

Dear Jim,

U.S. 226-75

6/7/75

The transcripts came today but I was not able to get to them until close to 5. I've read and marked up that of 5/2. Before I have a chance to forget I want to make a few comments. Later I'll have time to read the 5/21 transcript.

With some unexpected help you made a superb record! Simply great. I'll come to a few specifics.

I will be going around speaking and I'll be using these, so I'd like a second set for which I will pay, one I'll keep unmarked. When you can I'd appreciate your making a copy. I think Jim White might want to read this and I believe it would be instructive to Paul Hoch if he did. So, when you make it, please mail it to the Whites and I'll ask them, after they read it, to send it to Paul. He can then return it to me when he is finished. No rush on return.

Both the judge and Ryan made an incredible record against themselves when compared with the second hearing. I have these parts marked and when I know we'll get to discuss it I'll go over it again.

On the good faith jass, there is nothing against us on appeal. You did remember enough of what I'd told you and you were quite explicit and you did tell Ryan and the judge exactly what they had not delivered, and when after this the judge, on learning that there had not been compliance at the second hearing, still said they were in good faith, well....!!!

More, on the promised affidavit: Ryan promised it for 5/14. We got it in court 5/21.

Ryan said six times that there had been full compliance.

The judge himself said there had to be a first-person affidavit and he was specific on his own - no prompting - in picking out the lab heads. He also said that the affidavit or affidavits - he used the plural - should be responsive to the interrogatories and then he accepted entirely non-responsive, non-first-person affidavits and added he'd regard partial compliance as full compliance. The difference between the two hearings makes me believe he was spoken to. He'd not have made this kind of record otherwise.

There is a gratuitous crack by the judge on page 12 I want to note:

"I assume, Mr. Weisberg, at least for the time being has other means of support, doesn't he, Mr. Lomar?"

Whatever else the judge had in mind there is a clear inference that I expected to get rich off this costly and entirely unremunerative proceeding. This is the rottenest kind of prejudice and ought not be forgotten on appeal.

He then argued with you about this. Perhaps without intending you answered him on the alleged profitability: "Well, his financial circumstances are not good, but that is a situation I do not expect to change in any event." Here he went into hiring you. If you told him you did not expect my circumstances to improve you told him explicitly enough that this would not be financially rewarding to me. Of course you knew better and knew I would be giving it all away. Whether he has leaden humor or was serious, he did then argue with you and I think the combination is prejudicial and can't be from anything that was before him.

Later, after reading the 5/21 transcript. This judge knew quite a bit about me not before him and I find it consistent with all else, prejudicial. He ~~sum~~ described me as "redoundable" and Ryan as "persistent." Let us not disappoint any one of them. Ryan promised the ERDA affidavit for the next day, when you leaned on the judge (beautifully) he said nail them, so please do. Ryan said he had by the hearing been assured the ERDA affidavit "was on its way." That the day before "they promised that would be here this morning. I don't have it yet." (3) "And I expect that...affidavit...today or somebody will hear about it." (4)

Let him hear, with a simple, separate and immediate motion to compel to which you attach these pages from the transcript (plus the judge's good faith page on Ryan) and build the record with a vigorous effort because before this is over we are going to need a record.

Ryan says I'm persistent? So, let us persist on this immediately. If we do not load the record now we are going to find that we'll have nothing in hand before the next hearing, have a bunch of the meaningless handed us with a motion to dismiss to the judge and he'll moot it. He has indicated this and in a way that would for all practical purposes gut the law until it is overturned. "substantial compliance."

Legally I would suppose the affidavit I filed would be enough. But he is the one who decides what illegality is legal and he will. He has telegraphed it.

You handled him beautifully then, stood up to him on every count and with the right points.

Now the time has come to try the case on opposing counsel. It will be a serious error not to do this. Ryan promised the already overdue affidavit the next day and it is more than two weeks. He admitted his client deceived him, which weakens his position. So, I think you should stuff his own words down his throat and into the "good faith" record.

Don't forget Whizzer on having to accept a false affidavit. We want to be ready or have a fair chance to go over and ~~analyze~~ analyze the ERDA affidavit. If after you do this we do not have it, I'd ask for a postponement until we have it and 10 days after it. Do it whenever you deem appropriate but not too late.

The attempt to rewrite the law and weaken it worse than the old one is more apparent in the typescript that it was in court.

