

Dear Historians Dave and Phil and Side Memoire, from H.Weisberg 2/6/85

Jim Lesar phoned me last evening to read me something he had just gotten in the mail from the appeals court in the "ing case, at district court C.A. 75-1996. When he ~~finished~~ finished I told him I understood the words but not the meaning. He said that he also didn't, and that Bud didn't. So while I can report and record what the appeals court panel in that case said, I cannot say why or what prompted it so long after Jim filed the en banc petition in that case.

The court ordered us and the government to brief the question of its jurisdiction under the Tucker Act. I never knew much about it but do know that it has to do with claims against the government. I used it 30 years ago in my successful suit against the government for damages to my chickens.

The panel directed that the briefing be limited to this one matter and that the brief be provided by a date this month I do not remember and reply briefs not long thereafter, in early March.

It appears that in this the panel is addressing but one of the many questions raised in our petition, my being paid for the consultancy. For Phil's information, the government actually got the judge in that case to get me to act as its consultant in my suit against it, over my objections, and then refused to pay me.

Jim and I discussed the possibilities that occurred to us, that the panel, on its own, decided to get this question addressed in detail before the entire court gave it or it and other matters consideration; that the panel perceived that it was weak on this particular question during en banc consideration; that there had been en banc consideration with this question unresolved; and I wondered if the petitions I filed could have triggered anything, particularly another outrage against me.

We have and we probably will have no way of knowing. Whether or not we learn anything in the future will depend on what we next hear from the court or this particular panel.

What Jim and I both believe is that this case is inextricable from another titled Laffey, a suit for lawyer's fees in a successful discrimination case against the government, by women. The government appealed the award of fees to Jim by the district court, with some escalation for what we consider the law provides in such cases, with such risks and official obduracy. In Laffey at least a major consideration is the hourly rate.

I'm a little rocky today, the reason I do this instead of other things, so I'm not checking the file to learn the date we filed this en banc petition, but it was months ago, we think a long time and Jim had rather expected some reaction some time ago. Before I filed the petition and I think before that case was decided he was inclined to believe that what appeared to be a long delay to him involved the court's problems with Laffey. Nothing in what Jim got yesterday indicates this. Whatever it may or does mean, in and of itself it is interesting enough for Mark Allen to have offered to help Jim with the research and Jim is going to try to locate someone with experience in government contract cases.

What Jim received is brief and the clerk to any one of the judges could have written it in very little time. Of course there are many other cases, so the coincidence in timing may be only that and there may be no connection with what I filed pro se. And Jim's life right now is complicated by a case in which he must travel very soon, something that cannot be delayed to give him time for this briefing.

The district court judge, June Green, held that I had substantially prevailed, which the government also contests despite the large volume of records disclosed in the litigation. Vurrently she is also the judge in Mark Allen's HSCA records case.