

Dear Jim,

11/30/83

I've just read Smith's memorandum one time, which is more than enough, and I have a request for something that should take but little time. Please just forget looking up law or citations and don't worry about its rejection because Smith will reject anything except the FBI's ass against his tongue.

Call it whatever you want and I know you can't call it what I'd describe it to be- something like correction of factual error or controlling factual error, something a bit stronger than an accidental error but short of what it is a deliberate and prejudicial lie, and ask for correction.

It is not true that my sole basis for opposing discovery is its inappropriateness. I have stated, without contradiction or even pro forma denial that:

I have already provided all such information of which I know;

Defendant's counsel has acknowledged receipt of it;

So, I had complied with the ~~request~~ demand before it was made, and that is one of the bases for my opposition to this discovery;

I have alleged, with considerable detail, that compliance would be unduly burdensome, and this also is undisputed, without even a pro forma denial

I have alleged that if discovery is appropriate, it cannot be until after good-faith searches with due diligence have been made and attested to, and that in this case the defendant has actually admitted under oath that instead of making such searches in the field offices to which the requests are addressed, FBIHQ, arbitrarily, ~~may~~ capriciously and without search made or possibly decided to restrict compliance to records of its own selection and even that over my expressed objection.

I have alleged and proven that at least some of the search slips are phoney if for not other reason because they are dated almost a year prior to my requests and include what is not within my request.

I have alleged that, and I think proven without reasonable doubt that, the defendant's attestations are not truthful and have requested adjudication of this and been denied. Allege that no system of justice can survive ~~stand~~ unanswered and documented allegations of false swearing to the material, nothing being more material in an FOIA case than attestations to alleged searches

I have alleged without contradiction or even pro forma denial that even when phony search slips identified and located pertinent records they remain withheld.

I have alleged that in the absence of proper searches made and competently attested to, no discovery is either necessary or proper in an FOIA case.

This is off the top of the head. I may think of more. But it is a straightforward lie for the judge to rule on a falsehood, that I questioned appropriateness only. I also think it is important to have all these matters stated simply and at one point for a number of reasons, ranging from appeal to amicus to assistance of public groups on the principle.

Can you make a motion to reconsider because of factual error and call it this or factual error and obvious omissions. I think it is important not to exceed the recognized bounds while at the same time making it clear that it is not accidental. LaHaie did admit I had done this and I used it in an affidavit. You may have to search your wastebasket for it, but I did. I found it in checking his alleged ~~stat~~ citations.

This is a political, not a legal matter and I do you you forget about any answers in the law and state the political issues as such while representing the truth, that they are legal issues in this memo. Also, where does he get 100,000 pages?

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I think you should state ~~try~~ that my request does not refer to 150,000 pages, compliance does not begin to approximate ~~15,000~~ 150,000 oages and ask if the judge has information we do not have. Can it be that he has been informed by the defendant that withheld compliance would involve 150,000 pages?

I do think it is important to make a strong statement about untruthful affirmations and his refusal to make a determination of fact and his attempt to deny me the possibility of establishing whether or not the attestations on which he bases his action are untruthful. I'd include a reference to the assault on the independence of the judiciary involved in untruthful attestations.

I think it is very important not to overlook his evil, his excesses and the oppasrtunities they provide and that some strong but not impolite statement along these lines must be files as soon as it is possible. And then sent around some.

In haste,

P.S. Lil's checkup was very complete and detailed, so much so that it was lunchtime when we got back, and before it I had to limit my therapy to and hour and a half. Which is better than none.

When I can get back to the 226 affidavit I will be showing that the appeals court was misled and deceived with regard to what Smith likes to quote, with documentation, and you may have to have that with you at some time.