His under/Spectro-appeal-Aspin

Bob Smith, CTIA

Dear Bob,

It was kind of you to take the time for your note of the 2nd. I read it in some haste earlier today while awaiting a meeting with our wretched County Commissioners, from which I've just come. It was a miserable business that has left me rather upset. If I seem to miss some of your points, I trust you may be able to understand that the freshness of this unpleasant encounter is somewhat distracting.

Let me also explain that as of now I have not taken the time for a careful reading of the decision. I had skimmed parts of it with Jim before we met you Thursday, reread the last page of the dissent to be usre Danaher was as incredibly anti-democratic as I had felt on first reading, and got and stayed busy with other things. It was an is my intent to go over it carefully before Bud and Him and I discuss next steps. If I give it this careful reading now, by the time I want to draw upon it, it will no longer be clear in my mind. I see no point in endless readings and re-readings when there is so much for which I can't find time.

We all misread Danaher. I doubt if any of us misread him more than I did. I'd very much like to be able to read his questions at the hearing in the light of his opinion because at that time what he was asking seemed inconsistent with his opinion. However, inthinking it over I can visualize intentions other than I read into them at the time of the hearing, intentions consistent with the opinion and with trust in the Government's writte and spoken word.

Jim and I did discuss the seeming narrowness of the majority view, but not in detail. I presume but do not know that what was ignored is not foreclosed. I have a feeling - and it is only a feeling - that some of the judges are more upset with the government in these cases than shows. In Apsin, as I recall, the judge went far afield, or perhaps it would be better to say farthur than necessary, to be specific on the point here in question. He could have content himself with saying only that he found a legitimate law-enforcement purpose. He went much farthur and gave a judicial interpretation of the exemption that could not be more in point in this case. I think the Court of Appeals majority is carrying this narrow issue farthur. If I feel that the decision in my case is an excellent one, despite your apprehensions, I think in combination with that of Aspin it is even more important for free information.

It is always good to have devil's advocacy. It is one of things Inhave always spught. There is only one of my books that I did not subject to this and then only because time did not permit it. So, I welcome your cautions and views. I'll go over them again prior to a meeting with Bud and Jim, at whatever time they elect.

My own view is that Jim did a first-rate job in the papers of the appeal. If as I expect- and I think Jim also does- the Government will feel other than you seem to indicate you do and instead of returning to the court below goes immediately to the Supreme Court, I believe all of that fine assembling of the relevant will be in the record before the Supreme Court, whether or not it was mentioned by the Court of Appeals. And here a very simple but perfect thing that Bud did will be, I think and hope, will be very important. If you have forgotten this, think further based on it and the decision. Bud said before Sirica that for the law-enforcement exemption to be invoked there must be a law-enforcement purpose. So, what law was being enforced? It is precisely because there was and could have been no such law-enforcement purpose that I went for the spectro, and I gace Bud Hoover's testimony on this to make it binding. In response to Bud's very good question, all the Government could say was that when a President is killed, there has to be some law, human or natural. I think this was not lost upon the majority in the court of appeals. When Aspin says there has to be a specific law being enforced, which, of course, is what the law says very clearly, and now we have this decision, I believe that Bud's simple question that got right to the nitty-gritty gives us the controlling factor absent corruption or dishonesty of political determinations. If these kinds of considerations are going to prevail, no course of action can overcome them.

The foregoing is but an encapsulation. With it in mind I'd like you to reread footnote five and the Williams affidavit. I think it is on page 9. Then reread the Williams affidavit. I zeroed in on that immediately because it is almost precisely what I had expected. Where my estimate was wrong lies in the signature only. I had told Bud this is what they would do based on the Jevons affidavit, of which I had a separate copy for him. If that is not perjury, it is very close to it.

I would appreciate your thinking on this combination and whatever esle you consider relevant. I think any of it that you'd put in writing may be of value at some time in the future. I should have made a carbon of this for Jim but forgot to, so I hope you'll show it to him, please. And I'd appreciate it if you give him a copy of your note to me and any further thoughts you may have. Thus he can have a record of everybody's ideas. In our situation, the negative ones can be most important. If you disagree with what I am suggesting, it is more important for im to know that than if you agree.

