Dear Jim, C.A.75-1448 appeal; 3/4/77 transcript; our approach 9/25/77

I have just read the transcripts. I've attached paperclips at points to call to your attention for various reasons. I'll attach them and discuss them. But I'm making suggestions immediately rather than waiting for time to put it all together and organize it because of the volume of such stuff to read and of the backlog of FBI materials when the promised instalment of FBI materials of last week has not arrived and will be here soon, another 2,000+ pages.

The transcript is very good for us. It provides us with opportunities to attack both Ryan and Robinson with attacking them. Robinson's impatience is I believe extra-judicial and improper. I believe also that it magnifies what I regard as his offense in first assuring me that he would hold a hearing with his courtroom witness room filed and then denying it to me without even ruling on whether or not the interrogatories had been responded to. His own words on the problems for judges are great on thispoint and they could not more perfectly lead into the languageof the appeals court in our No. 75-2021 about Wigmore and taking testimony.

I believe once again that those who face constant invocations of "national security" have a great stake in this. The transcripts do not mean that much to me now with the changes in my health situation, another legal consideration, I believe. But to others the principles we can establish by a remand can be great. More if I think Robinson is counter to the t ink of the court in Halperin, Mead Data Central and other decisions.

One way of really attacking Ryan is that once again he is testifying and not providing testimony. At each point in enough instances he lies. But there can be an attack on AUSAs telling judges and judges accepting what should be in the form of qualified testimony and should jot be in the form of chatter from unqualified and partisan counsel. This gets right to our right to take testimony and to cross-examine, as on what was being protected under the CIA statue, what secret method was involved, one not generally known to be a method. Here, in both cases, what we can do can be of great significance to others because neither claim can have any real basis.

I don8t care for myself whether or not others wantx to be amisus but I think their selfish interest suggests they should especially because unless his bookx is delayed there is going to be Epstein's interview with Nosenko which had to have CIA sponsorship. I knew that there had been at least one Nosenko interview a year or more ago, as I'm sure you have in writing from me.

The delays in this case from the judicial and I think are wrong, as was assigning it to a magistrate that denied us a record when the whole case at that stage depended on a record. It is just too bad if a judge is too busy. The Act does not have such a provision. A litigant has his rights. The obligation of a judge is not to claim business but to assure those rights, especiallt when they are under an Act that goes to the very basis of representative society.

I think we should make at least pro forma appeal to the Interagency committee with the request that Rhoads disqualify and recuse himself as defendant. Here we have also a basis and I think an unusual basis for asking the appeals court to entertain new material because this defendant withheld it from me despite discovery until after Robinson ruled, such things as what I've sent you on the utter meaninglessness of the review and appeals mechanism when the appeals authority asks those whose decision he is supposed to be reviewing to tell him what to hold and then to write it all out for him. I believe nobody else has anything like that. Ive just had another rejection on review I've not had time to check. I'm sure it is on this and is in other ways non-responsive.

If you want to make the Interagency appeal I'd be specific in raising questions about what is being protected, what secret method is being hidden, things like that for the benefit of any atavist who may be on that committee and think he should be honest rather than suppressive

Page

5 Ryan "testifies" that "at least they were properly classified at the time they were classified." He says their affidavit proves this. It is impossible and were it not it is the kind of thing on which cross-examination is essential. I'd argue that a few cases of this and there would be many fewer cases filed and going up on appeal, easing the judicial burden. (It also applies elsewhere.) But I think an important point is the judicial collaboration in frustrating the working of that wonderful engine for establishing truth and fact. Relevant to this he lied later about the 1/27 transcript and when you caught him Robinson made light of it and went into the extraneous generalities he likes.

6 b(1) is the controlling influence, he says. We've proven that false every time to now that it has been claimed, proved that there never was any basis for it. Again cross-examination is essential, especially when they refuse to answer interrogatories. There is no aspect of b(1) established by affidavit. There is the meaningless claim only. This also applies lines 11 ff. That Ryan lied to the court, see your comments page 9, lines 18ff.

18:6-It is extremely unlike if not impossible that "the subject matter of those (Nosenko) transcripts is not out in the open." However, this is a matter for evidence, not counsel's allegations. On this I know of no CIA record on or about this to the Warren Commission as of the time of that transcript and there are FBI records that are and for years have been available, records of the FBI's long questioning of Nosenko. We now have Epstein's wiether or not other interviews with Nosenko after my request(s).

If there is no point where I got into other defectors remind me.

18:14-the only purpose in withholding,"would only be to protect the national security." Again cross-examination is essential because of the high probability of impossibility of any legitimate national security consideration being possible with Nosenko or any discussion of other defectors, both ways, ours and others.

Line 23 is the beginning of what I regard as very important, especially because he violated his promise to me and prevented both evidence and cross-examination. Robinson: "There is nothing that I can see to prevent an affidavit being constructed by the head of an agency that very carefully — as it was done here — that makes it impossible for the court to exercise any rational judgement. That's the difficulty we have with this thing."

With this recognition of the frustrating of the role of the judge how can one possibly justify the foreclosing of the promised cross-examination and the opportunity to take first-person testimony. (Do you think he could have been looking for an issue to send up on appeal when he said this or did it just bubble out?) The failing here is greater because of my extertise. Ryan even gets into this with an admission at 20: 4ff, saying that if the government has not provided an adequate affidavit ot would have to "redo the affidavit, submit a more adequate affidavit for the Court's satisfaction."

In the following paragrpahs he lies about the review process, again testifying without the problems of testimony, without being an under-oath witness and if he wanted to get this stuff about 1/27 transcript into the record he should have provided a witness. When you sought to correct this - and it does get to due diligence and good faith - it was at 22:3ff. Robinson interrupted you and turned it all in the wrong way and avoided the issues of good faith, due diligence and false, misrepresentative and deceptive and misleading affirmations to dismiss it all as merely a tradition he did not like. He not only kept on interrupting you, he said (I cannot take any more time in this matter", line18, without letting you respond to Ryan or to make the first single point in refutation. After giving Ryan most of the half-hour it all took. All he lot you get out is less than four lines. He then said he knows the government is never in compliande and not truthful in ases that come to him,"I haven't had a single case yet where they said yes under the statute you are entitled to it."

You tried to say something at the end, 23:9 when, after having listened to Ryan after cutting you off he did this again. You got out five short words,"As a matter of fact" in attempting response when Robinson cut you off with "I am not going to hear any more. I told you. This could go on the rest of the day. "etc.Is the end to save him time or to see to it that justice is done? Did he save time by denying testimony and cross-examination? Or did he, as he says at the end, pass the buck with an inadequate record? HW