

9/3/70

Mr. Bernard Fensterwald
927 15 St., NW
Washington, D.C. 20008

Dear Bud,

Mr. Kleindienst's August 26 letter to you and your response have just arrived. No matter how late Mr. Kleindienst's interest in keeping things neat and orderly manifests itself, I am, naturally, anxious to accommodate him. Therefore, I write this letter to you, with a carbon, so that, if you find it not inconsistent with the norms of your profession, you may be saved the not inconsiderable time of rewriting, and merely forwarding.

I believe it both necessary and desirable to keep the record straight. This cannot be done without response to Mr. Kleindienst's letter. It perplexes me. I can readily understand its self-serving purposes, to which I feel I must also respond, but this is not all.

The last words in his letter are, "while this case remains in litigation". I am under the impression that there is no longer any litigation in this case, Civil Action No. 719-70, Judge Curran having signed a summary judgment in my presence on August 19.

On August 20 and 21 I wrote the Attorney General, Mr. Kleindienst and Mr. Bolapp. You will recall you were then away. These letters were necessary only because, contrary to Mr. Kleindienst's letter, the Department had not complied with the order of a federal judge. To these letters, all received by the Department prior to Mr. Kleindienst's letter, there has been no response.

I think it not unfair, on rereading my letter of August 13, to say that Mr. Kleindienst's letter is not a response as much as a self-serving argument, possibly motivated by a desire to leave a record congenial to what the Department desires to be in its files, which are also the people's files. These deal with important events in our history and should be pure.

Mr. Kleindienst says my request "was ultimately resolved by the Attorney General himself". This is not so. It was resolved only by my filing this action, was resolved only because of that action, and resulted in the summary judgment referred to above. Prior to that judgment, Judge Curran issued an order to the Department and it failed to comply with that order.

Mr. Kleindienst refers to the consumption of time within the Department. I am aware of the time and other costs wasted for me, but I must ask you to remind Mr. Kleindienst that had his original letter on this matter not been entirely inconsistent with both the fact and the law, the Department would not have had to invest this time. The wasted time and costs are mine, not the Department's.

Every effort was made by employees of this Department to be as

cooperative as possible", Mr. Kleindienst writes. To credit this requires rewriting the dictionary, at least with respect to "cooperative" and "possible". The Department began by ignoring my proper request, which I regard as a violation of the law. It then failed to answer your letter, written on my behalf, for three months. It then, after I filed this suit and it decided to avoid the court record, not only failed to tell you or me how they would make this file available to me, but it also failed to respond to your telephone calls seeking to arrange this. It then delayed the simple, mechanical chores of providing the copies for so long, when my inquiries were again, persistently, ignored, that it was necessary to seek relief in the court. It then violated the order of a federal judge and in doing so, I am confident, committed perjury. And to this day it has failed or refused to supply what I initially requested, the protection both the Department and I would have had in a court hearing, a letter from the person in charge of that particular file stating that I had been given access to the entire file. Refusal to supply this letter is hardly a demonstration of "cooperation", nor is it consistent with honesty or sincerity of Department purpose and intent.

Mr. Kleindienst's claim that there was a difficulty in locating the file cover may be explained by his having been misinformed, which I am ready to believe may have been the case. But there was no difficulty in locating it for, as you know, having been there with me, I personally put it in Mr. Eardley's hand and he personally told me he would not supply a copy of it. To save Mr. Kleindienst the time that is apparently required within the Department in finding what may embarrass employees on a lower level, and to inform him of the fact, the realities, may I request that you send him copies of Mr. Eardley's letters to you and your response as they relate to this point. The difficulty, I repeat, was not in locating. And also bearing on this point, if it is not burdensome to you, I think it would be helpful to Mr. Kleindienst's understanding of the kind of cooperation I was given to send him a copy of the page from Mr. Anderson's affidavit, encircling the date and marking his reference to having "delivered" a copy to me on August 12, which he did not do, and the proof thereof in Mr. Eardley's subsequent letter sending a copy. If you do this, please, you will also have replied in what I would regard as an adequate manner to Mr. Kleindienst's allegation that "the Court...(was) advised in a frank and candid manner".

I regret the need for making a record that may, in the future, be taken as other than favorable reflection on the performance of public servants. There is an easy way to eliminate this, however, and that is for the government to do what Mr. Kleindienst claims it has done but has not. As of today, for example, there has been no response to my request for a clear and complete copy of the picture, made from the negative. I consider this not in accord with Mr. Kleindienst's words or representation.

The costs that were wasted in this matter were mine, not those of the Department, and they were inflicted upon me by the Department's failure to comply with the law. I have already raised this point with Mr. Kleindienst and he has failed to respond, so I must keep the record accurate but I may have to consider whether I may want to enter a claim.

The Department alone is responsible for my having to seek your services, and they have not, to my knowledge, offered to pay for them. Therefore, I hope you will find it unnecessary to do more than forward this letter to Mr. Kleindienst, so that your own costs will be minimal.

Sincerely,

Harold A. Tabor