

Dear Jim,

FOIA costs, fees

7/10/76

While going over the answers to 1448 interrogatories a couple of the notes I made stuck in my mind. So, when I went for a good, brisk walk feeling fine and happy to get it in before the predicted 90th day (it is only 8:30 now) I thought about this some.

First, please do not forget to record your time for yesterday and the mileage. You will get it back.

When you have time think if you can possibly put a claim for all in before a judge who is sitting on any one case. If not be ready for both Green and Robinson.

While I'd probably have asked you not to if you had consulted me prior to your affidavit in 1996, now that you have done it I see no reason not to make more use of it.

There is a unique record in these FOIA cases. In the one case we lost there is clear national and public interest because it is the first of four cases by the Senate as requiring the amending of the law. All other cases were successful, with dismissal following compliance. This is what Pratt held in 75-225. I see no reason not to be prepared to cite this, too. And in ~~me~~ every case you have handled I've given away all that I obtained. To your knowledge in the past 15 months I have done this three times by press conferences alone. I have also done this with what I have obtained on appeal, as the 1/22/64 transcript, where about 50 reporters were present. That was the first of this series and included what we had obtained in the spectro. So I am not reserving even the literary rights to what we go after and get. In every case it has been offered to the major media and those of the less than major who wanted it. In the last two instances, both AP and UPI put two pages of stories on their wires, each service, both stories. This is consistent with the doctrine of all the self-serving documents we have obtained, like the Kats. letter, p.3 referred to in the earlier memo today, giving it all to the people.

I qualify as an expert, the FBI and DJ say the best and better than anyone they employ, so this makes it more, not less of a public service. But I also do this with no regular income and a very limited income and at my age, with no retirement, when all costs are significant no matter how relatively minor. You do it at the other end of the scale, when you are just starting your practise. When you are and should say you have to be your own file clerk, typist, messenger and law clerk. You ~~has~~ also have no regular income.

With this kind of record in seven cases I've filed and a similar one in those in which I prevailed on appeal, I think there is more than a meeting of the liberal meaning of pro bono.

Yes, I've also published all the significant records obtained, in facsimile where possible. This the 1/22 transcript, which is not really directly related to the rest of Post Mortem, is included at extra cost to me. With the 1/27 transcript, where I did not believe that at my age when already in debt I could honorably add to that debt you borrowed the money to pay the printer so I could make all hundred pages available. With ~~the~~ the many other records included in facsimile I still sell it profitlessly at a third of the cost of this transcript alone at the Archives. If I do not recall the amount I've given you from this after paying off the loan I'm certain it is not as much as that sum would have brought at bank interest from the time you borrowed it. So there is no chance of any profit or commercialization. This is further established by the arranging for wholesale distribution. I'll be lucky to get the cost of manufacture and shipping alone back. No possibility of profit, good possibility of loss and in a half year not a penny has been sent by the distributor.

Your situation also is this: is the country to be denied what can come from your handling these cases because I can't pay you? Are you to let me do what I can do and from my lack of knowledge become a burden to the judges? Or do you have to face what the oath of a lawyer requires, that you provide services in this national interest. I'd not be reluctant to note that the Congress is just beginning to catch up with what I published beginning 12 years ago about what happened and that the Senate's recent report in some areas is less full than my 1967 book, lacking names and details I did publish. As of now, as Jon Newhall noted not long after you left yesterday when he phoned to confirm it, the current training camp and munitions-running headlines are in Whitewash II and Oswald in New Orleans, 1966 and 1967.

I don't have to remind you about the amount of work in the ^{King} case, again entirely pro bono for both of us. I'd use it, esp. before Green. And that ninth circuit has just ordered you to continue pro bono after Ray relieved you and that I will continue to be helping you on this.

So, I'd have a request ready in whatever form you think, with separate parts, one for you and one for me. There is probably no basis for my collecting for work other than required after rejection but there is an enormous amount required afterward. I think this should include cash costs and a reasonable hourly rate. Judges are more familiar with legal fees. In my case why not base it on Newspaper Guild rates for an experienced reporter, with an estimate of the cash value of the fringe benefits?

We ~~have~~ precedent now, two fair judges and the need. By the way, in the case before Robinson I have already promised to give these transcripts to the press and have asked reporters to make arrangements satisfactory to themselves in the event I do receive the transcripts. The last one to whom I spoke is John Maclean of the Chicago Tribune.

Think about this and be prepared. If you believe it should be by the case before each judge, a good time with Robinson is if we receive the 5/19 first. He will have read it before you can file the motion and when he sees the stuff that was available he should feel indignation and have a fine case of their deliberately putting us to those time and cost for extra-legal and political reasons.

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