Jim, suggestions for response or opposition to Dugans 10/27/76 10/31/76

This is an Alice in Wonderland case in which defendant's Memorandum of Points and Authorities filed October ~~27~~ 27 is Through the Lookingglass.

It is the exemplification of basic Orwell, that control of the past enables control of the future.

It is the practise of Poe's Purloined Letter in which defendant pretends not to see what is in the most conspicuous and open place, on the table of the record in this case.

The Defendant's Memorandum of Points and Authorities, faithful to the long record in this case, is characterized by unreality, ~~x~~ infidelity to fact. ~~[illegible]~~ It is based on misrepresentation, evasion, non-responsiveness and distortion to the extent that it flies into the face of the testimony of defendant's own witnesses.

~~[illegible]~~

It is but the most recent in a series of the defendants efforts to misue this Court, the processes of the law and the language and intent of the act to perpetuate non-compliance and deny the plaintiff his unquestioned rights under the Act.

Consistent with the unreality of the defendant's claim to "good faith" and "due diligence" is the misrepresentation that this case dates to December 23, 1975. It actually dates to March 1969, when the plaintiff filed ~~[illegible]~~ those requests that are still not complied with.

There is no reference in this Memorandum of Points and Authorities to the plaintiff's request of April 15,1975. There has not been compliance with that request. Plaintiff's proofs of this remain without contest. Plaintiff's charges that there has been false swearing to compliance with this request and to the existence of records called for by it and still withheld after a year and a half remains without response or challenge. When the plaintiff sought this proof under discovery plaintiff's motives were misrepresented and the contents of what the plaitiff sought under discovery were entirely misrepresented. Aside from thiswhat the plaintiff sought under discovery beginning with the plaintiff's motion of May 5, 1975 - a motion that remains without response after almost six months -

clearly exists in the defendant's files, clearly is covered by the requests in this instant case, clearly is readily retrievable without time-consuming search and after all this time remains withheld. Those 25 numbers volumes already compiled by the FBI and the relevant three boxes of indices are within the plaintiff's requests of March 1969 and April 15,1975. By one device after another the defendant refuses to supply them. The reason is obvious. They will prove th this Court the deliberateness of non-compliance that takes its doctrine from Alice in Winderland, Orwell and Poe.

The defendantss present proposal is a request of this Court that it become party to the defendant's clear intention and long record of violating the letter and the spirit of the Act. This proposal includes a request that ~~xxx~~ seven and a half years be regarded as inadequate time for compliance when the law says 10 days. It includes the request that it be given an added six months after which "if the FBI has not fully processed the King assassination file, we will advice the Court of the progress of what additional time is necessary." This is a clear forecast that after a full eight years from the time of the plaintiff's first requests, a full two years after the uncompliedwith request of April 15,1975, there still will not be compliance.

This language is false and ptetentious in the representation that the FBI is the defendant in this instant case. It makes no reference to the files/of other of the Department's components that are within the requests and remain withheld. The Plaintiff's evidence on this remains without dispute. in the possession

Whatever the defendant may mean by "processed" that is not the point or the end. The question ~~is~~ is of compliance. There is no single reference to or promise of compliance in the defendant's Memorandum of Points and Authorities. The plaintiff's experience in this and all other cases is that there is never "good faith" or "due diligence" in compliance. The refusal to provide either those 29 compiled volumes or the three boxes of relevant indices six months after the pliantiff proved their exietnce and relevance is merely one of the countless illustrations that remain without any dispute. The first records given to the plaintiff were "processed" but they are both incomplete and partly withheld by extensive and unjustified and unjustifiable maskings. For more than six months, after

the plaintiff's complaints, after instructions from this Court and even after the plaintiff presented Director Kelley's statement that such maskings as those complained about are wrong and may not be practised in cases like this instant case they that withheld information remains withheld and followingthe filing of these meaningless promises of pie in the sky of the far-distant future are still practised.

