

Dear Jim, 75-1996; SA Donald Smith's call to you today 10/26/76

Some of the possibilities are obvious, some not. I do take his call to be a clear signal of their concern, however. They are, from their schedule that I would not accept, ready with exactly the number of pages Dugan offered, only two weeks early. They are bucking for a good-faith ~~xxxxxx~~ boy-scout badge.

I take this to mean they also are uneasy. Let us make them uneasier. And let us put some pressure on the tolerant Green.

Our motion was on the 8th. By the time I see you there will have been three full weeks. We have not had and I am sure we will not have a proper response by then. Whatever the legal form is, we want her order on full and complete compliance by 12/15, without unjustified excisions or withholdings and with affidavits based on first person knowledge in justification of all withholdings.

I will not now accept anything less- and this is not all.

You will recall that while I did not expect exactly this I did expect that they would go over what is less damaging to them first. This is why I said I want to specify which of the items I want searched first. I have said that pretended compliance from their fictional means of compliance, the FBI Central Index, is assured non-compliance. I will not under any circumstances accept their pretense of compliance from that as even token compliance. I'll gladly get nothing as an alternative, but I'll make a fight of it and get some good out of it. I just don't have the time they are taking and the time Green has taken with all the other cases. This is a 1969 request, not 12/75.

Meanwhile, I will not lose sight of the fact that there has not been compliance with the 4/15/75 request. In whatever way possible make a vigorous issue of this. They are trying the old cherry-picker play on us and Green is horrified of the work she may face. Give her a choice between being a judge and being a foil.

My first request was for the evidencesaid to incriminate Ray. That happens to be my most immediate need. I want them to search and certify on that first, including all the filed offices with relevant records. Not whatever this substitute for Wiseman has opted.

We need first-person affidavits from everyone on compliance with the 4/15 request. Not their rewriting of it. That they have rewritten it is plain in the record. There has not been compliance even from the FBI central index. They have not complied with our motions on the indices and 25 volumes that are within that request. Their game with Smith telling you 12/75 is an end run.

They have a new problem now: a sitting House committee. Give them all the pressure possible. If Green aspires to go higher, then this will also be pressure on her. We have a good enough record.

I am inclined to think that this is not really a very complicated matter. Dugan still had not presented a plan. His time is more than up. Maybe it is now the time to move for summary judgement because that does not relieve them of the responsibility for providing all they come across and they do have the other requests and the House committee's needs to meet.

Whatever the deficiencies of the record it is a very good record, especially with the possibility of Congressional interest and looking into. I think the time to force the issue on all points is right now. There has been no compliance with any of my requests ~~zzqzqz~~ when by their own schedule all are long overdue. There has been no compliance with any one thing Green said. There has not been proper response to many motions. I'd even force the Vaughn motion now and give Green her options. If she wants that, let her have it. If she wants to reject it, the record will not support her. Their best offer, so very late, is illegal and meaningless and requires another year. I do not think any appeals panel will sit still for that and I do not think Green will want this to go up. If she doesn't like Vaughn, she created the situation. Let her as an alternative issue a meaningful order with unlaudylike teeth in it.

If we put this together we are driving the awkward machine. Losing is cheaper than what lies ahead as an alternative to an immediate vigorous push. Be ideas, we can't lose.

The giveaway is their fixing on the exact number of pages they promised but in half the time. They are worried. Let us worry them much more. Best

Dear Howard, my enclosed of today to JL

10/26/76

The pressures I've put on the FBI in 1996 has forced them to pretend to have relieved the first FOIA agent they had on the case and treat the amended complaint as a new request. They are hung on the agent they have assigned to that because, under pentlty of perjury myself, I've already laid that on him in the record. As a result of these pressures they have halved their promised time. If they were to keep this schedule, which I do not for a minute believe, they will have only searched a very minor fraction, less than ~~3.5~~ 3.5/200 of the revelant files I've proven on and in the record. Searching, of course, is only the beginning of stonewalling.

This thing did not begin to move ahead until I got to do what I'vw wanted to, which means giving them a real crack at me. They don t dare. So I've made a record on which they cannot expect to prevail on appeal and on which they dare not go to the Congress, as all of this at some point surely will.

They can t expect to take any chances with the ouse now because not only do they have to assume I'll be consulting with them but because I'm sure they know I have. So it does them no good to deny me, really. They are merely stonewalling.

One of the reasons I want to push and push hard now for total and complete compliance is because the chances of a better case are slim and then it has to be one of mine. I alone have so many requests so old and not complied with. The law is more important to me than what I can get in this case.

There is no denial that the request is as old as I testified. I've proven it under cross examination and the judge has since reiterated thiw without dispute.

I've gone farthur. I've done what you lawyers never do. I said and I've proven that the AUSA lied to the judge.

I've not stopped at that, by the way. Sunday I set Jim a more comprehensive affidavit proving that the AUSA in the other cases also lied and lied deliberately. I'l going to keep after these bastards.

The affidavit I got in when Jim agreed without having had time to read it will become very important before this is all over. t has, without denial or pro forma response, established that they have made a special case and a special object of non-compliance of me and that all their witnesses testified falsely on h ow and when they comply. That is still what is in this case the most material question.

In this phoney good faith-due diligence play for the judge they have given me all the reading I need: they recognize the situation and have taken a new means of stone-walling, secure in the belief that theyx judge willtake it. This is why I want a new and very firm statement from me that I will not.

The record may not be as good as it could have been, this being that rick a case, but it is still a Hollywoodian supercollassal record. I'l stand on it.

I'm also look ahead to filing damage suits for tortious acts, nit just the wrist-slapping of asking for punishment of the Civil Service Commission. If they decide to do that in the FBI it will be Brownie points anyway. I want to make a real effort to move all of this and FOIA with it far ahead, in anticipation of the coming hard push to gut it legislatively. Barring a real turnaround I'll have the right friend in the right place at the right time.

Meanwhile if Green reviews this case and herself in it she will come to see that she sits on a cloud of verbal smoke. I want her to face this. On the 8th she gave them 5 days to present an acceptable plan. They claimed confusion so they asked and got five more. We are almost twice past that now and still have nothing. Jim chickened on the contempt move and now does not have time for it. We sure as hell need it in the record...If you have not learned it I hope that after your clerkship you will realize that the quest for perfection is self-destructive to the litigant of inferior power and influence. Especially against government.

It has been a long and in some ways exasperating day. I hope this is comprehensible, as I do for what I've written in.

Best,