

10/15/70

Dear Gary,

The weariness lingers (though the infection seems to have responded well to the antibiotic), and I think I'll look at some kind of spoof movie on TV tonight. Spent most of the day preparing what I hope is not a futility, a draft of what can now be only an amendment to the papers Bud filed without consultation with me. I've not seen them. I know from what he said today that he appears to have used all of my suggestions, which would not be novel. But I committed a great oversight, something that would not have happened if we'd talked this thing out, for it is that obvious, something that I should not have missed in any event upon first reading of the "response". Those crazy bastards opened the door so wide, and Bud is and was oblivious to it and I simply muffed it until last night, when suddenly it came to me when I sat back and thought for a moment.

I'm too tired to repeat the entire thing. I'll correct the draft before Jim gets here tomorrow and give it to him to take back. The first thing is that my nunch, coming from an increasing understanding of federal semantics, was correct. Bud did what I've asked Jim to do, check the citations, and sure as hell, they are not and do not say what the government says but are my way! Next, they went a bit too far and alleged a total prohibition on the public release of anything originating with the FBI. Boy, when I understood the argument that makes possible! The question, aside from those of the law, national interest, public policy, etc., this becomes one of the integrity of FBI reporting. So, I threw together Kellerman and Greer on Sibert and O'Neill, the Warren Commission on that 45-60 degree angle (remember, this is a suit for the spectator), some doubleplusgood duck speak from New Orleans, McCarthy, Steinmeyer and Jones and Silver, plus a bit of Wall on Bertes-544-Benister-Bertes, plus my "Information Breakdown" by Shaffer, plus the FBI holding back on the Commission stuff, and there suddenly emerged a memo of just how wrong the FBI can be, in the form of a motion that the Justice Department be required to provide proof, not just the opinion, that what I seek is covered by the exemption of the law.

Bud says he is now satisfied we'll win in the lower court, based upon the thing I haven't seen but that he tells me (and probably only me) comes from the analysis I sent him. He had earlier figured we'd lose all the way to the Supreme Court, and I then and always disagreed. (I have a notion he did, too, which can account for his willingness to take that added case, can't it?)

By accident today, in talking to a reporter friend, I learned where my impoverished lawyer was when he had an appointment to go over this case with me, the papers he filed, and didn't keep it last Friday. He had arranged a little lunch for Saerach and invited a number of people there to raise money for him (Mrs. Fomerance, apparently, was but one). Joe Rauh was another. I didn't ask who all was there and don't care. But on the subject of money I think no further comment is necessary. And here am I wondering where the money will come from to subpoena the medical witnesses for that suit. The question is not on the availability of money, but whose ego it is to be spent to inflate.

I am now convinced that my initial approach was correct, that our response should have been as I instinctively demanded, in the form of a demand for proof of the applicability of the exemption. It could not be provided without perjury, as Bud knows and knew....I tried out my decision to file the motion the judge's clerk says is necessary, on the DJ perjury, on this reporter friend. He says it will make a good story. I was going to do it anyway as soon as I can get the motion drafted. I'll probably have to invent a new motion to encompass it, giving no lawyer I can consult (Bud is not interested and was too deeply involved himself anyway.)

Best,