

28 December 1973

Dear Harold: I've spent a good part of the day going over your various notes and memos of the past month, and while I'm still uncertain about many details it appears you feel increasingly that you have good grounds for a suit. It seems a little ridiculous for someone so far away and so uncertain about details to offer advice, but I feel I must remind you some factors which you probably already have considered fully but which I feel may be strong enough to justify my saying something about the way they appear here. If you feel your case is good enough to go ahead in spite of them, I of course cannot and do not question your judgment and will mention these things merely in the sense of echoing your own thoughts. If my suggestions don't fit your concept of the situation, put it down to the remoteness of my viewpoint.

Since you began to mention this step, my chief thought has been that in view of the past, and of current circumstances, the prospective defendant cannot be depended upon to behave just like any other citizen who has been served with another summons. This feeling is reinforced by today's order. There is clout here, and the reaction has every potential for great vigor and well financed thoroughness if not actual violence. Some of this may depend upon co-defendants, if any are named. As I try to visualize it, your complaint would involve one or more agencies whether they are named or not. Equally involved in a peculiar way is an entire industry, if only because it may be shown to have allowed itself to be used. The whole question is not how good your case may be, but whether the step you propose would not automatically ally all these elements together against you and put them in a position -- especially if you have a good case -- where their ~~own~~ only effective answer would be to foreclose the possibility of your proving your case. From here, it manifestly is impossible to form any judgment one way or another, but it is not difficult to imagine the possibility.

One of your memos to JL mentions consultation with two others, but I can't tell whether they'd be merely co-counsel or actual co-plaintiffs. M. I take it to be from an outfit shown to be undependable, while H. is a name I seem to recognize but cannot place. In any case, the idea of others in the case sounds excellent in principle because of the far-reaching implications and the truism that the more judgements take part in such a decision the better. But again, I have to note that my instinct would be to limit the number of people who know about it as far as humanly possible. Too much may have been said already.


Timing could be of the greatest importance, not only from the standpoint of surprise and catching the objective off guard, but also from the standpoint of everything else that is going on. In this connection the question of public relations also becomes of great importance, and since the support of the media may be doubted on the basis of all your experience, I would figure on getting along without it if necessary. In any case, don't count on it.

In this connection I have the feeling that we are entering our most dangerous period, one of profound deadlock between Nixon's determination not to face the consequences and the somewhat pallid forces which are converging upon the eventual focus of the impeachment process. I still have great difficulty envisioning Nixon standing still for much of this. He probably would be willing to resign for reasons of health but that actually would solve nothing and would leave him perhaps even more vulnerable to the charges piling up against him, since he'd be merely another citizen. So, increasingly, his only way out is a coup if he can figure out how to bring one off. The temptation to try it must be growing every day. Given that developing mood of desperation, you will no doubt consider it in the light of what sort of environment it will provide for the process you yourself propose to initiate. It might even facilitate what you are thinking of, provide a better climate for it, but on the other hand it could provide a climate for quick and drastic suppression.

Certainly nothing I've said here is intended in the slightest to discourage you. It's merely that you would be taking on more than ever before and that I'd feel very bad indeed if I did not let you know how serious it looks from here, even on the basis of fragmentary understanding or perhaps simply because of it.

All I'm saying, really, is that the battlefield should be surveyed with the utmost care before this one gets going. For the thing that impresses me is the possibility that the better your case, the more dangerous it may be to press it. I could be wrong about that, and hope I am, but until I know differently I can't ignore it.

Best,



jdw