

Spectro-NAA

(item 2)
My request seeks the results of the spectrographic and neutron activation analyses (NAA) performed ~~in the FBI's investigation~~ by the FBI. The brief represents that [^]there remains nothing to be disclosed. In support it cites a Kilty affidavit and one of his depositions ^{but deposition was} not in this litigation.

Kilty was deposed in this litigation. With regard to what are sometimes referred to the NAA printouts, which he referred ^{to} as Polaroid records, he admitted that they exist and had not been provided. I asked for them. Department counsel took the position I had to request them again, even though they are the second item of the request and they were not provided. I appealed ^{ed} and received no response.

Prior to this Mr. Shea had talked to then FOIPA supervisor Horace ^{Beckwith} and he then told me that the FBI had agreed to release the film/^{plates} exposed in making ^{photographic} ~~these~~ examinations. That also has not happened, I appealed and ^{again} received no response.

These plates ^{too} do exist, are within the request and have not been provided.

The brief conjectures that a second set of entirely undescribed records were provided allegedly because I "had apparently lost" the earlier set. This is not true. I have preserved every record provided exactly as I receive it, as the defendant knows and the case record reflects. When I use any record I make a copy and preserve the original exactly where and as I received it.

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The Department long argued that these items either had been released to plaintiff or did not exist. The Department claimed that this was sufficiently attested to by the deposition of John Kilty of the FBI (see Transcript of April 6, 1981, p. 42). Nonetheless, the court ordered the Department to search again. The FBI accordingly re-released items previously given to plaintiff in 1977 because he had apparently lost his earlier copies (this time releasing names of FBI Special Agents withheld under now-superseded policy, see n.13, supra) and submitted an affidavit from John Kilty stating again that nothing else existed to be turned over (R. 228).

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(6) Field Office Investigatory Records.

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The December 1, 1981 Order credited the FBI with having already released to plaintiff all of the items which he claimed not to have received--with three exceptions. The first exception consisted of evidentiary items (e.g., a case of Clairol hair spray, an ashtray) which the court held non-retrievable under the FOIA. The other items, "the Memphis files" and "the Savannah files," were ordered released (Dec. 1, 1981 Order, pp. 8-9). The Memphis files had not been turned over because they were not responsive to plaintiff's FOIA request (they dealt with a threat to bomb a plane on which Dr. King was once a passenger and with a file entitled "Martin Luther King Security Matters" that was unrelated to the assassination). Since the 1977 Stipulation between Justice and plaintiff's counsel had called for records only of the assassination investigation (the MURKIN

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