United States v. Reynolds

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This page is about the 1952 U.S.

United States v. Reynolds

Supreme Court of the United States

Argued October 21, 1952
Decided March 9, 1953

Full case name	*United States v. Reynolds, Certiorari to the United States Court of Appeals for the Third Circuit*
Citations	345 U.S. 1 (http://supreme.justia.com/us/345/1/case.html) (*more*) 73 S.Ct. 528; 97 L.Ed. 727;
Prior history	*judgments entered in favor of the plaintiffs upheld*, 192 F.2d 987 (http://bulk.resource.org/courts.gov/c/F2/192/192.F2d.987.10483.10484_1.html) (1951)

Holding

In this case, there was a valid claim of privilege under Rule 34; and a judgment based under Rule 37 on refusal to produce the documents subjected the United States to liability to which Congress did not consent by the Federal Tort Claims Act.

Court membership

Chief Justice
Fred M. Vinson

Associate Justices
Hugo Black · Stanley F. Reed
Felix Frankfurter · William O. Douglas
Robert H. Jackson · Harold H. Burton
Tom C. Clark · Sherman Minton

Case opinions

Majority	Vinson, joined by Reed, Douglas, Burton, Clark, Minton
Dissent	Black
Dissent	Frankfurter
Dissent	Jackson

Laws applied

Federal Tort Claims Act

Supreme Court case about the State Secrets Privilege. For the 1878 case about polygamy and religious duty as a defense to criminal prosecution, see Reynolds v. United States.

United States v. Reynolds, 345 U.S. 1 (http://supreme.justia.com/us/345/1/case.html) (1953), is a landmark legal case in 1953 that saw the formal recognition[1] of State Secrets Privilege, a judicially recognized extension of presidential power.

Contents

Overview

Three employees of the Radio Corporation of America, an Air Force contractor, were killed when a B-29 Superfortress crashed in 1948 in Waycross, Georgia. Their widows brought an action in tort seeking damages in federal court, under the Federal Tort Claims Act. As part of this action, they requested production of accident reports concerning the crash, but were told by the Air Force that the release of such details would threaten national security. Because of the failure of the government to produce the documents, a directed verdict in favor of the plaintiffs was granted by the trial court. The judgment was affirmed by the United States Court of Appeals for the Third Circuit. The United States Supreme Court reversed the decision, and remanded it to the trial court. After this, a settlement was reached with the widows, who received an aggregate sum of $170,000 in exchange for a release of liability to the Government.[2]

Issues

1. Are the Judge Advocate General of the United States Air Force and the Secretary of the United States Air Force allowed to assert privilege in the face of a suit brought under the Federal Tort Claims Act and the application for production of documents under Rule 34 of the Federal Rules of Civil Procedure?
2. Does the doctrine in federal criminal cases of letting the defendant go free by dismissing the criminal charges in cases where evidence is not produced by the government apply to federal civil (tort) cases brought under the Federal Tort Claims Act?

3. Was the judgment entered by the District Court under the Federal Tort Claims Act against the United States Government and in favor of the plaintiffs for failure to produce the documents in question proper?
4. Was the affirmation of the judgment of the Third Court of Appeals proper?

Holdings

In this case, there was a valid claim of privilege under Rule 34; and a judgment based under Rule 37 on refusal to produce the documents subjected the United States to liability which Congress did not consent by the Federal Tort Claims Act.[3]

1. As used in Rule 34, which compels production only of matters "not privileged," the term "not privileged" refers to "privileges" as that term is understood in the law of evidence.[4]
2. When the Secretary lodged his formal claim of privilege, he invoked a privilege against revealing military secrets – one which is well established in the law of evidence.[5]
3. When a claim of privilege against revealing military secrets is invoked, the courts must decide whether the occasion for invoking the privilege is appropriate, and yet to do so without jeopardizing the security which the privilege was meant to protect.[6]
4. When the formal claim of privilege was filed by the Secretary, under the circumstances indicating a reasonable possibility that military secrets were involved, there was a sufficient showing of privilege to cut off further demand for the documents on the showing of necessity for its compulsion that had been made.[7]
5. In this case, the showing of necessity was greatly minimized by plaintiffs' rejection of the Judge Advocate General's offer to make the surviving crew member available for examination.[8]
6. The doctrine in the criminal field that the Government can invoke its evidence privileges only at the price of letting the defendant go free has no application in a civil forum, where the Government is not the moving party, but is a defendant only on terms to which it has consented.[9]

