

Dear Jim,

11/28/84

Your petition for a r hearing and en banc review in 82-1229 is excellent.

So is the chastising of the panel, which, with any luck, may interest some of the pre-Reaganut judges. The language is polite, respectful and devastating of the panel's integrity. It has been so long since you employed this talent I'd concluded that you had lost it forever.

There are two serious omissions I do hope you will have at hand in the event there is any opportunity to use them.

My earliest statement that MURKIN could not comply with my request was in mid-1976, shortly before the beginning of FBI testimony. Perhaps August. You can find it easily, as apparently you'd forgotten because I did remind you, in the summary I made for you of the transcripts of the sessions.

I have a pretty clear recollection of it. Dugan had gotten up and told Green that they were going to comply with my requests by processing the FBIHQ MURKIN file. I told you it could not possibly mean compliance, that I had not requested it, and you got up and so stated. What, I think, makes this very important is first, that it was before the first MURKIN record was even looked at by the FBI and second, it was in open court and the FBI never undertook to establish that it could comply with my requests by processing MURKIN. This is on page 12 of the motion.

On page 8, relating to the consultancy and whether or not there was any kind of agreement on the time required, I did provide an estimate, it turned out to be quite accurate, and it was never questioned in any way or returned with any kind of complaint or question. Another telling point is the nature of the work. This made it impossible to ask or provide any time estimate before I did, without being asked. Moreover, the Department never indicated in any way that it was placing any limit on the time required, as it should have if it anticipated any time problem. The proposal was its, not ours.

For the little space I think your exposition of the rewriting of law and previous decisions by Reaganuts is very well done and, with any kind of honesty, irrefutable. I think this can turn on some of the pre-Nixon judges of whom I believe a few are still around. And maybe a couple who do not go that far back.

Let's hope!