

Decision on my spectro appeal, US CA DC No. 71-1026 HW 3/1/73

The victory is more basic, more important and more anti-Government corruption and misrepresentation than I'd expected. The focus is on what I had expected, but what surprised Jim and me (Bud not available) is that the majority ignored the point where we felt that under the law controlling decisions there was no room for doubt at all. This leads me to believe what I have from the nature of the questioning during the oral arguments that the court really wants me to go after the FBI and the DJ. There is a point at which this is to me fairly explicit, if subtle. The nature of the language as addressed to the spurious invocation of the so-called "investigatory file" exemption is such that until this is disposed of the government simply dare not use it frivolously again without begging reversal on appeal.

The decision holds that just because the FBI says it is an investigatory files doesn't make it one and even if it is there must be a showing of harm if the public information sued for is to be withheld. It goes further and says the FBI presented no evidence on this and what evidence it did present is neither persuasive nor credible and in any event doesn't meet the test. It is here that it practically invites me to go after them and orders the lower court on remand to give me the opportunity. Footnote 5, p. 7.

In my unlaywerly, non-lawyer's view, this decision does more than affirm the binding character of the language of the state. It extends it and requires in camera examination of what is alleged to be covered as a last resort. Or, the government is no longer sole arbiter and can't be again unless this is reversed on appeal to the Supreme Court. I have all along felt that this would be the government's next step regardless of the nature of the decision because they simply dare not give me what I seek without destroying the Warren Report.

The dismaying part deals with the judge Jim and I sized up wrong. We felt that if only one sided with me, he would be that one. He is the one who dissented, Danaher. Former "New Deal" Senator from Connecticut, later Truman's appointee to the Internal Security Commission. He is simply incredible, drags in all sorts of irrelevances not before the court (raising questions in my mind about with whom he was in touch), and concludes in a way that makes prior restraint look like a writer's boon:

"...the law, as ~~before~~ to the issue before us, forbids against this applicant's proposed further inquiry into the assassination of President Kennedy.

"REQUISCAT IN PACE" caps in original. Or, I'm not allowed to do my work!

I am sending the copy I have to HR who can copy if he wants one now or wait until Bud & Jim decide if they will offset, which might be a little cheaper, who I ask to send to the Whites for them to read or copy. If Paul wants a copy now he can get it from the Whites or from Jim who will be other there by then, and does plan to see Paul.

If I may be permitted a euphoric moment, I have sued the government four times, that is, to adjudication. I have won three times and the "loss" in the fourth was under such circumstances that it is a victory. I did get what I wanted because in order to prevail the government had to offer all I asked for except copies for my possession.

The argument ignored is firmly established, that even if what is sought is properly subject to withholding, any use waives the right to withhold. There was use, by the WC and by Jesse Curry.

The entire text of the affidavit by FBI Agent Williams that is at best deliberately deceptive and misleading and misrepresentative is included in the decision. My view is that it is suborned perjury. The first lengthy memo I did was on this, taking it apart. Bud elected to leave that out as too hot. Because he said this would go to the Supreme Court, I let him have his way. The court here affirms my judgement.

For those not familiar, I did the draft of the complaint, Bud edited that, I edited that, and Jim did the appeal, with my editing. 26 printed pp, 14 in xerox.