

Dear Mr. Smith,

4/19/83

If I remember correctly, when I wrote you a few days ago I expressed the belief that new moves against FOIA, by (mis)use of me, were probable and would draw on the appeals court decision in my suit for the results of spectrographic and neutron activation analysis in the JFK assassination. I believe I also told you that I had a copy of the decision but would not read it until my lawyer told me what, if anything, he would attempt to do about that decision.

I've not heard from him about the latter, but in today's mail I have a copy of the Order by Judge John Lewis Smith in my suit for the Dallas and New Orleans JFK assassination field office records that can turn FOIA entirely around and place the burden of proof, among other things, on the requester/plaintiff. I'll enclose a copy of it.

Because this Order refers to the appeals decision, I've read the footnote referred to and I'll enclose a copy of it. I see no relevance of that citation in this Order, even if the facts stated in it were true, as they are not. Whatever may have happened in any other litigation is not in any way related to whether or not the FBI should be able to exercise discovery against an FOIA plaintiff not only under any circumstances, which is the position I've taken, but also under the circumstances in this case, where, without contradiction, I've stated that it is burdensome, one of the bases in law for not granting it, isn't necessary, hasn't even been claimed to be necessary, but even if it were, I'd already, voluntarily, provided all the indicated information in ignored affidavits in the lawsuit and almost entirely ignored appeals. The volume of what I've provided is enormous, two files drawers.

As you can see, Smith is also ready to assess costs against me, something I believe is unprecedented under FOIA and not envisioned in the Act. This also can mean the end of FOIA for most people. I don't know what my overworked lawyer will be willing or able to do about it, but if in the end I am required to do this, I think I'll offer to do it by paying 10% monthly from my \$335 Social Security check, my only regular income.

The actual case record in the suit against Smith (C.A. 73-0522-0420 combined) is incredible. The FBI has filed 10 sworn statements in it and I've proven, also under oath, that all were untruthful. In less polite language, perjurious. Smith has not ruled on that but instead does this. (Somewhere I have a copy of a transcript in other litigation in which Smith forgot himself and said that he always takes his leads from the FBI.)

I won't take much of your time with the enclosed footnote but I will say that where it refers to the case record, with the possible exception of its citation of dates which I haven't checked, it is not correct in any statement adverse to me. The extent of this boggles the mind. I have not initiated any new requests in this litigation, the first thing, and the second is wilder, about the AEC not having any records because it only provided facilities to the FBI. The largest volume of records provided was by the AEC. (That is how I learned that the FBI had made tests it sworn it hadn't made.) Because I did tell you about the shirt collar and tie, I tell you now that they were subjected to spectrographic analysis and it reflected that they had not been damaged by a bullet. Its pertinence was not that it was included in my request because it wasn't and could not have been. The FBI had kept the making of the tests secret, even from the Commission and all its known records. We deposed Frazier to learn whether or not other pertinent records existed and had not been searched for and to try to determine whether there had been official untruthfulness. When I hear from my lawyer I'll go over all of this and prepare something for him, and I suppose for history.

Let me add that Frazier, who was the FBI's major liaison with the FBI in Lab matters, did not just "mention" this. I had obtained an FBI picture which seemed to me to make it clear that no bullet could have caused the damage to that collar. Frazier was shown it and questioned about it, without objection from the DJ lawyer or the lawyer from the FBI, who understood that the questioning addressed the existence or nonexistence of pertinent information. He could not explain it, he refused to testify as an expert, but when asked if, having had the questions to which he admitted on questioning, he had done nothing at all, he testified that he had directed the Stombaugh (hair and fibers) tests be made.

In a personal sense FOIA means nothing to me. I hope I can live long enough to complete the writing I planned prior to my 1980 surgeries. But I regard it as an important law for the country and for the major media, from whom most people come to know what they know. I've been persisting in some of the litigation to be able to avoid adverse precedents. The FBI can close off all information pertinent to all my cases through me, to all subsequent requesters.

Lesar and I were not unaware of what Smith could do. We discussed it some time ago. I then suggested that he ought to inform others, like the ACLU. If he has, he hasn't told me. He may well have been too busy. They and other public interest groups have more at stake than I.

Then there is the separate question, of what I believe can be major news, the true story, the real evidence, of the curbst one and the clothing.

Having read this one footnote only, I believe it is not impossible that the appeals court was thoroughly frightened by the meaning of the evidence that the FBI never contested. I think the greater danger - and not only to the Act - lies in trying to cover it all up.

If you do have any questions, please ask. I got this Order today and because I had written you earlier, I did not wait to hear from my lawyer. I'll be going out in time to get this in tonight's outgoing mail. Although I believe this footnote is entirely unfair, I want to be fair myself and let you know what it says.

I'll not be home Friday morning, I'll be in Washington tomorrow only for the regular checkup by my surgeon, and generally I'm not back home from my daily walking therapy until 10:30-11:00 a.m.

Best wishes,

Harold Weisberg