My own view, from the first, was that this decision would be an awkward and difficult one for the panel because it is, essentially, a political decision, a political interpretation. I felt and told Jim long ago that this would take more than the usual time if for no other rwason because the majority would want to measure its words and be certain of its position. I was also confident I would prevail, possibly because despite long experience I retain an basic faith few lawyers I have met seem to share.

Initially Bud visualized one enormous, all-encompassing suit. It did much work to prepare for it only to find it and the cost wasted when he changed his mind. However, he could not have been more right to change his mind. And I think he could not have been more right than he was to select the spectro of all the possibilities for the first suit of this kind by any of hs. His judgement could not have been better. There may be others that are as viable, perhaps even more so as a matter of law, but law is not the only factor. We never discussed the basis for his judgement, but I was and remain absolutely without question about its soundness. I think it has bee vindicated to this point and I can't think I can later change my mind on it. Some time ago he offered to press some of the others, but I decided against it in part because of the overtones you orchestrate. The politics is not as good, to give you but one of may considerations. I think Bud felt at the outset that the controlling factor would be what the majority decision siezed upon. I know it was my own view, hence I showed him Jevons affidavit. On this, with any kind of honesty from now on, we can't fail. The issue is narrow, yet all the other factors that are relevant im dealt with in the papers he drafted and filed. So, we are alive on all counts and the Supreme Court will be hard put to <u>honestly</u> reverse the court of appeals. I think this also was in that court's mind, as it was in Danaher's. If I am wrong, the Danaher's dissent is merely irrational. I think he was giving what he could to the Supreme Court. That he gave it nothing from the law or the record is encouraging to me, and that he made a boon of prior restraint in so doing puts in in sharp outline. I think he did it so excessively that his own likely supporters on the Ciurt will not be happy with his emotion.

I think you have taken too narrow a view of what was before the court of appeals. They could not order the court below or Justice to give me what I asked for. From the hasty and incomplete reading I can't recall anything in Jim's brief they foreclosed. So, I disagree with your interpretation that it is not an affirmative for disclosure. It is the most affirmative order for disclosure they could reach, putting the court below in the position of having to find a real law-enforcement purpose and Justice in the position of having to cite a law. What will make this more interesting is the public posture Sirica struck in the WG case!

Maybe I am wrong, but I think that in context the wording of this decision about a showing of harm advances our side much. It has to be read more carefully than I have read it, but this was my impression. I think others will use this language as we need not.

Here yiu cite footnote 3. I suggest you reread it and remember that if we did not undertake to prove it, the information was given to others. Think also of what this means in other cases in the future. It is good, not bad, because it does impose an affirmative obligation and they say "this court need not resolve" in this case.

I believe Jim cited American Mail, and I think that is the controlling decision on the point of any use. For the future, that is very good, I think.

You may turn out to be right in your interpretation of the final paragrpah of 13 and the footnote, but I disagree. Read it with care. It all hinges on a single thing: law-enforfment purpose. Without that this means only that the court of appeals was keeping itself covered. No criticism of it for its decision. Now consider this with footnote 5 and see if you can t see an entirely different thought in the minds of the majority. This focues even more on the Williams affidavit that I think is in fact if not in law perjury and subornation of perjury. There can be little doubt of the deliberateness of the deception. Why do you think the majority quotes it in full?

I am amused by your warning about "wild accusations" when I consider what has come from the CTIA and so many of its individuals. One would be hard out to be any wilder if one set out to accomplish precisely that. Why you anticipate that I would make "wild charges" I do not know. If there is anything in my record to warrant this, it would be helpful to me to know it. We are none immune, but I have always felt that most of all by comparison I show up rather well in this aspect. Remember, for example, all of the times I've tried to talk others out of all the stupidities and irrationalities from which we have all suffered and by which the credibility of all was undermined. I can think of only one thing that you could have in mind, if you have anything in mind, and that is an editing of what I wrote, not said, by the National Enquirer, which omitted any indication of the omission and made what appeared contrary to what I'd written.