There is no such thing as "the King assassination file." There are an admitted 203,500 relevant records only 2,3500 of which are in Washington. Of these not all are in the possession of the FBI if today even a majority of them are, from the uncontested evidence in this instant case. This evidence proves a constant shuffling of the FBI's files to the end that any component at any time may claim not to have possession of them. There is no such thing as an FBIHQ "King assassination file," as the plaintiff has been forced to prove in his efforts to obtain compliance. It is and has been the defendant's pretense that a selection of the records found in the FBIHQ file index constitutes compliance. However, it is also the testimony of the defendant's own witnesses that most of the relevant records are not in Washington at all. On this the plaintiff's testimony, that most of the relevant records of the investigation are in the Memphis Filed Office, remains without dispute. It was not questioned on cross-examination.

Yet even these meaningless promises are not claimed to constitute either compliance or even the promise of compliance. They are limited by the defendant's own prognostication on non-compliance, that after six more month the defendant will ask of this Court "what additional time is necessary."

The record in this case is clear that should all the relevant records be "processed" within six months and copies provided to the plaintiff there still will not be compliance. The Defendant's processing is a means of perpetuating non-compliance. From the first those few records provided the plaintiff have been made imcomplete by full and partial withholdings. These consist of withhold what is admittedly called for on the ground that even after reaching it with regard to one item of the requestsit has not, after all this time, been reached in the processing of another item of the requests. These withholdings include names well-publicized on the spurious claim of the protection of privacy. The

first proof of this in the record is now about six months old. It is the masking from an Airtel of names published in all the newspapers and news and many other magazines, in books including the plaintiff's, and broadcast all around the world by all electronic media. It is the names of those subpoenaed as witnesses in the Tennessee prosecution, of those who sold or were witness to the selling of the so-called death rifle. All of this and much more that remains entirely withheld is in the public proceeding in the court of Shelby County, Tennessee in the 1969 proffer of proof in the guilty-plea hearing. These withholdings include the scientific tests clearly specified in the requests and Complaint in this instant case. They continue, in total disregard of the directives of this court. One of the more recent examples is in those records delivered to the plaintiff on the day after the filing of the defendant's Memorandum of Points and Authorities. Two similar examples of this are the April 5, 1968 teletype from the FBI's New York Field Office and the April 8 teletype from the Chicago Field Office, both addressed to the Director and filed offices. The first relates to the earlier arrest of policemen who were members of the extremist Minutemen, the second to the dismissal of Chicago policemen who were members of the racist Ku Klux Klan. Both cases were widely and extensively publicized prior to the April 4,1968 assassination of Mr. King. The plaintiff has extensive files of what was published contemporaneously. Yet all this is withheld as of the day after the meaningless promises of the defendant's Memorandum on Points and Aithorities in which there is the claim of both "good faith" and "due diligence." There is not even the claim to an exemption in what was provided to the plaintiff on October 28. There is, however, repetitious proof of the false swearing by SA Thomas Wiseman and the misleading of this Court by the defendant's counsel, both of whom assured this Court that there never was any other suspect. The first 10 percent of the records provided the plaintiff on October 28, 1976, provide still new proofs of thi unrelieved false swearing. Using these records as an illustration, all except two refer to suspects not James Earl Ray.

There is no single instance in which the defendant has provided an unmasked copy of a single record after the plaintiff proved there was no basis for any masking. Masking thus becaemes a separate ebgine for perprtuating non-compliance. Masking is a means of

the defendant's own expert witnesses attest that most of the records are stored.

