

Christic Institute  
1324 N. Capital St.  
Washington, D.C.

7/24/86

Dear Christic people,

I write in the belief that because you do not fear suing the CIA over the bungled assassination, embarrassing as that can be to the CIA, you might not fear helping me in litigation in which, had there been any attention at all to now, the FBI would have been seriously embarrassed. In it I am involuntarily pro se but pro se I've done what previous counsel ~~was~~ <sup>were</sup> too timid to do, made a record in which the FBI and its Department counsel have not offered even a pro forma denial that they got a money judgement against me by fraud, perjury and misrepresentation. While the case was before the appeals court the first time (it is <sup>back</sup> there again) the major FBI affiant in my litigation disclosed to a friend of mine an abundance of FBI documents that leave the fraud, perjury and misrepresentation without question. (In my reporting youth some of those records, in and of themselves, would have been regarded as newsworthy.) It all began as Freedom of Information litigation and the present status is that, after Judge John Lewis Smith held against me on my motion to reconsider his previous rubberstamping for the government, my brief is due October 1. I've been working on it as best a nonlawyer can. But the sole issue as I see it and my former counsel agrees, is whether or not this judgement was obtained by those undenied felonies.

It may be possible that because of my previous experiences I may be able to help you in the CIA case. I've used FOIA against it and have a fairly decent record of their lies and how they lie and if when you get to trial they use some of the same affiants, I've checked out some of their false, deceptive and misleading attestations of the past. They are more clever and subtle than the FBI but both, in cases they regard as delicate, have difficulty telling the truth by accident and oaths are no impediment to them.

I am 73 years old and in seriously impaired health, mostly circulatory. I'm a former reporter, investigative reporter, Senate investigator and editor, was in OSS in World War II as an intelligence analyst and was in the part of OSS that was transferred to State intelligence. In the first major "security" case of the era I was one of 10 liberals, mostly also Jews, who were fired by the right extremists who took over. I presume in your work you've heard about Ambassador Peurifoy. I knew him when it was a danger to be on the same stairs he was on and was not surprised when he killed himself after helping CIA stage the Guatemala overthrow. They all hate me, all those then involved, because I organized the successful defense of the 10 of us. They don't like being beaten and the FBI, I rather suspect, dislikes me even more because of my past

successes against them. Probably particularly because my perseverance when they lied in earlier FOIA litigation led to the 1974 amending of the investigatory files exemption and to that part of CIA and FBI dirtiness that was forced into disclosure because of it.

That the FBI always stonewalls my FOIA requests is affirmed in a hearing by the Senate FOIA subcommittee, published. The Department's then witnesses attested that they could not and would not attempt to justify the FBI's bad conduct with me. My litigation, despite the stonewalling and extensive noncompliance, also has brought to light much that is embarrassing to the FBI and DJ.

For more than two decades I've been studying the political assassinations. I regard them as the most subversive of crimes. I'm a minority of one in not being a conspiracy theorist. My study is of how our basic institutions worked or failed to work in those times of great stress and since then. I've published six books on the investigations of the assassination of President Kennedy and one on that of Dr. King. I am not aware of a single error of any consequence in this large body of work. I've filed innumerable lengthy and detailed affidavits in my litigation and if there had been any error in them my opponents, who are also the prosecutors, would have been after me. My work stacks and my books are used even as college texts.

In 1978 I filed suit for the records of the Dallas and New Orleans field offices relating to the JFK investigation and, in New Orleans, <sup>to</sup> Jim Garrison's. These are inclusive requests. My then lawyer, who remains a friend, asked me to agree to an extension of time for the FBI to search and process. He took the good-faith word of DJ counsel who for some reason he liked. (Daniel Metcalfe, whose career of obstructing FOIA litigation now has him co-head of the Office of Information and Privacy, where he does that dirty work even more effectively.) They took four years. Meanwhile, in 9/80, I had arterial surgery, a left femoral bypass. It was followed by two complications, the second not uncommonly fatal, and after each of those two additional operations I was more limited in what I could do and even what I could safely try to do because I live on a high-level of anticoagulant. Standing still then was prohibited and now, because of complications following prostate surgery this past January, is more dangerous. I can't stand still long enough to put the paste on a toothbrush with <sup>out</sup> blood engorging my left foot. At my best I can walk about two city blocks before I must rest and elevate my left leg. Since those surgeries I've been faithful in my daily walking and resting therapy at a nearby mall which lets me in before it opens for business and except for the two days every week my blood <sup>is</sup> tested, <sup>when</sup> ~~me~~ I'm delayed getting to the mall until about 8, I'm there until 10 or later. Since the surgical problems this past January, in addition to this walking therapy, I'm to spend two hours a day flat on my back with my legs elevated and I come close to it most days.

