

Dear Jim,

12/23/73

I have just read once the DJ memo on the "meaning" of the CA decision in my case. As far as the HEW stuff. My stomach and my nerves will take just so much!

It is sickening to see that in each instance the non-lawyer is the one who understood the meaning of the law, the intent that it had or could and would be attributed to it and how to argue the case. His lawyer did not. So, I don't think Bud will listen to me now and I will not address this with him. He may listen to you.

I think that there must be direct confrontation with three things in this case:

Was the information sought part of an investigatory file;

Was it compiled for law enforcement purposes;

Was the decision procured by imposition upon the courts and by fraud that may be criminal and had criminal intent.

If each of these things, as an absolute minimum, is not done forcefully, which is not the same as stridently, then there is no chance.

I think that the members of the Court who can be expected to see through tinted political spectacles rather than as judges must be put in the position of supporting criminal acts by lawyers and by government or there is less chance, if not none. And here it might be good to recall that DJ has argued judges can't understand the kinds of things that are involved and bracket that with the total absence of any hearing.

I also believe somebody has got to lean on Werdig's answer when he was asked what law is being enforced. The good members of the court have to be armed.

And what was never done effectively, show that to believe the lawyers now is to call the sainted Hoover a perjurer or the converse, to believe the sainted Hoover is to know that the government contrived to commit perjury or to skirt it while accomplishing its ends.

This always was a political case. Fumbling made it only a political case. The only way to prevail now is to take that head on.

And one way to accomplish this is to file the damage suit I have proposed, charging that I was denied my rights by criminal acts and suing for cash damages.

I don't know how lawyers will react to the idea, but I think it would be very good if there were an amicus brief that went into the history of official falsehood that in some cases, particularly 2569-70, must be perjury, to circumvent the clear intent of the law. Some litigant hurt by this decision seems to be the more appropriate one, for he, too, is the victim of these wrongful acts.

I read this memo with more dismay than I think even you can imagine. There is nothing in it that I did not anticipate and at some point address with Bud. It was possible only because he refused to do what I asked and he agreed to do, from before you were in DC. I can show you long memos on this. It is not that the dishonesty was not anticipated. I anticipated even the Williams affidavit and showed Bud Jevons' (which can be used here to show pattern of deception of the courts and misrepresentation that Bud described as perjury).

I also believe that there should be an argument that precedent of the sweeping nature of this ought not be decided without exhaustive judicial inquiry, a full hearing, not a fraud and here that "national interest" and quotes from the legislative history and a passing comment on Mitchell would seem appropriate). This gives the thing that was never done with Williams more point, as it does Kaufman's words. And here there should be reference to the challenge in our petition for a rehearing, to confront this court with the fact that it is acting on the basis of charged illegality if it does not send this case back for a full hearing. In this it loses nothing and can escape an unpleasant situation.

I think what must be confronted directly is the bottom of page three and the top of page four of this memo.

I think also that there should be some consideration to arguing that without any kind of hearing on district court and on the basis of dubious if not criminal deception of all the courts a law is being declared unconstitutional by courts that lack the courage to say what they are doing. To put this another way, I see nothing to be lost by making it easy for the Supreme Court, as Bud did for all below, and everything to be gained by making it tough for them to be dishonest.

At the same time, they are dependant upon what is before them, so the right stuff has

to be there.