The misrepresentation at the top of page 3, whteher or not it was genuine on October 8, 1976, cannot be genuine since then because it was discussed between counsel for both sides soon thereafter. Although the plaintiff has reason to believe that the defendant did give copies of "items relating to the Martin Luther King assassination ...to other persons" this was not the plaintiff's testimony on October 8, 1976. The plaintiff's requests reflect the belief that such materials were given to others. The record in this case includes the public acknowledgement of this by other authors. There is still other reason to believe that consistont with a long history of media manipulation this was done. The plaintiff's own knowledge of this in this instant case comes from reporters who consulted with the defendant while they were being given access to such evidence by the defendant. However, what the plaintiff testified to on September 17 is specified in his affidavit further filed October 8,1976 and in attachments. It is not that other persons had received informations on the assassination of Martin Luther King" but rather, as the records makes clear, "in order to demonstrate that plaintiff has been singled out in not having his Freedom of Information cases promptly disposed of." It is for this reasons, which remains without any dispute and about which the plaintiff was not cross examined, that the plaintiff went through those of his files that could be retrieved and testified to about two dozen of his requests of this defnedant alone that remain without response, some longer than the seven and a half years in this instant case. Plaintiff has much earlier begun to present proof of this, the first being the DJ-118 form he filed relating to the reports and pictures provided to the defendant by one James Powell following plaintiff's initial request of January 1,1969. it is uncontested that years later some of this request, when duplicated by another, was complied with. It also is uncontested that since the plaintiff provided this proof there still has not been any compliance with that request now almost eight years without response. On October 8,1976 the plaintiff provided added proofs that the defendant has in fact "been singled out" for non-compliance by proving this again that there was prompt compliance with a paralleling request for personal files made by Les Whitten and that when another, Amory Brown, spetifying he was not using FOIA, asked question of the defendant his questions were treated as a

and FOIA request and an appeal was filed for him promptly. In the responses to Mr. Brown the defendant disclosed to Mr. Brown, who had not even made an FOIA request, that which has not been disclosed to the plaintiff in another case, C.A.75-226, which seeks what Mr. Brown inquired about. In fact the plaintiff's first requests for this information go back to 1966. He filed an action to obtain it in 1970. C.A.75-226 is the first case filed under the amended Act.

Examination of the plaintiff's affidavit leaves no basis for defendant's misleading representation.

It specifies that after the calendar call of September 30 I sought "a dramatic representation of the deliberate falsities of the Department's representations to this court" and how I went about proving this beginning then Paragraphs 63 ff.) Exhibits 5 through 16 address this only. That "I am a special case to defendant" is alleged in paragraph 1, with the proofs beginning with the preceding paragraph and continuing throughout the balance of the affidavit. Where there is reference to other cases, without exception it is not with reference to "persons that had received information on the assassination or parties bother ing." It was "to demonstrate that plaintiff has been singled out" for non-compliance and is limited to that.

With only 3 weeks in which to obtain what the proofs, some of which were in New Jersey and to prepare an affidavit of 105 paragraphs the plaintiff was required to do this without benefit of consultations with counsel from whom he is separate by some distance. It thus was not possible for this affidavit to be filed until after the calendar call of October 6, 1975, when a copy was hand-delivered to defendant's counsel and then and thereafter discussed with him by plaintiff's counsel.

It also was known to defendant's counsel that both this affidavit and the order to which it was attached were prepared prior to that calendar call and thus could not be in response to any instructions of that day or in pursuance of what the plaintiff is misrepresented as having stated.

This misrepresentation is carried further with a misrepresentation of the plaintiff's stated and understood purposes, to show that in general the plaintiff is "a special case" to the defendant and to other defendants.

Plaintiff's affidavit does not allege that others were given information relating to the King assassination. It does allege that others were given favored treatment and that okher were given other information requested by defendant and denied to him. The actual allegations are without response. Allegations not made are contrived in an effort to continue to avoid response.

The misrepresentations of what the Court indicated and plaintiff's counsel "proposed" "Indicated" is projected further in misrepresentations under "argument." The fact is that plaintiff's counsel stated explicitly what he would be filing and when he would be filing it. Plaintiff's propesed Order is not inconsistent with what the Court indicated from the first in these status calls. It is in accord with plaintiff's experience with defendant's stonewalling, misrepresentations and strategies and tactics to deny plaints his rights and to drustrate the Act and pretend a basis for seeking modification of the Act.

