

FYI. Please return to B.F. file. Forgot a carbon

NOV 8 1974

Dear Jim,

11/7/74

There is so much we were going to do and didn't I couldn't remember it all. Last night the last material I refiled was on surveillance. Bud and Mill had agreed that the first thing we'd do in Memphis is file surveillance motions, on Ray and on the defense team. I took a file with me for this purpose. But our stalwart TV star has no gut for any real fight and we didn't get to using that, either.

Even if it is too late I'd still do it. I don't think it can be too late. Or is. And it is a no-lose deal.

I thought of it a couple of times when we were in Memphis and mentioned it, but we have a brave leader who learns nothing from any failure so he's off on the Williams kick.

Perhaps a single motion would be better, combining all. I think it would be stronger.

It should include any and all surveillance of any and all kinds on all members of the defense team, by any agency of government or anyone acting for any agency of any government.

As you realized by the end, I'm sure, the accurate reading on the judge's personality is the one I made from his tolerance of the Mallie misconduct. We erred seriously, not your fault, in not keeping the right kind of pressure on him. Francisco is one example. The others we were not able to get him to declare court or hostile witnesses were others. This in itself was crippling. We tried the case as one of sniplifting, not as a political case, which it is.

From the time Bud came back there was no fight. But we got what we did when he was away and got where we are only by fight.

The pressures on you were too great. They make your fine performance even finer. But they also inhibited me because the reality is that you carried virtually the entire weight. That was so much too much I could risk adding no more emotional burden to it than I did. I was apprehensive of this when we returned from the discovery trip, when I discussed the situation with Mill, without which Bud probably would not have come here the Sunday after his return and made all the agreements he never kept. Mill was with him then, and that was pressure on Bud. As an example of what this precluded, had you and I been alone, do you doubt we'd have completed discovery, or tolerated the too-late discovery on Jimmy? Or Us? I think, by the way, as an old nose of mine says, we should insist on completion of discovery as a matter of Jimmy's legal rights. And I'd have a section in this closing argument on that whole rotten business.

As of now I think Henry, who really knew he had no case and put no real one one, really did intend trying it on unswear. My going to Jay and obtaining fighting counsel of my own may have been what decided him against it. They knew each other. And when Betty put her arm around me in public as we walked to the Cree, they got the reading, loud and clear.

So we once again face the problem of a screwing Bud's cowardice. Remember as you plan and draft the rest of his fate cowardice in the spectre case. If there is any fighting to be done, I'll talk to Mill. This is not the time for a southern g'man closing argument or a timid nursery of fact and law on which the timid judge or the 6th circuit or the Supreme Court will act. And this is the time to lose the argument with politely put reversible error, of which there is much, from ruling against completion of discovery, tolerating it to the unreality of the witnesses. Remember also that we'll probably be in that federal court again and don't want to be the underdog again....This is why in talking to you I suggested the manner of your excellent habeas corpus petition. It struck the exactly proper balance and it was vigorous, not defensive. ...

I came up with a funny thing. I noticed it in Memphis but paid no close attention to it until I filed it last night. It is headed "~~Chambliss~~-James Earl Ray Attorney General's Office of the State of Tennessee." I first noticed it in my attaché case. But not the source. I then thought it was a paper written by you or Dick. Now I never handled any of Henry's papers, so there is no chance I picked it up by accident. It is almost 100% right about the crime. The single listing for 4/4/68 has 5 breakouts, with this the "proof" 15:00-6:00 pm - Wm Anschutz found bathroom door locked. 6:01 pm Chas G. Stephens heard shot." Same case, huh? The chron. ends with arrest 6/3/68...Whatever the cause of this new evidence of some kind of dirty-work, it gives us a reading: they know they have no case. This means we have to keep the pressure

on them and no mistakes.