

Dear Sol,

11/9/86

By now I presume you are back, both well, and both busy catching up on much.

Enclosed are a copy of the brief, without the court-required staff covers and without the appendix, a copy of a letter I wrote Stavis thanking him and more, like mention of Rule 11, to which I'll return, and what I hope not without cause, excited me--the same appeal court's recent judgement in Tinsley v Magle et al. I've drafted something on it to use when I respond to the government's brief in the hope that you may have time to comment on it or make suggestions. If I'd known about Tinsley I'd have used it, of course, but it wasn't published until this past Tuesday and I just got it. I know there is legal language for reconciling conflicting or contradictory decisions, I think as guidance to the district courts, but I'm not aware of the precise language or, if there is one, rule.

I've also written Lesar to ask him for reduction-xerox copies of the affidavits I filed, to which I refer in both the brief and the Tinsley draft. I want to attach them to what I file, along with all those hospital/medical bills. They were on legal-sized paper, then required.

In Tinsley the court quotes language that precisely fits what the government did in this litigation at the district level and is overwhelmingly documented in it. and is not denied or disputed in any way. They didn't have to before that fink of a judge. So, I think there is a Rule 11 case against the government and I think also that is the best way of fighting their frivolous cases against private persons and groups. I'm not suggesting, of course, that any court would welcome such litigation.

It may be that I'll be less able, as I'll explain. Just before the end of the month I began to have more trouble with the left foot, leg and thigh. I delayed seeing the family doctor until I'd finished with the brief and to be sure that it was not a transitory thing. Lil finished the very big job of xeroxing, when on our machine each page to be copied is put on by hand, and collating, when there is no space here even to spread that many pages on a surface, I found a place that could staple 150 pages (the appendix) and left that to be done on the way to the doctor, picked it up on the way back day before yesterday and yesterday mailed the government's copy and boxed and took to UPS the court copies. The doctor said what I knew, that the blood is getting down well but isn't getting back at all well. He suggested and I've started increasing the diuretic and taking the added dosage at a different time. So far it hasn't made any difference and I'm not optimistic about that approach. I'm going to write the cardiovascular surgeon in D.C. about this, see if he has anything to suggest. He'd just examined me, done another doppler and said what the family doctor said. There is, by the way, visible additional swellings in several places. I'm not a likely candidate for any surgery short of amputation and I'm not thinking of that! I'm less steady on my feet, have more trouble with the ankle and knee joints, and feel the pressures from the swellings whenever I walk and sometimes with the feet elevated. The pain is not a factor and isn't much. Until it makes me stop walking. This is not, as with similar things in the past, relieved by the increased return circulation from walking. So, all I know is that I have additional problems, almost certainly from the added venous thrombosis following the January prostate surgery. I do know that activity is the best treatment for the patient and I'll try to be a little more active, until I have the next brief, anyway, once the rain stops. (How we've needed it!)

When you have time, I'd appreciate any comments and suggestions. The government's brief is due 12/8 and my reply 12/22.

Tinsley also told me that I was right and Lynch of the ACLU was wrong when I asked him to argue impossibility, already in the case record without dispute. He'd told me that if Lesar had done as I asked none of this would happen and then he does it himself! He didn't speak to me until he'd completed his brief!

Best,

*Harold*