

Fear Jim, 1996 transcripts

HW 1/26/80

Last night I read the last three transcripts, 12/28 and 12/20/79 and 1/3/80.

I think you did very well in the last but not in the first two. However, the same major problems remain. You do not simplify and sharpen the issues, you let Cole lie his head off, when you can turn this against him, and you make promises to the judge that you should know you can't keep.

When Cole's lies were so outrageous the judge caught and corrected several, you should have been able to summon more than a mild expression of disagreement. He is a very vulnerable man because of his excesses, which may well be attributable to the DJ reading on your personality and way. But all his lies can't be attributed to ignorance. He also is ripe for harsh ridicule, and you can be good at that. An example is his constantly shifting description of the abstracts. He keeps putting them down as an index until he is reminded that we have an index item in the requests.

You want to philosophize and generalize this thing too much. Hard specifics are required and are available. I think we should prepare these and I'll try to remember some a ter I comment on what I noted as I read.

I think it is significant that the judge has failed to rule on his motion for summary judgement and may well be a good sign. I think she is waiting for you what she is not getting and that her delaying on the consultancy and counsel fees may well be intended to pressure you, not me. She wants to get the case over with and is tempted, but she knows the record is an outrage and she is reluctant to let it go in this condition to the appeals court. But you have not given her what she can rule for us safely on and that is required and not all that difficult.

You are too timid about some things. When they cited their affidavits you were afraid to say they are all false. Instead you argued, sometimes well and sometimes not well. On Horn, for example. When he said he knew of no other records anywhere.

You made no use of my uncontested affidavits at all. What in the hell do I do them for? That they are uncontested and address the issues Cole pretends to be raising is, I think, important.

I hope you can make a real preparation for 2/8 and in a form that you may get all twisted up and can keep control over so you won't be looking all around for papers you've shuffled out of place and won't forget what you want to say. We've got a powerful record but you ignore it almost entirely. I think this may be one of the things that is bugging the judge. And not her alone!

11/28/79:

The judge herself brought up the question of the consultancy Page 3:14.

3:18- Is the government still to file a response on this? Unclear to me.

4:12 and 6:21, references to the Vaughn v. Rosen.

5:18 - Cole to report on DJ components other than FBI.

6:19 the appeals to Shea to be "looked at" 12/20. (You had no preparation on this and that is a real loss for Shea says the opposite of what Cole represents. It is in my last affidavit.)

9:7 - Discovery material on the consultancy. Cole did not provide what she said, I objected to you and I know of nothing you have done about it. I think she will not lose his point other than she stated he should do.

12/20:

4:21 consultancy discovery.

5:00 Vaughn response.

6:5 Memphis index. You are almost entirely silent on this. I prepared you with much. I have an affidavit on it. Hold his nose to it and spin the stone hard.

6:9 Cole says there is nothing in the depositions on scope and you let him get away with it. You never once mentioned the fact that although they swore to it there was never any search for Items of the first request and as you know none on the second, instead the MURKIN substitution. While you did say that we stated from the first that MURKIN could and would not provide what the requests seek, you did not sharpen this except with the illustration I gave you in court, the Item on the index and that was later than this point.

8:4 first ref. to sampling. You should have made strong reference to all that I've provided them and they've ignored. And you should at some point clobber both with Beckith on this. The judge let them get away with a false affidavit although admonishing him and you have been silent instead of demanding a truthful response. I think you should go back to that and demand it and use this to show how they've delayed the case because there has been no response to my affidavit. (Remember the Christensen volumes and my request? You've done nothing about that. I don't know if she'll remember now but they are related.)

8:14 Court asks about any document withheld in its entirety and Cole says "it doesn't go to the issue of not having searched for them." You let it go ehrrm you could have murdered him for so large a lie.

9:2 is where Cole lies and said I received six volumes of inventories and I did not get them or have them in separate volumes. When you responded you did not include files not searched until at 16:5 you made casual reference to the other writers Item and then without the punch using what my affidavits hold on O'Leary offer you. It was much too pedestrian for so important an issue, no search on the first requests.

17:10 abstracts - Cole says they are "like the central index file." I have not noted all his references to the abstracts as an index

17:12 he actually says we did not request an index. What would have been wrong with your interrupting him and bashing his foul, lying mouth in? All you had to do is complain and read that Item at that point. You'd have thrown him.

