Dear Jim,

10/25/73

In the few moments before the mail is due, I want to take an approach I tried to avoid in writing you last night. First, however, by accident I spoke to a friend of Judge Kaufman's today. I told him what little we know about the en banc reversal.

I tried to avoid an emotional presentation of reasons for wanting to do certain things and for my attitudes. This is not because I believe an emotional consideration has no place. In this, to the contrary, I do. How can one be without emotion when this kind of thing can happen and then in the context of the rampant fascism that is not limited to the person of Nixon?

However, aside from what you feel, I did not want your judgement to be under the influence of emotion. I believe that there is a solid basis in law for what I proposed. Perhaps the torts act is not applicable, perhaps it or decisions under it eliminate fraud as a basis for suits under it. I am confident that there are multiple bases for these kinds of actions, that they are and are intented to be a violation and restriction of my rights, and that this in itself is actionable and might interest Morgan, to whom I believe an approach would be better than to the national ACLU office.

What we confront is a totality of corruption that when I was your age would have been inconceivable. Let me give you a minor illustration from my recent experiences that may interest Morgan.

I told you that in going over discovery material in our helicopter suit I found what our prestigeous lawyers did not, that the Air Force has a secret file on me quite separate from the claim I made against it. There is a separate notice of it someone in a moment of carelessness did not remove in delivering the material. I repeatedly ask my lawyer to ask for it. Now he is a friend of the assistant USAtty with whom he is dealings and he tells me that unlike the character with whom I dealt, a real bastard he knows, this is a decent man. My lawyer has made three requests for this file. We are entitled to it. He has been told three times it does not exist, twice in writing, eyt he knows we have irrefutable proof of its existence, even the file number.

In the beginning there was Superkraut. Then lunch, then two phone conversations we had. And now I'm going back to what I wanted to do very early in two forms, one by Bud and one by me. This is an off-the-top-of the-head formulation of the second:

Dear Judge Bazelon,

I am the litigant who was before you twice in one case, first when you were part of a panel and then when there was an en banc rehearing xx on July 11 of this year, the decision in which I understand was filed yesterday. it has not reached me. I know only that it was adverse to me and that you were a minority of one.

It may not be uncommon for litigants to be caught up in the folkways and mores of lawyers as well as in strained technicalities of the law as represented and misrepresented, but I do think no meaningful justice and no system of justice can survive any of these artificialities.

However, it is not in a continuing quest for justice but in seeking a means to do something about and to rectify an injustice to me and to the courts, I believe a criminal injustice, that lacking any other immediate recourse that I write you. In doing this not only can I not address the decision, not having seen it, but I want to make explicit that I have no such intent, for I think that would be wrong.

Rather do I want to address as I have not been able to, or at least to raise, as I also have not been able to, what I regard as a serious abuse of the courts and of the judges of your court and the court below in this matter.

Let me explain that I have filed three suits under the Freedom of Information law, all in federal district court in Washington. In all three of these suits I have sought access not merely to "public information" but to evidence, in two cases what is in those proceedings described as official evidence. In all three of these suits there has been false swearing by the government in what I believe is material in the sense in which this word is xxx used in describing perjury. This, of course, involves questions of

the subornation of perjury. In two of these suits I was represented by public-minded counsel who not only did not ask a retainer or fee of me, knowing I ~~must~~ am without the capability of providing them, but has not asked me for his expenses. I do regard this as genuine dedication to the legal profession by counsel and I am, of course, appreciative of it. In the other case I was pro se.

In the first of these suits, C.A. 718-70, a Department of Justice lawyer swore falsely to the court that he had delivered to me part of what I sought when in fact he had not only not delivered it but he had refused it on my request as of the time he swore to delivering it. Further in proof of this, there is the later covering letter from his superior by which it was conveyed to counsel. This, I believe, is the essence of materiality because of the question then before the court.

In the suit in which I was pro se, C.A. 2569-70, a knowingly perjurious affidavit was provided to the court that I believe is the most material false-swearing possible in a suit under this law, falsely alleging that I had not made the request required by the law. The affiant and government counsel both knew this to be false, but that knowledge did not deter either, for both, apparently, felt that the fact that I was without founding in the law justified some risk in achieving an ulterior purpose.

In the matter that was before you, No. 71-1026 in your court, I do not want to in any way compromise you nor do I want to risk, in my lack of knowledge in such matters, want to transgress against the proprieties. So, I will not be explicit in any allegation. Instead, I would ask you to consider the plight of a litigant who is captive of his counsel's captivity to what in medicine is well know as the reluctance of one doctor to testify against another.

In medicine, the patient only is directlt involved, those to whom the patient is dear, indirectly.

In law, however, there are precedents that may persist through ages. More than the initial litigant are involved. More than he may suffer.

Where I have sought to use the Freedom of Information law, I have also sought to use my first-amendment rights. I am a writer. I believe that in denying me any of my rights under the law the government is denying me my rights under the Constotution. I believe it is because the government, knowing I would write, was motivated to deny me what I sought in these cases, in all three, in two of which I did, ultimately, get, more or less, what I sought, but in ~~xxxxxx~~ neither case because of government willingness. In the case that was before you, save for that evidence I have an entire and a rather long book written.

At each point when I asked my counsel, who I repeat is a sincere, dedicated member of the bar, to make an argument~~x~~in court, he agreed and then, when the argument was made, written or verbally, did not. This was beyond my control as I believe it was, as he saw it, a nicety, a courtesy to other members of the bar.

The net effect, regardless of the decency of intent, of which I am without any doubt at all, is that the courts were imposed upon, I was denied my rights and other for how long I have no way of estimating may be denied their rights.

My purpose is to raise a basic question with you. I do not know any other way in which, at this ~~xxxx~~ stage in the litigation. My indirection is not in any sense from fear of fact. I would welcome confrontation with that, in your presence, with government counsel present. I would then allege both perjury and its subornation.and undertake to prove it.

This would not be the first time, for I did raise the question, without his ever addressing it, with the Attorney General, in writing, and I can produce my letter and the one, later, written for him. It is he who would not confront, not I; ~~xxxxx~~ he who would not face the question of perjury by those under him.

At one stage in these proceedings the government alleged that judges do not know enough to make decisions in such cases. How can judges function as judge if the government undertakes to deceive them, to misinform them in ways I believe transgress against the laws and the canons of the bar? Apparently with impunity.

End draft letter. We can talk of this when you are here. Best,