In a suit under the Tort Claims Act, the District Court entered a judgment against the Government.[10] The Court of Appeals affirmed.[11] The Supreme Court reversed and remanded.[9]

Facts and background

See also: 1948 Waycross B-29 crash

A military aircraft on a flight to test secret electronic equipment crashed, and certain civilian observers aboard were killed. Their widows sued the United States under the Federal Tort Claims Act and moved under Rule 34 of the Federal Rules of Civil Procedure for production of the Air Force's accident investigation report and statements made by surviving crew members during the investigation. The Secretary of the Air Force filed a formal claim of privilege, stating that the matters were privileged against disclosure under the Air Force regulations issued under R. S. section 161, and that the aircraft and its personnel were "engaged in a highly secret mission." The Judge Advocate General filed an affidavit stating that the material could not be furnished "without seriously hampering national security," but he offered to produce the surviving crew members for examination by the plaintiffs and to permit them to testify as to all matters except those of a "classified nature." In the absence of the documents which the Air Force failed to produce, the trial court directed a summary

judgment for the plaintiffs against the Government. The Appeals Court of the Third Circuit affirmed the decision. The United States appealed to the Supreme Court in certiorari.

The case ***United States v. Reynolds*** involved the refusal of the Government to release reports concerning a B-29 Superfortress crash in 1948.

Opinion

Majority Opinion by Justice Vinson

The majority opinion was written by Justice Fred M. Vinson: These suits under the Tort Claims Act [12] arise from the death of three civilians in the crash of a B-29 aircraft at Waycross, Georgia, on October 6, 1948. Because an important question of the Government's privilege to resist discovery[13] is involved, we granted certiorari.[14]

The aircraft had taken flight for the purpose of testing secret electronic equipment, with four civilian observers aboard. While aloft, fire broke out in one of the bomber's engines. Six of the nine crew members, and three of the four civilian observers were killed in the crash. The widows of the three deceased civilian observers brought consolidated suits against the United States. In the pretrial stages, the plaintiffs moved under Rule 34 of the Federal Rules of Civil Procedure, for the production of the Air Force's official accident investigation report and the statements of the three surviving crew members, taken in connection with the official investigation. The Government moved to quash the motion, claiming that these matters were privileged against disclosure pursuant to Air Force regulations promulgated under R.S. § 161.

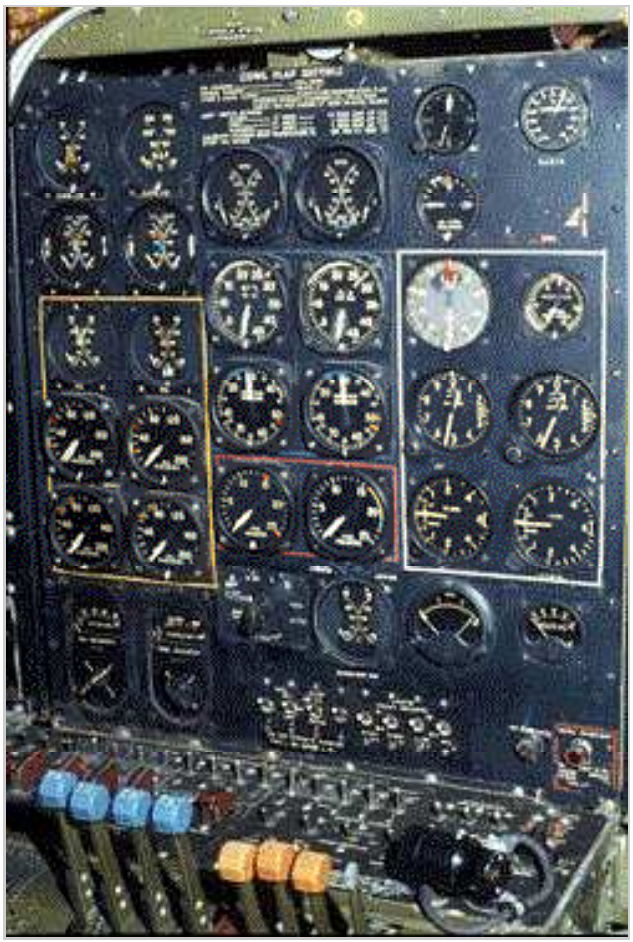
The District Judge sustained plaintiffs' motion, holding that good cause for production had been shown.[10] The claim of privilege under R. S. section 161 was rejected on the premise that the Tort Claims Act, in making the Government liable "in the same manner" as a private individual[15] had waived any privilege based upon executive control over governmental documents. Shortly after this decision, the District Court received a letter from the Secretary of the Air Force indicating it was not in the public interest to disclose the report.

