

12/19/76

Dear Jim - re attached 1996 affidavit draft.

After we spoke yesterday I completed a draft to which I added about 3 grafs this morning when I read and corrected it. Lil will pick the changes up on the carbon, which I will mail you so you can go over and return it. If the Morion or whatever else you will file will be short, write it out in longhand and Lil will type that also.

Dugan and the FBI have to be pretty uptight to pull something as shady as his Response and Smith's affidavit.

However, it gives us a wide-open door, particularly in citation of the 9/16-17/76 testimony and my testimony. I believe this permits me with complete propriety to address what they persist in ignoring, that there still is no compliance with the 4/15/75 request; and to ascribe motive for stalling and withholding, the records Wiseman swore to having searched prove his perjury was not accidental.

This gets perjury before the unwilling Green again and in a form more easily read on appeal than in the transcripts.

I continue to believe that this provides the only hope of denting the stonewall; that it can be valuable when amendments are again attempted, as Shea has already; that it may help others avoid crossing the line in this and other cases; and that in time it will have other importances.

As you will see I think I have made a case of deliberate misrepresentation by Dugan and of false swearing by Smith in this newest affidavit Dugan filed.

Please try to restrict yourself to the minimum in changes to save your time and to enable us to get it filed as rapidly as possible.

And, of course, to give them more to contend with.

Either <sup>Lenahan</sup> ~~Smith~~ was lied to or he lied to me because those "personal" records of Jimmy's that I have now gone over do not include a single one of those I told the FBI are missing in the sequential delivery from the 44-38861 file.

I will write him a polite letter to this effect. I handed him a list of those missing, or those of which I had a record other than I gave you, in a letter to Kelley when I saw him Friday. From that he will know that I know.

I will get to Vols 9 and 10 later today. I began to read 9 Friday.

After we spoke I spent some time monitoring two all-news stations. Neither then last night or early this morning nor in the Post did I see anything about what May heard earlier on the radio about the new committee.

I think seeing the transcript of the public part of its session is important. I think expelling even the reporter from the executive session is exceptional. I have never heard of that. Sprague seems to have learned the lesson of the Warren Commission's executive sessions and about devils loving scripture.

Ordinarily I would think this would not sit well with the House leadership, less with the Dick Tracy plans. However, in this case I think that those who do not want a real investigation are wise to sit back and await the more all indications are they will have soon enough.

Whom the antigods would destroy....

Best,

1. My name is Harold Weisberg. I reside at Rpute 12, Frederick, Md. I am the plaintiff in C.A. No. 75-1996.

2. In this affidavit I respond to and address misstatements of fact in Defendant's Response to Plaintiff's November 30, 1975 Notice of Filing Attached Exhibits and the attached affidavit of FBI SA Donald Smith, filed December 15, 1976.

3. The affidavit of SA Smith appears to be defective -- It does not address, does not respond to the testimony of September 17 16 and 17, 1976. It does not address, does not respond to the testimony of September 17 16 and 17, 1976. *add*  
*these* days earlier, on November 12, 1976. *add*

4. Defendant admits non-response to <sup>these</sup> five admitted FOIA requests by me.

5. Defendant claims, without citation of the Act, its legislative history or case law that "Persons seeking records under the amendments would have to make a new request and the agencies would have to consider the request under the new standards."

6. Defendant also states that "In fact, for the matters relating to the assassination of President Kennedy plaintiff filed a new action seeking the same materials he previously requested that was the subject of the en banc decision, see Weisberg v. U.S. Department of Justice, Civil Action No. 75-226. This subsequent action was filed following the effective date of the amendments." (Emphasis added.)

7. "one of these statements is true and to defendant's knowledge are not true.

8. I have read the legislative history of the amendments to the Act and the Act itself. I recall no requirement that requests would have to be ~~refiled~~ refiled after the effective date of the amendments.

