

December 12, 1983

Dear Jim:

In today's mail I received LaHaie's undated application for expenses, his declaration dated 11/30 and his letter to you dated 11/25. While I respond immediately, I will not mail this until after you have filed the appeals brief because I do not want this to intrude on the limited time you have for it.

In his letter LaHaie demands to know in less than five days ("by the close of business" 11/30) when I "propose" to do what he orders me to do and he knows I do not intend to do. He does not ask what I intend to do = not because he does not know. He presumes to order me to do what he wants only.

Assuming that the mails moved with more efficiency than can be depended upon, you would have received his letter the afternoon of Monday the 28th. If you wrote me immediately (and his division has a record of claiming that you should not use the phone) when you did not have time to, I would, with luck, have received his letter and any advice you might have offered the day the time he set expired. It therefore is clear that he was making it impossible for me to have written you and for you to have received my letter before his arbitrary deadline. Or he has something else in mind.

If there is but one thing he and the FBI know about this litigation without any question at all, it is that I do not believe for a minute that I am "now required to remit" the sum they claim "forthwith." I believe, as they know, that I have the right, if not in fact the obligation, to make the appeal they have been informed I intend to make if I have no other real choice.

Whether my "conduct" is "contumacious" is not a matter for him to decide, and it will not be decided if the rubber stamp flails again. It will be decided at the end of the appeals process. My own belief is that something entirely different will by then have been decided. As has happened before, whether or not that is in his mind.

I do commend LaHaie, however, for the extraordinary government salary he receives. From his application and its stated rate of hourly pay, \$53 an hour, he gets \$110,240 a year. I'm a bit surprised, which is to say the least, because it is stated to be for his "time" only.

I'm not surprised that in his stating of what is "effectuated" by what he has done he does not claim it will "effectuate the purposes of" FOIA. We have no disagreement there.

Having arranged it so that he could not have any response within his arbitrary deadline, he states that he has "no alternative but to file further" motions he describes as "appropriate." Please tell him that if he were sincerely interested in speeding anything up he would do as he has refused to do, even with my offer to pay those costs a standing offer, send me a copy directly. (The way your mail has been, I'd probably have had that copy out here in the country before yours arrived.)

Perhaps he has something other than contempt in mind, but for what he describes as "contumacious conduct" I am not aware of anything else he would regard as "appropriate." Please ask him for me to stop wasting time with threatening letters and to get on with it because if I have to face any such test I want to do it as rapidly

as possible. While I would prefer to spend the time and effort preparation would require in other ways, I can think of some other uses I might want to make of it and I'd like to have it completed before Congress returns, with amending FOIA on its agenda.

Senator Sarbanes was in town last week and he invited me in in advance. If I'd received this letter earlier, I think I'd have gone in and spoken to him about the entire thing.

In my view LaHaie has made himself a petard and he, not a rock, is sitting on it. Whether he cuts the rope holding it is his decision. I made mine long ago and will not change it.

On this I want to make it clear that the decision is mine and made contrary to your advice. You made one of your rare trips up here to persuade me and I rejected your advice. If you think he has any doubts, please give him a copy of this letter. It is my recollection that the case record reflects our disagreement, but I think in fairness to him and his possible "alternatives" and what they can mean to all parties, he should have it unequivocally and in writing.

Harold