

Mr. Bernard Fensterwald
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Washington, D.C. 20006

9/22/76

Dear Bud,

You are so close to the fulfillment of a great longing and ambition and I think I do know how you feel.

Recently I have given you a number of cautions of various kinds. Characteristically you have ignored them. We have a long history of this, a history in which I do not recall your once looking back and complaining that I was wrong. Infrequently you have grudgingly said I was right.

I'd prefer to remain detached from all this and from cautioning you when you are incapable of considering anything except your own longings and your self-assurances. However, I owe this effort to you and to all others.

Don't, under any circumstances, become counsel or anything else on the House committee. I have not been asked but I have written Rick that I would not join the staff and that I believe none of us should. Under other than the real circumstances I'd feel otherwise, but there are these real circumstances.

I've heard no word of executive-agency interference in Hill developments and until after the election I would not expect any real effort. When the time comes there will be real activity and it is inevitable that you will be a focus of it. Downing and Consoles can be utterly ruined with legitimate ridicule. So can you, with all the foolish things you've said and done. I was sent one tape that could do it and I know they have it. Nobody has heard the one I have, not even Jim.

This, however, will be the least of your real problems. The spooks have been at work for some time. During this time they have given me what can be seriously hurtful to you. You never remember those ill-advised impulses, acts in which I do not have any questions about what you had in mind. You have, nonetheless, done things no lawyer should have done, they have ample records and they've given me a very serious problem in letting me have a generous sampling. I know of many others they have not let me have.

Give the most serious thought to the position in which I will be if you do become general counsel - or take any other staff position. You know there is only one way in which I can or will resolve any conflicts of interest. There will be many.

You should recall that I am the first to ask for a Congressional investigation as the best approach. I have no opposition to one in general. I do oppose irresponsibilities.

If you take any staff job now I think there is no chance that your life will thereafter be what you would like it to be for you and your family and particularly your career. I can see utter ruin for you and charges before the bar, whether or not successfully. I can also see your doing what would require responses by me. In the past I have eschewed just about all of this. With a Congressional committee I can't see how I could continue to. It is not just moral and ethical considerations, either. I have a large investment in truth and honesty and responsibility in any investigation. Do not expect me to abandon my life to indulge your ambition.

You paid no attention when I warned you of the possibility of a Ray suit and then you shrugged your shoulders. Bad judgment. Now that his civil suit has been thrown out he is more desperate. They have been dealing with your Nashville enemies for years. Jimmy can and will see you, with probably wealthy right-wing support and with what will hurt you professionally more seriously than you can imagine if he loses. Your taking a staff job will give him what he lacks now.

I do not expect you to welcome this and frankly I do not believe you are emotionally capable of thinking it through as you would for a client. However, I believe I serve many interests, including yours, in taking this time all over again when there is so long a past telling me I waste the time.

You have forgotten how many eggs you've laid, how many are not chickens waiting for a roost. The probability is that you did not recognize you were laying eggs.

This is the way your mind works, alas. This gives you a real problem now because it will discourage even the effort to heed my cautions. You'll have self-justifications without end.

And you surely have led a charmed life. Few people could have any reputation left with ~~in~~ what has not done you real harm. To put this another way, you used up all your expectable luck long ago. I don't think there is any chance at all that you can luck through what I believe is inevitable if you take any staff job on the committee.

I have done nothing addressing you and have none planned. I have taken a few other initiatives. I expect to take more. In some you will be saddled with a conflict of interest you have no way of shedding. You already have it without recognizing it because your mind always turns away from these kinds of considerations. Once you have an official post there will be a radical difference, especially for me. If I have to serve my own interest, I will. Events will establish that it is not a selfish interest.

I'm genuinely sorry about the situation in which you now are. I can understand your longing, if I do not share it. But I'm worried because I do not expect you to pay a bit of attention to anything except this all-consuming ambition.

