

HW, having been etc.

1. I am the plaintiff in C.A.75-1996.

2. I have read the affidavit of 2/20/76 by FBI Special Agent Thomas L. Wiseman used as the basis ~~for the interrogatories~~ ^{of Mr. G. J. O'Connell to the} for the interrogatories ^I filed in this case. ~~non-~~

3. The interrogatories were filed for the purpose of establishing compliance under the FOIA. ~~with the request and complaint.~~ ^{re} No single question in ~~this~~ interrogatories does not serve this end. - *Add here*

4. There is broad and permeating non-compliance ~~with the request~~ in this case as in every other one filed by me for public information in the files of the Department of Justice and Federal Bureau of Investigation. This prior history of undeviating non-compliance is set for in an affidavit filed and never rebutted or even denied in CA 75-226. ^{#5} In every case there was a denial followed by partial compliance that in turn was followed but farther compliance, the delivery of that of which the existence had earlier been denied. *In only one case of six years ago did full compliance follow the initial denial, then of then the existence of the*

Memo brought.

5. In this case the FBI denies having what I know it does have and is covered by the request and complaint. The interrogatories, if answered honestly and fully, will lead to this public information the FBI ~~always~~ claims not to have

6. ~~XXXXXX~~ Counsel for defendant told us on February 11 he would be moving to dismiss based on the affidavit by FBI Agent Wiseman, then represented as drafted. In and after court Mr. Dugan protested the interrogatories as uncalled for. After court I personally told him that each and every one addressed non-compliance and if he wanted me to take the time I'd explain each one to him. He declined the offer and said he would file this affidavit and move to dismiss as moot.

7. This affidavit does not meet the affirmative burden of proof of compliance. No other affidavit has been supplied.

8. This affidavit also carefully avoids any statement of first-person knowledge in order to avoid a charge of perjury. I have regularly charged and proven perjury in an effort to nullify the law and its purposes. ^{FBI} In no single case has there been a ¹ refutation of these proven charges. Were the ~~same~~ statements contained in Mr. Wise-

man's affidavit ~~submitted~~ made as a matter of personal knowledge they would be false and where material could be alleged to be perjurious.

9. In the affidavit itself there are false statements, evasions, misrepresentations and non-responses. Of the devices used to accomplish this end the first and most common was to ~~rewrite~~ my request. When this was indicated in Deputy Attorney General Tyler's letter of December I immediately wrote Mr. Tyler ^{by certified mail} calling this to his attention and informing the Department of the nature of my request, not its altering and limiting of my request. As of today the Department has not responded to my request. Instead it pretends to respond to an entirely different one it pretends I made. However, there was not even acknowledgement of my letter, including the correction to Mr. Tyler until 2/19 and then it was entirely ignored. The time lapse was about two and a half months.

10. At no point does Mr. Wiseman identify any files he searched ~~as~~ making checking impossible and nullifying the requirement that the government meet its burden of proof. At no point is it possible to know which files if any Mr. Wiseman has in mind. At no point is any single file identified.

11. This despite the FBI having ~~been~~ given me proof of the existence of countless other pages of records essential to the existence of these I have been provided. This is true of all the scientific tests. The transparent purpose of having Mr. Wiseman/s rather than one with first-person knowledge execute this affidavit thus is apparent- to avoid a charge and the proof of perjury still another time and by the same part of the FBI. However, I believe and therefore aver that Mr. Wiseman's training as an FBI agent requires that he know from what he personally has given me that there have to be countless other relevant records that he did not give me. He therefore has personal knowledge of the continued and extensive withholding what is called for in this case.

12. With respect to other items of evidence called for in this case the same is true. Mr. Wiseman's training tells him that other kinds of evidence have to be in FBI files and readily accessible or there have to be records of the divesting of the files of these records. ¹³ To cite but one further instance, there are the photographs requested. The FBI actually claims to have no single picture of the scene of the crime. ¹ It claims

Page 1, add at end of 3. Assuming honesty of purpose of defendant and defendant's counsel they can also serve to help locate the public information sought and not provided.

to have no single picture of an allegedly vital piece of the evidence, a windowsill, showing either the complete windowsill or identifying it as either a windowsill or the one in question to the exclusion of all others. Yet another FBI agent, ^{Robert Frasier,} has sworn to the identification of this windowsill and to the making of tests the results of which are called for in this case and have not been supplied - microscopic comparison.

