executive order well before Mr. Snowden leaked this information that provided whistleblower protection to the intelligence community.... So there were other avenues available for somebody whose conscience was stirred and thought that they needed to question government actions." That order, Presidential Policy Directive PPD-19, signed by the president October 10, 2012, prohibits "retaliation" against intelligence community "employees" for reporting – to the chain of command, the inspector general, the **Director of National Intelligence** or designees – "what the employee reasonably believes evinces... a violation of any law, rule, or regulation." On May 31, 2013 in a case under 42 U.S.C. §5851 governing the civilian nuclear industry, Bothwell obtained a settlement establishing a U.S. Department of Labor rule that the word *employees* includes contractors for purposes of whistleblower protection provisions.

The U.S. Code defines other protections. The section governing the Department of Defense, at 10 U.S.C. §2409, bars reprisals against an "employee of a contractor or subcontractor" for reporting – to management, Congress, the inspector general, the **General Accounting Office**, the **Department of Justice**, other law enforcement, or a court or grand jury – what he "reasonably believes is evidence of... a violation of law, rule, or regulation related to... a Department of Defense... contract." NSA is a subordinate agency under DOD.

'beware of outside consultants'

William Olsen, of **Grant Thornton LLP** and former principal at **Arthur Andersen**, addressed an **American Bar Association** meeting on how employers can defend against threats to Data security. He told the Apr. 2, 2014 session that firms should "beware of outside consultants" such as Snowden. The next day, **Joel Brenner**, NSA's inspector general in 2002-2006, spoke to an ABA forum evaluating post-9/11 reorganization of the U.S. intelligence community. Answering a question, Brenner said, "Contractors are harder to manage," adding, "Government has no authority to direct private employers how to deal with employees. Bothwell suggested that intelligence data should be managed by government employees instead of contractors.

Snowden caused some operations to shut down, Brenner told the ABA session in New York. "And he does have handlers," Brenner added. "Only a tiny fraction of his disclosures are relevant to civil liberties," he said of Snowden's activity. "The U.S. is better at it than anyone else," Brenner said, referring to global intel data collection. He lamented, "Our companies are losing \$100 billion a year, based on the idea that European governments don't spy on their own citizens." Russia, aiming to "disparage" the United States, seeks "strengthened **International Telecommunications Union** rules over the internet," Brenner said, commenting sarcastically, "This part of Snowden's gift to us."

Former U.S. Sen. Evan Bayh (D-Ind.), told the ABA's Apr. 3 forum, "Snowden is one of the worst traitors in the history of our country." He said that Snowden is "also a fool" and that "people will die" because of his disclosures. "Snowden gave data to Russia, China and Iran... within 24 hours they changed." Bayh, who served two terms in the Senate, recalled his own 10 years on the intelligence committee, which his father, **ex-Sen. Birch Bayh**, previously chaired. "Oversight is very robust," said Evan Bayh, who left the Senate in 2011.

Edward W. Nussbaum, who was on the staff of the House Judiciary Committee during its investigation that led to the impeachment of President Nixon, and who later was counsel to President Clinton, was a speaker at an American Bar Association meeting in New York on April 4, 2014. Nussbaum lamented “the corporatization of American law firms.” He importuned, “You still need a champion, someone who works for you, who has passion.”

COVERUPS ALLEGED IN V.A. AND MILITARY HOSPITALS; BOTHWELL TOUTS TITLE VII AND INTERNATIONAL LAW

Patients in **Veterans Administration** and military hospitals are imperiled by management practices reported by 18 individuals represented by the Bothwell law firm in Texas, California and Hawai'i. Managers – covering up instead of correcting hazardous conditions – have punished doctors, nurses and technicians who protested deficient care such as sending a patient home with a pacemaker having no battery, or filling the wrong prescription, or allegedly drowning a patient during a baptism in a VA swimming pool.

A tactic used by some VA and Army hospitals is to refuse to investigate or even acknowledge complaints. Bothwell has won decisions by federal administrative judges ordering the VA and the Army to investigate claims of reprisal as well as age bias and sexual harassment. Bothwell won an **Equal Employment Opportunity Commission** ruling that requires the VA to pay monetary sanctions for failure to complete investigation of a hostile work environment case that had an adverse result. Now the battle of the briefs – thousands of pages of arguments and exhibits – is being waged in U.S. District Court in Honolulu, where eight past and present employees of **Tripler Army Medical Center** seek remedies under the Civil Rights Act of 1964 – and the International Convention on the Elimination of All Forms of Racial Discrimination, a treaty on which Bothwell wrote his postdoctoral thesis. Eleven government attorneys showed up for a hearing on the claims against Tripler, which an Army EEO counselor called “a big case.”