Jim told me that you told him you'd heard a radio broadcast saying I was going to be staff director. I'd be interested in knowing when and where you heard this and if any authority was quoted. There is no basis for it. I was not asked, I was not questioned about it by any reporter or radio station and I would not accept if the offer were made. I have so written Rick, if not with respect to any one position. He did not ask me. I stated a general belief that nobody identified as a critic should be on this committee's staff. When reports reaching me have it that Downing plans for you to be both counsel and staff director I am even more curious about this.

I have received no feelers and expect none. Those of you who have been working on this would not have it anyway.

The start is much more insuspicious than I think you realize. And it is already commercially tainted.

Something else has just come to mind. I'd not thought of it before and have not thought about it now. It is the position in which you would out Jim when he remains Ray's lawyer by court order. If he faces any conflicts you know how he has to resolve them. There is a King subcommittee and I'm aware of some of the parangidial black leadership beliefs. Aside from this the probability of conflicts is great.

You really should have thought this through long ago. Too bad you didn't and thereafter avoided confrontation with my cautions.

Sincerely,

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Yesterday Bud Fensterwald told Jim Lear what has to be a lie: that he heard on the radio that I'm to be the staff director of the House investigation.

Jim laughed and said there are two people who believe someone has to be outside of government criticizing it, Mader and me. He wondered at the time what Bud was up to. I told him it had not happened, I was made no such offer and would not accept one. He had not yet received my letter to Feeney. He had that Bud asked me to write him 9/10 or 10.

Then I had a long conversation with Scott Malone, who says he is the one who negotiated the Black Caucus deal. According to Scott there is already bitter fighting between the Downing and the Gonzalez factions, over Bud. The Downing group wants Bud to be both general counsel and staff director.

It does not appear to be that the Gonzalezites have another candidate. Rather that they just don't want Bud. I presume this is the Weberman influence. Scott says he saw Weberman one night, out in Montgomery County, with a bunch of kids in various stages of being out of it with drugs.

According to Scott all factions are against Lane, even the Schweiker staff remnant. He believes it likely that Lane will be a consultant. So will Morrow, of whom the story now is that the book is a fake but he has the real stuff he is holding back! The book is now called a fictionalized version of the real truth.

Scott expects to be their Mafia expert.

Kevin Walsh, who quits Lane's CGI to get a Hill job and then was opposed in it by Lane, is back. He is living temporarily with Mark Allen, one of the Univ. Va. students who turned Downing on originally. Both want jobs on the committee. An earlier report, third-hand from Groden, is that he, too, is to be a consultant.

Scott was pressing me hard to recommend a general counsel for Downing instead of Bud. I refused, telling him honestly that there is nobody I can recommend, that they don't need a politician, they need a good criminal lawyer and that those they may get who are supposedly informed will begin with misinformation that will be a handicap and will have to be unlearned. I said one with a good earlier record on a Congressional committee might be a good choice. My feeling is not that Scott was trying to get a handle for himself by influencing who becomes counsel but rather than he is concerned about their having a good one and over healing the breach.

Feeney is to be assistant staff director, rather unusual. He is Downing's man and a general counsel has enough to do. He ought not fill both posts.

Bud's conflicts of interest are apparent, having been Ray's lawyer and having his own CIA. But they appear not to be apparent enough for Bud, Downing & co. I later told Jim that while warning Bud would do no good he should be warned that this can ruin him and that if I have to be part of it I will be and am well prepared. Jim is not to tell him with what.

It is all from a madhouse. Walsh appears to be educated in criminalistics but to have no employment at it. Allen is serious and well-intended but goes for the attractive theories. They appear to be closest to reality of all. All of them can be ridiculed and for their records in the field, especially Downing and Gonzalez, the Members. They don't know enough not to be manipulated by the executive agencies, who appear not to have been making an effort to influence the vote to establish the committee. That was agreed to by the House leadership. I doubt Ford would overtly show any hand before the election. This is to say that there has been no opposition - yet.