The same affidavit offered to produce the three surviving crew members without cost, for examination by the plaintiffs. The witnesses would be allowed to refresh their memories from any statement made by them to the Air Force, and authorized to testify as to all matters except those of a "classified nature."

The Government declined to produce the documents ordered by the District Court. The Court then ordered a directed verdict in favor of the plaintiffs. A hearing was held to determine the damages which were to be awarded to the plaintiffs. The Court of Appeals affirmed.

We have had broad propositions pressed upon us for decision. The Government has claimed privilege to withhold information in their custody, if it is in the public interest to do so. The Respondents (plaintiffs) have asserted that the executive's power to withhold documents was waived by the Tort Claims Act. Both positions have constitutional overtones. There is no need for the Court to rule on these issues, since the case has a narrower ground for decision.[16][17]

The Federal Tort Claims Act expressly makes the Federal Rules of Civil Procedure applicable to suits against the United States.[18][19] The judgment in this case imposed liability upon the Government by operation of Rule 37, for refusal to produce documents under Rule 34.



The B-29 crashed while testing top-secret electronic equipment.

Since Rule 34 compels production only of matters "not privileged," the essential question is whether there was a valid claim of privilege under the Rule. We hold that there was a valid privilege, therefore the judgment assessed against the United States under Federal Tort Claims Act was in error.

The Claim of Privilege applied to military secrets, and asserted by the Air Force, is well established in law.[20][21][22][23][24][25][26][27] The existence of privilege is conceded by the court in this case,[28] and by the most outspoken critics of government claims to privilege.[29]

The principles involved indicate that the privilege belongs to the Government, and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. The privilege is recognized in English law.[30]

The instant case bears comparison to the privilege against self-incrimination. Too much judicial inquiry into the claim of privilege would force disclosure of the thing the privilege was meant to protect, while a complete abandonment of judicial control would lead to intolerable abuses.

Regardless of how it is articulated, some kind of formula of compromise must be applied here. Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Yet we will not go so far as to say that the court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted. At this time, we cannot escape judicial notice that the country is in vigorous preparation for national defense.

There is nothing to suggest that the electronic equipment, in this case, had any causal connection to the accident. Therefore, it should be possible for the respondents to adduce the essential facts as to causation without any resort to material touching upon the material secrets. Respondents were given as reasonable opportunity to do just that when the petitioner formally offered to make the surviving members available for examination. We think that offer should have been accepted.

The decision of the trial court and appeals court is reversed and remanded.

Minority Dissent

Justice Hugo Black, Justice Felix Frankfurter and Justice Robert H. Jackson filed a dissent that was substantially similar to that made by Judge Maris in Appeal.[11]

Subsequent declassification of documents

The declassified accident report, released in 2000, is available on line, and indicates that the B-29 crashed because a fire started in an engine.[31] This document also reports that the plaintiffs received a settlement of $170,000. The settlement date was effective June 22, 1953, some three months after the Supreme Court ruling.[32] In consideration for the money paid by the government, the case was dismissed with prejudice, meaning all future litigation on this case was forfeited.

After release of the classified documents, new litigation was attempted, based in part, on a complaint that the classified material contained no secret information. Monetary damages were sought as a remedy. The initial new claim was to the Supreme Court for a writ of error in coram nobis, based on the claim that the use of the "secret" label in the original crash report was a fraud on the court. This was an attempt to overturn the settlement agreement of June, 1953. This motion was denied on June 23, 2003 in ***In re Herring***.[33] The case was refiled as ***Herring v. United States*** in the United States District Court for the Eastern District of Pennsylvania on October 1, 2003. The trial court found no fraud in the government's claim of privilege in 1953. In 2005, the Court of Appeals for the Third Circuit upheld the decision in this new litigation, in which District Court determined "there was no fraud because the documents, read in their historical context, could have revealed secret information about the equipment being tested on the plane".[34]

Discussion and criticism of privilege in *Reynolds*

There has been much discussion about the use of government privilege to classify information. On the one hand, there is the need to protect government secrecy. On the other, there is always suspicion that "classified documents" are merely a way to cover-up government malfeasance, or bad faith actions of the executive branch.

