Passport Update

Background:

The Department of State responded to Chris Strunk's FOIA request for Obama's mother's passport applications by releasing passport records including a 1967 amendment to a 1965 passport and a request to renew that passport in 1968. Both those documents alluded to a 1965 passport, but the Passport Office said they could not find either the 1965 passport application or any record of it.

In an affidavit, the person in charge of responding to FOIA requests at the Passport Office, Alex Galovich, suggested that the records from that time period may have been destroyed. He claimed to have looked in PIERS (the electronic database of passport records from microfilms, which began in 1978, but included some records from before 1978 if they had been brought up for review after microfilming began), and in "the paper records".

Galovich included in his affidavit an unauthenticated document (of unstated provenance) from the early '80's claiming to be from the Secretary of State to consular offices saying that the retention period for passport records had been reduced from 100 years to 15 years for 5-year passports and 20 years for 10-year passports, and that a special project begun in June of 1984 had segregated and disposed of the disposable records (meeting specific criteria)through November of 1965 and would continue until all disposable records were removed through the year 1968.

The Passport Office asked that the case be considered closed.

Strunk objected, submitting affidavits with evidence strongly refuting the claim that records through 1968 had been destroyed – since Phil Jacobsen had been able to get two routine passport applications of his mother's from that time period, the retention schedules show no changes from 100 years to 15 years and back to 100 years, and the Passport Office website in multiple places claims that passport applications are available from 1925 onward.

The Department of State responded by saying that the claims by Jacobsen were not true (but failing to say why they were not true or documenting their untruth) and irrelevant because the only thing that mattered was whether the Passport Office had conducted a reasonable search. They argued that a reasonable search had been done and that the "cable" presented in Galovich's affidavit showed that it was reasonable for some records from the time period to exist and some to have been destroyed – as, they claimed, Jacobsen had admitted with one of his own cited sources.

Included in a footnote at the tail end of the DOS response was this:

> "*Schrecker v. U.S. Dep't of Justice*, 217 F. Supp. 2d 29, 35 (D.D.C. 2002) ("Discovery in FOIA is rare and should be denied where an agency's declarations are **reasonably detailed, submitted in good faith and the court is satisfied that no factual dispute remains.")**. (emphasis Butterdezillion's)

Strunk requested to be able to file a surreply in response to the new claims in the DOS response. Included with that request was another affidavit by Jacobsen responding to those new claims, which are listed and described below:

1. The claim that Jacobsen had admitted only some passport applications exist from before 1978. Jacobsen noted that the defendant (DOS represented by Bowen) had actually deliberately left off part of Jacobsen's cited material to make it appear to say that only some passport applications from before 1978 are maintained, when in reality the quote referred to an ELECTRONIC INDEX that has all passport applications created since 1978 and some passport applications created between 1962 and 1978.

   As Jacobsen said:

   > *"7. Defendant, referring to Plaintiff's own filing(s) and, more specifically citing this Affiant's previous Affidavit quotes @ 5:*
   >
   > > *"Jacobsen Aff. (Dkt. #41-2 at 20 (observing that State maintains "some passport application records created between 1962 and 1978")(emphasis added)."*
   >
   > *8. Defendant(s), at the time this entry was made, knew, or should have known, that it was a misquote, and that it would result in a statement likely to mislead the court. Defendant(s) further had the hubris to add the emphasis to this misquote. The quote correctly reads, in its entirety, the following:*
   >
   > > *"the State Department maintains an electronic index of all passport application records created since 1978, and some passport application records created between 1962 and 1978."*
   >
   > *9. The wording deleted from the beginning of the quotation completely changes the meaning of the quote and makes it appear that DOS has only some passport application records created between 1962 and 1978 when the full quote actually refers to the electronic index."*

   That deliberate edit in order to misconstrue the actual quote and to falsely accuse Jacobsen of admitting what he never admitted shows that the agency did not submit that claim "**in good faith**". In addition, besides emphasizing the misquote, DOS further adds to their misquote the following statement:

   > *"It therefore should not surprise anyone that State might locate some, but not all, applications submitted by a single individual over the course of decades."*

   This argument appears to be used in furtherance of misleading the court. The first quote is incorrect and the following conclusion by DOS therefore is also incorrect as can be plainly seen.

