Couty of appeals en banc spectro hearing of 7/11/73 HW 7/12/73

Bud, Jim Lesar and I conferred on what Bud would argue a weel ago and reached complete argeement. In his "argument" yesterday Bud did none of these things. His performance was miserable.

From the Supreme Court's Mink decision, handed donw after the decision in the spectro case, it wa essential to destroy the Williams affidavit. I had asked this the minute it was filed, several years ago, and then gave Bud a detailed analysis showing that it was perjurious, that whoever procured it soborned perjury, that its intent was the deception of the court, but on each occasion, despite ampromise to argue this, Bud never did. In fact, before Bud filed the suit, I have given him an affidavit by another FBI agent in which, under identical circumstances, the FBI had perjured and Bud had admitted it was perjury (Jevons).

The Government's new argument was that FBI age reports were never permitted to be seen by others except inside the executive agencies and then on a need-to-know basis only. This also Williams swore. So, he had agreed to use Pat Gray and the Aliotto and a series of other cases I had provided.

Lesar's phrase last week, when Bud agreed, was that the government's effort in this case was to "castrate" the law. This followed my statement that the official effort was to nullify the law by deceiving the courts and misrepresenting-by criminal activity, perjury.

Bud did none of these things yesterday. He didn't even know the laws and regulartions, although he had been carefully briefed. Two of the government supporters began digressions and arguments as soon as the arguments opened. For some strange reason, for the second time (first before Sirica), when the government was supposed to go first, Bud did.

His position was complicated by the court'slumping of his own crappy, unworthy suit for the Kaiser documents in the RFK case. His own man on this, Bob Smith, had asked him to abandon that suit, it was so bad.

The two were Tamm, a former FBI agent, and Robbm whi had been Fulton Lewis Jr's lawyer before appointment to the court. It is more excuseable that Bud missed an unexpected great opportunity when he had been talking about law-enforcement purpose and one of these had asked suppose there was still such a purpose. This would and could have meant only that the entire story of the assassination was a fiction. Besides, the FBI could have had none, there having been no federal law violated.

Bud never did get to the central issues. He ignored the preparations for him, his own word, the needs of the case. The net result is that the strongest case to strengthen the law, to take to the Supreme Court, was weakened to the extent that oral arguments can weaken. The effect on the judges cannot have been but bad. Partocularly before this court, which has the best FOI record and which had been reversed by the Nixon appointees under Burger. More particularly when the court of appeals panel, in the original decision, had shown the way in Footnote 5 and had awaited the handing down of the Mink decision before releasing its own.

It was such a shambles Bud permitted the antagonist judges to get him off on the disclosure of informants, the Williams perjury, without his resisting it, without his pointing out that no such issue exists in a suit for a simple, unsecret scientific test, and that other exemptions protect FBI sources and had not been invoked.

Last week, not that it was news to him, Bud agreed to show in this argement that in <u>every</u> FOI suit I have filed there had been official perjury. He had agreed that the Gray hearings and Watergate give this special relevance and could have attracted news attention. He specifically did say he would argue this, agreeing that it was the solicitation of this footnote in the earlier decision, the fact and the need of the case. When I heard nothing from him or Jom in the ensuing week, I was certain he would chicken out again. That made it no more agreeable when it happened.