To pull off this attempt to obtain judicial sanction for still further stalling in non-response to requests now more than seven and a half years old defendant pretends they are a mere 10 months old and that all efforts to obtain compliance are somehow unreasonable if not outrageous. This defendant objects to the request in the proposed order that defendant "deliver all records called for an a weekly basis" (Item 2) while 20 days after the filing of this proposed Order the defendant says exactly this (on page 2):"approximately two sections a week can be processed." Earlier defendant assured this Court that there would be regular delivery of that which was processed, in units of about 400 pages which is what two sections comes to. (Page 2)

With requests more than seven and a half years old Item 1, "all the manpower equired to assure com]lete and full compliance" in two months does not appear tok be unreasonable. Ni matter what date is selected by defendant as the first of plaintiff's request, to none is Open America relevant. These requests date to early 1969. The renewed requests date first to April 1975 and the amended renewed requests to ten months ago. Plaintiff has not demanded forthwith compliance in preference to other requesters. Plaintiff have proven without denial or ever questioning by defendant that defendant has regularly

discriminated again plaintiff, defendant's practise for eight years. There is no fidelity in the representation that after all this time plaintiff is asking for "preferential expedited treatment" or that this"would have the effect of taking personnel away from other requests." (Page 5) The record is entirely to the contrary, thus the defendant does not cite the record.

Even here defendant limits himself to the FBI. The FBI is not the defendant and there has not been compliance by the defendants other components. The record not only proves this without any question, it proved other discrimination against plaintiff. Plaintiff's requests not been processed in sequential order. And even after this was proven defendant claimed the right not to assign personnel freed from other requests of later date than plaintiff's to the belated processing of plaintiff's requests.

It is defendant's stonewalling and misrepresentations and shuffling around of the records called for in the Complaint after the filing of both requests and Complaint that require the search of all F field offices./ (Item 3) In addition an overwhelming percentage of the relevant records are outside of Washington, in the field offices, as the Attorney General and defendants own expert witnesses in this instant case prove. From the evidence obtained by plaintiff from defendant alone it is frivolpus to delay "search of the files of the FBI's" filed offices "until the search of the "main office proves to be inadequate." Moreover, this has already been proven. S.A.Wiseman has sworn that records sought in this instant case are not in what he described other than defendant's counsel does. There has to date been no evidnce on what is contained in the FBI's "main office." The alleged search was limited to something entirely different, the index of FBIHQ. S.A. Hoard has already testified (September 16) that most of the files are not in the "main office" and are in the field office. The Attorney General has stated ahat of a total of 203,500 documents known to exist only a tiny fraction, 2,300 2,300, are anywhere in Washington.

The truth is contrary to defendant's representation fromc citation of Meeropol v. Levy (sic). Until certain Items of the requests are processed in the field offices, particularly Memphis, other search for those Items elsewhere are more likely to be "counterproductive."

There is need for Item 4 from the record in this indtant case. Numerous records remain

in their entirety
withheld ~~long~~ many months after plaintiff proved their existence, relevance and even location in the "main office." The 25 numered volumes and their indices plus the description of their contents already in the record are a convenient illustration. Plaintiff's March 1969 and April 1975 requests make these vilumes and indices relevant. Other records are withheld in part, page after page and by partual maskings for which no exemtpion is claims in some cases, is or can be relevant in others, and in some instances when ~~even~~ even the fact of their been required to be prodcued is admitted in court. It is defendant's own record in this instant case that makes this Item essential if the Court is to be assured of compliance and the plaintiff is to be permitted to have any such certainty.

Item 5 is likewaise essential to this. The false swearing in this case, while not limited to those without first-person knowledge, does include them. It is the defendant's practice to submit non-first person affidavits wven when first-person affirmations are possible. This S.A. Wiseman swore there were no pictures of the scene of the crime, faithfully repeated by defendant's counsel. The fact is that there were. The initial prtense is that there was no record of this in Washington. This also is false from the records provided plaintiff on October 28, 1976.

