

Jim Jim, On "Sampling" government lawyers in FOIA cases 1W 1/22/80

In Cole's letter to the judge forwarding the samples of abstracts he says that this is his means of settling the case, by sampling. Well, be under no illusion - there is no circumstance under which by the most remote connection I will be part of such a thing in an FOIA case. You didn't mention that when we spoke and perhaps the judge who is anxious to end the case won't be outraged by such a proposal but it is, even for government lawyers, indecent and another effort to use my cases to rewrite the Act.

However, I would be all for you rising to the pinnacle of your not inconsiderable talents for ridicule and writing a letter or filing something else but in some manner making our proposal for sampling:

Let Cole "sample" the MURKIN records provided from FBIHQ, all 20,000 pages, for compliance with the judge's order that no FBI names be withheld, her order prior to the processing of any records.

Let Cole "Sample" the Department's response to my affidavit and the judge's comment when I proved Beckwith's affidavit to be false & sworn and to have phoney attachments.

Let Cole then "sample" us with a response to what Beckwith was supposed to respond to, Lila's memo. That still has not been done.

Let Cole "sample" the withholdings of the public domain from the records, even after my notification that the information was within the public domain.

Let Cole sample the Act for an exemption which states that the FBI and the Department can rewrite requests and not comply by revisionism. In this connection give him a sample of the depositions, which show that despite contrary affidavits there still has been no search for record responsive to some items of the requests. Ask him to cite an exemption that permits this or sanctions unrelieved false swearing to compliance without searching items of requests.

Ask him to sample Shea's reports and testimony, in which Shea says that the records need reprocessing, and to show how any of his "sampling" can get around that. And to "sample" responses to my appeals. Particularly those which specify files not searched but relevant.

I got interrupted and I'm tired, very tired, so I won't spend any more time on samples. And if you don't clobber him over this I won't be spending any more time on anything. For all these years they have kept me dangling and wasted me merely because you are not vigorous and don't clobber them for the worst of offenses. Clearly this judge tolerates anything - except from us. So let us do what we can to end this as abruptly as we can with the only alternative a vigorous order from her for full and complete compliance. Now I know this doesn't spring full-grown from a rib but there are ways, they won't take all that much time and there is nothing that won't take less time than our course of the past.

The burden of proof is on them and you have not made them assume it on anything. Of course the judge hasn't. So we just file motions citing the record, as of my appeals, and ask that there be an order compelling them to justify each and every one of the withholdings I appealed, excisions to files not searched, emphasizing what I said was public domain or otherwise disclosed by the FBI itself. Refile the Vaughn motion, but extend it to the field offices, which gives room for compromise but is not unreasonable. Move that all my affidavits relating to non-compliance be responded to by those of first-person knowledge and that all untruthful affidavits, meaning those I've so characterized, be proven to be truthful or withdrawn. Move that all non-first person affidavits provided when first person affidavits were possible be replaced by first

affidavits and emphasize HQ and Memphis indices, with details of the places searched. For searches of the files of the Divisions and each Department component, with search slips to be provided for all searches for each item. Include anything we have asked for and not gotten, all appeals that received no response. And I think you can do it in a single motion of many appts, each of which can be identified by a letter or a number. It doesn't have to be completely inclusive but it should draw together the existing heliofa case of non-compliance that they have perpetuated and the judge has tolerated. While taking things out on us, especially me, when my only offense is making the request.

In any even I have for years been saying that this is wasting me, preventing my doing anything else and for years we keep ~~not~~ doing exactly what enables them to waste me and "stop" me. It will continue until you make a vigorous effort to stop it. They know you want. They sized you up exactly as I told you, a nice, quiet guy who doesn't fight and takes almost anything, no matter how awful it is.

I'm not a young man of 62 any more. Often I just can't keep my eyes open even when I'm not sleepy. Sometimes I can't walk straight and increasingly I misjudge minor distances and bump into familiar objects. I'm at the point now where if I had a completed book I'd have to give serious thought to paying the cost of having it printed. Not that I don't want to write more books. But these things have wasted me so that I wonder if they can ever be more than useless manuscripts. If I am to do any work, if I am to make any use of the records I've obtained and if any other good is to come of this out approach requires immediate and radical change.

As I told you often and long ago, I'd rather lose than continue this way. I have to mean this and I have to start. When Cole can pull something as wrong as this and be unafraid and you do nothing I have to let you handle the case as best you can, as you want, without my putting any more time into it. I don't know if you have been making any effort to keep tabs on the costs to me when my only regular income is from Social Security but I've used up a considerable portion of my meager protection against the kinds of emergencies that are not unheard of for those in my condition. So I don't see any point in spending more to rent cars and go to Washington for the kinds of status calls we've been having, in which there also is no abuse from both the Department and the judge that you can't summon the more than justified indignation to at least say something about.

I'll be there for the 8th. but that may be the last. If it is like the others it will be.

If you don't find legs that you can stand on you'll be wasting much of the rest of your life because everyone will size you up as an overly-tolerant mark and will do pretty much as the government lawyers have done.

As you will see I have taken my own way of making what they are doing ~~expensive~~ expensive for them. I've filed, rather will be filing, a "protective" ~~new~~ request for these abstracts, which is exactly what we told the judge we would do in camera 11/77. I've include indices and ticklers and I've extended this to JFK. They can now decide whether to get it over with and provide them in this case or go through the entire thing possibly in another case, which won't make that judge love Green. And they can recognize that whatever they do they now have the extra problem of fighting giving me the JFK ones or merely have that much extra work and trouble. Maybe Cole won't learn anything from it, maybe he will. Maybe it will get him loved, maybe unloved. And maybe Ldl will start filing some ~~new~~ requests, for the records I've asked for and want and still don't have. And who knows, maybe it is not impossible that at some point someone will wonder what they are accomplishing, what the cost is, is it worth it, will it succeed in the end, even if they can defend it if ever called upon to do that.