3/31/72

Dear Jim and Bud,

I've finally had a chance to read the Court of Appeals brief No. 71-1026 in the spectro suit, and it is an excellent job. The few points I will make below are not new but are in memos I wrote you earlier, in analyses of the various governmental legal fictions, etc. I make them here so that they may be in your mind at the time of oral argument or so that you may correct any misunderstanding I may have.

I particularly relished some of the language. I am inclined to attribute it to the longest-haired of us, not, of course, counting the Philadelphia fledgeling or the Berkeley Bush. By the time I get to the Pope's chambers I was prepared for recitation of the keeping of vineyards from the song of songs (and would not have found it inappropriate !). On a more serious level, I hope you are aware of the possible misuse by this administration of any legal determination that there is such a thing as "human" or "natural" law in terms of charges and prosecutions.

I think that rather than as an afterthought, there should have been a major point made that had been exempt under (7), it lost that status by use. Before the Commission in testimony is not the only use. In paraphrase it was sent to Curry, who published in commercially, not as a police function; and in this form it was published as an exhibit by the Commission. American Rail, as you cite it, would not be more pertinent. My question has to do with why you didn't elevate what I think is really a major argument to such station, as in Argument III, as B? You do go into it on p. 22, as under C. I wonder if, in the rush, this is no more than a typographical error, that it was intended as B?

Under "Issues", 2, on the first page, and developed later, I think a major and missed point, really two, under the Williams affidavit is that it is incompetent and irrelevant. You do not say that his long recitation, admirably described as a catalogue or horrors, are no more than a nightmare, not one of them being in any sense at all related to what is sought or what is at issue. To describe it is "meretricious" amount to praise for that rubbish. I would like to suggest that if this is heard by a court you regard as at all inclined to be sympathetic, you go back to what I first wrote you about it and allege it is a contrivance close to perjury for the sole purpose of deceiving the court and defrauding me, since it does not relate and since it is also false-and under oath. Whether or not Williams is a lawyer and knows, certainly counsel does.

Page 4, IV. Facts, again, neither bullet nor fragment was found in the Plaza. But, maybe they'll think we have something we dont?

Page 2, under statement of issues and in the listing of alleged judicial error, should you not have alleged, affirmatively, that he should have ordered a hearing if he believed the government's argument, not restricting yourself to the allegation that he erred in giving them a summary judgement in the form of a Motion to Dismiss?

PP 8-9, Williams affidavit another point is that he is not in it or elsewhere qualified as an expert in the filed in which he offers opinion and interpretation of fact as well as law.

In this connection, I think you should be prepared to argue that in no sense was this in any event any kind of "investigatory" file, rather being the report on scientific tests, and use the Williams affidavit as intellectual judo to describe what is an "investigatory file", thus clearly defining this as another kind, the kind I allege, of scientific testing only.

On any citizen being entitled to public information, in argument you might want to ask the court but if there were such a test, who more than a writer has a right to know on such matters? Clark goes into this in his Memo, as he also does into the significance of the change inx (7) "other than an agency" When you get into court, the H. Kept is repetitious and eloquent on "national interest"....Now that the first copy has reached me