Before any judge who does not disgrace his robes I made out an irrefutable case

of deliberate noncompliance, beginning with a refusal to make the initial searches required by FOIA. (Please excuse my typing. I'm also supposed to keep my legs up when I sit and the typewriter<sup>up</sup> to one side.) During this period between the beginning of the production of records and my proofs of noncompliance, the Department asked me to help it because of the historical importance of the subject matter. I'd met the appeals officer of that time when in a King assassination suit that judge asked me to cooperate with him. In each case I provided a full file cabinet of information and documentation, *(two in both cases)*, the documentation mostly disclosed <sup>FBI</sup> records.

When I sought to initiate discovery to establish <sup>refusal to search and</sup> the deliberateness of the non-compliance they moved for discovery. I refused over the phone and my then lawyer, Jim Lesar, came up and tried to talk me into some kind of pro forma compliance. For a number of reasons I refused. I'll <sup>some of</sup> come to them. The FBI asked for and got a judgement against me. When I refused to honor it their lawyer threatened to seek a contempt citation - phoned my lawyer to make that threat. I said to reply that I dared them. I knew very well that they'd not dare any kind of proceedings - and to this day there has been none - at which I could expose them when there was any prospect of any attention. So, pretending the opposite of the truth, they sought and got a duplicating judgement against my lawyer - two for the price of one, claimed legal expenses.

The demanded and ordered discovery, never modified, was for "each and every" reason and document I have relating to the requested discovery. I'd already provided it, to an enormous extent, only not under the name discovery. Each and every was and was intended to be grossly excessive and even if there had been any need for discovery, much more than what was needed. I attested to the physical impossibility of this demand, and when instead of making an effort to refute me DJ's counsel made sneering remarks about the state of my health, I filed an additional affidavit to which I attached not only all the hospital bills covering those three surgeries at Georgetown Univ. Hosp., but, for the "discovery" period, local doctor bills because throughout it I was down with other illnesses, debilitating and lasting, including pneumonia and pleurisy two times. In addition to my physical limitations, I was then weaker and with most of my files in the basement, I was able to use the steps only infrequently and was not able to make the demanded searches - for the FBI's own records - and there is nobody to help me. My wife, who also has trouble getting around, has no knowledge of those files. None of the evidence I presented was refuted in any way and from a long history the defendants knew there is no need to before Smith. Because long in advance I could see what was coming I asked my lawyer to speak to people like the Nader law group and the ACLU because of the precedential importances, particularly under FOIA, which will be gutted if this "discovery" precedent stands. He said he would and like so much he just didn't get around to it until they got the judgement against him. He then spoke to

Nader's Cornish Hitchcock who, seeing the conflict, suggested that he speak to the ACLU about representing me. Mark Lynch, no longer there, agreed to handle that one appeal. He prepared his brief without speaking to me. We discussed it by phone - I've still never met him - after I got his draft. Indicative of the fear that Lesar told me bore <sup>heavily</sup> on ~~the~~ lawyers in D.C., Lynch initially omitted entirely the malevolent fabrication, invented to justify the judgement against Lesar, that, and this is approximately a direct quote, throughout the five years of the litigation the district court had closely observed my alleged misconduct (never really defined) with Lesar. I was never before Smith once in that litigation, it was not only impossible but the transcripts show I wasn't. My medical records also showed it, but they got away with it. I was finally able to persuade Lynch to insert a modest footnote but he made no argument over it and neither did Hitchcock, who ignored it entirely.