9. The requests represented by my C.A. 75-226 are not the same as ~~these that are~~ that which is embodied in ~~xxxxxx~~ the en banc decision.

10. C.A. 75-226 is the first action <sup>"</sup> filed anywhere under the amended Act. <sup>"</sup> It was filed first thing in the morning of the day of effectiveness of the amendments to the Act.

11. I filed the new requests of C.A. 75-226 before the effective date of these amendments, under the unamended Act.

12. If this had not been proper defendant would have had and used a total defense, the one now claimed without any authority, "Persons seeking records under the new amendments would have to make a new request."

13. It is a fact that defendant recognized my requests filed prior to the

effective date of the amended Act as valid and proper under the amended Act, ~~the only~~  
~~alternative being that the records sought are not what defendant alleged all the way to~~  
~~the Supreme Court, "investigatory files compiled for law enforcement purposes" and totally~~  
~~immune.~~

*claims*

14. Defendant ~~argues~~ that each and every record I seek in this instant action  
"would also have been exempt under the prior law, Section 552 (b)(7), that is investi-  
gatory files ~~compiled~~ compiled for law enforcement purposes..."

15. In support of this claim SA Smith swears (Paragraph 4) that "FBI records,  
consisting of 'investigatory files compiled for law enforcement purposes,' were not  
subject to ~~disclosure~~ release pursuant to FOIA requests during the time frame covered  
by the letters listed in Plaintiff's Notice of Filing of Attached Exhibits."

two

~~that whether or not the ambiguity is extended, and it is not SA Smith's avoidance of the~~  
~~that would have eliminated ambiguity~~

16. SA Smith is ambiguous without need for ambiguity. He implies that all FBI  
are  
"FBI records" and "investigatory files..." If he had not intended conveying this false  
belief he could easily have stated instead "Those FBI records that are not 'investigatory  
files..."

17. His misrepresentation to another court is the identical point on which defendant  
prevailed in the cited en banc decision.

18. The fact is that not all FBI records, ~~and~~ not all I seek in this action and not  
*prior to and* all provided me *(in this instant case)* pursuant to this action, are "investigatory files." One, for example, is a  
~~that~~ handwritten note of ~~the covered~~ *FBI* former *J. Edgar Hoover* Director of the FBI ~~that~~ translated from his  
*it* special idiom says "Who the hell does the Attorney General think he is telling me what to  
do about letting the people know?"

19  
20. SA Smith does not swear to a personal search upon which to base his affidavit.  
Instead, he qualifies his affirmation, *saying* "I have caused a search of FBI records to be made"  
relating to my 1969 requests.

20  
21. He then does swear that the records I then sought and still seek *to be* were not subject  
to release pursuant to FOIA *4/* requests during the time frame covered..."

22. A personal search of the relevant records would have establish this *to be* false.

S.A.S.M.P.H

23. The attorney general himself directed that some 200 pages of those records ~~claimed~~ <sup>be</sup> to have been <sup>and "not subject to release"</sup> "investigatory files" ~~be released to me. They were selected to make this~~

24. It is not true that the Court of Appeals for this circuit in an en banc decision expressly held that "all" the records relating to the assassination of President John F. Kennedy were properly exempt" and in fact this defendant has not so held. This defendant has supplied me with other "records relating <sup>to</sup> the assassination of President John F. Kennedy," including FBI photographs ~~The records supplied to me by this defendant include photographs~~ of evidence. ~~from the FBI's files.~~ such I have published ~~these~~ photographs. ~~Statement served no law enforcement purpose. Neither the original news account nor the handwritten statement was compiled for any law enforcement purpose. In no sense is either or both together an "investigatory file."~~

26. "During the time frame covered by the letters listed in Plaintiff's Notice of Filing of Attached Exhibits" there was, to the best of my knowledge, only one basis for a federal law enforcement investigation of the assassination of Dr. King, conspiracy under the Civil Rights Act. The first statement on this assassination by the Attorney General is that there was no conspiracy. None was officially alleged for two weeks, when an information was filed in Birmingham, Alabama, by the FBI.

