

Dear Howard,

11/11/77

Today the Assistant Chief of the DJ Civil Division offered to hire me as a consultant, to pay me at consultant rates, to provide me with office space and such assistants as I might require and to pay my transportation costs so that we could work out a solution to the problems the FBI and other DJ components have created in the "ing case, C.A. 750 1996. Today I also declined the offer.

One for the books? Or !!!

You lawyers are trained to make one kind of notes. I have interest in others.

There were nine of them, from the No. 2 person in civil and the head of its litigation divisions in FBI to people from the FBI and Civil Rights and the DAG's compliance section. (He never got to say a word. I don't know if he knows how much he is.)

There is no doubt that after their claims to full compliance we are getting much more. There is a question about how much. But it will be good, whether or not as much as I'd like.

When these people have a chance to realize what happened today they will see, and the FBI will see, if it ever sees, that it lost much face.

It would up with the assistant chief and me working out the basis of a viable agreement- if they can get the FBI to perform.

In the course of his considering my proposal about it turned out that is what I think is the real clobbering in and I gave the AUSA, the FBI FOIA supervisor and the representative of its Office of Legal Counsel on the 2d they in total secrecy started to do exactly what I said was a belated and minimal beginning point, the reprocessing of the 3,000 item entries on an index to 29 volumes of prosecutorial records.

It got pretty intense at some point but on each issue we faced them down, issue by issue, with a compromise of my offering on again assuming a burden of proof the law imposes on them as practicality toward reasonable compliance. I'll tell them what is public domain of what they withheld from these more essential volumes. They will give me reprocessed index cards where they now agree they have no basis for withholding and the names, in the form of a list, on those where they make such claims still.

Jim and I have always worked together in such situations about as well as anyone could ever hope for two people to be able to do. In all these situations we have never had a chance to really prepare. We do it by improvisation, really spontaneously. Today it took, among its form, Jim's laying out for them their grim realities, unless, and me making the unless reasonable for them, with a firm now or else, what I'll do on each question and issue if they force me to. At several points it was fun despite what it really was and means.

On the question of withholding police names I'd just read the Hully decision on the bus, made the language in point for Jim, and he read it for the first time as we walked down the DJ corridor. The rather nice litigation chief pulled what she thought was a blincher on us, the second circuit decision of about a week ago in the Hiss FOIA case, on the issue of records relating to one Schmall. The judge would not even look at the stuff in camera, based upon affidavits provided. When she was finished I told them I know something about Schmall, that he had been an intelligence agent and there was thus a different situation, and that I would not be in the position of the affiliates, I was prepared to take the stand and give competent testimony on each contested withholding. At that I did not say nearly as much as I could have but it was enough.

They did an awful lot of backing down. We did not. They will do more and if it is enough we will accept the practical situation. Enough will have to include what will be hard for the FBI, its learning to stop playing games with Jim and me. One consequence may be that they'll seek to play the same games but with less dependence on getting away with them by raw power.

I believe the FBI is sort of thrown by people who are not afraid of them, who are willing to challenge them and do it regularly, who know what they are talking about and make few if any mistakes, and who while not really squeezing them can be blunt as we were today and give them their alternatives, between doing what we want and facing what can be less to their liking in a court decision.

We grew angry often enough. Not too much. Jim is great when it happens to him. (Wish it happened more often!)

There came times when I said they had to realize the time had come when I would not be sliced like a salami any more. Another than I refused to be put in the position of bearing their burden of proof for them. But would be helpful without assuming the burden.

Each time the top guy made a suggestion of how I could be helpful I told him how they had refused precisely that offer. It began by Jim's telling him that I had made offers that had been rejected. One is by the providing of a consolidated index of what is in books and court proceedings on the subject. By the time this has happened to many if not almost all of his suggestions the wind was pretty much out of that sail. When he came to a list of names I refused outright to do it. I said I would give them subjects, but the FBI claimed that would not help. So I got back to the ludicrous they had and we know they had, which is where they had refused in our presence when I proposed it for the second or third time on the 2d. Only then did we learn that they'll have that ready soon.

There was a little banter before the top man was free, in his large outer office that he shared with the Division chief, Barbara Babcock. Jim laughed and said he had learned a story as a boy about the bigger they are the harder they fall. I was reminded of TR and said (before the FBI got there) that while I didn't think they'd think I was speaking softly I really was - and hoped I would not have to prove I was carrying a big stick. The rest of the morning should have given the lawyers an idea of the bigness of that stick.

There was a role reversal. It just happened that way, with Jim talking tough to them, first trying to get them to see that their easiest course was to do as with the 26 vols., just make stuff available. They bridled. Jim nudged them a bit by saying they withheld nothing on blacks, only on white. When that shook them up more I added "and women-no privacy for them." There is much of this, even to who sired their bastards. I told them so. To total FBI silence. (They feel that way about women anyway, I guess.)

When they complained about the amount of work I told them they were getting paid for it, I wasn't, that they had made these errors and now claimed to be able to benefit from them because of all the work it would require to rectify them. So there were no more complaints about the amount of work that looms. I even told them that whereas I had begun by repeatedly offering a compromise, that if they'd please the expurgated indices to the key volumes I'd accept that I told them that with the attitude and the passing of time I would not agree to being put in to the extra work use would require, having to keep going to and from files to which I do not have easy access - that I want the relevant records reprocessed with the indices. I don't recall that they agreed but I'm confident it will happen.

They came up with a farout interpretation of the stipulations and after correcting them on that I told them of their violation. It stunned the lawyers when Jim, in anger, said they'd held the records up to dump 6,000 disorganized pages on me at one time. I added that they were so heavy neither Lil nor I could move them. True, by the way.

I can't recall anything on which they got any place at all. We beat them down on everything. They are left with their power, what they can get away with and our need not to spend the rest of our lives on this.

In the course of chatting with the young woman lawyer from Civil Rights after it was all over we learned how they managed not to comply: they turned their records over to OPR, OPR claimed not to have to respond, and then instead of either responding or returning records they put them in storage. I think the judge will love that, as will these other people, who apparently don't know it. They will a week from today, when we all meet again.

We were back in the suit of offices in which I fell asleep after winning in 718-70 while the lawyers tried to decide which would damn himself by watching me while I went over those records. The furniture hasn't been shifted. It is arranged exactly as in 1970. But reupholstered, which may say it all.

I later found myself wondering how these FBI people, who must regard me as the menace Hoover and his created, felt when I was asked to become the government's consultant in the case they are defending against me - with full staff, quarters, equipment and pay!