5/12/70

Dear Bud,

I plan to hand-deliver this Thursday. I have now had a chance to read Mitchell's letter of the 7th and the two undated motions you gave me today. Combined they are a deliberate trickery we need not accept.

First of all, the suit is mine, as you known, and Mitchell's letter that he is making this available to you is unacceptable. In out agreement to the dismissal of the suit we must specify his agreement to making the documents available is not persuant to your ignored letter of 2/2 but in response to Civil Action No. 718-70.

Second of all, until we see what they are going to make available, we do not know, for Mitchell has selected what he presents as your language and your appeal, whereas the request is mine and my language in the pertinent form must be controlling. These things are part of an effort to make it appear that the suit and the Freedom of Information Act did not cause the delivery of the sought material, and this is neither necessary on their part nor honest nor acceptable to us. However, there need be no big deal about it. We merely correct their deliberate error in our written agreement to withdrawal of the suit.

Writing the letter does not make the matter moot. Only delivery of all the requested and refused material can do that. Mitcell refers to but part of it. We may or may not want the rest, but we do want to see everything for which we sued. The tricky language of the seeks to tell the judge what by Mitchell's letter is not at all the case. Mitchell you should read carefully. He defines only some, with care. But their "Opposition to Plaintiff's Motion for Summary Judgement" actually reads, "that the plaintiff will be given access to the documents sought in this action". There then follows but an excerpt from Mitchell's letter, omitting the limitation he was careful to insert (or Ruckelhaus or whoever drafted the trickery) and quoting only, "whether or not the documents you seek are technically exempt under ~~xxxx~~ one or more of the provisions...." This single peregraphs seems to deine as a single thing what is actually two different things: what I filed suit for and what Mitchell defines, which is only part of what I filed for.

Their motion to dismiss, however, does not include selecter quotation from Mitchell's letter. It attaches the letter instead, hwile simultaneously telling the court something else,"that plaintiff will be given access to the papers sought herein".

With this blatent dishonesty, I think it best that we not agree to anything at all until we see a) that we are given access to everything for which I made request and b) that "access" includes copies of whatever we want.

These are crooked ones. I think we should be firm in our ultimate agreement to withdraw, specifying that the Department alleged the papers sought were not in its possession, that we agree to withdraw the suit because they have made copies for me of those things alleged not to be in their possession that I want. Let us leave only a record that they did comply with the law, not that the law was circumvented, and that it is invocation of the law, in the form of a formal request, followed by an ignored appeal, followed by the filing of a suit, which resulted in the offer of access, whatever we may learn this means. Especially because Anderson did not respond do I consider this important. The one thing that is at this point moot is your ignored appeal. Mitchell can hardly seek to invoke it after ignoring it for three months.