

Dear Jim,

4/21/74

Having had so little sleep, even for me, for several days, I am getting tired enough to think that I may be able to get a little nap before the sun is up enough to awaken me. I have not been uncomfortable during the several hours I have been handling other correspondence. And I find that varying sitting and standing positions, those that are least uncomfortable, it goes better. So I'll delay going over the very interesting looking mailing of 4/9 until later in the day, when I can sit in the sun with it.

But first to address what it occurs to me may not have been clear to you from what I may have sent on this newest FOI suit, 2502-73, for the suppressed executive session of 1/27/64.

I think that thanks to the failings and dishonesties of the government we are in a position to ask Gessell for a summary judgement in our favor.

I also think there is little chance the government would not appeal and we can't pay the costs of appeal.

So, without having discussed appeal, I have opted for making as full a record as possible. Jim has agreed not to move for a summary judgement. Instead we are moving to develop all the responses possible from the government. Each one puts us in a position to show official dishonesty and what I regard as deliberate deception of the judge. It is my hope that at some point he will resent this and express his resentment publicly.

If there are facts in material dispute he is not supposed to grant a summary judgement.

This does not mean that he will not. This particular judge must be a Warrenite and that may mean a problem.

However, I have been able to dip into my filed goodies and provide more than merely reasonable grounds for charging misrepresentation to the judge, if not what avoid perjury, the clear intent, by careful and deceptive and misrepresentative language.

The government must be really uptight about this one to have brought Rankin out for the first time. In bulldogging his affidavit I have found that there is but a single possibility of its not being false and that, fortunately, is at an executive session the transcript of which I have. It shows that the question of classifying the transcripts did not come up at all and the first one thereafter is the first of those all of which were stamped TOP SECRET.

I just don't see how he can get around this. Unless it is by semantics, which should not diminish the reaction of the judge if he is honest. Rankin avoided saying he was ordered to have the transcripts classified TOP SECRET (separately significant) by using "to security classify...those records created by the Commission..." There have always been specific regulations on TOP SECRET and he was not given orders to classify any of the transcripts "by the Commission." Thus my previous comment, of which I may have sent a carbon, that his only out is producing Warren or a statement from Warren because the Commission itself could not have ordered it from the records I have.

And whereas the language of the executive orders are specific and limit the use of TOP SECRET to national defense and then under prescribed conditions, there has as yet been no showing that the Commission had the authorization. The closest the government has come is the Sirica line, there's gotta be a law even if there isn't. They merely allege over the name of the lawyer who filed the papers, "In view of the subject matter of its undertaking, the Warren Commission plainly had authority to classify documents pursuant to Executive Order 10501..." This they did not. This also is the one time the government slipped and omitted "as amended." I got Jim to phone the government lawyer and ask him "which amendment." Because there is none applicable, the response was "no particular one." I have suggested but not insisted that Jim file an affidavit on this and his opinion of the reading he has given to all the amendments, a ~~not~~ inconsiderable amount of work I pressed on him.

When I spoke to Jim last night to give him the option of including the specific research I had been able to do after the generality of the draft of the affidavit I prepared for him immediately—we have to file before the end of this week and I just got the government's papers yesterday noon — he said that he has come to believe from what he has seen in various decisions of that district court that while there has been no public attention to the various affidavits I have filed — none one disputed or challenged in any way by the government — copies are making their way around the offices of the judges of the district. If this is correct, it alone justifies all the time and trouble.

Jim is so satisfied with the potential of this one, the draft of which I have not yet read myself - and you know my typing - that he said last night that if he wants to make further revision he will come up again Tuesday to get the second revision notarized.

(I think he has come around to my view that if we make a good record in court records we have not lost regardless of any decision.) I have not discussed this with him since explaining to him that it was my view and the reason I filed so extraordinary amount of paper when I was pro se.)

I know very well that the Government will not let me have the proof of how they finagled to avoid any investigation of the reports that Oswald was an agent. Not without going to the Supreme Court, which is theirs now.

I have not discussed this with Jim, either, but he must realize it.

So, at some risk of antagonizing the judge, we are to move for further discovery this week. I have suggested that he restrict it to what is applicable to those papers just filed by the government or where their answers of the past have not been responsive.

Thus my most recent suggestions are for copies of Rankin's claimed orders or the page or pages from the executive session transcripts reporting it; the records of his communicating it to the staff, which had to know, of course, if the classification was to mean anything; the exact language of the executive orders that they deem applicable and that of the undescribed and unidentified amendments; the basis for the Commission's claiming to be covered by the executive orders (I have already provided proof they were not, I think). Things like this. The answers have to be filed in court, so the judge's clerk at least will have to read them.

What I am really seeking to do is frustrate their effort to misuse the judges and the courts and to create a situation where they out themselves in conflict with the court rather than with me by virtue of their misrepresenting to the court in writing. If they lie to or deceive the court, the judge then is confronted with whether to accept it or not. My function becomes that of putting them in a position to be honest or be liars. And if at this juncture they lie, it is to the judge as well as to me. At each step I provide him with enough to show less than honesty by them.

I see no way other than this of coping with the multitudinous problems not the least of which is prejudice against me and my side on this issue.

I have an additional hope: that the judges can by this come to see that their Warren was also a victim, which I do not regard as identical with exculpating him but do regard as a means of making it easier for the judges.

My reasoning with Jim is that with Rankin a former solicitor general and the Department of Justice the country's best expert on the law, their offenses in misrepresentation of everything can't be attributed to ignorance or misunderstanding. This also figures in my recommending that we demand specific documents which have to exist for Rankin's affidavit to be credible and for specific citations of authority for the whole line of argument to begin to be tenable as a defense against my proper request.

If the judge goes for this I will then be prepared to show him that regulations are rewritten after he has been lied to in the past to make the revised regulations consistent with the lies made to him. I have the before and afters.

And if somehow he rules against us, we have already devised a means of getting it reopened so that an added record can be built.

Of course this suit, as all the others, jeopardizes work I have already done because what I might get would have to be available to others who ask for it. But I am prepared to run that risk for what we might call the common good.

I hope this explanation makes sense out of what might not otherwise.

Best,