Dear Jim, 6/12/76

When Lil has a chance to read and correct it there will be another 10,000 words or more of another draft of another affidavit to combat another crookedness which I fear we will be sending much time on without real accomplishment if we do not turn this 1996 trickery and deception around.

I think we should evaluate our situation, our options and our priorities. In the coure of this we should also estimate the judge's position and the objectives of the government - what to it means success and failure. If we do not and if we failx to evolve a different course we will be on this case as long as the Hiss and Rosenberg people have been. And they are far from the end.

In my opinion what Dugan is getting away with represents great sucess for the government. It prime objective is to suppress as much as possible for as long as possible. Dugan does n t really have to worry and doesn't have much work to do. He is an ideal stonewaller, by character. He lies and cares naught about it. All he need do is keep filing briefs and arguments on points of law, contriving a semblance of seriousness about each and this will go on forever.

We have now gotten to the judge with the knowledge that they are really hiding the sins of the FBI. We know it is not alone in sinning but if she wants to regard them and them alone as sinners and the DJ as no more than coverers-up, that is okay in terms of what can happen in court.

But we are getting no more records and we are not really moving forward on anything. You are now going to have to take time briefing an argument against Dugan's spurious one. After we beat him on this one, as the draft I'll be enclosing indicates, he'll have a serious of other ones, all fabricated to stall. (I've included the phony word Watergate or Watergating on purpose, by the way.)

There is too much of importance you can do to permit them to ring our noses this way. There is too much danger to the law from permitting them to abuse judges the way they have in all these cases where the records are extensive. While we do not have a Pratt as judge is the best time to make what I think are the now necessary efforts.

What I am talking about is not fighting. That we do and we do it well, as I thinkan exceptional m if not publicly recognized record proves. I am talking about how we fight and for what. And I am trying to think of you separate from all of this. Aside from your own personal needs, which are also in my mind, I am thinking of how your limited time can best be used.

If you disagree you know I'll agree with you, as I have always when I've disagreed.

There is more than reason in what I'm trying to get accross, although I think reason is enough. There is intuition I've come to trust and I think the record should persuade you cannot safely be ignored.

We may well be at the kind of juncture we were with McRae when Bud was simply afraid and doublecrossed us all with his timidity. He gave in to the niceties and the norms and let the dirty bastard Haile get away with a nything. That initial mistake was the Hiss mist ake, being unmanly, calm, tolerant of any abuse, including the personal. We then reacted strongly but it meant nothing with Bud's silence.

We have just had this kind of personal, unprofessional attack on us. We err to be tolerant, to be restricted by what we think judges like and do not like. This is w hy I react strongly in this draft.

There is an important psychological factor in this. They are trying us out. They know us both well enough. They are trying the judge out at the same time. I think we will lose coutless hours we don,t have and may well jeopardize what we can do if we do not join issue with them on this alone. We have in the past when we did what others never do. We alleged perjury to Kilty. They did not even bother to deny it.They were reduced to ad hominems the appeals court did not buy.

The appeals court is also overburdened by these cases. The real reason is official dishonesties. This is part of what I was saying when I said we have to arm Green.

We have been at least instrumental in brin ing about some changes. We have to stay

in the point position for many reasons, from the lack of guts on the parts of others to the political significance to our cases to our knowledge of fact in all our cases that is not equalled in any of the others or by any of the others. In these cases there may be more experienced lawyers but you also have knowledge of fact few if any of them bring to their cases.

I'm also talking about what you've heard me call intellectual judo often enough. We can and must convert our weaknesses to strong. We have to use their strength, arrogance and dishonesties against them. When they are abusive of us or the Court we have these kinds of opportunities. We work for them if we can safely exploit these opportunities and fail to. I am not saying we should be wild, anything like that. I am saying that there are times that call for the departures from custom and that our record with the unorthodox is that it has been successful in every instance.

While the judge might have resented a complaint about Dugan I think there is no way she would have resented a complaint against Wiseman's personal vilification of me and fairly clearly of you. I think that it was as safe as anything can be, meaning we could and would have lost nothing by it. It also means we could have gained a great advantage by it. He was a miserable, rotten bastard and the accusation is infamous. You could have ignored the inherent accusation against you if you'd preferred, but I do not see how anyone could have made a peep, not even Dugan, if you had declared you have the right and obligation to defend you client's name and to have exposed the fabrication for what it is, a rotten fabrication made up in all parts. Their serious ~~mmk~~ mistake was to select a completely unfactual area to contest this way. You knew they had never ever masked a lab-agent's name and there had never been any harrassment and that I had never had any personal comate, ever, with any of them.

