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25 March 1966

OGC 66-0851

MEMORANDUM FOR THE RECORD

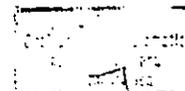
SUBJECT: Heine v. Raus

1. On 22 March 1966, I met with Messrs. [] and [] to obtain some details on the hearing which took place in Baltimore on March 11 on the Motion for Summary Judgment. From their recitation, I understood that Judge Thomsen was not entirely familiar with the case and seemed disposed to develop some issues of fact. In addition, I understood that U. S. Attorney Kenny who was present in the courtroom gave the impression of being uncooperative.

2. The Judge construed Raus' affidavit, in which he says he is employed by the Bureau of Public Roads as being contradicted by the Helms' affidavit which says he is an employee of the Agency. He also indicated that it might be unfair to permit the defendant now to plead absolute privilege because of the lapse of time. In this connection, he noted that the answer failed to make this plea; and that it was being made by private counsel not the Government. He also stated that the Helms' affidavit was insufficient as alleging merely conclusions of law. He is quoted as saying that if Helms would not appear as a witness he, the Judge, would be agreeable to coming to Washington and take his deposition personally. In short, Thomsen insisted that the subject of Raus' scope and nature of employment be more fully developed. It seems that despite Connolly's efforts to show a favorable comparison between the Helms' affidavit and that found acceptable in Norton v. McShane,* the Judge was not impressed.

3. Concerning the Director's statutory authority to protect intelligence sources and methods, the Judge queried whether or not this had not been waived by the Helms' affidavit. While [] []

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believes that this was rhetorical. [] suspects there may be more to it. Both are concerned over Thomsen's saying that the plaintiff should be permitted to file limited interrogatories; and that on the basis of the present pleadings he would render an opinion.

4. Both [] and [] apparently agree that the Judge's principal concern is that the wording of the Helms' affidavit fails to disclose adequately the scope and nature of Raus' Agency employment. They suggest that this might be cured by having him submit to a limited deposition, restricted to developing this subject alone. But appreciating the problems that even a limited deposition could generate they believe the best course would be to have Helms and Raus file more detailed affidavits, reinforced by a Department of Justice representation that for the Court to pursue the matter further would not be in the public interest. In this connection, [] emphasized that it would be well if such a representation was made by the Department of Justice, not the local U. S. attorney. In suggesting the advisability of having Justice intervene now, they have in mind the Judge's flat statement that he would feel constrained to grant summary judgment, if to do otherwise would be contrary to the public interest.

5. The recount of the proceedings was done without the benefit of the transcript, which despite []'s request of the Court reporter for an early delivery will not be available until Tuesday, March 29.

6. As a follow-up of his request for leave to amend, [] filed an amended answer on 22 March, pleading absolute immunity. []

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[]
Assistant General Counsel

cc: []

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