Under date of April 7, 1968 the Memphis Field Office sent Washington 47 photographs of the scene of the crime. The Washington and Memphis file numbers are clearly indicated. If there is any meaning in the FBIHQ index it simply is not possible that the existence of these photographs was not known to S.A. Wiseman when he swore fasely that they do not exist and put AUSA Dugan in the position of giving similar but entirely false assurances to this Court.

The sole subject of these apparently three-page airtel airtel is "the following photographs." The description proves the relevance of each and every one of the 47 to this instant case.(Some also prove the known falsity of some of the official representations about how this monstrous crime was committed.) The "main office" or FBIHQ file number is clearly visible. It is 44-38861- 146. From the records in plaintiff's possession it is clear that File Number 38861 in a major file in this case. Moreover, this airtel withheld until

Octpber 28, 1976, gives the means of ready retrieval from the Memphis Field Office files of this and other public information called for by the requests and Complaint. It is File Number 44-1987.

The foregoing is not the only reason to believe a first-person affidavit is essential in any determination of compliance. From the record provided it is not possible to determine how many pages there were to the original Airtel. A remote-generation copy of the original was provided. Despite this the masking on page 3 is visible/ in the time straight line immediately below the description of the last two photographs.

Yet in making personal deliveryato the plaintiff, who went to the FBI Building first thong the morning of October 28,1976, the delivering agents, including S.A. Smith who has testified in this instant case, apologized for not having found these 46 photographs and promised to deliver them at some later date. This in response to a request of not later than April 1975 or a year and a half earlier, if not as is apparent in response to the specific requests for such photographs of March 1969.

This is but one of the more recent of the superfluity of illustrations that the defendant styles as "preferential expeditted treatment" sought by plaintiff and as requiring "taking personnel away from other requests" with the "a disasterous effect on the processing of other FOIA requests."

Defendant objects to Item 6, that defendant "complete compliance without further costs to the plaintiff;" and the companion Item 7, to restore those charges for searches and copies plaintiff has already paid.

As this Court has already noted most of if not all of the public information plaintiff seeks was requested more than seven and a ahlf years ago and defendant has stonewalled compliance to the point where plaintiff has in effect been denied the fruit of all his labor and his use of the information sought. The damages to plaintiff from this alone is great. As defendant has already admitted now many others have made similar, duplicating requests. More than seven years after plaintiff's initial requests and a year and a half after plaintiff's renewed FOIA requests the House of Representatives established a committee that wants all of what plaintiff has requested. Discrimination against and

"interest...of the nation."

n citing 28 C. F. R. § 16.9 (c)(@ e) on page 6 defendant does not claim that the assessing of such charges are mandatory and in fact the y are not mandatory. Plaintiff has made all paymentsubject to the right to attempt to recover them.

Defendant's claim that this x is ues in this instant case and in Open America (page 4) are meretricious and unreasonable. The plaintiff's in Open America demanded compliance in advance of compliance with other requests. In this instant case the record is clear that defendant has violated even his own sequential processing of requests in continued and long-standing discrimination against plaintiff. The "exceptional circumstances" that now exist in this instant case are the exceptional stalling and long-la ting non-compliance with plaintiff's rwquests. In Open America the court found that there was no showing of a lack of "/due diligence" in that case. On this instant case 100 percent of the evidence is of neither good faith nor due or any other kind of siligence except in non-compliance.

Defednant's claim to a "backlog" surely cannot apply to requests seven and a half years old; or to requests a year and a half old; or to requests almost a year old. (Page 4) The evidence is that there is deliberate non-compliance with all aspects of any and all plaintiff's requests. it is a record of deliberate stalling for which the only claimed justification is the artificial designation of this as a "project" request. Defendant has violated the Act in dela ing compliance with "project" requests and not beginning to process them in order of receipt. There is, from the proofs ad uced from defendant alone, no basis for not having fully complied with plaintiff's FOIA requests before now. Not having done this does represent special discrimination against plaintiff.