Despite this, I agree with you on the "wild" part. I am opposed to this and have sought to avoid it to the degree one who has spoken as spontaneously as I have can. Now, on the "accusation" part (and one meaning is "indictment"), I disagree. I think that is precisely what this decision asks for. Again. reread footnote 5. What I anticipated at the beginning, what they actually did, is what we now need to document all over again. There is no possibility of supporting any one statement in the Williams affidavit. Often the courts and judges are the creatures of dishonest officialdom. I think it is possible to interpret this decision as calling for precisely this proof, of total and intended dishonesty and imposition upon the trust of the judges and courts. Surely Williams and the Government have delived unto us a classic opportunity. I am all for making full and responsible use of it, as understated as will permit comprehensibility. In doing exactly this we will give a perspective to everything we have all in different ways sought to do. I recognize that I was and remain a minority in drawing the distinction I did in my very first writing, the Introduction to WHITEWASH. But I tell you and will, if you are so disposed, argue with you, that basically I am convinced I was then and remain correct. Of the many culprits, the worst and most culpable is the FBI, next the staff. This decision is an invitation to lay it on the FBI and the Justice Department. That can be done with surgical care and for that I am gung ho!

As I recall the dissent,I think that save for one thing it can be handled easily and simply, that it will be disposed of in the normal course of events. The one things is the very end. Readx it again, the graf before the caps and the caps.

If I don't really resent the lecture in your close, I also don t resist the temptation to remind you of the biblical injunction about the casting of motes. Your own associates are those to whom I have tried wit out success to get you to address such admonitions. Yet you remain their associate and they remain rabid. Do you not realize that I have not to this day had a single word to say of this matter in public? If I think this decision is sufficient basis for changing my attitude, as it relates to the decision and the conclusion of the minority opinion, to date I have done nothing except that for which you were present. I called the decision to the attention of about three people and to one I directed attention to Danaher's emption. Thereafter I made only one stop on my way home, to a junior executive with a major syndicated news service and then only to give him a copy made by one of his subordinates. We had arranged for their counsel to discuss FOI matte s with me, but that lawyer knew nothing of the law. He was interested. So, at my suggestion a second copy was made for him. In even out local paper there has been no mention, and I am a friend of the editor. We are dining together again this coming Saturday. I am opposed to personal publicity, always have been, have kkp avoided all I could, have had nothing to say in

writing or public appearances except for pay for years, and have been notoriously unsuccessful in pressing thisview upon others, notoriously your associates. If I agree with yourx basic philosophy, I think you address the words to the wrong person. Frankly, I wonder why you do - what your basis is in my writing or public appearances.

We could carry this further, into the area of secretiveness. I have informed everyone with whom I am in contact of what I do and why, but others have even filed suits without lwtting me know. I can cite a couple where the filers might have been better off and thex end a better end if they had consulted.

So, if I do not resent the lecture, and really, I don't, I wonder what prompts it.

Now, if there were the opportunity for writing on this decision, I would use it. I would feel that it provides an opportunity for advancing responsible work and attention xxxxx to the subject and the law. But I would not think of doing it without showing whqt I'd write to Jim. I think this is a very good decision, at least as good as we had any rational reason to expect, perhaps better, that it can mean much in the broad, general sense to freedom of information, and that as many as possible should know about it.

This is not quite the same as "about six confession" or that kind of verbal vomit. It is also not quite the same as zeroing in on the JFK brain as the essence of the solution to that crime. Or to all the vacuities about the spooks conspiring to do the dastardly deed. If you want a longer inventory, you need only ask. I can provide it-with tapes!

I agree entirely with your admonition. My disgreement is with where you direct it. Your focus should remind you about the injunction dealing with charity's beginning.

I've taken this time because I really do believe that all sides should be examined, considered and kept in mind. This includes those with which any of us xxxxx disagree. As in the past I have solicitee this, so I welcome yours, ask for more of it - and remind you of others who could use it.

Sincerely,