Pending complaints allege white racism at Tripler and anti-Semitism in VA facilities in Dallas and San Francisco. Employment discrimination in hospitals sometimes prevents the best caregivers from helping patients. Instead of correcting the ones who issued the wrong prescription and a pacemaker with no battery, Tripler managers retaliated against the African American and Asian professionals who reported the errors. Likewise, a complainant at the **North Texas VA Medical Center** said no-one was disciplined for conducting an unauthorized, fatal baptism there.

SETTLEMENTS, JUDGMENTS AND CONGRESSIONAL LEGISLATION WON

The Bothwell law firm has represented SWAT team members, nuclear weapons engineers, oil and gas industry professionals, the **Oglala Sioux Nation**, and a former commissioner of the **U.S. Food and Drug Administration**. Bothwell's U.S. Supreme Court litigation helped persuade the **Federal Aviation Administration** and Congress to change the mandatory retirement age for commercial airline pilots from 60 to 65. Local clients have won judgments against the **San Francisco Municipal Railway**, the City's **Department of Public Health**, and commercial property owners. Bothwell also advocated for whistleblowers who have reached settlements with a Fresno workers comp law firm and with **Pacific Gas & Electric**, and **Invensys**, a multinational tech firm based in London.

HEIRS OF '76 PONDER LINCOLN, KENNEDY AND LANGLEY'S GOLD STARS

Sons of the American Revolution (SAR), founded July 4, 1876 in San Francisco, today has chapters in every state and many nations. Members are descendants of patriots who fought in or gave material aid to the War for American Independence, 1776-1783. Atty. Tony Bothwell, San Francisco chapter president 2011-14, commented at the chapter's April 24, 2014 meeting:

At SAR meetings and ceremonies there is often talk about honor. Not just on Memorial Day and Washington's Birthday but also often at chapter, state society and national society SAR gatherings. We honor our patriot forebears. We honor those who died in our country's wars. We honor wounded warriors. We honor all who have served in the armed forces. We honor civilians who have laid down their lives for country whether by intention or circumstance. That includes the victims of the 9/11 attacks. We honor Eagle Scouts and students and educators who have become learned in the origins and purposes of our Republic.

Shouldn't we honor also those who have served our nation in other ways, as diplomats, or in the Peace Corps or in the intelligence services? There are almost 100 gold stars on the wall at Langley.

Some of you can speak with much greater authority than I on this subject. But any of us can ponder the question.

We honor those who answered the call, regardless of their political beliefs. Is Lincoln any less honorable because he opposed the Mexican War? Kennedy, like Lincoln, gave his life for his country. John F. Kennedy, in a letter to a Navy friend, wrote: 'War will exist until that distant day when the conscientious objector enjoys the same reputation and prestige that the warrior does today.'

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Bar member: U.S. Supreme Court; U.S. courts of appeals, District of Columbia Circuit and Ninth Circuit; U.S. district courts for the Northern, Eastern, and Central districts of California, and (*pro hac vice*) the District of Hawai'i; State Bar of California; American Bar Assn. (National Security Committee; former delegate, International Court of Justice); International Law Association (American Section). **Member:** Sons of the American Revolution (San Francisco Chapter President); U.S. Holocaust Memorial Museum (founding member); Southern Poverty Law Center (Leadership Council); National Lawyers Guild (former chapter executive council member); Rotary International (Paul Harris Fellow); Rotary Club of Fisherman's Wharf, San Francisco (past president); Tarrant County Black Historical and Genealogical Society, Fort Worth, Tex. **Former member:** national energy ethics advisory panels of Americans for Energy Independence, Edison Electric Institute, Atomic Industrial Forum, and the U.S. Catholic Bishops; Tri-Valley Martin Luther King Council, Livermore, Calif. (founder and chairman); Human Rights Conflict Prevention Centre, Bosnia and Herzegovina (Advisory Committee). **Qualified expert:** Lawyers' standard of care (Superior Court, Los Angeles). **Graduate:** Georgetown Univ. School of Foreign Service, B.S.F.S., International Affairs; Boston Univ. School of Public Communication, M.S., Journalism; John F. Kennedy Univ. School of Law, J.D.; Golden Gate Univ. School of Law, LL.M., International Legal Studies, *summa cum laude*.