14. That agent, Robert Frasier, testified before the Warren Commission on the manner in which these kinds of tests are conducted and went into considerable detail about how pictures taken by comparison microscopes are used.

15. In this case the FBI has supplied photomicroscopic photographs where they are not essential evidence and where they do not relate to solving the crime but none basic to even investigating the crime. However, this also does establish the use of photomicroscopic comparison pictures, called for in this case and not provided with regards to the windowsill and other ballistics evidence.

16. This same Agent Robert Frasier also swore ^{in 1968} to having made a comparison between bullets test fired from the alleged murder weapon and the actual fragment of the fatal bullet removed from the body of the victim. Yet these pictures, too, were not provided.

17. In a previous case, G.A.75-226, it is established that ~~there was~~ a series of early retirements occurred within the FBI in which all those with first-person knowledge and/or who had executed earlier affidavits departed the Bureau. These agents were all in their 50s. None retired from disability, one retired as soon as the first steps were taken in that case and by the most remarkable of coincidences two others, ^{including Frasier,} retired on the very same day. That day also just happened to be the very day after FBI Director Clarence Kelley signed a false and deceptive letter having to do with precisely the kind of evidence called for in this case, ^{and then and now still withheld} The falsity of that letter, which recounted the supposed work of these same agents, was established under oath in court ^{at that time} and was not ^{it} and remains unrefuted.

18. I believe and therefore aver that even with the early departure of the agents who performed some or all of the tests called for in this case Mr. Wiseman

has personal knowledge from his training and experience that the public information sought a) exists; b) that it is withheld and c) where it should be and how to locate it.

an FBI charge made
19. There was an extradition procured ^{specific} and a prosecution planned based on this evidence. Mr. Wiseman's affidavit does not recount a search of the files in those ~~the~~ ^{three} cases in court to determine whether the public information sought is in these files or is referred to in any of the records relevant to those procedures.

20. Still another example of where duplicates might be found is Divisions of the Department of Justice. Three have been involved in this, the Criminal, ~~Civil and~~ ^{Civil} and Civil Rights Divisions. Mr. Wiseman does not attest that having failed to find what he knows has to exist in Bureau files he asked these divisions if they have the relevant records.

21. There was a conspiracy charge filed by the Bureau in Birmingham, Alabama and the case itself was in Memphis, Tennessee. Mr. Wiseman's affidavit does not attest to a search in these or any other field offices. Nor in New Orleans, where on information and belief I declare some some of the evidence sought in this case was sent.

22. There are records of the shunting back and forth of some of this evidence. ~~Some~~ I have copies of some, not from the FBI and not delivered by it in this case. Mr. Wiseman's affidavit does not report the search of the records of this shunting around to determine if such a search would disclose where ^{any of} that which he has not delivered is or may be.

23. I do not believe this is necessary to locate what is sought and is withheld. I cite these as instances of failure to meet the requirements of the law and requirements of a search and note again that at no point and in no way does Mr. Wiseman identify and files he did search. It is obvious and my previous experience establishes that the search of the wrong files will ^{yield} yield nothing, as this same experience establishes ^{in any of my cases} that ~~the Bureau never~~ provided a first-person affidavit when that is within its capabilities.

