

Mr. Carl Stern
NBC News
4001 Nebraska Ave., NW
Washington, D.C. 20016

11/5/86

Dear Mr. Stern,

Until now I've sent you copies of filings in a precedent FOIA lawsuit in which, unhappily, I've wound up pro se. We made a major effort to inform quite a few reporters at what for us is considerable cost and if any reporter was interested he must have believed that his desk would not touch it. This time I can't send what I'm filing and I write on the chance that you may have some personal or professional interest that NBC may not share.

My wife, only recently out of a wheelchair, is xeroxing and collating by hand the many copies required on appeal. With the exhibits well over 200 pages per set. When she finishes I'll file it. It is due by the 15th.

To refresh your recollection, in CAs 78-0322/0420 I filed for all the FBI Dallas and New Orleans field offices' JFK assassination investigation records, including what is not in those main files. Because this and the King assassinations are historical cases, when Quin Shea asked that I file detailed and documented appeals to inform him in all I provided so much that my copies take up two full file cabinets. In this case, there came a time when the government demanded discovery and, under oath and subject to the penalties of perjury rather than merely by a lawyer's statement, because I wanted it that way, I gave a number of reasons for not providing all over again what I'd already provided in full. The reasons included the impossibility of swearing to what was demanded, the impossibility of my doing it all over again because of its cost and my health and the limitations it imposes. DJ threatened a contempt request, I dared them to risk a trial, and they switched to getting a money judgement for claimed lawyers' fees. After the case was on appeal, under the compulsion of another court, they disclosed to a friend of mine secret and truly scandalous FBI records they'd been able to get away with keeping from all the earlier official investigations. My selection of them leaves it beyond question, and it is undeniable, that to get the discovery order they committed perjury, fraud and misrepresentation. I used, pro se, Rule 60(b). As usual, Judge John Lewis Smith ignored everything and ruled for them again and it is this that I am now appealing.

I've learned since my earlier filings that the FBI SA who provided most of their attestations in my case and supervised the disclosures that I use as new evidence is a lawyer and this just happens to coincide with one of the liberties Smith took with the case law that he cited, to make it appear that it does not apply to this SA, John N. Phillips. Smith took other liberties, twice within quotes.

Smith also lied, and I mean this literally, in his Memorandum. I do not expect the media or the appeals court to get excited about my proving it, unless it excites them more against me. For one example, he says that he held an "extensive" hearing. He held none at all, refused two when I asked for them, and his own Order describes the one proceeding I was at as "oral arguments." It was less than that, no argument, no questions and he wouldn't even let me read what I'd prepared and thus I had to ad lib from a wheelchair, without notes. He said he made repeated reviews of the case record, describes one as "exhaustive," when he is so ignorant of it that he repeatedly says I'd sued for King assassination records of the New Haven office, neither true.

A nonlawyer can't speak in terms of precedent with any authority but I think there is precedent involved, aside from the fact that what I allege is not everyday stuff.

The brief, as they count pages, is just under 70 but actually about 75-80. The appendix is about 150-160 pp.

Scalia was on the previous panel. I suppose they'll use the same panel with a replacement. That is not very hopeful because I think it is from their opinion that the suit is for King assassination records. They did say that in their opinion, so you can guess how familiar with what my then lawyer filed they were.

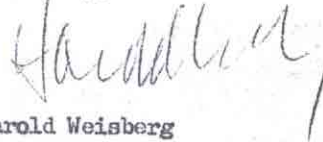
I'm assuming the same panel from what the clerk sent me. I don't know. And I now think the other two on that panel were Wald and Willkie. Hasn't Willkie left?

Smith also undertook to rewrite 60(b)!

I'm sorry if this isn't clear but preparing this has been a drain on my wife and me and we've not been well for some time.

I'm not presuming that you are interested and this requires no response. I'll be sending a copy to Jim Lesar, former lawyer and still friend, if you'd like to look at it there or I'll lend you one.

Sincerely,



Harold Weisberg