

11/25/72

Dear Mr. Clapp,

Your letter of the 22nd came yesterday. I spent that day in Washington, getting home at 1 a.m. I also have to spend all day Monday there. So, I respond in haste and will in more detail as soon as it is possible.

First of all, I am astounded that you would do as you have without consulting us. If the case had been adequately prepared, there are normalities of life, like illness, that could make this schedule impossible.

However, you have not prepared the case and have not permitted enough time for adequate preparation of either part of it.

You have by this sought to completely foreclose the medical part, with which you have not only done nothing but have steadfastly refused to respond the frequent times I have written you about it. You don't even have all our medical records, have done nothing to get them, and have not done as you promised when I pointed out that you did not have complete records and lacked any basis for comparison and evaluation. This was at our July meeting in your office, on the answers to the government's interrogatories. You then agreed complete records are necessary and you would get them. After months of effort on my part, hindered by your silence, I received this assurance only today. After what is missing is delivered, proper medical inquiry is required. I have repeatedly raised this question with you, from the beginning, without response. When I learned of a forensic psychiatrist in Baltimore and wrote you asking about him, you did not even answer. You have done nothing about locating an expert witness or witnesses in this area, have made no suggestions to me as to who would be acceptable to you, and have been silent when at my initiative the Environmental Defense Fund phoned you three weeks ago to offer precisely this kind of help. Even the scientific literature relevant to this that I have sought out and collected over the years you have not looked at. If you have doubts about what caused them, you can't possibly have doubts about the existence of medical problems with both of us. Such doubts and the presentation of proof in court both require what you have never even discussed with us, competent medical examination. Were such an effort to begin immediately and to be pursued with utmost vigor, it is a complete impossibility within the limits of the time set forth in your letter.

In the other area of the case you also have done nothing. I'm referring to fact, not legal research, which you have never even mentioned to me. All you have done with the fact is that which relates to the answers to the government's interrogatories. In about a year, to the best of my recollection, this is all you have done, respond to those interrogatories. When you were here and I wanted to show you other evidence, you said that would come later. You didn't even look at the extent of it. You did no more than skim through the Taft file, which I had in a cardboard box, and the few things I had laid aside for Davis. If you had or have in mind what you believe it is necessary for us to prove and how, you have not mentioned it to me. What kinds of witnesses you will want you have not indicated. I had arranged a number for Taft, but that was years ago. As I told and wrote you, I have no way of knowing where most are or even if they are still alive. I also told you several are seriously ill. I went into this further in giving you information for the interrogatory answers. Aside from the experts who are busy people and you selected a holiday time which aggravates this already-serious problem, merely finding and speaking to those to whom I had spoken or from whom I have affidavits is probably impossible in the less than a month you have permitted, and this does not even allow for taking them to you so you can decide whether you want to use them. Under ordinary circumstances, I can't imagine you putting a witness to whom you have never spoken on the stand. In this case, with the history of Silard having done that, the disaster it caused and my explicitness on the point with you, it is inconceivable that you would guarantee the inevitability of precisely this.

If you have decided upon a theory or approach to this aspect of the evidence, you have kept it secret. Therefore, I haven't the slightest idea of what you want to prove, who you consider unnecessary, how you propose to do it and with whom, what further proofs in the form of calculations you might require (and all these kinds of things take time, particularly after the lapse of so many years).

Our logs are extensive. They deal with what we will have to prove, overflights and their consequences. I don't believe you have even looked at them and I know they are in my files, for I saw them there in seeking what the RDP asked of me. If you took any of the copies I've had, you did not take all, for several files of them remain in that box. You neither looked at nor took our records with the government, for those correspondence files also remain in the box. We never got into the sonic boom part. There is an entirely separate claim, to an extent significant for us, with the Air Force, which had agreed to pay and then didn't. In that case we could pinpoint the source of the planes and went to that base and reached an agreement with the proper officer there. Whether or not in negotiation with the Air Force you could have accomplished anything on this may be conjectural. Had you ever begun to prepare the case you'd have known about it. With even a considerable compromise of the claim, for over \$4,400, you'd have had enough to pay the medical and other experts we need. There are other sonic boom damages where the booms are officially acknowledged, and I have pictures of the damages they caused. In checking this file, of which you knew nothing, I find that I was also in touch with the Secretary of the Air Force, which I didn't recall in answering that interrogatory question. And my then Congressman, who made a considerable effort, whose file I have, and it shows what I think you will want and might want to pursue further for it can be interpreted as acknowledgement of responsibility. Yet without having looked into the case enough to know of this separate item (and if my recollection is correct, the same planes caused damage in the Washington area, reported in the papers), you have applied inordinate pressure upon me to accept a total settlement that would net less than payment of this separate claim alone.

I know that for about a year, whenever enough time elapsed so I did not have to fear resentment on your part, I wrote repeatedly to ask you what I could do by way of preparing evidence for you. In doing this, I also reminded you that the time was being wasted and that I wanted very much for the case to be heard by Judge Thomsen. I don't believe you responded a single time. And there is an enormous amount of work required to substantiate individual things you might want to prove. For example, the capacity of our laying chickens under normal circumstances. Or the preparations of graphs showing normal and interfered-with production. If you want this, and I think something like it is essential as proof, it might take no more than 10 minutes on the witness stand, but it could well take a long hard week as a minimum to prepare. I have countless files on this. This individual element of the many-faceted proof would require at least a third of the time you have permitted, plus what we'd have to do together with it, plus graphing, plus experts, etc. There are countless such elements of proof if any case at all is to be presented. If you have no way of knowing this, it is not because I didn't undertake to inform you or ask what you wanted me to be doing for the past year but because you have not begun to look into the case you are now, without consultation with me, rushing into court.

