

Bham - Rmy

Dear Jim,

7/5/80

Earlier today I sent you a letter I asked that you send to Bill Cole. In it I referred to unfactual representations presented to the Court by Cole of which I would send you additional proof for you to send to him. Again I ask that if he had not responded in 10 days you send this and the correspondence relating to it to the judge.

Because this is part of a matter pertaining to which Cole undertook to convey to the judge that my word could not be depended upon and because his representations exist in the transcript for misuse against me I also ask for a retraction of any allegation of unfactual representation on my part. Unless, of course, he, assisted by the not inconsiderable resources of the Department and the FBI, wants to prove that I said anything not factually correct about this matter.

The records attached are the best I can now provide. My copier awaits a service call and I fear a major and costly repair.

However, Cole will have no trouble locating better copies because these are among the discovery records that first Eatey Ginsberg and then Cole delayed providing until it was too late to use them in deposing the FBI SAs he represented.

With regard to both records, please note that they contradict the Government's representations that all records ^{are} in Central Records and bear added serial numbers. Neither of these is so marked. This bears on the need to search the records of the various divisions, which has been refused.

The matter is Birmingham compliance under the Stipulation.

The first record, of 8/30/77, which is two full months before the deadline under the Stipulation, forwards the "required" affidavit of SA Dennis F. Brewer which, as the record states, attests that three pertinent records were not provided because they could not be searched. (It was about a year later that we were provided with a copy of the Brewer affidavit, as an attachment to a Guin Shea affidavit. Cole has also used this Brewer affidavit more recently.)

The second attached Birmingham record, of a month later, refers to the first record and to a 9/26/77 phone conversation with what I take to be an FBIHQ Supervisor, A. Lewis

Barnett. As a result, Birmingham states, "Enclosed for the Bureau are Xerox copies of the three magazines described in referenced Birmingham airtel as requested by the Bureau in referenced telephone conversation."

What is described as "magazines" is not that but includes the catalogues with the specifications and characteristics of the so-called death rifle and of the telescopic sight attached to it, important items of evidence.

Director Kelley also wrote me a letter about the withholding of these records. His letter was used by Cole, Wood, Shea and Mitchell, the latter two as a basis for affidavits.

Both records are captioned with the identification of this instant case.

Both were at FBIHQ before any Birmingham records were provided and/or withheld in this case. Both were there ~~at~~ the time all the uses, which I described as misuses, of the Brewer affidavit, were made. This means that at the time the Brewer affidavit was filed in this case the FBI and it appears to be safe to believe its counsel knew that the affidavit was factually incorrect and yet it was filed. (Its counsel includes Charles Mathews of its Legal Counsel Division whose name appears on the first record.) This means also that at the time Cole also used this affidavit in support of the Motion for Partial Summary Judgment, in which the judge ruled in his favor, he should have known that the Brewer affidavit was incorrect. I believe that Cole had the responsibility of knowing whether or not it was correct, particularly because on a number of occasions and under oath I described it as not correct. This means, in addition, that ~~as~~ case FOIA supervisor, as an affiant and as a live witness in this case Wood ~~also~~ should have known and had the responsibility of knowing that the Brewer affidavit was not correct.

The FBI had ample opportunity to correct the Brewer affidavit and provide copies of the improperly withheld records. Instead, more than two years later, it used that affidavit as the basis for prevailing on the withholding of the Birmingham records. I recall no other affidavit addressing those withholdings. (No proof of copyright, for example, was provided, for how can there be proof of the copyrighting of the uncopyrighted?)

The Court was deceived and misled, clearly, from the Court's decision.

The withheld information is pertinent to all my requests, going back to 1969.

The appeals office was converted into an FBI rubber stamp, because its affidavits depend on those of the FBI's, including Brewer's.

This was a conscious act by FBIHQ, whether or not its counsel, because it perceived the obvious, that printed matter within the size of normal letter-sized paper is removed easily, is apparent. FBIHQ knew this not later than 9/26/77, which is before the first record provided under the Stipulation was provided to me. (No Birmingham records were provided until some time later.)

To one well familiar with the subject matter active in the withholding is obvious. In the past and now I avoid arguing the facts and alleged facts of the King assassination. I have offered to testify in camera and I did not press this offer. I merely made it. I do not now withdraw that offer.

If these records had not been withheld, their disclosure would have raised substantial questions about what the FBI Lab did and did not do and report and about all uses and representations made on the basis of what it did report.