In asking that the original files of the FBI be searched and that there be no search of them until some time in the unspecified and far-distant future be postponed until after an alleged search of the minuscule fraction of them that may be in Washington defendant is asking for judicial sanction for an overt engine for non-compliance. The above-cited records of the Memphis Field Office are one of many proofs of this and of the deliberateness of this ploy. (page 5)

It simply is not true to designate plaintiff's request for the remission of costs as "entriely improper." This is provided for in the Act and it has been defendant's practise

in other cases and on infrequent occasion with plaintiff. Most of what was delivered by defendant to plaintiff in C.A.75-226 was without the charging of either search or copying fees. In ever sense that case and the decision of the court of Appeals No. 75-2021 exactly duplicates this ~~same~~ instant cas. Some items of the requests in this instant case are an exact duplication of those in C.A. 75-226.

In a case as old as this, when the FOIA requests are without dispute proper, when there is no contesting that they were made and that the records exist and can be retrieved and provided, after more than seven and a half years an order of compliance ~~immediately~~ in two ~~more~~ months is not unreasonable, is consistent with the letterand the spirit of the law, and will be burdensome to defendant only because defendant has created this situation by a sustematic and deliberate campaign to vitiate the Act and to deny plaintiff his rights under the act as part of this campaign. The evidence on this in this instant case is that there have been repeated searching of the same files for each separate requester and that in none of these searches was there any compliance with plaintiff's requests for what is in those searched files when plaintiff's requests for what is in them go back to January 1,1969. In fact, S.A.Howard, who identified himself as the supervisor in charge, claimed to have no knowledge of any of Plaintiff's several dozen requests for what is in those files and has not been provided to him. This surely is unprecedented under this Act.It likewise is within plaintiff's knowledge without precedent that his checks would be cashed by defendant, some after destruction and taping together again, with no compliance.

There is no stalling that defendant and defendant's counsel have avoided in this instant case. Even the request of plaintiff's counsel that plaintiff's requests and other correspondence be produced was rebuffed. Now, long thereafter, defendant informs this court that "as soon as the FBI locates this information" which is not in any way limited to the FBI and was more often addressed to other officials of the Department, it will, belatedly be provided. "Defendant's counsel is in the process of preparing a response." (Pages 2-3.) This aspect in itself is month old. Plaitiff's testimony is a month and a half in the past. His other representations, by affidavit and through counsel, are older still. With either "good faith" or in the exercise of "due diligence" there would

not now be any need to ask still more time with an Order pending, and Order the propriety of which this Court indicated months ago and delayed only on the request of defendant's counsel. This non-existent need was deliberately contrived for still another stalling device. In any event it is not relevant to compliance in this instant case. Its relevance is limited to defendant's record of deliberate discrimination against plaintiff.

Defendant's reasons for this as stated by plaintiff are without dispute as they were without cross-examination when defendant had the opportunity. Plaintiff's work is responsible. It deals with fact, not theory. Plaintiff is to his knowledge unique in the field of his specialization in not believeing or charging the FBI with guilt in the original sin. He has on more than one occasion defended even the FBI and the CIA against false charges made by those who range from the paranoidal to the commercializers and self-promoters. However, defendant's disinformational interests and desire to avoid embarrassment from the record are furthered by these extreme and unreasonable charges by the uninformed self-seeking. The most recent of these is the allegation to the Congress by a self-promoter who will not have equal access to all of plaintiff's accomplishment in this instant case. Mark Lane actually alleged to the Congress that the FBI is responsible for the assassination of Mr. King. Such false charges may attain headlines for Mr. Lane but they are not hurtful to defendant. Theyare, rather, helpful because when the time comes defendant will without difficulty and as the result of not fewer than four internal "re-investigations" prove them to be false. By this means defendant hopes to be able to underwine the credibility ofall criticism of the FBI and other components of the Department of Justice, regardless of truth.

Without the deliberately contrived delays in this instant case this situation would not exist today.

With the existence of a Congressional committee whose work will require the same information sought by plaintiff since March 1969 any further delay for any reason, real, imaginary or manufactured, is entirely unreasonable and is for other than the stated purposes.