Prosser and Keaton

The 1953 Supreme Court decision in ***Reynolds*** is still contentious.

Privilege is the modern term applied to those considerations which avoid liability where it might otherwise follow.[35] As it is generally used, the term applies to any circumstance used to justify or excuse a prima facie tort, such as an assault, battery or trespass. It signifies that the defendant has acted to further an interest of such social importance that it is entitled to protection, even at the expense of damage to the plaintiff. The defendant is allowed freedom of action because his own interests, or those of the public, require it, and because social policy will best be served by permitting it. The privilege is bounded by current ideas of what will most effectively promote the general welfare. The question of "privilege" as a defense arises almost exclusively in connection with intentional torts. Negligence is a matter of risk and probability of harm; and where the likelihood of injury to the plaintiff is relatively slight, the defendant will necessarily be allowed greater latitude than where the harm is intended, or substantially certain to follow. it is the bare value of the respective interests involved and the extent of the harm from which the act is intended to protect the one as compared with that which it is intended to cause to the other which determines the existence or nonexistence of the privilege.[36]

The relative social value given to an interest which the defendant seeks to further can affect the nature and extent of a privilege. Occasionally, the defendant may act at his peril if he makes a mistake of fact or law; at other times, an actor is justified in acting on the basis of what the facts reasonably appear to be. At other times, the defendant is justified so long as he was acting in good faith. Or, the privilege may be regarded as absolute in the sense that the court will not permit an inquiry into motive or purpose, since this could result in subjecting the honest person to harassing litigation and claims. When no inquiry is permitted into motive or purpose, it is sometimes said that defendant has an absolute privilege; when the defendant can act in either good or bad faith, with impunity, it is more properly called "immunity" rather than "privilege".[37]

Judiciary Hearing, 2008

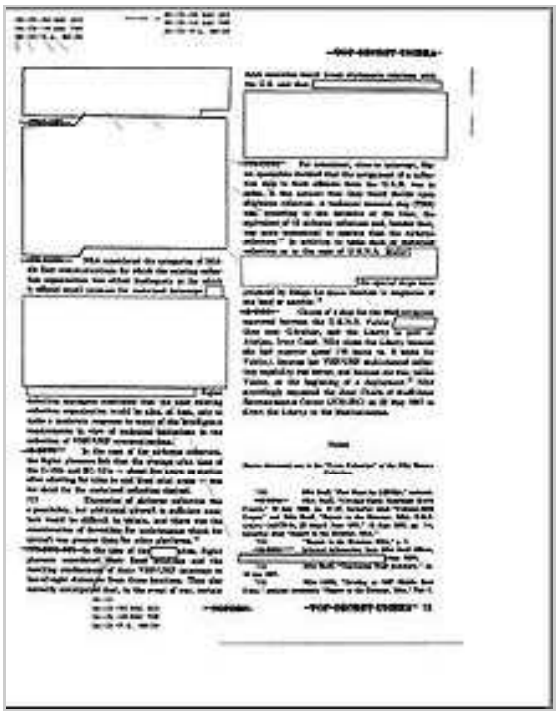
Many commentators have alleged government misuse of secrecy in the wake of the Supreme Court decision in the case of ***Reynolds***. Senator Leahy in his opening remarks for the Senate Judiciary Committee's February 13, 2008, hearing on the State Secrets Privilege called the Third Circuit's decision in ***Herring v. United States*** "a little mystifying".[38] The hearing featured testimony from several experts in the field of government privilege, and their testimony is illuminating.

The Honorable Carl J. Nichols

Testimony of Carl Nichols, Deputy Assistant Attorney General Civil Division of the Department of Justice.

The state secrets privilege serves a vital function by ensuring that private litigants cannot use litigation to force the disclosure of information that, if made public, would directly harm the national security of the United States. The privilege has a long standing history and has been invoked to protect such information. The privilege is firmly rooted in the constitutional

authorities and obligations assigned to the President under Article II to protect the national security of the United States.



Typical redacted, de-classified "secret" document released by the government.