24. With regard to other public information sought in this case I know beyond

of its existence in the files of the FBI. To cite one example, pictures of the scene of the crime. It is not merely that nobody can believe that the FBI investigates a crime of this nature, also the most costly crime in the nation's history, and has no single picture of the scene of the crime. ~~NEVER~~ Rather is it that I can identify dozens of these pictures. However, were I now to make this identification ~~the~~ previous experience is undeviating that the FBI will not acknowledge having more ~~and non-compliance will not have been fully established.~~ *Insufficient follow.*

25. The same is true of pictures or sketches of other suspects. What is incredible here is that Mr. Wiseman's affidavit does not acknowledge the receipt from me, personally, of one such set or that the FBI has made a public statement ~~as one,~~ *this and another* reported in the newspapers and in my files and published writing.

26. The same is true of arrests. There was even an apology to one person who was arrested, ~~and~~ again reported in the press.

27. The immediate purposes of this affidavit are to ~~substantiate~~ respond to that of Mr. Wiseman and to inform the court that it is inadequate and is knowingly inadequate; and to show the court that the interrogatories filed are not frivolous, not excessive, not for any ulterior purposes of any kind but are for the stated purposes of establishing non-compliance and effecting compliance and the delivery to me of what is called for in this case and is in the possession of the FBI.

28. This affidavit is being filed at the first moment possible after I received a copy of Mr. Wiseman's affidavit.

29. I am in a post-phlebotic if not phlebotic condition and have impaired circulation. These conditions limit my physical capabilities. I cannot now drive to Washington. The result is that I cannot work rapidly enough to inform both this court and counsel for defendants as fully as I will before the scheduled calendar call of March 15, 1976.

30. However, I will begin the preparation of an affidavit addressing each paragraph of Mr. Wiseman's affidavit and showing that each is either a deception, a mis-

representation, an evasion, an irrelevancy or a plain false swearing. I do not make these statements lightly. As an example, I cite Mr. Wiseman's affidavit beginning on page 8 beginning with Answer to Interrogatory No. 29. The statements sworn to by Wiseman therein and following are false in relating to what he gave me; evasive in citing the Deputy Attorney General's unsworn letter (which does not meet the burden of proof); and irrelevant, incompetent and immaterial as well as just plain wrong in attributing motive to me (a matter of which Mr. Wiseman can have no knowledge in any event); ridiculous in pretending that published and publicly-available pictures are somehow secret, confidential sources that have to be protected and are immune; and contemptuous in not responding in not admitting whether or not the FBI has what is sought and is clearly understood as sought ("photographs which may or may not be in the possession of the FBI").

irrelevant, incompetent and immaterial as well as just plain wrong in ^(falsely) attributing motive to me (a matter of which Mr. Wiseman can have no knowledge in any event); ridiculous in pretending that published and publicly-available pictures are somehow secret, confidential sources that have to be protected and are immune; and contemptuous in not responding in not admitting whether or not the FBI has what is sought and is clearly understood as sought ("photographs which may or may not be in the possession of the FBI").

31. Mr. Wiseman lays dereliction to me without justification and he personally has frustrated the keeping of the Deputy Attorney General's promise of December 2, 1975, to make my examination of some of what is called for possible. In combination with what will follow I believe they are an effort to mislead if not to deceive this court. He ^{attributes to} alleges of me a failure "to provide written assurances that he would pay the cost of such a special search," for pictures. Aside from the frivolity, the pretense that the FBI does not have in one file pictures of the scene of the crime or of suspects, there is the question of fact. I have a history of keeping non-interest bearing deposit accounts to pay for ~~such payments~~ copies and in fact never get receipts for charges made against it and have never asked for an accounting from the government. This goes back ten years and is within the knowledge of the Department of Justice and the office of the United States Attorney, which files this affidavit. I have always paid the Department promptly whatever it asked of me. However, the Department is supposed to notify me of its estimate of the cost of the search and the amount it wants in advance payment. Prior to the first calendar call in this case when ^{my} counsel was informed of the cost of one such search he sent a check by return mail and I repaid him in the same manner. I note for the record

We paid the sum Mr Wiseman asked also promptly,

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and for the information of this court that whereas we were told the search would take a week, much more than a week has passed and we have not been notified that the search has even been begun, let alone completed.

