

1496 - 5/23/78

Dear Jim, Re: this evening's call - 1996 and the present situation 5/28/78

There is very little I can say that I have not said before. Yet I believe it is necessary to say it again. And to agree. And to the degree our situations permit to try to proceed on the basis of agreement.

This is off the top of the head in part because I am tired and in part because of the sense of deja vu from again going through what we agree to do and then did not do in 1996 in September-October 1976.

Basic consideration: I am perishable. Those angels are still sitting on the shoulders but when I feel tired as often as I do I cannot depend on them also not getting perhaps a bit weary.

Basic consideration: we have an incredible in-court situation in 1996 and we are not making use of it. A Vaughn v Rosen inventory means we'll be in court on this case this time next year and I'll not have done any writing and everybody I know will still be asking "when will you be writing _____?"

The judge did not listen when we told her the truth. Now she has the situation we forecast. I do not expect her to do more than she has done, say she compelled me to be the DJ consultant. But in not listening she did create this situation. I do not think there is any part of it she wants to go up on appeal on any of those issues except where she can use them against the other side.

Now that they have all lied to her, twisted their Senate testimony as it relates to me and been naughty-naughties in denying me the first use of all the work I've done - and still have not complied - we are in a position to get them all off our backs in more than this case. We have a situation where all these people who have been so corrupt can have real problems, even if Green accepts everything. I want to give them the fullest possible ^{benefit} of everything they've been doing all these heavy years.

I do not believe it is impossible for them to hurt so much they stop giving us the rough times we've been having. But if it is ever to come to pass for me it must be now. Otherwise I'll be drizzling my way through courts for years and even in courts not being able to get around to all that is important. Not for example to those cases that can give me some help.

This warrior is not too old or too tired to want a few scalps. Not to have scalps. To have fewer Komahawks to have to keep dodging.

A Vaughn v. Rosen situation a month from now will be essentially meaningless. It represents what I have described as the stately dancing of ritualized minuets. Okay, so we get it and in the end we get a few more pieces of paper. What else does it mean or does it give us? It gives these skunks that much more time. We have to file it now, when the time comes. But we do not have to restrict ourselves to it. I do not want to. I want a complete reprocessing of the records that have been given to me. Every one, not just the prosecutorial volumes. I want response to all the items of my request, not a substitution of their selections. And we can ask for an inquiry into what the DJ and FBI have done in this. (I can think of few things that can be more helpful to the Act and more hurtful to the campaign to gut it again.)

We can't lose. We have already won, but have permitted ourselves to be in a position where winning has no meaning. You are still tied up and I still can't find time to write.

I would like you to be getting your fee out of this, and I can see that as possible by giving the judge what she needs and can use and I think may see that it serves her interest to use. This is what I've been driving at in the affidavits. She is not about to face those by saying tak tak I should not have let it happen. If she angers, and I do not think she will at us, what can she do? She should be angry, so let us help her point her anger where it belongs, not at people of less power and influence. Not many

cases work themselves into this kind of absolutely incredible situation. If we do not take and keep the initiative we'll be ducking their rocks and rolling with their tricks and I don't like rocking and rollings. I'm for swinging, and now we have the time and that 2x4 I've been looking for when their heads are all low enough. So I'm for swing.

I think she may very well go for complete reprocessing - and any compromise will be a great and costly defeat for them. I think there is no choice for her and them about at least some of the specific items of my request. And I think these two things alone, without punishment, can be very powerful with those people. But I also want to press whenever and wherever we can for punishment. Failing will still be a victory because I do not believe for a minute that the same people will again subject themselves to the same risk. And we do have all those other cases.

Absent testimony there is only one way of doing it, by affidavit. There is no way of doing it with brevity, save in a series of short individual affidavits. The FBI can get away with short conclusory affidavits. We can't. And with cases where the records run to 50,000 pages and the arguments are as convoluted as say "etcalfe's" omitting a single element can be deadly.

There is no way of knowing but I believe that right now Gesell will not object to a lengthy affidavit if it is all of relevance and substance and may even welcome it. I think we have for a while been at a point where the judges who are not DJ rubber-stamps are sick and tired of the abuse they've been having to take. I don't think there is another FOIA plaintiff who can prepare them as I can.

Now if we had time to whitt and hone, to write and rewrite, that would be fine. So we have to be prepared to file rougher stuff and get on with these and other matters.

My faith in having an overwhelming record is as stout as ever and I look back on no exception to the truism that for us it is essential.

You said that Green did not want to take testimony from me. Perhaps you are right. But I see another possibility: that she had come to see there was no need for it. Of course she did not want a direct attack on the Government lawyers, which is one of the reasons I do. But there was no disputing what I asked you to remind her and them, that they cannot comply in this case from MURKIN. Don't you think that when she and they accepted that it has meaning? But we cannot let it go at that and should not.

Whether or not I am correct in the belief that the judges, for all the problems of long affidavits and things like that, are ready to act if put in a position to act (and given few alternatives), I am certain that by taking forceful, vigorous ~~steps~~ steps now we have the one chance of surmounting being wasted by those who are immune and work for those who want to waste us.

Besides, I think you have not thought through what they can still do to waste us more. If I have not I have not been unaware of what they can do and I think will be doing. And I've not had time to look at the JFK records. Will I have time to look at those of the FO's? Or what CIA may be dumping on us?

There also comes a time when it is essential to fight even if it seems that one fights merely for the sake of fighting. Not to do so looks very bad and not to do so can be self-defeating.

You have been too busy to think through the possibilities we now have. We have never had as many good ones at one time. We have a real shot at real accomplishment and at relieving these constant pressures. It requires forcefulness and thinking of ourselves, not judges or anyone else. Except that I do think of those I've determined to teach a lesson. One way or another, one lesson or more.

Best,