27. But from the moment <sup>of</sup> the fatal shot to this day defendant has insisted that there was no conspiracy in this crime.

28. For the "time frame" prior to the filing of this information there would appear not to have been any compilation of files for law-enforcement purposes from defendant's own public statements, there being no federal law to be enforced.

29. Defendant has even <sup>described</sup> ~~classified~~ as filed compiled for law enforcement purposes the records of a public trial, which are <sup>FOIA</sup> included in my 1969 request.

30. There is also the entire ~~C~~intelpro operation, which was not a law enforcement investigation. ~~S~~trying to persuade Dr. <sup>K</sup>ing to kill himself and sending his wife edited tapes of electronic surveillance on him, all by defendant, were not for law enforcement purposes.

31. Although defendant has not disputed Director Kelley's statement, that 10 months ago he had these records searched, ~~and~~ has not disputed that they are included within my FOIA requests in this instant cause, and has not disputed that by defendant's own statistics time for the ~~chronological~~ response to that request has long since ~~passed~~, <sup>passed, yet</sup> none of these records ~~has~~ <sup>have yet</sup> been provided.

32. My 1969 requests include public press statements by defendant. This surely <sup>would be</sup> a new form of "investigatory file" <sup>my</sup> copied for an unenacted "law enforcement purpose."

33. My 1969 request which the indirect search by SA Smith did locate does include ~~photo~~ photographs neither taken ~~not~~ compiled by defendant and not taken for law-enforcement purposes but taken by others and given to defendant.

34. My 1969 requests the ~~ignoring~~ of which SA Smith admits also did recognize the relevance of some exemptions and did refer to what could properly be released to me. It is obvious that ~~if~~ nothing could have been released under the Act I would have been told this and it would have been a total defense in court.

35. My 1969 requests did include that which was alleged to incriminate James Earl Ray. This was after his guilty plea, which was sanctified by a recitation of this alleged incriminating evidence - in public, in open court and preserved in a transcript that was sold to the press.

36. There is and was no question of privacy <sup>or</sup> of Mr. Ray's legal rights involved because prior to the date of defendant's Response I filed with defendant a waiver for me only by Mr. Ray. It is well known to defendant that I have been his investigator and conducted the investigation that underlies the successful habeas corpus petition and the <sup>subsequent</sup> evidentiary hearing.

37. Inherent in ~~the~~ defendant's Response and SA Smith's attached affidavit is the pretense that the FBI is the sole defendant in this cause and that in my cited testimony I alleged no more than that "the FBI has not properly handled plaintiff's Freedom of Information Act requests." The fact is that I addressed <sup>FOIA requests</sup> ~~only one of many~~ <sup>partly, in</sup> to the FBI, and my ~~text~~ <sup>then</sup> cited testimony and that <sup>own</sup> adduced by my counsel from defendant's ~~witnesses~~ <sup>at that</sup> ~~time~~ <sup>it is</sup> are explicit ~~in~~ <sup>and</sup> not that "the FBI has not properly handled plaintiff's requests, ~~but~~

that the Department of Justice, of which the FBI is but a single component, <sup>also</sup> has not. does not dispute, <sup>FOIA requests to</sup> As defendant ~~acknowledges~~, I did address ~~five~~ the Department five times. That "only two of the five letters were found to be in the FBI files at this time" when I addressed <sup>only</sup> ~~but~~ one request to the FBI is not a denial. Nor is ~~that~~ that "All other letters were directed to the Department of Justice..." Nor is the bland admission that my requests were deliberately ignored under an Act that requires response in any sense proof of the claim ?