Dugan is not in my opinion on the defensive is he can continue to stall. This is his objective, so it means he is succeeding and has the initiative as he wants it. This means that we are on the defensive and the weak never prevail that way.

I'm addressing this not in personal terms, not in any sense in terms of what I get or do not get out of this suit. I've gotten enough for literary purpose, much as more can be an improvement and I'm sure would be. I'm trying to get you to consider another aspect. I believe that sleeping on things like this is what makes the reputations of the Foremans and the Williamses and the Baileys and the Kunstlers and the Goudins. This is not criticism. I intend it constructively. I'll not complain if after you read t his affidavit you get it. The decision has to be yours and you know I do not complain. I'm asking that now that we have passed this in the immediate you reconsider and ask yourself if we did not err and will not continue to err because of the potential of the actual issue that is dramatized by this personal excess for which there is absolutely no basis at all.

In my own and not inconsiderable experiences in matters of this nature I can think of no exception to the rule that rising to what I have even called a question of personal privilege (in the Belin debate) is universally respected. The counter-part, as I look back on some memorable situations, is that one fails if one does not.

If Alger Hiss had once-only once- allowed himself a normal, natural human emption when he was before the UnAmericans his entire life thereafter would have been ~~kkff~~ different. I remember my own experiences of this kind still.

While I'd have preferred to go after Dugan, too , and don't take the time to argue the reasons, I can see that you could see danger in that because he is a lawyer. Not that you lawyers don't have saying about trying cases on opposing counsel, which is what he and Wiseman were doing to us and we let them. I just don't see any danger in a proper and vigorous response to Wiseman's defamation.

I'm taking this time because I fear we are begging down into the kind of interminable morass in which the Rosenbergers and Hisses are mired. We can escape much of what they have not been able to. One of our needs in making the effort involves the judge in several way, from making it easier for her to making her face issues promptly. I therefore think it is inpirtant to blunt Dugan's coming move in advance and that we can do it by returning to this defamation in any way you want. not necessarily as I have.

Actually, we'd have blunted in advance if we had accepted the initiative he in his arrogance and ignorance gave us.

I'm not concerned for a minute about how the judge will rule on his contrivance. All the case law is entirely against him. His is an overtly spurious move. But on appeal before the likes of Bamaber he may well win on this fiction about harrassment. I think his need to stall will drive him to any appeal on any possible fiction. I do not think we have thought enough about them and their objectives.

To put this another way, there are times when it is wise to try a long run around an unsuspecting end and there are time from smashing the ball out of the center of the line no matter how stalwart those other linesmen are. This is the place to batter the ball out of their strength they've misused and over-used.

If we were to accomplish nothing but a psychological advantage it would be significant. Green is not a no-bullshit judge. She is a very nice, tolerant lady. Note, however, the difference when you stood firmly before Robinson, who is a no-bullshitter. Dirty as Ryan has always been in the past he was mouk and we secured. He was then silent, which is not to say he won't shenanigan some other way.

But you did not get bogged down in anything-not even an extra paper to file.

Unless we do something to Dugan and Waxman we are going to remain bogged down. There will be endless status calls, fictitious questions of non-existing law to argue and they'll also evolve their new whitewash. Or they'll do as they have in the other cases, select what they'll let out in a sequence suitable to their purposes and have their finks, to major attention, handle it the way they want. Look at the press on Hiss and Rosenberg.

I'm also saying I don't think we can look at each session as a thing unto itself and fight rearguard actions at each. This is going to waste you.

We have, I think, been too content with an honest judge who is also a timid one.

We have to buck her up, as in a way and in part I try with this affidavit. I want to raise questions of my rights, under the law and as I am treated in court. Snagging back at the defamation, which Dugan has made the centerpiece for the coming status call, is one way. Head on.

Another is asking for action of her on each and every directive she has given Dugan and to none of which he has replied. I think a motion to this end and others is indicated and that if you can find the time to do it now it will have you much time in the end. Very much. We saw her on maskings, for example, by using the attachment to the Kelley letter of 5/28. There is no possible justification for that. On the other hand, if they got away with one that raw...There will be no end.

