

Dear Jim, re 96-1547

8/7/86

I've started a file on this case that I'm keeping on my desk. There may be some things that belong in it that I've not yet dug down to. I'll have a copy of this in that file in the event you want to discuss it.

The friend who drove us down to Smith's charade came this afternoon to try to catch up on some of my basement filin for me and while I was down there showing her where what goes I looked into my separate file for appeals. I do not have a file on the original fee waiver because, I suppose, I never anticipated any problem with it and I'm sure that what I have is in the chron file that I'm not now able to search for such records. I find these communications in it and I'm sure you have copies of them and probably more.

My 8/20/80 appeal of the denial of my 5/22/80 request for the records involved in this litigation and of the fee waiver revocation. I had a second carbon so I enclose it.

My 8/30 to you covering my appeal of that date, all three items of which, to the best of my knowledge, remain ignored. This was just a day or two before I went to Georgetown, followed by the surgeries there. Please note that this appeal opens with reference to nonresponsiveness and the problems created by it. I refer to the abrogation of the fee waiver by an underling who lacked that authority and I find no answer, no denial, no action, no referral in this file.

My letter to you refers to the fact that you were to have written Cole and that you had not. To the best of my knowledge after saying that you would do that it became one of the countless matters you just never got around to, regardless of importances, and that is one aspect of the problem I now face. I'll come to the other after I refile this stuff and see how Kathy is making out.

There is a conspiracy against getting that filing caught up. Kathy's little boy got an upset stomach and she had to take him home. When I refiled I noticed a cross-ref which may indicate where there are other copies, in the separate King appeals. We were then active in 1996 and that was included in Cole's fabrications.

A little background may help. Shea kept asking me when you were going to get around to doing something so he could act on a number of matters about which he wanted to hear from you. After a few of these I evolved my own formula and informed you of it and sent you a copy. I appealed with regard to everything on which you did not have a case in court for me. So, among other things, my appeals then covered what is now in this new lawsuit before Gesell.

When I mentioned to you how I wanted to have this handled and that in my opinion we have them in an intolerable position before a judge we have every reason to believe will not tolerate it you said you might what to do that in another case. That is to ignore my desires and my interests and I do not accept it. If you want to do it in another case in addition, fine, go ahead. While I doubt that you have anything like as favorable a situation in any other case, including that in this case we can give Gesell the proof that they lied to him, I certainly have no objection to anything you do in any other case. But I am very much interested in this for myself and for the things it makes possible that you were always going to get around to doing something about and never did, much to my detriment and the detriment of all subsequent litigation in which those gross lies were accepted by the courts.

When I wrote I think I said that you got the FBI's records of distribution of copies of its general FFK releases in one of Mark's cases. I have thought of this and believe it was in Blakey's case, where he sought a fee waiver. That record, which you did send me and I may have in a file on that case, I don't know, is quite explicit in accounting for all copies and explicit in stating that the extras were destroyed and not deposited in the Oibrary of Congress and elsewhere, which is precisley what

Figley, as I recall his name, stated in the presence of not fewer than six other DJ lawyers, assured Gesell. (The entire get weisberg crew plus Shea at the least, plus FBI agents, probably.)

I'm just going to remind you of one time you refused to do what I asked and its great and continuing consequences. I refused to comply with that phony discovery order and I asked you to state specifically to Smith why I refused. Instead you went and misrepresented my position. Which almost got you in serious hot water, too. Now I'm going to tell you what Mark Lynch told me: that if you had done what I asked, and Lynch said it was entirely proper, that would have been the end of it. Your waffling knowing better is what caused the present situation and all that preceeded it. Mark told me that each and every reason I advanced is recognized and accepted and that only your waffling, my word, not his, created the problem.

What dismays me, because I do have a high regard and affection for you, is your absolute refusal to learn from experience and you repeat the same mistakes, without ever giving it any thought. It is a kind of rigid mindset, a lack of any flexibility and in addition, what is surprising, is a lack of appreciation of the political elements, the kind of thing I've referred to over and over again as law-school law and academic approaches. How you can't appreciate the possibilities of merely, quietly, telling Gesell that these people are lying and that they lied to him, which is relevant to their credibility at least. Which as I suggested would be demolished in other ways. But that is the subject-matter of my Item 7, what was promised to him by them in 2055, if I recall the number correctly. It doesn't have to be addressed only as in terms of their credibility: it is the subject-matter of that requests. (Parenthetically, I'm interested in knowing what you thinks may be a better situation and before what judge.)

Now on the alleged abrogation of the fee waiver and Cole's letter, you know very well that there is not a word of truth in anything he alleged and that he just made it up as he went. You were there and you know very well that I made no such stipulation as memorializing myself in the deal with the then chancellor, later governor of Wisc., and you have a copy of what I prepared and there is no such provision or condition in it even by inference. You also have by now, if as I asked you made a file of such things, a very fat file on my unselfishness with what I get under FOIA and my disclosure of it to others before I use it myself. It is a particularly malignant fabrication by Cole because of the actuality and because he neither had nor could have had any basis for anything he said. This extends even to the sensational, as two examples of which you also have personal knowledge will suffice. I gave copies of the 1/22/64 Commission transcript away at a press conference in NYC when I was ill and you read my ~~speech~~ speech for me and when I got the other two, part of 1/21, I think, and the Nosenko, 6/22 transcripts, we made copies in your office the minute we returned from the Archives and immediately called a press conference and gave them away, with related documents that were then available. And as Gesell may or may not remember, and if you want a reminder, there is Lardner's story and what we filed, I asked for a TRO only so that I could have copies available to service the press, without any compensation. I began doing that at home before I got my copies, by the way. I did get phone calls one of which made it apparent that the FBI singled out false and defamatory records about me.

Proper use of Cole makes them put their own poison in their own well. I can't understand how you fail to see this or that you can possibly have naything else at all comparable. And, of course, without that mendacity, this would not now be before Gesell, it would not be the cause of any litigation. Once again, and this should be argued, they go out of their way to force unnecessary and unjustifiable litigation, with all the costs and troubles that entails and the burdens deliberately heaped on the courts. You won't find anything like this and Gesell is the ideal judge because he has been abused by such litigation, because he is a decent and honorable man and

because they introduced the matter before him in this case in their Answer. It could not be more relevant and more of a potential disaster for them. Imagine if you can the potential impact of another Axelradding before and by him! It is possible. And I think that you are just instinctive afraid again.

Separately, I suggest, off the top of the head, that you might want to, in form, do this in a motion to expunge their Answer as a ~~gross~~ gross and deliberate misrepresentation, and put the rest in as relating to this argument.

I'll mail this because it is by no means certain that you will be coming up this weekend and because I do want you to do what I ask and as promptly and as you can do so well, quietly eloquently, and think of tapping off someone like Gardner now that the Post has finally suggested, if indirectly, that these DJ types, even at the Supreme Court level, do lie. You told me Grieder did on TV and how Herblock has done it. I may phoen George and see if he remembers that day, as he may well.

Perhaps there is some compelling reason that I do not see. If so, please tell me. But unless there is, please listen to me for once and do as I ask as rapidly as you can, while the matter of official lying is fresh in so many minds. It can really be something these terrible people have handed us and I simply do not want to waste it or less it be frittered away. If they were not so overconfident about you, do you think they'd dare such a thing? ~~That~~ respect alone ought drive you on this because they are that openly contemptuous about you.

I hope the other types are not as bad as the one I just corrected above.

I got wound up in this and let my office get too hot so please excuse the typos because I'm going to lie down now.

With a slight hope,

1/10/00