Accountability is preserved by a number of procedural and substantive requirements that must be satisfied before a court may accept an assertion of the state secrets privilege. The Supreme Court in ***Reynolds*** held that such information should be protected from disclosure when there is a "danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged." The Court noted that the privilege was absolute, even if the need in the plaintiff was compelling. The Fifth Circuit has noted, "the greater public good - ultimately the less harsh remedy" is to protect the information from disclosure, even where the result might be dismissal of the lawsuit.[39]

It is well established that the President is constitutionally charged with protecting information relating to national security. As the Supreme Court has stated, "[t]he authority to protect such information falls upon the President as the head of the Executive Branch and as Commander in Chief." [40] The states secrets privilege is not a mere "common law" privilege. Instead the courts have long recognized the privilege has a firm foundation in the Constitution as was noted in ***United States v. Nixon*** [41] where the Supreme Court noted the claim of privilege "relates to the effective discharge of the President's powers, it is constitutionally based." [42]

In the case of ***Herring v. United States***, where it was disclosed that the de-classified accident report from *Reynolds* was reviewed, Judge Davis found, "[d]etails of flight mechanics, B-29 glitches, and technical remedies in the hands of the wrong party could surely compromise national security," and thus "may have been of great moment to sophisticated intelligent analysts and Soviet engineers alike." [43] The Court of Appeals for the Third Circuit agreed.[44]

The assertion of the privilege is not lightly entertained, and there are multiple administrative hurdles which have to be overcome once it is chosen to be asserted. There are multiple internal reviews, and the court has the final oversight. Still, the Executive Branch is given the utmost deference, and the courts cannot get into the business of second-guessing national security and foreign policy questions.[38][45] [46]

The Honorable Patricia M. Wald

Testimony of Patricia M. Wald, Former Judge, United States Court of Appeals for the District of Columbia Circuit (1979–1999).

The states secrets privilege is a common law privilege originating with the judiciary which enunciated its necessity and laid down some directions for its scope in cases going back to the nineteenth century but more recently highlighted in *United States v. Reynolds*. In the criminal area, the Classified Information Procedures Act (CIPA) provides a relevant model for alternatives to full disclosure of classified information which allow a prosecution to continue while affording a defendant his or her due process rights. The time is now ripe for such legislation in the civil arena; litigants and their counsel are confused and unsure as to how to

proceed in cases where the government raises the privilege; the courts themselves are confronted with precedent going in many different directions as to the scope of their authority and the requirements exercising it.

It is my opinion that the Freedom of Information Act (United States) should allow a judge to review the material and make a determination whether the assertion of privilege is warranted. The goal should be flexibility in the interpretation, leaving the determination to the judge in the federal court.[38]

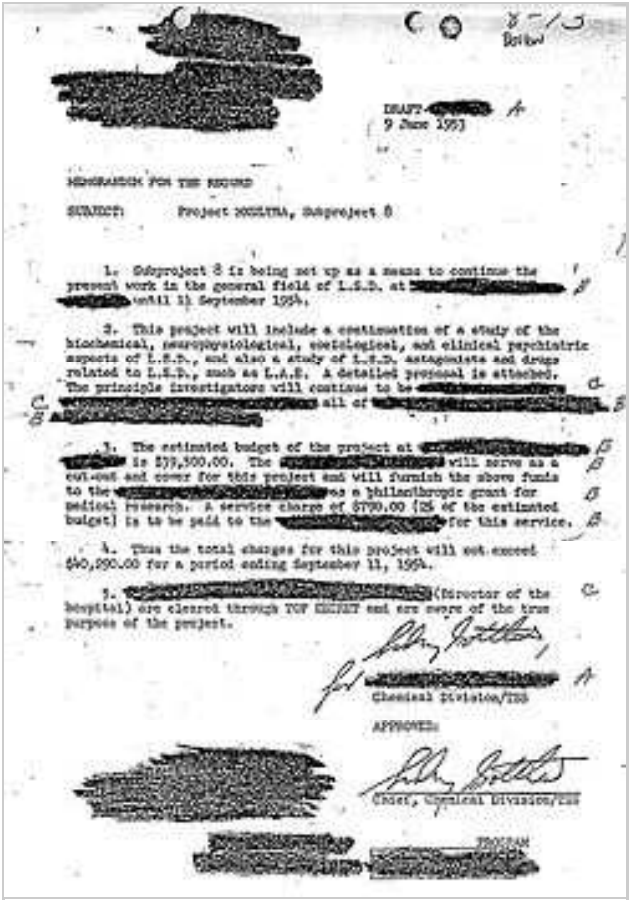
Louis Fisher

Testimony of Louis Fisher, Constitutional Law Expert, Library of Congress.

