

0322

Dear Jim,

3/22/83

I've started work on an affidavit justifying fees and costs in C.A. 75-226 but, with most of the part of the day I could have worked on it taken up with other needs I write about a few things because I expect to be in town in time to make the outgoing mail.

I've begun this affidavit with a statement of the need to sue. It may not be complete and in later portions there also may be things you believe might be added, but I should have it completed and retyped in time to have it awaiting you on your return. If you then want things added you can tell me and I can do it.

I believe you said you want first to have a basis for negotiating. If that is the case, I can provide you with a copy for the DJ Lawyers that is not executed.

I am much more concerned about the situation in 0322/0420 than you appear to realize, although I have said what I think often enough and I believe clearly enough. You now face a time crisis and in my view, despite the fact that you are without doubt too busy, you created it by merely not doing what I asked, which would have taken no more time in the long run and had certain advantages, not to say what I believe, needs.

There really was no need that you had to postpone even reading them as you received them and instead reviewed the entire case. You may have preferred this, but history should have told you that there is always something that prevents your doing what you plan to do. On the other hand, I can think of many advantages in reading those newer affidavits, all of which are based on new information, prior to reviewing the case.

There also is the fact that it looks very bad for you to have these dated affidavits going back to July 8 and responding to government submissions going back to June which you have not addressed and then to be filing my affidavits only (if you do) the end of August. It looks worse because the judge can reasonably expect all outstanding matters to be on his desk when he returns from so long an absence - and this judge in particular will be looking for excuses.

I sent you affidavits dated 7/6, 1983 and #2 (two of this date) and as we discussed at the time you could have done as I asked, filed them with a memo to the court explaining that you could not address them then but would as soon as possible. This would have obliterated the at best disadvantageous situation we now face and would have had the advantage of putting the FB, in the position of not responding to them by the time the judge was back. This is only one of the major advantages now thrown away - because they cannot really answer and now have an excuse.

Regardless of the causes - and without doubt you have been too busy - we now face a bad situation we need not have faced and as a result you have not been able to do anything you said you would, either your review of the case and whatever you would have done with it (am I wrong in believing you expected to have it done about two months ago in your first estimate, or your filing of these affidavits in time for them to do the good they might. However, if you had not insisted on your review first when you had the time, this situation would not exist now and we'd have major tactical advantages I worked hard to make possible.

Is it possible you did not know you'd have the brief in Mark's case to do? Is it possible you could not anticipate the work in the Prouty case you've had to do? Or any of the other things that have taken precedence? I don't really think that you could not have anticipated these possibilities. And unless you could not anticipate any of the possibilities, how explain this when I have made my beliefs and desires so clear so often and some time with such vigor?

AW

Now explain it is most important for you, not in terms of excuses but in terms of your understanding why this or something like it happens over and over again, sometimes taking great costs of various kinds, yet it happens over and over again. I'm an older man, Jim, and draw on many experiences besides the very many in these cases, and as one who has only good feelings about you and wishes only the best and great ~~successes~~ successes for you, I tell you that for a lawyer of your age, experience and exceptional intelligence they should not happen. So I think you really should be asking yourself why they do. In this case, if it was really necessary, whether or not efficient, to postpone and postpone and postpone, always in the expectation of what your own life experiences ought tell you not to expect.

I think there are other reasons and I hope you take the time to try to come to understand them on your own. If you do, it can be of inestimable value to you.

If on your return you find that the judge has set some kind of proceeding at which I should be, my only conditions are those of the past, that it be at a time that does not subject me to rushhour traffic, which is dangerous for me today, and that there be a place for the driver, either local cabbie or private person, to park because I cannot expect a driver who knows anything about DC and I'm not able to walk from any commercial lot to the courthouse. After I'm there we should have a little time to talk.

I remembered where to locate a copy of the Shea memo to Salochin and have it, so of the things I asked you to send or refer me to, I do not need that. If you have time to phone before you leave and can refer me to the Salochin memo on Hoch's requests and the first spectro case when it was before the appeals panel, that will help because I can't remember where I used it.

No, skip this one, too. While I did not find a copy in the Hoch subject file of official records, I thought to check that spectro file and a copy is there.

There will probably be a few instances of my just referring to the case record where I do not recall the location of the records as used in the case. But they can be added later.

If you can find it without great difficulty, the page of the debates on the 1974 amending in which Teddy K made it clear that the original spectro case led to the investigatory files amending, I'd like a copy because mine seems to have disappeared in the students' filing and file shifting. (Yes, I know that technically it has nothing to do with this case. It is part of my review of the history of the litigation and it also serves proper political purposes at this juncture.)

Nothing new here. Most of the time I've been staying inside once I return from the mornings therapy, except when we've gone out to eat, and that has not meant more than 10 minutes in the heat and humidity. I'm still getting tired easily and most afternoons last week I took a nap. I didn't yesterday because of the Krioles afternoon gene and fell asleep while reading at 9 p.m.!

No rush on the estimate by Jackson(?) on offset reproduction of the first book. I've about 50 copies and I'm also getting a local estimate, which may be and I expect will be higher, except for the cost of transportation from DC to here.

Hope you all enjoy the reunion,