17:17 the judge had to do this for you when he said the question of DJ excisions were "never brought up before." I provided DJ with specifics on this, including public domain withholdings, like in the Byron Watson stuff, about which I don't give a damn. At this point,

of

18:17 the judge expresses a clear understanding the requests. However, she is uneasy, and when you started to tell her about searches not made, at

18:18 she is under the misapprehension that there was a change in the searches and processing. There has never been any additional searching and all of it and the processing was during "Onslaught." This is uncontest in one of my affidavits, I think perhaps the most recent or one of them.

(maybe there is no requirement that they respond to an affidavit but you don't have to go along with that and there are many uncontested affidavits all of which Cole ignored and all of which prove the opposite of his allegations.)

24:8 see references not searched. She is uneasy about this after you told her they hadn't been. I think this is important. She knows about them and assumed it had been done.

25:11, where you are good on JUNE, except that you have all of it as JUNE MAIL rather than that being part of June, you failed to tell her that these are specific items of the requests. And how can't you know what is there on the persons listed if there is no check under those names?

26:2 ff you say what would be good, that you would lay all the issues out before

the court and say it "needs to be briefed" at 26:7, but you've not done it and when you said it should have known you'd not have time to do it promptly. (At some point or points you promise to file all the motions for Partial Summary Judgment within two weeks or a month, which you should have known was not possible. And is there applicability for some of motions to Compel, like on the searches not made?

28:17 Cole again says the abstracts are "like index cards."

29:7 Cole says what is not true and you let him get away with it, that the June files were searched and the records were given to me.

30:25 first ref to Kelley's ~~9/14~~ 9/14/77 letter to me, with reference to my affidavit of about 8 months earlier, or about 5/77. I don't recall that letter and will await receipt of their response. But I'm wondering if you got the wrong letter? The one I recall calling to your attention may have been a little later, the letter on what was not provided under the Stipulation, and that I recall addressing in my response to the Mitchell and Shea affidavits. (And they are not inclusive, Shea's even less than Mitchell's. You should, I think, be familiar with that of my affidavits and be prepared to read uncontested parts because they are important on the issues Cole raises and on the Stipulation and the misuses of that, on which you have been inadequate.)

31:16 Cole admit no search of the June files.

35:11, withholding of SA names. You understated enormously too much. Here was a chance to get her to face their contempt of her. She issued an order, she didn't just indicate a belief they should be good boys. They are still in that contempt, a matter I hit hard in the Beckwith affidavit, which seems like years ago now. (You return to this on page 40)

44:6 Cole says there are "No Lab files in existence" and that all the agents testified to this and that all records are in the main file. This is not true and the effective way to have clobbered him would have been to remind him that Wilty admitted the Lab and not the main file still has some of the best records ~~and~~ we have not been given. Here your excessive good-guy instincts, which are not best for a lawyer, may be thrown at you because over my objection you agreed to write Cole and haven't. You did not have to write him and you should not have said you would. All you should have said is that it is within the request of four and a half years earlier and sending it by the next mail would not be a bit too soon. So we still don't have it.

44:21 Cole says that in addition to the Stipulation, which you are going to have to address as you should have on 11/1/77 if not earlier, they are "relying on... his initial complaints." They have ignored all ~~but~~ all except those relating to the field office records were prior to the Stipulation. They are not and cannot be relying on my complaints, if that is the word, because they haven't yet made the searches I showed they'd not made and have done nothing about the excisions, even of SA names.

His claim that they are "trying to figure out what scope is" is false and the correct use of the language of the Stipulation is a means of hitting him hard on this. Scope is where the information requested is, where they have not searched, not MURKIN. (44:22)

1/3/80:

Cole says Shea made two "final decisions." This is false and the quotes should be pushed down his throat.

Abstracts: although she fudged when Cole started maneuvering she told them to (52:3) pick the first 100 records." I think we should go over them. But what they produced proves he lied, they produced 100 abstracts in serial order. He said this was impossible. At 34:16 Cole says "We don't have the cards in numerical sequence." He has lied and shafted so much on abstracts I think we should demand a definitive statement, are they as the FBI's own book says they are? Why should Cole still be improvising the second time?

have

By and large you did well 1/3, but you still ~~make~~ the same blind spots about fact and the record in this case and the kinds of bastards we contend with.