On remand the judgement against Lesar was dropped. Had it not been, what would have been the position of lawyers whose clients refuse to take their advice? It was <sup>Modified slightly</sup> ~~changed~~ against me and the FBI's demand that it be multiplied <sup>about</sup> five times was rejected.

While I was on appeal the same FBI agent who was their major affiant in my case in which he is supervisor also was supervisor in a different FOIA JFK case filed by a friend of mine, Mark Allen.

The two basic justifications <sup>are</sup> for the discovery against me ~~was~~ either that it would enable the FBI to prove compliance or that my subject-matter expertise was required by it to locate anything not processed for me. Both, of course, were false and knowingly false when uttered. But as these records were disclosed to Allen and I got copies of some, they were incontrovertible proof that the FBI had lied with regard to any reason given to get discovery. And the affiant who lied had personal knowledge of his perjury when he committed it and thereafter, for he has not withdrawn or amended it or apologized for it. In short, the records disclosed to Allen reveal the existence of records pertinent in my case, over a broad area, and also prove that <sup>besides</sup> ~~other than~~ in regard to discovery, the FBI's affiants were deliberate perjurers. (I use the word because it was material, most material, the only basis for the judgement, and because this agent, John Phillips, had sworn that the records over a broad area did not exist - while he was processing proof of their existence.) Of the new evidence I used in my pro se Rule 60(b) motion there is one exception to disclosure to Allen by Phillips and the FBI. There is a significant record the FBI got twice, the recordings of the Dallas police for the period of the assassination. Phillips had sworn to anything that appeared to have some prospect of letting him get away with it and each time I proved he was untruthful he came up with a new attestation, quite a few times, never worrying about swearing in contradiction to himself. Well, among the information I'd provided the DJ and it had ignores is where the second set of records were. <sup>Outside</sup> ~~Aside from~~

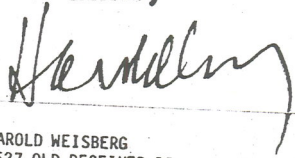
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this litigation, in which just about all that enormity I had provided was ignored. <sup>exactly where it'd indicated it was</sup> the recording was blundered into 12/84. The appeals office so notified me and I don't have a copy and I've had no answer to my letters about it. It is not subject to any exemption and no exemption was <sup>yet</sup> ~~made~~ <sup>claimed</sup> to withhold it. That is ~~the~~ <sup>their</sup> SOP with me when they are before a Smith. What I'm also saying is that even in litigation when they've given me proof they still stonewall and lie to the courts.

On his part, in his last Memorandum, Smith presents himself as so compassionate that, his words, out of consideration for my pro se status he reviewed the case record. (He should live that long, it is so vast!) How much does he know about the litigation - leave alone the case record? He says in that memorandum that this is a suit for King assassination record and for the records of the FBI's New Haven office, the latter three times.

I hope this is not too disjointed. This has not been one of my better days. If you have any interest and want any more information, please ask. Or might be interested. I can't drive to D.C. and I can't use the poor bus service. We are about 35-40 minutes from the beltway. If your Nicaragua clients are even in the area and if anything I know might be of interest to them, please tell them they are invited. One of my OSS and later State assignments was as a Latin America specialist, although I was not educated in the area. It came from other expertise, but I learned much about it and about Samozza and about US support of military dictatorships. (They educated many in our army institutions.)

I am aware that under the rule I can file a separate action and I think I can file for damages but I am not sure. It would take about three of my Social Security checks, my only income (thus I did not phone) to pay the judgement and that would be easier but I can't be party to wrong or evil and I can't be party to setting so utterly dishonest, dangerous and anti-democratic a precedent. (Can you tell me if I am correct in the belief that for them to collect they have to come to Maryland to do it and that that requires a public proceeding of some kind <sup>open</sup> in court? I've been found guilty and punishment is imposed without any trial of any kind, not even a kangaroo court.) And if you cannot help me, I want to take this opportunity, as an older man who has lived long enough to observe so much evil in the world, to express thanks and appreciation for what I gather you are doing from the news story I read.

Best wishes,

  
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