

Dear Jim,

1-28/73

The Federal Rules of Appellate Procedure, No. 35, provide at least one and I think more than one basis for a "Suggestion For a Rehearing En Banc" and for other possibilities we can go into detail on when you are here Tuesday.

(a)(2), "when the proceeding involves a question of exceptional importance."

I'd like them to decide whether or not it is of "exceptional importance" if they are the victims of perjury and its subornation and whether the court below was.

(a)(1) provides this also, but I think we should stay far away from asking them to "maintain uniformity" in their FOI decisions!

The conclusion of (c) is interesting. If "aufaan" meant in footnote 5 what I think he did of if he is put out, he might invoke this right to make them record themselves if they grant a rehearing.

As I read (c) it does not toll anything.

10/21/12

The timing on your call was fine. I had just felled the locust I need to fix the dam and had done as much trimming as I was up to. I'd just entered the house when the phone rang. And it was early enough for me to finish the job after that break.

And now I've enough time for a letter before the evening TV news, which I want to catch, sort of maybe a political weather report.

First I must thank you for what you have done. If you hadn't done it, it would not have been done, a feeling I know only too well. So at least let me make my appreciation explicit. Fine.

Second I think we must look backward and forward at the same time. I have communicated my feeling about the past to you. The look we need now take is at the mistakes so we do not repeat them. If the biggest was my taking a word, there may be others. I will be addressing the decision in what time I'll be able to grab. I won't be able to go over all the papers already filed. Partly because I'm the guy who is considered prolix by those who like to skim perhaps and partly because it has bugged me all alone, in this case and in the Ray matters as in my assassinations work, I think now, meaning in a proper order of priorities, the weak spots in the record must be strengthened.

A short step in looking forward: I still do not want to do anything that can embarrass him or appear to compromise him. This should entail no problem at all because he not only agreed to an amicus long ago but he took me to lunch with the then ACLU guy and asked him, getting turned down. So, I know he is willing. Or was. I suspect should be more so now.

You will be talking with and dealing with others. If you need or want more authority than what I now write, let me know. You may want to be able to assure others.

I believe without reading the decision that regardless of its wording the government will seek to apply it as broadly as possible. Therefore, I believe heavier responsibilities devolve upon me that would otherwise be the case. I believe this is the strongest case possible against the misuse of that exemption. Therefore, immediately more important to society and to me is the principle of law. More than getting what I have been seeking at this point. Should I prevail in the end, they'll now have to do something to it or with it. This is one the FBI can't fob off on anyone else. This is one they can't say the Commission should have existed. My letter to Hoover was all I then thought necessary to this end. So, it is not only that they don't want the fabrication to come apart. They don't want it to happen to them, either. From the FBI point of view this is a very tough case. It also means that some of the dirty work they've been doing for years may have to end. Indeed, they would have to worry about its exposure, meaning theirs.

So, I'll be willing to make any reasonable compromise. What I will be concerned about is taking somebody's word and find he will not keep it. This is why we are in the shape we are in. I was right, I did see clearly, I did do the work of laying out the proof, and Bud did, repeatedly, make promises, as you know, without once keeping them. That now seems to be the central flaw. Doesn't make me feel good. However, I will want to know what will be and will not be done and I will want to depend upon being consulted if changes appear necessary. You know this never once happened and the changes in the agreed-to approach were suicidal.

I believe the fact is essential, separate from the law. There has been careless error. It was repeated after I corrected it. I didn't get a chance to correct it until too late because I was not consulted. This I would not want to happen. But generally speaking, I would prefer to be as detached as possible, for a number of reasons. On the other hand, I don't believe anyone else has the factual knowledge I have, so I would want to be certain that it is understood.

If I have time before you are here, I'll read and correct the affidavit draft I prepared as soon as you phoned. I also must complete the complicated chapter I'm working on, and I can't do that in short periods like the one I use for this. If I do not while it is in mind I'll forget and be confused. If I do not get to go over it and if we don't together, I'm quite prepared for any changes you want to make. My major interest is getting the allegation of perjury and subornation in and on the record.

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