

Mr. William Schaffer
Civil Division
Department of Justice
Wash., D.C. 20530

12/11/77

Dear Bill,

Jim phoned me Friday about another matter. He then told me that he had spoken with Lynne, who told him to tell me to forget about John Dugan's concern about the tapes I am to send getting lost in the internal mail, to just send them to her. Getting this message back and by indirection required more than two weeks. Jim also told me that Lynne is anxious to get what I am doing. Not anxious enough for either of you to respond to the time I've taken to try to serve you. However, I report on that.

I have spent about 60 hours collecting the notes, which I was not able to file as I made them, comparing them with what I sent to Jim contemporaneously and assembling the most complete set possible and then beginning a review of them. I am at HQ Section 40. Because I will be having to do the same thing with what I have written to the equally unresponsive FBI it may be a fair estimate that it will take me about two hours per Section.

Getting this much done has required that I put in days that have run to 20 hours. I have also had medical and dental appointments and a death in the family. There was the considerable amount of time required by the FBI's release of the material it has been denying me for up to almost nine years, what I testified to a year ago this past September in this suit. Responding to inquiries of the press has taken such time. While it has now tapered off it may not be over.

I did not begin dictating to a tape recorder when I began for the reasons about which I wrote you, also without response. Since then, aside from Dugan's legitimate apprehension over what can happen to an only tape in the mails, I have my own apprehensions about your (plural) good faith in all of this. I will not be mailing any tape until I have been able to make a dub to protect against loss and any other contingency. As of Thursday my auxiliary tape recorders had not been picked up by Sony for repair. (It is this way in the country. I am not prepared to buy another and unnecessary tape recorder.) And I am awaiting some tangible evidence of good faith. As examples, a few of the many available, you personally have not informed me of what compensations I am to receive (you told me the rate for consultancies but I have no idea what that is) and after three weeks and after writing to you about it I still await the missing Sub G Sections the FBI said needed only xeroxing when it admitted three weeks ago that it had forgotten to include them in the copies it had made - of what it had earlier neglected to provide after assuring me it had.

This is an unusual situation you have created, in part by misrepresenting to the judge that I had refused to be your consultant in my suit against you. I had in fact said and written you that I would, upon demonstration of good faith, begin with the FBI's responses where it could respond. As of now and since then it has not been able to run its xerox machines or to respond to simple inquiries it will not allege are incomprehensible. While I do not like the situation and do feel, based on my experiences since your initial offer, that it is merely another device for stalling me and misleading the judge, I have proceeded in good faith and this will continue.

This bizarre situation has grown more so with the FBI's JFK release of the 7th. Because I understand your purpose in asking me to be your consultant to be to avoid unnecessary litigation and time in court I mention this, too, although it was not my major purpose in writing you early on a Sunday morning.

The FBI did not notify me of the time of the release or the conditions of examination until the day before it was scheduled. If I had wanted to make an examination or if my obligation to you had permitted it a dental appointment and the difficulty of arranging transportation to keep it precluded my examination. Before the FBI bothered to write me it had made copies available to others. They, in turn, had had time to make copies for

still others, who were in touch with me. In addition, upon complaint from the media, copies were provided to the media of this partial release prior to my receipt of the FBI's belated notification. Jim had written and asked for a waiver of fees for me, which also is added indication of my desire for these records. Neither he nor I heard further on it. Then there is the fact that I have about 25 JFK requests going back to 1968. They are without response even though I testified to them more than a year ago in this instant case. My testimony means that in addition to the fact of these requests all the lawyers involved in this case and the FBI FOIA personnel involved are all privy to that particular non-compliance. The partial release includes material relevant to one of my earliest ignored requests. I still await copies, even though it has been released. I likewise still await even acknowledgement of the letters I wrote the FBI about this.

Aside from anything Jim may have told Lyne I started to raise the question of these unmet JFK requests with her the first two times we met. While she expressed interest in avoiding unnecessary litigation she has not found time to discuss these matters. As a result I see no way of avoiding litigation over that. It has been quite hurtful to me. I doubt you will find as indefensible an FOIA record.

You also should know that based on what I've been told of the content of these 40,001 FBI pages I have reason to believe that they hold what the FBI should have provided under discovery in my C.A.75-226 and did not provide. I'll be surprised if this is not also true of my C.A.75-1448.

If all of this seems unusual to you, then I tell you that your own division has yet to comply with my PA request of two years ago. It was not even acknowledged. Much later my wife filed one and received partial compliance. I believe her appeal is in limbo. And this also is not at all unusual.

What "is phoned me about is Wain Shea's letter of 12/6/77 in this case. I quote two parts: "As to all other Civil Rights Division records, the action of July 26 was ~~the~~ the final administrative action for purposes of the Act. Your letter to Attorney General Bell does not set forth any adequate basis why the action should be reconsidered, given the facts available to me." (MY emphasis.) And, "Judicial review of my action on this appeal is available to your client..."

With regard to information available to Mr. Shea may I ask what in the world you asked me to be your consultant for if you do not use my services and act without the "facts" than can be "available?" Not that I have any reason to believe there were not other and readily available sources of "facts" if Mr. Shea had any interest in fact. My own experiences with him are uniform - he wants no fact of any kind. He also does not taint his affidavits with them, as I am quite prepared to prove if that becomes necessary.

His letter concludes with the usual formality. In context I take it as an invitation to sue. This is what I told Jim last night, accommodate Mr. Shea. Only in this case have the complaint specify that. I do not want to file unnecessary suits. I want to file none. But when all other options are exhausted, I have no choice. Your people were not listening to Jim when he spelled this out, the latest time in camera on 11/21. As your consultant I tell you that you will be hard put to find a case you will want to defend less than one in which Civil Rights is defendant. I am not going to take the time to spell it all out because when I have in the past I have not had even acknowledgement. I meet my obligations to you, I believe, when I inform you. I offer the opinion that in this case it may be particularly embarrassing to the Department. In court I will have no choice. I would encourage you to believe that there may well be other interests and that none of it will bring you joy. I tell you this with what I believe is an adequate understanding of the nature of the representations the Division will make or has made to you. Absent any sign of good faith from the Department in this matter and given Mr. Shea's record with me I am not prepared to do more than alert you. Believe me or not I am serving your interest in telling you this, not my own. If as now seems inevitable this goes to court you will learn soon enough.

Sincerely,
Harold Weisberg