

Dear Howard, and your law review BOIA article, 6/3/76

We had an incredible excellent day in court today, appeals on the new spectro.

We are without doubt about reversal and stiff remand. The miserable subhuman of a DJ lawyer visibly gave up. He was, in fact, so disheartened that he blabbed the wrong things. Alas, no appeals transcripts are available if made.

We can't be certain about the meaning of the opening, but if it was for real then the turnaround actually happened in open court.

Remember, except for the chief judge on the original case we had every one voting against us. Today there was a visiting judge from Montana as the third to Spottswood Robinson III and Wilkey. (Two of the Vaughn v. Rosen panel, by the way, when they then reserved the same district judge, Pratt.)

Robison, who presided, didn't give Jim a chance to say hello before he was all over him. Jim held up fine and began to turn Robinson around rather well. They they stopped him, saying they'd come back, and Wilkey had questions for the DJ wretch Stein, who had abundant lies that did not suffice. He tried to try the case on me and they brushed it aside. He simply could not meet the record we'd made, with vigor that Jim thinks helped and may have been crucial, despite the lawyerly reluctance to find a spade more than an implement of undescribed character.

Our I think unprecedented emphasis on the total absence of meeting the initial burden and the same on noj-first-person affirmations scored. Why could not the people with first-hand knowledge affirm? Are they dead?

There is every indication that the almost multitudinous resignations we have forced from the FBI have been, for the FBI, in vain. I think this decision will direct that we get answers from Frazier and Gallagher at least.

What I gave Jim of Frazier on the reports really impressed the judges. He read it.

Robinson even ridiculed Pratt, who found "substantial compliance," language not in the law (in this sense-it is on recovery of costs). "I don't know what that means," he said.

There is no possibility of doubt, my direct confrontation on every fact and allegation was the thing. This court was confronted by entirely unresolved factual contradictions on all material questions and is without means of resolving them. They, also quite clearly, are going to find for us on discovery, which Pratt denied.

Jim was so euphoric he gave the cabbie a 30% tip! I feel fine but knowing what I know unless there is a contrary policy determination the government will go up. We'll have to await the decision. But unless they are prepare to throw in the JFK assassination sponge they have to go to the Burger defense. Unless they feel they can stall more and longer by accepting a reman and stonewalling again. This will put great pressure on Pratt. Jim and I did not discuss this. But can you imagine Frazier and Gallagher under oath saying what the lawyers represent- that when the President was killed they did no do what is essential in the homicide of a Bowery bum? Or Frazier denying his sworn WC testimony? Or swearing that all the necessary tests were not done?

It was so impressive that the Nader man who handles these things came up to us later. (He and an associate were the only spectators. They held this case for last. I felt it was for time but was uncertain whether this was good or bad.) I'll not be surprised if we need to depose if they find a way of helping. We'll need it. If we can we should begin that way because the government actually claimed that when all I could afford is interrogatories we did not try to exercise discovery because we did not ask to depose. Meanwhile, they opposed our request for interrogatories, which they refused to answer. I think that aside from Nader, who is his own kind of dictator, they have finally seen the value to them of what we are doing and how we do it-tough!

OOOPs! There was another spectator-Kilty. Jim predicts his retirement. I add an

African safari.

No, there was not a single reporter present, even though a bank was litigating a complained about zoning ruling. The other and earlier four cases were commercial.

Remember, this is the first case under the new law. Remember my role in the amending- this case in earlier form and this court overturned, specifically.

Remember also what we are doing and have done in the three current cases. All three!

We were right to turn to the courts.

I think we have the three best cases, too.

"Jim never had a chance to make his oral argument until there really was no point in it- when it was all over. He then, quite wisely, said virtually nothing. What he did speak was a precious subtlety I hope was not lost on the judges.

I think Robinson's vigorous questioning without giving Jim a chance to pay his respects threw him for maybe two minutes. He recovered well and did very well.

But the big thing was the definitive quality of the written record and the directness of the confrontation on fact.

Let us not underestimate power and immune corruption.

We'll have to wait and see if we have a whammie.

I feel we might. I know Jim does.

And don't hold your breath. I have no idea when the decision will be handed down. Pratt, however, is sitting on the sensational Maryland corruption case, that of the governor. All the Baltimore district judges recused themselves and he was appointed, I think by Haynesworth, the next district geographically.

However, I think you can take some comfort, especially with the vigor of the attack on me, personally, in their brief and in oral today, from the continuing refrain "Mr. Weisberg says," never once challenged when Wilkey said it, and the same about my rights under the law.

There is another I think apparent consideration. This court was really clobbered by the Senate and by the conference report. Now they have an eye on history and what it will say of them and of the assassination. Wilkey actually went into this, saying it is now 13 years, but people with first-hand knowledge are still alive. What when they are not?

I offer no opinion on the judicial quality of the question and I'd not argue if you were to say it is extra-judicial. However, I would not dispute another who might believe this can turn out to be a milestone comment in the form of a question.

I do have this opinion: that in these three case we have begun to turn the corner and may yet turn it all over.

Hastily,