

Dear Jim,

1448 etc

1/14/77

My purpose in writing is to assure that no embarrassed or angry judge criticizes you for not pursuing all your client's remedies, as the expression goes.

I do want you to abandon the interrogatories in 1448. I do want you to do it as pointedly as you consider will not be adverse to your interest. Do not consider my interests in the customary way for as I have told you often the state of the law means much more to me than what is obtained by any suit.

What you say I leave to you. I'll repeat some of what I would like you to get into the court record in whatever way you consider appropriate.

As best I could I have been trying to obtain these and similar records for about a decade. In its present form I am in a 1975 suit in a matter that is to be expedited administratively and judicially. Administratively the law stipulates 10-day compliance or rejection. Judicially these cases are to go to the heard of the calendar. Last summer this judge said that if the interrogatories were not responded to in a month he would fill his witness room. Instead he shifted everything to a magistrate, which denies us even a record to use on appeal.

Last summer he accepted one of the items for in camera inspection. In accepting this he said he did only because it would not take too long to read. That was last summer. We have asked him to act. He has not.

Obtaining these records can mean no personal benefit for me. I arranged long ago to make them available to all if I obtain them. I am not writing a book in which I would use them. There is no way I can sell them. There is no way I can recover what the effort to obtain them has cost me.

All of my records are becoming part of a scholarly archive. On this particular subject I have gone farther. I have arranged for a doctoral thesis to be written on it. This scholar is now engaged upon that work and will have access to all my relevant records, without any compensation to me. I have no selfish purpose to serve and none is possible.

The law was enacted and then it was amended because all governments practise unjustified secrecy. The amending was necessary because the government corrupted the original act. It is following a similar course with the amended act. One of the means is to misrepresent to and deceive courts of law. Another is to wear down those citizens who seek to use the law. In no case can any citizen or groups of citizens wield the power or assume the costs the government can and does. In no case does any court grant the presumptions to the seeker of information it grants to the government. All the courts assume good faith on the part of the government yet the Congress was explicit in passing the Act to state that in such matters good faith is not the practise, thus the need of the law. In this instant case it is claiming security exemptions on what is secret from the American people only, the intelligence services of other lands knowing their defectors and the knowledge of their defectors. Yet this provision is limited to what is secret in the sense of actual national security needs, not the whim of some overly-secretive bureaucrat or those afraid of embarrassment.

Embarrassment is as obvious as it is prohibited as a reason for withholding. The basic subject is the investigation of the assassination of a President. To me this kind of crime is the most subversive of all crimes. ~~It~~ It negates representative society, nullifies self-government.

Even the Congress has agreed that the assassination has not been solved and that serious questions requiring answers remain. To put this another way, this means that after more than a decade the Congress has come to believe what I first published in the first book on the Warren Commission and its Report.

There is now no doubt that the Congress can have this record. This means it will have been denied to me in a way that denied me my rights to it under the law.

In itself this means that the opposite of the intent of the law has once again become the actuality, made an actuality by the failure of the courts.

It also means more. It means that the people can be denied meaning in these records, another of the purposes of the law and another of the needs of self-government. The congress may hire ~~xxxx~~ people possessed of brilliant intellects but it cannot in the life span of a select committee acquire the knowledge I have acquired by what translated into everyday terms is a lifetime working career. There is nobody of whom I know ~~xx~~ who has the knowledge of this subject I have acquired. The ~~Department of Justice~~ has told another court that I know more about it and the investigation of it than anyone now in the FBI.

These agencies and I have a long history of their denying me records for years, making unpunished false representations to withhold them and on my obtaining the records no court has once published any official who made any misrepresentation to me ~~xxxx~~ or to a ~~xxxx~~ court. I have obtained thousands of pages under the Act. In no single case, not with regard to a single page, was any claim to any exaction ever valid or justifiable. If my study and public use of the withheld records can be delayed those purposes ~~xxxxxxx~~ the law was enacted to prevent have been accomplished.

I have about 50 long overdue FOIA and PA requests pending, most entirely ignored. These go back to 19~~th~~ 68 and 1969.

These requests that are sanctioned by the law are ignored in violation of the law because the courts make it possible. The law is flaunted by the executive agencies first because they know the courts tolerate anything and second because the agencies never prosecute themselves. This perjury is not uncommon and misrepresentation to and deceptions of the courts are common and are an accepted means of flaunting the law and denying the people their right to public information.

Discovery is essential if I am not to be denied my rights and if this court is not also going to be imposed upon by being misled and having misrepresentations made to it.