A "state secret" refers to any information that, if disclosed publicly, would be reasonably likely to cause significant harm to the national defense or foreign relations of the United States.[47] Few judges, reading this language, will be likely to challenge the government. I would prefer to add a second sentence to the definition: "The assertion of a state secret by the executive branch is to be tested by independent judicial review."

Concerning "immunity", I would like to see a third sentence added to the definition: "The 'states secrets privilege' may not shield illegal or unconstitutional activities." I see no reason privilege should sanction violations of statutes, treaties, or the Constitution.

Our experience with states secrets cases underscores the need for judicial independence in assessing executive claims.[38]



DRAFT [redacted]
9 June 1953

MEMORANDUM FOR THE RECORD

SUBJECT: Project [redacted], Subproject 8

1. Subproject 8 is being set up as a means to continue the present work in the general field of L.S.D. at [redacted] until 15 September 1954.

2. This project will include a continuation of a study of the biochemical, neurophysiological, sociological, and clinical psychiatric aspects of L.S.D., and also a study of L.S.D. antagonists and drugs related to L.S.D., such as L.A.E. A detailed proposal is attached. The principle investigators will continue to be [redacted] all of [redacted]

3. The estimated budget of the project at [redacted] is $39,500.00. The [redacted] will serve as a cut-out and cover for this project and will furnish the above funds to the [redacted] as a philanthropic grant for medical research. A service charge of $790.00 [2% of the estimated budget] is to be paid to the [redacted] for this service.

4. Thus the total charges for this project will not exceed $40,290.00 for a period ending September 15, 1954.

5. [redacted] (Director of the hospital) are cleared through TOP SECRET and are aware of the true purpose of the project.

[redacted]
Chemical Division/TSS

APPROVED:

[redacted]
Chief, Chemical Division/TSS

[redacted]

Another redacted government document, this from CIA 1953 LSD experiments.

Michael A. Vatis

Testimony of Michael A. Vatis, Partner, Steptoe & Johnson LLP.

There are two bedrock principles which are in natural tension. Secrecy in government can be an absolute necessity to the protection of our national security. This is especially so today, where the surveillance of terrorist groups is essential.

At the same time, the second principle is equally true. Secrecy in government is antithetical to democratic governance. Too much secrecy shields officials from oversight and inevitably breeds abuse and misconduct; it thus can fatally weaken the system of checks and balances that defines our system of government.

Add to this the corollary: there are secrets, then there are secrets. Too often, information deemed classified by the Executive Branch merely echoes what was in last week's newspapers. Classified material is frequently released to the public for strictly political reasons. In truth, many "classified" documents have no reason to be called such.[38]

See also

- List of United States Supreme Court cases, volume 345
- *Jencks v. United States*
- Declassification
- Classified information in the United States

