

Rt. 8, Frederick, Md. 21701
7/8/75

Reporters Committee for Freedom of the Press
Legal Defense and Research Fund
Room 1310
1750 Penna Ave., NW
Wash., D.C. 20006

Dear Committee,

Non-reporting of the first case filed under the amended FOIA case is helping officialdom rewrite the law in court with a not unwilling judge helping out.

In fact, with no single spectator or reporter present on May 21 Judge John Pratt laid out exactly how he would rewrite the law. Since then the government has taken the line he practically recommended and has filed a motion to dismiss without compliance or filing an affidavit that addresses the complaint.

This case is my C.A. 226-75. In the original form it is one of four suits cited as requiring amending of the law in the debates. It is for specified scientific tests in the JFK assassination investigation. I filed for the results of these tests only.

It is a Watergate-like story.

In C.A. 2301 the FBI pretended I had asked for the "raw material" and swore that it and law-enforcement would crumble into ruins if this were ever ~~given~~ given out.

Given the legislative history of the amendments (and on these tests and this suit the conference report could not have been more specific) DJ did not dare take the same tack.

Instead they called my lawyer and me in for a conference, refused to make a record or permit the making of a record of what was said, and blandly told us that the results for which I sued do not and never did exist.

Of course the whole purposes of the tests was to obtain the results for which I sued and sue again.

As an alternative they offered me this same raw material I had specified I did not want and it had said would, if released, lay the FBI waste. I asked for certification that there were no such results as I seek and accepted this raw material.

The FBI then sent me only a fraction of the raw material and pretended this was full compliance. I demanded and got what is represented as the rest of this raw material. It is really close to gibberish.

The FBI then swore that it had filled my request in full. In a return affidavit I proved that the material/^{provided} alone proved continued withholding. On this and other basis I alleged perjury. It remains undenied. And unreported.

The government's old trick is to have the wrong person execute an affidavit that is only hearsay and to avoid a first-person affidavit where the perjury will be clear. They used it in this instance. Only because the agent did swear he was familiar with the files and with what I have been given and what I had been given referred to what I had not been given I believe it did become perjury. It made no difference to the judge that prior to the execution of the affidavit this proof of continued withholding was cited in the hearing, a calendar call.

The judge's solution was to change the law to put the burden of proof on me. And to say that he had to assume the government's "good faith."

We asked for a stay for as long as full compliance required plus enough time to go over what would then be supplied.

In its Opposition the government skirted the question of perjury and the proof of continued withholding by saying I could make such allegations ad infinitum because I know more about the JFK assassination than anyone in the FBI.

Really. For all the world as though this eliminates any obligation to comply with the law, too.

But they also got a little careless. Clarence Kelley wrote the letter in which compliance was alleged by providing certain specified and itemized tests. We charged these omitted some required to have been made. The first affidavit responded that they were, too, made. And I then swore that these had not been provided.

The FBI then sought to resolve this affidavit deficiency with still another by this same agent, John Kilty. He merely swore that the tests he had sworn had been made had't! This swearing to having sworn falsely was then used by the government to claim full compliance and as a basis for claiming the presumption of validity of all government acts.

The next calendar call is set for July 15. Prior to then I will again prove perjury, seeing no alternative and because it is a crime and was committed still again. My affidavit, now being typed, proves still new perjury in their newest.

Going along with all this the FBI agent who could give first-person testimony, the one who also testified before the Warren Commission, took his retirement. He is younger than I. We had asked that he or another who had personal knowledge swear that the results I seek never existed, what they told us. Nobody can swear to this without committing perjury so nobody has sworn to it. Not even hearsay swearing.

To make the Motion to Dismiss look better the FBI dumped on us more than 200 pages I said I didn't want and 15 8x10 glossys to boot. They relate to the tests the results of which I did not want, of the paraffin tests on Oswald. I want only those relating to ballistics, essential evidence. I can visualize the government complaining in court that I am a crusty old bastard who just can't be satisfied when look at all we have given him.

That none of it responds to the request under the law or the Complaint, from all indications, will make no difference to this judge.

To now it has made no difference that in addressing his allegation of the presumption of federal good faith I filed an affidavit ticking off all the false swearing ~~it~~ in all the suits I've filed and that the government hasn't responded.

The judge's solution for the government, which will rewrite another provision of the law and negate the whole thing, is to say that he'll regard "substantial compliance," whatever he may mean by that, as compliance under the law - as full compliance.

I'm sorry I've been too busy to write you sooner. There may well be other legal issues that do not come to mind.

I believe that because of the existing prejudice against the subject the government will use this as a precedent case.

Total journalistic disinterest in the first case filed under the new law may well encourage the government. I think that with any coverage what has been pulled would never have been tried.

I also believe that what the record now shows is not without news values.

The government claims ~~it~~ never ^{to have} compiled the results of the intricate tests of the essential evidence when the results are the essence. And it was about the assassination of a President.

It claims not to have performed the most vital of these tests.

Even that a private citizen knows more about this assassination than anyone in the vaunted FBI.

I do not file these suits on whim. I never take any chance on the fact. It has come to the point where I obtain more by the mere threat of suit. In every case I know what the factual situation is beyond any question and what should be delivered if there is compliance. I have absolute proof that these tests do not prove the official accounting of the crime and that the FBI knows it. Without this certainty I'd never have filed this suit in any form. The other evidence I have is what made me file this as the first of my JFK suits.

There is no doubt in my mind that were there to be compliance with what I seek in this case the whole official account of the JFK assassination would come apart.

Why else would there be perjury?

But my purpose in writing you is to alert you to the danger to the law.

My apologies for the haste.

Sincerely,

Harold Weisberg