

10/22/78

There is always a problem with new material before the appeals court and we always have that problem because relevant material is always withheld from us. So I think you should take the initiative on the issue rather than permitting it to be raised against you. This will have the side benefit of raising bad-faith questions inherently, unless you want to make it explicit, which I would.

I do not mention in the affidavit what should be obvious: if the CIA could declassify much more material for the public use of the House assassins committee there appears to be no good-faith reason why, with a case in court, they could not have "declassified" these two transcripts.

So time ago, right after reading these transcripts, possibly the day we got them, I suggested that we might ask for some kind of judicial inquiry. There is no way anyone can justify the classifications, the withholdings and what ensued.

I suppose there is no possibility of the appeals court doing this. I think you might want to ask for inclusion of a directive in a remand order for the district court for there to be a full and entirely public inquiry, with live testimony following full discovery. By this I mean a real delivery by the CIA of all records relating to the withholding of these two transcripts and a competent first-person affidavit attesting to a diligent search, with a listing of the places, files, computers minds and anything else searched that we think should be.

It is my belief that this is a particularly offensive case, that the courts will realize it and that it is perhaps one of the best for what is long overdue, a vigorous inquiry into these subversions the subverters probably equate with patriotism. So I think you should take firm initiatives with this.

I think there is relevance to the mootness question and to other similar considerations relating to compliance, bad faith, etc. But there is also relevance in the amount of fees you can ask for from a money-oriented court. I am not familiar with the punitive provisions nor do I know what a court can do by way of its own sanctions. However, I believe that we should again stress the subverting of the Constitutional independence of the courts and in this connection ask appeals for a remand that directs a contempt investigation.

And what fun you would have giving each of these patriots a copy of the transcripts and asking him to find and explain the "national security" content or going over the details of Nosenko's treatment with Briggs and asking him about each incredible detail in Hart's testimony "Is this what you mean by 'model.'?"

Of course I'm not suggesting any ranting and raving. But I am suggesting a politely forceful expression and perhaps a little indignation over the treatment of the courts and your aging client and the public he seeks to serve. This is a time for indignation and the expression of outrage. And I think this court would welcome some of that, too, at this juncture.

In this you'll be beating the "lynches, the ACLUers and the Halperins to it. Quin tells me they are now after the CIA more than the FBI.

Now I hope there is an available notary. Lil is making the last few corrections.

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