

Dear Jim,

3/24/83

Here is the affidavit I referred to last night.

We were talking about the status in 1996 and 322/0420. If you understood me to be deprecating the need to research and use case law, you did not understand me because it is necessary. What I was talking about is something more or in addition to this nicety, which is necessary.

But when was any of our cases really decided on either that or the FOIA itself?

If you think about this, you may see what I was getting at.

Even where we won completely, as before Gesell, we didn't. After all, didn't I ask you to sue for a TRO, which I was sure we'd not get. But we did get the rest, didn't we? And isn't the rest what I really wanted?

Our problems are, completely official dishonesty, and that is or should be basic in any such litigation. I think we make a big mistake, regardless of how we may anticipate any judge to go, not to make this important in every case.

Especially when it is so totally permeating.

We emasculate ourselves in not doing this, politely, of course, but straightforwardly.

Most of the appeals court decisions I remember in which it might have been a factor say, "absent a showing of bad faith." We can read this a number of ~~XXXX~~ ways, but why not take it literally?

Aside from what we can do for ourselves, and particularly on fees, we can do much for the Act, as we once did when it was amended.

And as long as we do not get excessive, who knows, it may turn a judge or two on the appeals court on. They can't but know that most of their FOIA litigation (of which I am aware) exists only because of it.

At this juncture in 1996, quite aside from the case law that should be your way, it can yield very much.

And at this juncture on 0322/0420 it is everything because they've lied about everything and can prevail only on their lies.

Then, too, there is always the chance that it can be the hinge.

I wish we had time to sit and talk this through. I think it is very important and I think your view is dominated by your reluctance to do battle, outside of case law.

With which our success has been only minimal. And how it has wasted us!

There are only two weeks before the hearing in 0322/0420. As I told you, I'll be less uneasy if I don't have to travel during rush hour, which 9:30 means. Especially with a driver who doesn't know Washington. (My routine is still way off. Coumadin increased again today, is uneasily and reluctantly by the doctor who remembers my 1979 hemorrhaging very well. It scared him more than it did me!) I will not have to have a parking space if the arrangement I'm working on pans out. They'd pick me up at your office or elsewhere, later in the day.

I'm thinking of reprinting Whitewash and if I do will be able to add about 36 pages. I'd update the overall and perhaps add a page or two of new pix.

Best,