I think this or another motion should address the total lack of any affidavit from any Division. We want either compliance from all the others or the requirement of the law, affidavits at least claiming it. Here they will not have as easy a dodge as the vast FBI has with an FOIA agent who can always claim no personal knowledge. This is one of the reasons I've gone into who had what files in his possession and when. At each time any Division had any of those files in hand from at least the time we filed the Complaint it failed to comply with the law. Unless you disagree filing this kind of effort, no matter how phrased, and I think it can be short, will move us ahead, hit Dugan back on his ass in court, make a much better record, which has always been our strength, and put them again on the defensive on another central issue.

This is not really pushing the jydge. But if it is then I think we have no choice. There has been virtually no departmental compliance. They have succeeded in by-passing Criminal, as I recall, by a Civil Rights dodge, then giving us a few Criminal papers of no real consequence except in a few cases.

The motion for production should be forced and one of the better items is what their records prove they have and are withholding, like that index.

Force her on the Field Offices, too, using Washington and Birmingham as cases in point. If they want to claim the Birmingham conspiracy charge was a fraud, let them. But I think we should compel them. I don't think for a minute that she is going to accept

their brazen lie that they have made an exhaustive search of the FBI's central records and I think she is not likely to accept that as compliance when there are only at most less than two-tenths of one percent of the total number of files in Washington. I have some great back-channel stuff if you want to us it, how they fake the available Washington records and have the truth in these back channels. But in all these months they have been able to get away with this pretense, this stall, while God knows what records are being memory-holed.

If we can t prevail on these kinds of essential then I think we are off on a lesser in terms of what you'll get in return for the time it will require of you. If you do not agree they are essentials that is different. But I think less than minimal compliance that we'd get by prevailing on them all is an essential. There is not and never has been a reasonable prospect of full compliance.

We also face, I think, what concerns us both, damage to the good law by dirty-works. The same hazard we faced in spectre and where by an exceptionally vigorous and frontal attack once we had good targets we are coming out fine despite a wretched judge. They always try to rewrite the law through us. I don,t think we want to ignore this or duck on it.

What works for us is the language as well as the spirit of the law. It requires promptness. Here we are well over a year after the appeal and we have virtually no compliance because of a serious of false swearings, deceptions and misrepresentations. I don't think we want to dance stately minuets to a cacophany we pretend is melody. We may have to consider departing from t he strict gentlemanliness that loses when there is only unilateral gentlemanliness. Wiseman has given us a perfectly safe shot. I don't see how we can lose in any way on that. This is why I concentrate on him.

He has deceived the judge on all major questions. We arm her and perfect the record by putting him on the cloberswille express.

Let me before I close try to approach this a different way. We do have a good record in this. It is not as good as it can be and should be. It is being built at great cost to us both in time,and we don't either of us have the time it now looks like this is going to require. Maybe we didngt think of this at t e outset but we do have today's real situation, of an interminable serious of proceedings that mean victory for them because their game is stall, run the clock.

Most of the good record we have is from the judge. We have been content to let her make points for us. This is fine. Only not in perpetuity.

Among the government approaches of the future I can see, already telegraphed, is the burdensomeness of being required to search so many records. They now can even summon enough gall to claim there is no substantial need because Levi has his Office of Professional Responsibility looking into all of this.There is no question about it, either. Once they have created a situaten from which they cannot now retreat, that the records we want are not in Washington the have created a live fiction of burdensomeness. They can now use this in an effort to nullify the law in all major casesoof the past.It is not less than a real possibility.

This leaves us with few alternatives. One I think we have to find some safe way of addressing is their good faith. Wiseman is one way. Stonewalling is another and we can establish it. What you did with that press-release withholding is perfectbn this. So are those Jamie List pages and the unrresponded-to request of 1970. These do all address good faith and stonewalking and deliberateness. I was watching her. It was effective, as you should recall from her crack about cross-references.

We just have to keep real pressure on them, not the kind that lets Dugan slip endlessly into legal Rube Goldbergisms the judge feels bound to go along with. Let us make this first the last for which Him he will have the kidney!

I'm not talking about orthodox victory. You won before the first calendar call in these terms. My concerns are overall accomplishment and as part of this how we expend spend our time. If you elect to do it in what I regard as a rear-guard way, okay. Then let us force the Vaughn motion with whatever you want from these drafts as a new added basis and go on to the other and very promising moves we've been talking about. Best,