

Dear Mark and Jim,

12/11/84

During my morning's walking therapy I was able to think more about what I want to do about the appeals court decision, but because of a number of medical and other interruptions I was able to make less progress on it today and there are two more such days of interruptions the coming two days. Nothing serious, only necessary. For Jim's information, Lil fell in my cardiologist's office and developed a hematoma on her right forearm so large he exclaimed "OH myGOD!" when it happened 10 days ago and *he* ~~he~~ told her yesterday when we had her mother ~~and~~ (who is now 95) there that he was really scared when he saw it. ~~So~~ I took her to the orthopaedist for the second time today and he told her it is coming along very well but to expect the large swelling and ugly and extensive discoloration to persist until after the first of the year, diminishing gradually. The coming two are nothing out of the ordinary, so have no concern.

I decided that it was neither necessary nor correct not to inform Jim.

I am preparing a petition for an en banc review, without expectation that it will be granted, but to file it and to have it available for any other possible uses, and I do believe that it will be of considerable value for other uses.

In form it will consist largely of what I believe is captioned, "Questions Raised," and I am going over the precise language carefully and instead of giving the court hell for conjecturing, mind-reading, just making things up and having written an untenable justification for its preconception, ~~and drafting~~ *in the form of* polite questions which are just ruinous to its integrity.

I've really been polite, too. Once I referred to its citation of Voltaire instead of the case record, I did refer to its mind-reading, with regard to Jim, but only once, and I did, again I think but once, refer to conjecture or what it conjured. But the questions are just about all self-answering. And utterly devastating.

And this is what troubles me about lawyers. No matter how proper and polite, I fear that any lawyer who filed anything like this would jeopardize himself and his *other* clients. I wish I did not believe this because it would be better for a lawyer to do what I'm doing. However, unless, and perhaps even if, court-appointed, it may well be dangerous for any lawyer. Except, perhaps, a Hirschkop, who I'd dearly love to do this because it can be so very important in today's climate and realities.

So, with regard to Mark, whose help I appreciate and whose additional help I would also appreciate, if he wants to be released, I release him. He had agreed only to handle this before the appeals court. Where it will still be, but I cannot ask him to subject himself and innocent other clients to retaliation.

If he is willing, because of the conflict that the appeals court has magnified, to represent me on the remand, I would welcome that. And I would first want to move to recuse Smith as prejudiced, which he might not want to do.

I don't believe that both of you together will find as much wrong and very, very vulnerable as a decision of a court of law as I have because you do not know as much about the case record as I do and possibly for other reasons. This kind of thing simply must be opposed and exposed, to the degree each is possible. While there are what I regard as more basic and great dangers represented, it also is another assault on all lawyers. While admitting that not fewer than 200,000 pages are involved, for example, it states clearly that Jim could spend what it does not mention, uncountable unpaid days each requiring 100 miles of driving, also unpaid. (I think the only way this could be safe to address for lawyers would be if what is not reasonable to expect, a large number were involved en masse and you barristers ain't about to take to the streets. Except, perhaps, before the Afrikaner outposts.

This represents the kind of situation of earlier authoritarianism to which I once referred in an unrelated letter to Mark, and that I will oppose with all the vigor I can summon and in any way I can that I consider proper, whether or not a court would.

As I have told Jim many times, without effect, in the corrupted world in which we have been contending for a more decent society, with the corruption moved from the streets, as Nixon promised, and into the government, the most effective means is by embarrassing those generally considered not subject to embarrassment. And the most effective way I can think of of doing this is in their own words, what they themselves did. And that is what my "Questions Aised" is going to do. *Very politely.*

And I could not care less about what they will think of me or how they will react if I am ever before them again. The other considerations clearly, to me at least, outweigh this greatly.

What I am going to do is respectable, responsible, honest, factually correct, entirely necessary, and possibly without precedent.

With regard to the latter consideration, I remind Jim that when I once talked him into doing what he didn't want to do and what we knew had no chance of succeeding, asking for a TRO, we had our greatest success ^(in the other part) and for part of a week's work, albeit hard work, he got \$5,000 without having to sue to get it.

He then faced a "got Weisberg" brigade of six lawyers officially assigned to their fiasco and a number of others in the audience. And they got clobbered, really bawled out by the judge.

So, I consider nothing impossible and I am controlled by what I regard as necessary. And I think it is obvious that the necessity is not personal. This is, in fact, a cleverly-worded decision in that it does not defame me in any way, as the others did.

And, frankly, doing it is good for me. I feel better today than I have in a long time, even though yesterday was 19 hours long for me and I went through my regular schedule today, plus splitting a little wood for upper-body exercise. (This can be done sitting down, Mark.) I guess that the adrenalin is reacting well with my new medication!

If either of you can help me in any way I'll appreciate it, but I do think it would be unwise if any assistance were in any way public. The difference between these eminences and Gestapo and KGB types is of degree only, as I see it and as our system properly evaluates it. In some ways they are worse because they make false pretense. In any event, I'm not afraid of them and I am going to do what I believe has to be done.

Best to you both,