After reading these transcripts I have a stronger impression of Cole but it is entirely consistent with the one I formed at the depositions. He is skilled and smooth, able and polished in his dirtiness, with a manner and appearance that do not suggest he is a dirt bastard and a non-stop liar. I know you can't keep calling him a liar but you certainly can say the same thing more effectively and you should have been ~~not~~ doing it at all three sessions, where it would have been effective and you would in it have underscored at the least the total undependability of everything he said.

He is much smoother than Dugan or Betsy. He is totally amoral, totally unconcerned about truth, decency or the other considerations that mean much to us, but this is his Achilles heel, if you point the arrow right.

One of the beginning points, I think is the Stipulation. I don't know why you have feared getting right to that, as you should as soon as they violated it and I complied. It will not be a ~~big~~ big deal to brief that and that it past, however it goes. It will be simple to take to the appeals court as we must but for God's sake let's get it behind us and take this best shot at ending their false pretenses. They have even held all of what Shea can do up on this for years and your failure to get to it enables it. If you are hung up over having agreed to the Stipulation, that is of the past and get that Albatross off. They don't have a leg to stand on. I'm not inclined to believe that she'll agree with them, it is that jaw.

You also have to make a strong bad-faith pitch and that also is not that hard. It is not limited to the Stipulation and my affidavits should hold all you need.

Everything in FOIA begins with searches. Can you file a Motion to Compel with regard to the 12/23 requests? They cannot have searched most of the Items and their MURKIN representations has been more than disputed from the first. It is obvious that some of those Items cannot be in MURKIN records, despite the unfortunate beginning of your letter, which they take to limit it as they know it was not limited. All I recall on these Items is an evasive letter from Shea saying that we are not in the index to electronic surveillances. There was no such limit and we've proven there was surveillance. (My ignored Long tickler appeal, after I read what remains, holds a good and ignored example, their having me in bank robbery files and their still not giving me the other relevant records, which are covered by my PA request in addition.) What I have sent Shea on this is inclusive and informative. He can't claim a need to await any scope determination on my 1975 and 1976 PA requests.

I'm not sure that your preparation must be inclusive but I think you can pick and chose and indicate there is more in getting us out of the morass you have let them submerge all of us in. I believe the Stipulation must be the beginning point on resolving the false scope issue, and the judge has indicated that scope must be addressed. You may want to go back to the time Betsy raised this. The judge indicated disagreement with her concoction when she read the Stipulation again then. None of your references, scattered and detached as they are, are other than good when you refer to the Stipulation but you have never once taken it apart and not once cited all the violations, even my instant complaint about the instant violation with the ~~emphasis~~ records. You referred to notations only, and should sharpen that, which is easy. Incidentally, it was not Shea who gave me the info but the N.O. compliance with my PA request. My affidavit corrected your error on this.

That they still haven't searched the unsearched 4/15/75 Items is, I think, powerful on this and clear indication of motive, especially because they have misrepresented to the Court under oath on this and have not corrected their false swearing even though the lawyers became aware of this during the depositions. Both failed.

A simple proof of the fact that all MURKIN material does not meet the requests and related to the 4/15 requests is the O'Leary stuff. His public acknowledgement that the FBI gave him all he had for his Ray "Leaders Digest piece is in one of my affidavits. That it was approved to give him "public domain material" is in the MURKIN records. But what they gave him isn't and the judge, when she sees that, will get some understanding of what they withhold and why, as I've already spelled it out. You know very well they turned the whole case around on that and my affidavit includes Jimmy's letter to Battle saying he might as well just sentence him without trial.

These things are all off the top of the head this early morning. I think you should make your own list and prepare adequately on them, perhaps with exhibits if it is verbal. I think this kind of strong preparation is a minimum prerequisite for 2/8, regardless of any other required preparation, as perhaps on the abstracts, where I've done the checking of what they provided and await hearing from you on what you want done with it. I think our position is simple: it is within my requests and their violation if my rights for more than four years does not accredit a time argument now. Or cost. Or anything else. And while you are at it, there is no affidavit attesting to a search for any FBIHQ index and the central records book indicates there should have been at least one. The ticklers are MURKIN records and are a form of index. My affidavits on this also are not disputed. Be prepared for an argument saying they were destroyed and ask for proof, not just Cole's statement, and searches attesting that they do not exist after a diligent search. First-person affidavits. They have simply ignored this also, and this also is basic, in the initial requests, not any later explanations after they stonewalled.

Girl your loins, tiger-to be!