Dear Jim, 1996 Motion, affidavit and Founding Church decision 5/26/79

Last night I read the decision in 77-1975. Its applicability of 1997 is obvious and requires no time. I write because of what I believe is its applicability in 1996 and at the present juncture, particularly with the misuse of the old Goland decision in the Motion.

Even is not especially on searches, where I call your attention to the way the decision ends on this, with the obligations of the agencies to facilitate rather than hinder, footnote 107.

We have not been able to discuss this decision. I read it as the court's continued groping for a safe means of doing what it clearlt is suggesting it wants to do about all these kinds of cases.

But it wants what is solid, what is safe, what is not merely the absence of good faith but is clearly bad faith. Most litigants can't provide that. We can, and think this was the original signal in 1997, where we could not deliver on time. Its language in the footnote on the "stability of judgements", a footnote so long it extends over three pages, tells me this. It can t call the failure to find those records and the delay in providing them straight-out bad faith, deliberate, given the nature of the spookeries.

Of course all this is greatly magnified in histoircal cases, where there has been historical case determination, and the obligations under the AG's memo cited become that much greater.

Taking even the narrowest possible view of the requirements of the Stipulation, even if the violations had not nullified them, mere searching in response to a request without providing copies for adversarial examination does not constitute a search, I would addition lly argue. You'll find ample support in the affidavit, for all its unsatisfactory qualities. Such things as the Gaines matter, where I specify the existence of even MURKIN records not claimed to have been searched out leave alone provided, and the limitations of which Civil was already aware from my prior affidavit built into the New Orleans search by the Matthews directives. Even in terms of limitation to MURKIN and even if there is only the one sub, he did not direct that all MURKIN records be searched, the requirement of a valid Stipulation.

After reading this I disagree even more strongly with your complacent view that the judge knows better when literally Betsy has tried to stretch her legal Frankenstein into a summary judgement motion covering the searches in the entire case. I think this magnifices the offense, which is an offense, not a mere extension of adverary zeal, and requires explicit and detailed exposition in comprehensible form and for possible later direct quotation. However, Green reads the appeals court, and I think she will as I do, my reading is that they are looking for the open-and-shit. One way of providing this is direct confrontation on such issues so that there will not be any possibility of their being fuzzed over in the district court record.

This new Founding Church decision does all but call out for a clear bad-faith case. I don't think Green will want to provide it. But even is she doesn't, having it clear in the record will have other values in addressing other problems we always have to face. We simply have to beat these dirty bastards down on the occasions we can. This is one. And a grevous one.

Hastily,