You have done nothing at all about discovery. I have taken this up with you regularly. But the very day before you made these impossible arrangements, you wrote me that you "would" carry this further. But before that letter reached me you made this, too, impossible. I have repeatedly asked you about my undertaking parts of this, from drafting interrogatory questions to seeking the information on my own. I did begin this, did keep you informed of it, and one of the things I did in Washington yesterday was locate some of this, with more success than I had anticipated. I learned where files I had not considered are located and have a conditional promise of delivery of two xeroxes of everything in each, one for you and one for me to go over for you. It is for similar purposes that I have appointments in Washington Monday. There is an enormous amount of this possible, and the amount of money

involved is more than enough to justify the time. In any event, most of the time would have been mine and I repeatedly offered and suggested it. Among the things possible is proof of our allegations from the government's own files. I know of case after case of this and even discussed them with Brocato and Davis when I was pro se.

I could go on and on listing such things. My sole immediate purpose is to make the point that we are not ready for trial and can't be in the time you have permitted. It is physically impossible for us to get together before the week of December 4, a week before the pre-trial conference you have scheduled and only 12 working days before you have arranged for the trial. If we were willing to abandon the medical claim, which we are not and I think you should not even ask us to without thorough exploration of it when you have made none and could have made none, and if we knew now exactly what you want to present whereas we have no idea, you have arranged it so that there is not a fraction of the time required for even a rudimentary preparation of the case relating to the damage to the chickens.

When we first spoke to you there were a number of things I made quite explicit. We would not again go to trial unprepared is one. I told you in detail why, such as learning of "proof of loss" for the first time on the witness stand. Unprepared witnesses is another. These and other things kicked back needlessly. I gave you an illustration from our tax records, which show extensive losses over a base that was itself reduced by losses. That a large amount of work in preparation would be required is another. I also told you that I could and would do this work under your direction. If I am not a lawyer, I am expert in poultry, have been used as an expert in poultry by states, several countries, our own government, and in official proceedings of several kinds. I have had experience in collecting and preparing evidence, for official proceedings and in court. There is nothing I am raising for the first time in this letter. That we are today unprepared and can't be by the time you have arranged trial is not only not my fault but is in spite of my many efforts for a year. Yet we could have had all of this over with by June, certainly by Labor Day, if you had done as you told us at the outset you would. Yet it took you months to get around to addressing the government's interrogatories with me and about five months to answer them after I gave you the information you then lacked. It took you ~~four~~<sup>seven</sup> months to get to me the government's answers to the first part of Taft's interrogatories then something like six years late and a month to mail them to me. I got that at bedtime three days ago. Seven months is counted from the time you wrote me you had reminded Davis of them.

There is another area of great concern to me in all of this, and I have discussed it with you at length. Because the first case was unprepared, the judge concluded I am not an honest man. That is a permanent defamation for which I do not blame the judge. Silard is responsible in not preparing the case, even with me. Because of it the judge offered to withdraw. I declined, for I want and believe I am entitled to a fair chance to clear my name, and I regard him as an eminent jurist and a fair-minded man. However, nothing has been done that is not designed to prejudice him, beginning with Silard and Taft, whose delays are for years, and then continued by Baron, who never kept his word to sit down and negotiate with me, and Brocato and Davis who did worse, pretended they were when they didn't. You were explicit enough in telling us this is typical of Davis from your personal knowledge. Now you have arranged a scheduled after a year of time, that makes presentation of part of the case totally impossible and the rest at the very best entirely inadequate.

We can't agree to this and do not. We ask that you undertake to explain this to the judge in a way that will not be prejudicial to us or, at the very least, will be as unprejudicial as possible. You are well aware of our urgent needs of this time of the year. My wife is in ~~tax~~ school which continues into next month, two days a week. We spend until 1 p.m. a third day in therapy. Beginning January 2 we have our only income, my wife's employment, which lasts until after the middle of April. If she can do nothing during that time, I have much time and can and will do much. During that time I also must provide her with transportation, as you know.

This is a very old case. That, in itself is hurtful to us because of the delay and all that means and because it looks bad to the judge. I think it is important for him to know that not any of this delay over all these years is our fault or our desire. (I can, to illustrate, show you a diary with the incredible number of days I went to Taft's office for appointments he didn't keep or did nothing when I was there, his concentration being on such things as getting draft deferments for Mr. Williams' Redskins.) You responded to my letter on November 17 last year, a week more than a year ago. During this time there was no delay attributable to me. We gave you the government's interrogatories when we first saw you and you didn't get into them until February, knowing my wife was then working day and night. She alone knows our books. She alone keeps them. I mailed you the missing information three or four days only after she finished work, which I regard as prompt. Although as your later correspondence shows you did receive this, you wrote me in June saying you hadn't and would resign from the case unless you did. In fact, when I sent you my only clear carbon and asked for its return when I learned you had gotten the original, you have not even done that. You then took until October to answer these interrogatories, although we made a trip to your office in July to go over the final wording with you and you dictated some of it in our presence. I think, particularly in the light of the foregoing, <sup>the</sup> makes a pretty clear record.

We are exceedingly anxious to get this over with, but not by throwing it away. My correspondence with you is also clear and redundant on this. I wrote you about it many times, without a single answer. Not on what I could do, not on witnesses, not on anything.

My recent letters are explicit in their expressions of concern. They were written before you proceeded as you have without answering them or consulting with us. My concern has turned to fear. I again solicit some explanation, for I just can't understand this.

Sincerely,

Harold Weisberg