32. Prior to Mr. Dugan's filing this affidavit Mr. Lesar and I discussed precisely this ^{question} point with him. It was immediately following the calendar call of February 11. We did assure him that we would make payment under precisely the conditions already recorded between us and his client but had to know the amount for which to make the check. To this day we have not been informed. I have not heard a word and Mr. Lesar tells me he has not.

33. The question came up when Mr. Dugan claimed mootness. We laughed and told him of having paid for a search not made, for copies not offered, which means the opposite of mootness. We also told him of other such responses due to be made and as of this moment still not made, from other Divisions. Mr. Dugan asked and we gave him assurance of payment once we knew the sum to be paid. Obviously, without knowing this we can make no payment. But we did as we always have, provided both assurance and payment.

34. There thus is no basis for Mr. Wiseman's statements and to Mr. Dugan's personal knowledge ~~is not~~ *they are untrue* -

35. To Mr. Wiseman's and Mr. Dugan's personal knowledge the defendant has frustrated every effort we have made to get together with Mr. Wiseman personally, going back to our receipt of the Deputy Attorney General's letter stamp dated December 1, 1975. Because of my physical limitations I asked Mr. Lesar to arrange with ~~Mr.~~ ^{Mr.} Wiseman for me to be ^{able} ~~able~~ to examine what is described as already collected in Mr. Tyler's letter (i.e., "several hundred photographs in the Bureau files of Dr. King's clothes, the inside of the room..."). On several occasions when I knew I would be in Washington and asked Mr. Lesar to phone Mr. Wiseman - extending over a period of several months - Mr. Wiseman always claimed he did not have time.

36. I reported this to Mr. Dugan in our aforementioned conference after the calendar call of February 11. His initial response was "I cannot control my client."

I then several times asked him to do no more than use his "good offices" to try to arrange a meeting between Mr. Wiseman and me. I knew I would have to return to Washington for medical purposes the following week and so informed Mr. Dugan. Mr. Lear went farther and said that if the amount of material collected was larger than could be examined following the meeting of this medical need scheduled for the first thing in the morning, I could remain overnight with him to accommodate the defendant by cleaning all that up at one time. Mr. Dugan did promise to use his "good offices" and let us know. ~~XXXXXXXXXXXXXXXXXXXX~~

#37.

36. It is thus apparent that defendants and defendant's counsel have arranged a situation which not only frustrates compliance but also frustrates my doing what they ask of me, ^{They} and then make ^{spurious} charges against me because I have not done what they have made it impossible for me to do.

37. This is consistent with a long history. My initial request is now ~~more~~ more than five years old. The beginnings of this suit are about a year in the past. The appeal was not even acknowledged for six months and, in fact, was never responded to, which caused the suit to be filed. After the filing of the complaint there was a partial, minuscule release, ^{paid for promptly -} in the ensuing two and a half months nothing else has been provided and every effort I have made to effectuate a meeting with Mr. Wiseman has been frustrated - even my request ^{of Mr. Dugan} that Mr. Wiseman pick a date of his convenience, regardless of my own and my medical and physical limitations. I told Mr. Dugan this and I also

37. Prior to receipt of a copy of Mr. Dugan's Objections and the attached copy of Mr. Wiseman's affidavit, at my request Mr. Lear wrote Mr. Wiseman. His letter, a copy of which is attached, repeats some of this history.

asked Mr. Lear to so inform Mr. Wiseman.

This is also true of a second appeal filed after objection to amending of the complaint - the appeal was never responded to.

40. I believe and therefor aver that what has been provided by defendants to this court to the knowledge of defendants and defendant's counsel is untrue in most basic allegation; is not responsive; is evasive; does not meet the obligations and duties imposed by the law on defendants; and is part of a continuing official effort to frustrate and nullify the law and to deny me my rights under it. With defendant's counsel continuing to talk of mootness when he knows there has not been minimal compliance in my opinion represent this continuing official effort to deny me my rights because I personally have informed him of the widespread and permeating non-compliance, including no delivery by one Division and not even a response from two others, aside from the herein documented non-compliance by the FBI.