

Dear Howard, 75-1996- new turn

10/8/76

Finally I did get to make the record of what, less than I'd have liked to, more than I'd expected to. What the judge, who did not like it a bit, did not then know is that I also filed contempt motions against Levi, Kelly and a bunch of lawyers and FBI agents. You know damned well that she'll not grant that. But it is in the record with solid, documentary proofs.

I'm not going to give you full details but I'll send you a copy of the affidavit and the short statements I read almost all of. Toward the end I skipped a couple of paragraphs because I felt I'd said enough.

I'm a bit tired. I was uneasy about this and began getting up two hours after I went to bed. I've been awake since 4, up and about since before 5. The trip back was close to three hours because of accidents, exceptional but enervating, particularly because the radio was full of flash flood warnings.

This was an hour and 20 minutes ago, so I'll have less time. Call from the reporter who did the two-parter on the Miami tape/Milteer for Miami Magazine.

Jim did file my affidavit without reading it. He had no time. He did file my motion for contempt after adding an extraordinarily brief Memo of Points and Authorities. He would have filed the motion on forthwith compliance but the judge opened that further for us and told him to file an order on more, including ~~about~~ what they have given others and withheld from me. Tousy. What she took up on is before another court.

(He's also doing some simple but pointed filing in 1448 on Monday.)

I work him up this a.m. He was tired. He was, I think, going to back out. I can understand this, even more after the polite tangle I had with the judge. They never do anything about lawyers except ~~progress~~ progressive lawyers. He was frying some bacon, we were talking, he was unhappy, so I just left him alone to work it out for himself. He did. I said not another word on it. He read nothing except my motions. He had no time. He read the newer, shorter statement on the way to court.

He said he thought it would be better if I read it, I said I preferred that, so he said practically nothing after more of Dugan's stupid lies except to ask permission for me. I was making notes on the lies and opened by ad libbing on there, destructively. Actually he played into my affidavit. He was later stupid enough, while not in any way responding to my actually calling him a deliberate liar, to repeat the same lie. And that I had answered in advance with records that had passed through his hands.

The judge defended him to me while I was speaking. First by saying he is ignorant of the law. Actually. Then by saying she has never had such problems. My reply was simple, polite and unanswerable: you have your life and your experiences, I have mine. You know these people on one level, I on another. They do not treat me as they do you. Of course I used the formality of The Court.

I blew the bastard, if he did not explode. My statements says I had charged perjury under oath, had not been cross examined on that and had not been rebutted. When he spoke he said I'd testified without his being able to cross-examine. I nudged Jim and said offer me. He laughed and intended to but had no chance. The record shows that 9/17 he sort of ~~cross~~ cross-examined and did not touch this after quite some time when time was out the judge offered another hearing and he did not accept it. So he lied to her face all over again. He was then terribly frustrated, 9/17, because ~~it~~ he was able to do nothing with me except help me make a better record he didn't want.

He still did not present his plan. He had a verbal one: one analyst for their 88 volumes at a projected rate of 2 a week of 44 weeks. She, knowing nothing of what we were filing the first minute we had, would not accept this and was asking for still another plan. Here she argued with him. She had read the records we filed in support of my testimony. They are clear, these are 1969 requests. She went farthurred and interpreted them as all-inclusive, as I had intended. I've asked, as you'll see, for full compliance by 12/15, with all manpower required. We have already made the claim of special circumstances. They ridiculed in in July. \* If they now want to go up on appeal to claim due diligence and good faith with an unresponded to request of 7 1/2 years I'll print them an invitation. With the challenge I gave her today she'll have to ~~trouble~~ not requiring this. I really did blast them in the ad lib part, all politely, never with any string words. Fact.

Jim phoned shortly after I resumed. (My sources on the CIA's drug works called here.) When Jim got home there were stacked calls on the Rat petition cert. CBS's radio news was straight, honest. The main evening newscast is the one I heard while driving. We had the radio on their all-news station for traffic reports, to know when he could escape local traffic by returning to the unjammed superhighway. I was pleasantly surprised. Then NBC TV news had the same line from Jim's petition.

I asked him if he had ~~more~~ thought further about our day in court. He had not but he feels we have moved it much. QED.

The judge did not like what I did and said. But the fact is that afterward she was much tighter on the government. She actually said they had damaged me and that after I'd been making this long effort for so many years now they would be giving it to everyone else, to my detriment.

She also backtracked on me. She was, as all you lawyers are, shocked at having to face the reality of lawyers. But afterward she volunteered in arguing with Dugan that she could certainly understand how I feel if she does not agree with all I said.

I'd like to give you a fuller account but it is past bedtime. In time, I suppose, we'll have the transcript. After someone else buys it first, which will save \$1 a page. It lasted an hour.

The record is not perfect by any means. But I'll venture that in no FOIA/PA proceeding has anyone ever done as much to destroy any and all arguments about good faith and due diligence.

Frankly, I'm not of the opinion DJ will not dare appeal, no matter what she may order. They'll now have to opt any other course in preference. They may decide to take after me but I do not think they will dare that, either. They have to be crazier than I think to let this record go up on appeal. If it has not yet dawned on the judge or DJ, there is going to be Congressional FOIA interest. There is no chance of touching me on fact and there is greater danger in trying to, as Dugan should have learned when he cross-examined me. They'll need new dirty tricks to get around this one. However, I think that on the record, which can be important if we appeal, I've anticipated them all. We may go for mandamus on compliance. If we can swing the cost. You should realize that if they insist they have to sanitize the records for me they'll make the same claim for the Congress.

A word about Sprague's brilliant beginning as House committee counsel. He wrote the Memphis and Dallas authorities to ask if he could depend on their cooperation. This the Yablonski case prosecutor? What the hell does he expect them to say, no?

No subpoenas, naturally.

He appears to have been George O'Toole's nominee. Downing appears to have sent Lane to interview him. What a ticket to an inside track! Bud says there was a falling out with Specter.

It is all so crazy!

We did not get to use your letters because Jim had so little to say. There was really no need for him to say more.

We'll have to await evidences but I believe this was a no-lose situation and that all are much better off because of it. I feel good because on 2/11 when Dugan was pulling some of this on me I warned him that if I were forced I'd take such steps.

He didn't say hello or goodbye when Jim hand-delivered what we filed as soon as we filed it. I didn't even go into his office. I walked to the door with Jim.

Best,