But at the rate this case is going I can't expect to live long enough for it to end. I have one case in court now in the 11th year of effort to obtain a record that has not been provided, that is not covered by any exemption and the existence of which has never been denied to any court. That this was the first case filed anywhere under the amended act and that it is the first case cited by the Congress as requiring the amending of the act are utterly meaningless - because the courts permit it to be meaningless.

Just before you phoned I had been listening to some new official statistics on male life expectancy. Without my medical problems statistically I have about three years. This case has been before this judge half of the statistical probability of my remaining life. In that time he has held one hearing at which he made promises he has not kept.

I don't have time for the dancing of the silly ritualistic dances all to the tune of denying the workings of the law and justice. He can dance them alone, without me. He can throw this case out without reason and I will not appeal it. He has in effect done this to me anyway so why should I start worrying now. If he is not going to permit you to question the necessary witnesses and permit you to establish whether or not they are truthful I want you to drop the case. I haven't enough time left for all this prostitution of the law and its clear intent. If he will, handicapped as we are by the lack of discovery for which he is responsible ~~xx~~ regardless of what he reads from any of his ~~xxxx~~ catechisms, then I do want him to fill his witness room, his long-overdue promise. I would like this to be at the earliest date mutually possible. I would also like him to know that I have no choice but to proceed and no choice but to proceed without preparation. If he objects to this, tell him to stick the damned case up between his texts and his promises. I am done with it. And you will be. But I sure as hell ~~xxx~~ hell will ask to be heard by the Congress when that time comes, when the federal agencies put on their push to have their gutting of the law baptized.

There are alternatives, I think, but I have conditions if you opt them. One I have in mind is a motion for a summary judgement all around, not just on the inspected one.

But I want the essence of what I have said in the record. I could not care less what Robinson thinks of me or how he decides. I don't care about the form and it can be in an affidavit from me. But I want to make judge face themselves and I want a record for the future of who has done what when all of society was turned around and all the institutions that are supposed to ~~protect~~ be its protectors became part of a gangbang on it. I can say it to a man's face, be he in robes, a lot easier than I did to a woman's.

If he does not agree then file a memorandum with the Court, even if you feel you have to disassociate yourself from it, in which you at my demand withdrawn the case for the specified reasons that the court has denied me my rights under the law, in my ~~firm~~ belief has acted other than the law requires, that I will not be party to the denial of my rights if what is not in accord with the law as I understand it from having read it, and that in any event what time I have left I opt not to fritter away in futilities that no prayer and no legal text can make into anything else.

I did expect more of Robinson. But I made the mistake of believing him. But in the other cases you know this is ~~is~~ how I have felt since last summer. Since then I have been groping in other directions, as I think you realize.

One of these is the damage suit, in which we also go for all the still withheld under FOIA and PA both.

Another, I think, is for me to jump this all on the new Attorney General, including charges of perjury, by the time his ~~is~~ Cair is wars. Whoever he is.

For some time getting all we ask for has not been the most important thing. I would have preferred that it be but the errant agencies and their bedmates in robes have changed this.

The reality is that in so open and shut a case as 1996 almost two years after the request and more than a year after the filing of the case and almost a year since compliance was falsely sworn to and four months after my last proving under oath that there was deliberate false swearing to compliance we have not one sheet of paper added to the minuscule fraction required to have been delivered pursuant to the 4/15/75 King request. First made and then ignored almost 8 years ago.

Call these judges - the best of them?

Whether they fear the Department of Justice and/or other agencies or fear endangering hopes of going higher or whatever, they do have this record. All of them. The sole difference is that some are worse, like Sirica and Pratt.

We can't be any worse off by embarrassing them.

And I feel the obligation to make a record if that is all I will be able to do.

What we are engaged in is not the futility. How we are is.

Best,

Dear Jim,

1/15/77

Writing the attached letter on 1448 was the last thing I did last night. As usual I fell asleep immediately. I had difficulty staying asleep only because something impaled me to get up and at it again. This happened at least three times. Although as usual I had no trouble going back to sleep immediately, and I mean immediately close to literally, I finally decided to get out of bed after not much more than five hours of sleep. I believe one of the reasons is that this remains on my mind but not in what I believe would be the usual reason. This is part of why I write again.