References

1. ^ ***United States v. Reynolds***, 345 U.S. 1, paragraph 8 (http://bulk.resource.org/courts.gov/c/US/345/345.US.1.21.html) (1953). "the privilege against revealing military secrets, a privilege which is well established in the law of evidence"
2. ^ http://www.fas.org/sgp/othergov/reynoldspetapp.pdf See pages 3-10.
3. ^ 345 U. S. 2-12
4. ^ 345 U. S. 6
5. ^ 345 U. S. 6-7
6. ^ 345 U. S. 7-8
7. ^ 345 U. S. 10
8. ^ 345 U. S. 11
9. ^ ***a*** ***b*** 345 U. S. 12
10. ^ ***a*** ***b*** 10 F. R. D. 468
11. ^ ***a*** ***b*** 192 F 2nd 987
12. ^ 28 U. S. C. sections 1346, 2674
13. ^ Civil Rules of Procedure Rule 34
14. ^ 343 U. S. 918
15. ^ 28 U. S. C. section 2674
16. ^ Touhy v. Ragen, 340 U. S. 462 (1951)
17. ^ Rescue Army v. Municipal Court of Los Angeles 331 U. S. 549, 331 U. S. 574-585 (1947)
18. ^ 28 U. S. C. (1946 edition) section 932
19. ^ United States v. Yellow Cab Co., 340 U. S. 543, 340 U. S. 553, (1951)
20. ^ Totten v. United States 92, U. S. 105, 92 U.S. 107 (1875)
21. ^ Firth Sterling Steel Co. v, Bethleham Steel Co., 199 F 3rd (1912)
22. ^ Pollen v. Ford Instrument Co., 26 F. Supp. 583 (1939)
23. ^ Cresmer v. United States, 9 F. R. D. 203 (1949)
24. ^ Bank Line v. United States, 68 F. Supp. 587 (1946)
25. ^ 8 Wigmore on Evidence (3rd ed.) section 2212 (a), p. 161 and section 2378 (g) (5) at pp. 785 et seq
26. ^ 1 Greenleaf on Evidence (16th ed.) section 250-251
27. ^ Stanford, Evidentiary Privileges Against the Production of Data Within the Control of Executive Departments, 3 Vanderbilt L. Rev. 73, 74-75 (1950)
28. ^ 192 F 2nd 987, 996
29. ^ Wigmore, ibid.
30. ^ case law reviewed in Duncan v. Cammell, Laird & Co. [1942] A. C. 624
31. ^ http://www.fas.org/sgp/othergov/reynoldspetapp.pdf
32. ^ ibid. p.10
33. ^ In re Herring 539 U. S. 940 (2003)
34. ^ ***Herring v. United States***, 424 F.3d 384, paragraph 13 (http://bulk.resource.org/courts.gov/c/F3/424/424.F3d.384.04-4270.html) (2005).
35. ^ Second Restatement of Torts, section 10.
36. ^ Bohlen, Francis H. (1926). "Incomplete Privilege to Inflict Intentional Invasions of Interests of Property and Personality" (http://jstor.org/stable/1329309) . *Harvard Law Review* (The Harvard Law Review Association) **39** (3): 307–324. doi:10.2307/1329309 (http://dx.doi.org/10.2307%2F1329309) . http://jstor.org/stable/1329309.
37. ^ Keeton, W. Page (1984). *Prosser and Keeton on the law of torts* (5th ed.). St. Paul, MN: West Publishing. pp. 108–110. ISBN 0314744428.

^ ***a*** ***b*** ***c*** ***d*** ***e*** United States Senate Committee on the Judiciary (February 13, 2008). "Examining the State

38. ^ **a b c d e** United States Senate Committee on the Judiciary (February 13, 2008). "Examining the State Secrets Privilege: Protecting National Security While Preserving Accountability" (http://judiciary.senate.gov/hearing.cfm?id=3091) . Press release. http://judiciary.senate.gov/hearing.cfm?id=3091. Retrieved 2008-04-03.
39. ^ Bareford v. General Dynamics Corp., 973 F 2nd 1138, 1144 (5th Circuit, 1992)
40. ^ Department of the Navy v. Egan, 484 U. S. 518,527 (1988)
41. ^ United States v. Nixon 418 U. S. 683 (1974)
42. ^ Idem. at 711
43. ^ Herring, 2004 WL 2040272
44. ^ Herring v. United States, 424 F 3rd 384 (2005), cert den, 547 U. S. 1123 (2006)
45. ^ Kasza v. Browner, 133 F 3rd 1159, 1166 (9th Cir. 1998)
46. ^ Al-Haramain Islamic Foundation, Inc. v, Bush, 507, F 3rd 1190, 1203 (9th Cir. 2007)
47. ^ S. 2533, section 4051

Further reading

- Siegel, Barry (2008). *Claim of Privilege: A Mysterious Plane Crash, a Landmark Supreme Court Case, and the Rise of State Secrets*. New York: Harper. ISBN 0060777028.
- "Daughters of the Cold War" (http://www.legalaffairs.org/issues/January-February-2004/story_freedman_janfeb04.msp) by Michael Freedman. *Legal Affairs, Jan/Feb 2004*. An easy-to-read summary of the case.

External links

- 345 U.S. 1 (http://supreme.justia.com/us/345/1/case.html) (1953) Link to full text opinion on Findlaw.com
- Summary of case from OYEZ (http://www.oyez.org/oyez/resource/case/1535/)
- "Supreme Court Filing Claims Air Force, Government Fraud in 1953 Case," via Federation of American Scientists (http://www.fas.org/sgp/news/2003/03/iaf031403.html)
- Herring v USA (http://www.fas.org/sgp/jud/herring0905.pdf) - Decision finding there was no fraud in the Government's 1953 claim of privilege.
- Declassified case appendix which contains the allegedly sensitive documents, via Federation of American Scientists (http://www.fas.org/sgp/othergov/reynoldspetapp.pdf)