2. The agency's claim that they did a reasonable search - which cannot be known because the agency's declaration was NOT "**reasonably detailed**", since they omitted any information on what paper records they searched or how.

The PIERS database would have been virtually useless for locating a 1965 passport application, since the only pre-1978 records in that electronic database would be from records brought up for appeal after microfilming began in 1978.

The only way to know how to find the paper records without searching the millions of records individually is to look in the index for paper records, which is stored on alphabetized paper index cards which have also been microfilmed. Those index cards are to be retained 100 years.

But though the index would certainly have had record of the 1965 passport and most probably noted where the records regarding that passport were located, Galovich had said they found no record of the application at all. That strongly suggests that they did not look in the index for paper records – the only reasonable way to try to locate that record.

IOW, the DOS staked their entire claim on the reasonableness of their search. But their own statements seem to reveal that their search failed to include the only reasonable steps for finding that 1965 passport application.

On my own personal note here, at least 2 requestors have also asked to see the index records for Obama's mother's passports – Jeff Otherson (in his affidavit for Strunk's original objection) and "Dr Conspiracy" of obamaconspiracy.org. I don't know how long Dr Conspiracy has been waiting, but Jeff has been waiting over a year. These are microfilmed alphabetized records that are at the Passport Office. It might take an hour max to find these records. By looking them up Galovich could have completed two FOIA requests and actually done the "reasonable search" required for another. In over a year's time, it appears he hasn't done that. Any reasonable judge would be asking, "Why?"

Look at this docket . That is what the DOS has been doing the last year rather than simply looking in the index to find where the records are and disclosing them as required by FOIA. This is where your tax dollars are going.

3. The new claim that the document Galovich had submitted in his affidavit is actually a "cable". If any of the agency's declarations had been "**reasonably detailed**" they would have authenticated any documents they submitted as evidence. Instead, as Jacobsen noted, both the GSA and Galovich seemed to distance themselves from saying anything about the provenance of what Bowen also simply calls a "cable".

   Jacobsen also gave other reasons to believe that what was now newly called a "cable" is not credible – this being the first opportunity for anyone to address this claim of what that document even IS. What Jacobsen responded to was the DOS' *silence,* which is itself a communication. This was the DOS' time to respond to evidence suggesting the claims in the "cable" were not accurate. Their response was silence.

   Jacobsen responded to that silence by pointing out that both a change in the retention period and the destruction of millions of records would leave a paper trail and witnesses that could easily be brought forth. But the only evidence presented was Jacobsen's, showing the retention period did NOT change. The DOS offered no paper trail, even though they are the very people who would have direct access to that paper trail if it existed.

This means there is a very real, central **factual dispute** over whether the records in question should even exist. Galoway admitted that they do not know the disposition of the 1965 passport application in question. If he doesn't even know whether the passport should exist, how could he know where to look in order to find it?

4. Bowen's statement that it should not be surprising that some records were found and others not from the time period when the alleged destruction occurred. That hinges on whether records actually were destroyed as claimed in the "cable" of unknown provenance, and Jacobsen noted that if the "cable" was accurate and those records were destroyed, then the DOS should not have been able to find the 1967 amendment and 1968 renewal applications for Obama's mother.

More evidence that there is a **factual dispute** over what records, if any, were destroyed.

There is other evidence which suggests that the "cable" has been fabricated – not just by the absence of evidence that the claims are true (some of which is analyzed here) but by evidence that they are NOT true. Specifically, the claims in the "cable" don't match the information provided in a report by the Government Accountability Office (GAO) in 1981. A detailed analysis of that is here .

I repeat here what Bowen himself stated in a footnote:

> "*Schrecker v. U.S. Dep't of Justice*, 217 F. Supp. 2d 29, 35 (D.D.C. 2002) ("Discovery in FOIA is rare and should be denied where an agency's declarations are **reasonably detailed, submitted in good faith and the court is satisfied that no factual dispute remains.")**.

Strunk's response applies in every way to that footnote as well, because the DOS' latest response itself could be an illustrated dictionary entry for ALL THREE CONDITIONS that justify a judge granting discovery in a FOIA case. Strunk's response nails the DOS with the documentation showing just that.

Today, on Sept 27, the Department of State has submitted a request that the judge reject Strunk's surreply on the grounds that the surreply does not respond to new information.