When you phoned I had dozed off looking at the TV news after supper. I started to write you for the reason stated, if you do as I want you to do I do not want there to be any reaction against you. There were interruptions. The one that took longest wrenched my mind onto other subjects. It was a call from my best source on the CIA and drugs and mind-bending. Meanwhile, I kept drinking, as I do to relax. I was up several hours later than usual, drinking this much longer than usual but I was not drunk. By the end I may have been loosened a bit by it and when I can't use my right forefinger for typing my bad typing is worse, but I'm sure that what I said is what I mean and what I think at some point I hope we can sit down and explore. Time is always the problem.

Do not believe that I am depressed by this or in that kind of a mood now. Neither is the case. I'm listening to WAKU's early-morning beagle-woogie and blues program and it always lifts me, particularly what is and now, the early fold antecedents.

Getting any one of these records or any combination of them had no great meaning for me. What does is the overall. Each record I obtain interferences with something else I want to do. I can do only so much so not getting any record in and of itself loses any real significance for me.

There is no reason to be depressed from our record. We have a fantastic record. The odds are toughest on us, we are virtually alone and not even the Nader people can come close to our record of success, however one measures success.

The circumstances under which we make our efforts limit what we can do and what we can reasonably hope to do. We, not those like the Nader people, are in the mitty-gritty. Opposition therefore is greater.

These circumstances in 1448 are for all practical purposes beyond our control. The reason for this is Robinson, actually in this case and symbolically. All the judges with whom we have had experience are, each in his own way, the same, with Gesell being the probably exception. Gesell gave the government the right issue to confront in his own way and they opted the course presenting least trouble for them. We have forced a limited amount of this out of Green.

With time as precious as it is for us our immediate, perhaps most limiting consideration is time. Yours is precious to me. The judges do not care about time, not even their own time. All appear entirely unwilling to confront the government, whatever the reasons. Law and fact are all our way. Ordinarily this would be more than enough. It has not been. The government knows nothing is going to happen to it so there is no dirty trick that is too dirty. That they have practiced so many provides us with one of the greatest possibilities of contending with them and forcing some change. It is from our method of contending that we have had our successes. We force the issues in what you call the battle of the affidavits. In my view we have not forced this enough. To a large degree circumstances preclude our doing more. There is not much we can do about these circumstances. If we are to proceed with least waste in time we have to get around these circumstances. This presents a different set of problems. Addressing them begins with assessing our own priorities. So that you can do this I keep assuring you that getting or not getting any one set of records is not the most important consideration to me. This is foreign to law training and practice and most litigation. It is not to say that I do not want the records. It is to say I do not want to pay too much for the effort. What the government keeps us from doing is extorting too great a cost. I see other things as worth more. If we can do anything and how is what I have in mind. I think you can realize that this has been on my mind since mid-summer, when Green made fine speeches and did nothing except take offense when she had to confront herself. That she is taking this out on us bothers me not a bit.

In a sense it is helpful. My work differs from that of others in its scope and thrust. Ed Williams has written with some exaggeration recently that it is Balzacian in the sweep of its social commentary. But my work does show that the institutions of society do fail. One of these institutions is the judiciary. This also involves the government's corruption of the law and the judiciary. Together they are our current problem, leading to what I'm trying to get at, what we can do and what the odds are.

The conditions of my life and work and perhaps my own personality have denied me periods of long meditation. I can look back and see when I perceived the need for change and still realize that it was not the result of deep and long thought. But I do see that it was right, that the time for change had come and that as best I can now see the overall the direction in which I was trying to move is the correct one.

For all that lawyers will find wrong with it and with whatevercast you may choose to attribute to it - you haven't mentioned none and I have one above - when I was finally able to address Green on this it was correct and if I said less than I had planned I said what had to be said. I said that which the judges are going to have to face and live with in these cases and what we have to force the government crooks to live with and perhaps face. This is their Achilles heel, there one. This for example is why I want to use the punitive provisions. It is why I want to get another and now much stronger affidavit on perjury before Green and in that record. It is one of the reasons I believe and have for months believe that we have to shift to the damage suit approach and with it a lumping of all the old cases and all the agencies, whatever the risk. It has great advantages for you and many importances for me and it in its own way also gets to the nitty-gritty.

In a sense making Robinson face Robinson is important to this, too. We have one kind of record in these cases of presenting the most solid fact and never been disproven on fact or any other allegation. That is not enough because we ~~also~~ have a record of infinite patience and of taking all this crap except for an occasional allegation of perjury that nobody pays any attention to.