This is a smarter judge than Sirica, too. I think we will want to have an affidavit of our own to submit at the hearing, giving Ryan a copy then for the first time. Could anyone object when he did it to us. In it I will allege that from personal knowledge there has not been substantial compliance; that the law does not put the burden of proof on me but if there is any under oath attesting to the opposite then- and only then- will I detail this. But we want a first-person affidavit. We can work the details out and I think should.

We also cannot accept delivery of what we have specified, if it is delivered, in court without time to go over it. I want 10 days. This means that if in the early part of the week you do not have it for me I'd like you to file a postponement motion, open ended, for 10 days after delivery. If he turns us down ~~xxxxxxx~~ we are no worse off but he has a worse record and we a better one on appeal. Be sure this is going there unless they admit all and they are not now going to.

Think of every damned appropriate motion we can file and lets get them in. We are going to need them. Especially if Ryan uses what the nuts like Nichols have given him. (On this, remember nobody else has a right under the law to tell me what meaning there is to what I ask for and I am not required to ask for what has meaning. I am entitled to any and all public information and they have admitted entitlement.)

Their excesses and threatening but can be very helpful if we exploit them all. We can't take a chance and figure one is not important. We can't anticipate enough and we do need a simply overwhelming record. It is great to now but with the delivery of the ERDA affidavit and maybe a couple of trashy FBI sheets he'll dismiss and we'll be appealing with less of a record that we can yet make and I think must. We'll be helped by a demand for time to go over what is delivered and if it happens before the hearing when he has given them five delays he'll have a poor record.

Meanwhile, if they have not delivered by the 20th I'd have a motion for a summary judgement ready for him to contend with. I mean if he gives us the delay if we ask, this will not give them any delay and if there is a single page missing we should ask for a summary judgement. Shift the load. Don't tote that bale. File it with the clerk if we get a delay. But by making a demand now, with the record there is no excuse for them not having complied. I did specify and Williams did swear to having it all.

They are having problems they are shifting to us. We can't permit this.

Something else I've never discussed with you. Why are they now giving me raw material when all I asked for is final reports? The most obvious answer is they want no attention to the absence of final reports. They did exist. They dare not have this get much attention.

They could have had the case thrown out on this representation. They make it now, only now it gets no attention. If they had made it in answer it could have with the history of this case. They could have resorted to the Williams & gag of raw material, said what they told us, and could have prevailed. They we'd have had to go back in different ways. On raw material we might have had trouble.

They made the Nixonian choice, stonewall. This is what took so long for the response, aside from plain stalling.

I ought to have a full and accurate set of interrogatories to go over and be ready to defend each one from his - not their- allegation of oppressiveness. He called it fishing. I want to have hooks ready. I think I have FBI but from what you said the wrong ERDAs.

This is getting hairy, Jim, and we are all alone. We'd best be as foresighted as possible and we can't sit back and wait.

I think the only way is vigorous initiative on every possible point.

I made arrangements today to get quite a few copies of the pictures and what is relevant. You'll have had calls for what you have for better copies. I'll be using them in public. I'll also put that part of the case together in the speech. I'll prepare that part.

This will be before the next hearing.

If it gets no attention I would like to be able to hold a press conference. And give it out with a competitive situation for the editors.

I think the government's game is to exploit my weakness. They know I'm broke. Even the judge did, although how I don't know. The DJ has to know about the split between me and all the others and depends on no help from them. Safely, such is their dedication.

Before you get this you'll see the first step I've already taken.

I think I should speak to Downing. I'm writing Tom again. If a Member uses this stuff on the floor - just asking questions, not making charges - it might do a little good.

What you sent me does not include all the Archives has that is relevant. I think it does not include all they sent you. In today's mail there is something from Paul I've not had a chance to go over. It includes a list of documents. If they did not give us all of them then the Archives is still withholding what is not even withheld. He sent me one copy for you of something else. If he did not send you a copy I'll do it with this when I look at his mailing carefully, as I will when I awaken in the early a.m.

To date we have a great record for a normal case. This is not a normal case. We need the very greatest possible. Their stonewalling will either succeed or help us. I feel we'll be making the choice and that we have to full-steam-ahead it, taking the judge at his word and nailing them. He may not like nails enough to continue as he has been.

Best,