

Dear Jim- Remy 1997 affidavit

10/11/78

Although there is no chance that Lil will be able to complete the typing of the end of this affidavit I did get up at 4 to read and correct this small part I did not get to go over yesterday. When you called yesterday a neighbor, who is sales manager for a local farm equipment company, had just brought my new gas-motored "grass whip," which is also suitable for briars and brush with attachments. This was only one of the interruptions, but I had completed the draft. Whether or not Lil gets any more done this morning before she leaves will depend on when her sister gets here. Because the trip may tire her and I know my family stays up late I am not waking her to get this done because what you have is, I think, enough for our immediate needs.

After I completed addressing what I had spotted in the Owen records as I checked it for completeness only I became more general and went into basic considerations and principles, based on my by now not inconsiderable experience. While I think the purposes will be obvious, bear in mind that they include giving the Government something to cope with, making a bad-faith case, giving the judge substantial problems in considering a Motion for Summary Judgement, and looking ahead to both the appeals court and the Congressional FOIA committees.

There was no time to plan and organize and document so you have my first affidavit that has no attachments.

I hope there is enough for the appeals court on this incredible business of the district courts even considering a motion for summary judgement when without any reasonable question material facts are in dispute. I think there is more than enough to foreclose Smith on granting it. I do not think we'll have to move for a new trial to perfect the record if he should grant the Motion.

The Act says "any person." Those of us who are older, in imperfect health and still busy and active are "any person." So I've included a bit of this.

To paraphrase John Mitchell, when the going get tough those who are not tough must get tougher than the tough. I think we have and I believe we are probably the only ones who can and will.

We have not had the kind of experience I visualize for our next moves if as I believe the Motion will not be granted. I think we should refuse to be part of any more piecemeal business. I think we should take the position that we are ~~not~~ entitled to first-person affirmations that all possible means have been taken to locate relevant records and to provide them in accord with all prevailing standards. In this we should include the standards of historical cases and the AG's 5/5/77 policy statement. I think we must insist on a competent affidavit stating that nothing withheld is within the public domain. The CIA is less than any other agency able to make a case of not knowing what is and what is not public. (I have this in the affidavit.) We have done enough on specifics. The rest must be on broad general principles in which we refuse to get bogged down in minor specifics, as we have in 1996. If we do not take this position we will be bogged down forever. I believe this is a reasonable interpretation of the responsibilities imposed on the agencies by the Act and I believe that perhaps the best way to test it is before an adverse judge. While I am not attained to the knowledge required for a technical opinion I believe, especially considering the political factors, that the time is ripe to present this issue to the appeals court. It is in part with this in mind that I wove in illustrations from 1996 and this also included the FBI with the CIA.

I had such things in mind when I said that JoAnn's Motion to Strike her own motion on the first set of papers is good, not unimportant. No matter what it means I am thinking of how it looks, particularly when I have found more dirty workings by both of the affiants she used, Gambino and Owen, and have them in the affidavit. Let her explain that she was innocent. The more they have to do such things the less time they'll have for official dirtiness. ...Lil will be back Friday. The earliest I'll be able to get the affidavit executed is that night. If I do I'll mail it Saturday, otherwise Monday.

Best,