You speak often of how judges do not like to be reversed. I believe you. I also believe this has broader application for us particularly because of the subject matter of these cases. You took the absolutely correct first step in this spontaneously when Pratt threatened us. He backed off in shocked surprise when you stood up to him. He even expressed it, then and there. So in the context of the subject ~~matter~~ and this unique act we have to make the judges and all the other institutions and representatives of institutions face themselves. If we do not prevail at first or even at all is not the essential thing. Making the effort is, I think, essential and I do think the odds are with us on it. Regardless of his initial reaction I do not believe Robinson will want a record of himself as what in effect is a judicial Tom and that in time he will realize this and straighten up and guide right, not just make fine promises, as with "reem, and not keep them. In letter and in spirit this is a different law. It really is what I have always called it, the ~~paramount~~ ~~essence~~ essence of the American contribution to government, the right of the people to participate in it. The only thing wrong about these Fourth of July speeches on its become effective is that the orators were not sincere. The words are perfect. This gives us a strength, a special handle, and we must, I think, not only use it but use in in a manner that makes the kind of opposition, ~~denial~~ denial and frustration of effort if not impossible at least of possible cost to those who are responsible for it.

This may sound Pollyanna-like but I do mean it and I do think it has a good chance. What people do not understand about me is that I adhere to these ancient American principles. Most of those who dislike me and my way have no principles or fear these. While my expression is often ~~taken~~ <sup>as violence</sup> taken by today's standards, even that, I believe, has these roots. In part at least it is because in order to write I have to feel and feeling I have to express what I feel. But I believe the feeling, whether or not the expression is acceptable today, is appropriate and comes from what can be our strength in these matters. My one concern is that in taking this course you not be vulnerable. Because I do not want this and do want to take this course is why I began to write as I did last night and add to it this morning.

Such of this is instinctive with me. The instinct is the end product of years of experience, some crucible experience. If you have read the State files I have received you have a glimmer of some and I think you might well wonder how I was able to turn that around, all that power, all that fascistic willingness to use it and use of it. I did to the point where nobody dares mention it to my face. There are not many people, especially not many young people, who have laws passed to make them criminals when they are the opposite of criminal. Now how could I have survived that. How could I have avoided going to jail when I was broken and unemployed and Alger Hiss have gone to jail? I could add to this record of doing the seemingly impossible and to surviving such powerful enemies, which is what they made themselves.

In seeking to encourage you to see it this way I also remind you of what we have learned together in some of the many difficult situations we have faced. Often what we could and could not do was beyond our control. When I failed in some of these, as I did, it was because I was not faithful to my way of the past. One example is when I was silent when McKee's malpractice case was interrupted. That was my mistake, not yours and it was a very serious mistake in a number of ways. But we can look back on what I wanted to do and we could not do and see that whether or not they were in accord with normal concepts they were correct. To a degree I think we can do this with the FOIA cases.

It is over-simplification but what we now have to do is try these cases on the judges. For reasons I will discuss with you if you want this gives us the intellectual judge of the present situation, especially because the government has already started its effort to weaken the law and because there is now a new administration. I do not mean that a new administration means reform. It does not. The bureaucrats will be the same. But the political situation of a new administration when it becomes aware that there will be public hearings on these questions will force new considerations on it and they can work our way. There will be a few in the Congress who will feel this way and on the right committees.

Nothing is impossible. Would you have thought when I went after him that Oser would go- and so soon? I am not claiming his scalp on my belt. But he is gone and we do not know anyone else who went after him. Look at the changes in Sprague's situation. Do you know anyone else who went after him? And with those in the media who are most opposed to me.

Timing is ~~also~~ also important. I do not know if my timing in making an approach to Tip O'Neill is right or if the manner of that approach is. I do know that earlier I should not have and I do believe that later would be too late. We'll see and we have nothing to lose but the time writing him took.

In a sense this boils down to my having faith, after all these years and experiences I hope you never have, in what is trained out of people by all their education, especially law education, formal and in court. I submit that my record supports this faith.

I hope you will agree with me and try to go this way. If not as always do what you think you should. But I do believe that even a simple formulation of laying responsibility on the judges for making what we should have done impossible will be a powerful factor before all this is over. Pratt has made depositions impossible. Robinson ruled against them, gave us an alternative and then denied us that. If he grants it next month it means nothing and a record of it can mean something. So just go ahead and tell these characters that you are not able to represent your client as you should and would prefer to because of them and official opposition to the law. As long as we are not hung up on getting any particular record we are in a no-lose situation. For me the one certain no-win situation is the one I am in. Think only of what you have wanted me to get on paper and I have not been able to do. I am past the point where it bugs me but I am not past the point of wanting to do that work. I have, I think, adjusted to the realities. But I would like to try to change them in what I believe is the one way that holds promise without compromise on principle or objective.

Best,