~~that "the FBI" has not properly handled plaintiff's" FOIA requests. <sup>Remove without refutation.</sup>~~

38. The entirely uncontested ~~claim~~ truth established under oath is that the Department, including the FBI, ~~has not~~. This proof was not limited to those undenied 1969 FOIA requests. It includes preferential treatment of others, <sup>even</sup> not denied; it includes the proof that I have many other ignored requests, some of which, later duplicated in part by others, were responded to but not to me; that defendant has <sup>countless</sup> non-immune records not provided; that almost by return mail <sup>similar</sup> records not sought under FOIA ~~mail~~ have been forced <sup>given to</sup> on ~~others~~ whereas I had to litigate <sup>for years</sup> to obtain any of these identical records from defendant; and that the records relevant to my request for personal files have not been provided after the time in which by defendant's own most exaggerated claim they should have been.

39. Relevant to the failure to provide these personal records is the <sup>alleged</sup> (inability of the unnamed Departmental employees who conducted an alleged search for SA Smith to find the letters. It is not disputed <sup>that</sup> I did file <sup>them</sup> under the Act. It is obvious that there is motive in not complying with this overdue request <sup>in my personal records</sup> in the present claim that the FBI - and only the FBI - cannot now find these requests <sup>add</sup> under the Act.

40. While it is true that these 1969 requests should "have placed defendant first for review" of the records sought in this instant cause, it is not true that the <sup>ma</sup> 1969 requests is the only basis for this statement. It is uncontested that I <sup>Records provided to me in this instant cause established by the FBI under "internal security"</sup> request April 15, 1975. It is uncontested that requests of that time <sup>period</sup> have been provided to others. It is uncontested that relevant records pursuant to my April 15, 1975 <sup>This defendant</sup> request have not been provided and do exist. It is uncontested that I did so inform <sup>(this Court)</sup> ~~neither then nor since has this been contested.~~ It is uncontested that in suppose <sup>ive</sup> with my later request what is response to this

SA Howard testified that most of the records are in these field offices!

refer to this proven non-compliance ~~that~~ that by itself, after more than 23 months certainly "would have placed plaintiff first in line for review by the Federal Bureau of Investigation," defendant's own words in the ~~first~~ <sup>first</sup> paragraph of ~~the~~ <sup>remains</sup> defendant's response.

44.

Subsequent to the filing of my first requests in 1969 and continuing to after the filing of my latest request a year ago, there have been four internal re-investigations that required a searching of the files included in ~~my~~ <sup>these</sup> requests. The latest of these ~~XXXXX~~ ~~was completed~~ ~~XXXXX~~ includes a ~~search~~ search of field office files, particularly those of the Memphis field office, from which there has been ~~no~~ compliance. It includes a search of Washington files that remain withheld from me after the 1969 requests, 20 months after my April 15, 1975 request and not yet even looked at in response to my request of a year ago. Yet defendant does not deny having searched all these files that are relevant to my requests. This is separate from what also remains undenied, that ~~the~~ <sup>10 months ago</sup> FBI Director Kelley ordered a special search of the Memphis Field Office files relating to the Invaders part of my December 23, 1975 request. There is total non-compliance with the Invaders FOIA request. Defendant's own Agent Howard ~~saw~~ <sup>relevant</sup> to this court more than three months ago that most of the ~~relevant~~ records are not even stored in Washington.

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46. The concluding infidelity with fact and ~~truth~~ <sup>truth</sup> in SA Smith's affidavit is that "it was not until February of 1975 <sup>5/</sup> that, ~~per~~ <sup>would</sup> pursuant to Public Law 93-502 (the 1974 Amendments to the FOIA) FBI investigatory records would be subject to release under the FOIA as a matter of law." It ~~will~~ <sup>since before February 1975</sup> require a truck to transport those in my possession

to this Court. I have filed before various Courts ~~over the years~~ a series of official statements to the contrary, ~~including those by defendant and particularly with reference~~ <sup>relating</sup> to the JFK assassination, ~~where~~ <sup>late</sup> the Chief Justice, ~~and~~ <sup>J. Edgar Hoover, various Department officials and</sup> the White House said exactly the opposite of what SA Smith swears to.