

Dear Jim,

10/13/74

I've beaten my deadline on what I felt I had to prepare and prepare for in the Ray case, with a stack of drafts that will make Bud sick when he gets here today and picks them up. We are at a crucial point and one close to unprecedented, based on no legal knowledge but some of history, where the prospects of accomplishment are exceptional good and my fears of others blowing it again about that high.

It has been, even for the experiences I've had, a very trying time and it has tired me. I actually got six hours sleep last night and for several weeks that has been the average.

The one associate with whom I don't feel I have to cope is Jim. His two problems are inexperience and a reluctance to fight except in legal motions. He had developed but I think is overcoming another, seeing only forests, not trees. It is a natural thing for an inexperienced, dedicated young man who was suddenly plunged into having to contend with fighting off vicious wolves while he should have been enjoying a legal and evidentiary feast.

I anticipated I'd have to do the fighting in Memphis and as much as I could had prepared for it. It was, if I may say so, brilliantly successful. I made but a single mistake where my instinct was overcome by my regard for "in and his self-regard that is as important to him and to what we can yet do. There came a point when the Orce of the State was doing the white man's dirty work - successfully - when I saw that "in was not reacting as she should have, not taking the opportunity that was provided by this evil, when I should have made a simple, direct statement: "You honor, this is all a lie." At that point the judge would have had to confront this whole situation, one that from the first he has heard about from us only. I didn't do it. I should. Instead I gave that Orce a tongue-lashing as we left the court that as long as he lives to kiss white asses he'll remember. And I never let up on him thereafter, seizing every legitimate opportunity.

These guys now hate me so much more that there is little choice: they'll try the case on me. That concerns me so little I'm not planning how to cope with that. I'm planning instead to see that we frustrate their immediate present effort, to eliminate me and the part of the work I represent. It is the essential part, not the lawyers' creekedness, for which we are overloaded and on which alone we should prevail barring accident or a successful legal ploy by the other side. But victory on that basis is the wrong kind of victory and on the wrong basis. It also eliminates the real potential of this hearing, which can blow the whole thing wide open. I am even better prepared than I ever was and in an ordinary case with a semblance of justice impending when I finished Frame-Ups I already had so much there was not enough for an honest judge not to dismiss after the presentation of the prosecution side.

Most of what I've been working on is covered by a protective order so while it is not new to me I can't fill you in. What is new is new proofs only. For example, Jimmy Ray describes a letter he wrote five years ago that has legal significance today. I got that letter and he is right. I know of the letter from him, and its contents, but now that I have that letter I can't tell you of its contents. We are playing by the book against those who wrote it for others to play by it while they don't. In the end this will help, with any kind of decency, but for the moment it is a considerable handicap and a great emotional drain.

A phone conversation with "in yesterday eased one of my apprehensions. He has been away for several days, with his family, out in the country, going on picnics, etc., and has been able to stand back a bit. His perspective is clearing and narrowing. He had gotten lost in the accumulation of evidence, so deeply into it he had become smothered in the process. And he has been intimidated by the situation. I suspect he has a perhaps unrecognized guilt feeling over this in-court failure. It won't happen again if there is a similar situation but I don't think there will be.

My greatest concern is the limitations the bastards, working behind our backs,

have been trying to impose and had been succeeding in imposing. They waited only until we were on the plane. I have to assume that whether or not they did they did succeed in intimidating the judge to a degree because his timidity is amply demonstrated, his disposition to put up with the irrelevant and unacceptable is a matter of undeviating record it will succeed and my problem is to reduce it to the extent possible. Thus I started fighting back my own way as soon as there was need. It meant an exceptionally difficult time for Jim and me because of the amount of work alone, because of the emotional exhaustion, and for me because I had to respect his exceptional condition, which was making him somewhat timid in the sense of over-adherence to legal niceties when the time for them had passed. A week ago today he came up with a conservative-minded lawyer friend to go over an affidavit I had drafted. Jim started rewriting it to make a literary masterpiece out of it and I stayed away until there was no time left. By then on his own he had come to realize that as I had had to do this off the top of the head, so he ~~must~~ had to live with the time limitations. But I could see his upset and I left him out what two days later he heartily told me he was sorry he had cut. Not easy. But in the long view, Jim has to learn fast and the most important single thing at the moment is for him not to lack self-confidence in his first case. What a case to be a lawyer's first! And what unscrupulous opponents!

In his legal analysis in Whitewash IV (which I've had to abandon in all of this and is not yet here from the printer) Jim refers to what I did in tangling with the whole damned Department of Justice and the fink Silbert and the saineence Rankin as The Battle of the Affidavits. He was continually surprised when at each turn I dipped into files and came up with preafs that did prevail against a prejudiced judge and this great power. From it he has learned something, including about me. In fact, one of the comforting things throughout all this once Jim got his own reading on me is that voluntarily at every point he consults me, seeks my advice even on legal matters because, whether or not he is aware of it, and I think by now he is at least subliminally, he has seen that there is in political cases no substitute for knowledge, logic and political understanding, in the broadest sense.

The last crisis he confronted before he had to leave was Tuesday night, when it appeared that our demand for pictures of the one piece of evidence of which we'd demanded pictures would be denied us. He asked me to engage in another Battle of the Affidavits. As usual, he did not say what to do, just please do it. It was so late at night that I could not start, which was fortunate because it gave me some time to think it through. Not completely but enough. Enough to decide on both strategy and tactics.

I was not above tricks when we were with these scoundrels, only mine were legitimate, completely honest. This honest was difficult for the bastards to cope with. It consisted in explaining enough - but never all - the significance of evidence to Jim in their presence. I don't think they ever realized that rather than just burbling and babbling I was addressing them, not Jim. I could have told Jim in ~~private~~ privacy. So, faced with this enormous campaign against the judge and us and the case, I decided against the limited affidavit Jim had asked for. I decided to use the entire case of ineffectiveness of counsel as I propose testifying to it (well, not entire, but in outline and most of the issues) building up to justification of these pictures. (I had left no doubt in the opposing minds about my understanding of that one bit of evidence by telling them exactly what pictures we would want and I'm delighted that the technical expert - and I arranged for him, too - tells me these are exactly the ones he needs.) So, early the next morning, only a little less off the top of the head, I laid it all out in a lengthy affidavit. It was almost completely finished that night when Jim called to say there was no need for it. However, I completed the draft so it can serve as an outline for my testimony and the questioning by the lawyer. I've suggested Bud and he and Jim have both agreed.

(I've also suggested and there seems to be agreement that rather than Jimmy I be the first witness and these not the crookedness be the first issues joined - that I take the initial prosecutorial heat and be the one to first try to ~~kill~~ cool it.)

Through all of this Bud has been vacationing in Europe. Because there were clear indications that Jim was emotionally over-extended I had to raise that problem and the others we may have to face this week - scheduled for Thursday - with Bud at the first possible moment and with his partner, the better and a very good lawyer who is the one of the firm with his feet where they belong. I was pleasantly surprised to learn that he had seen or anticipated all the problems that vex me, in general not in specifics. I asked him to come with Bud when Bud comes, assuring Bud would because I could not leave here, and I left word for Bud to phone immediately with his secretary, assuring correctly that when he returned he would phone her. I wanted Bud to come up on a separate issue yesterday because it will be a diversion today, he said he couldn't, and he'll be disappointed at my refusal to go into it today.

When I outlined the problems to Bud by phone his reaction was that he and I would have to prepare the case and lets get started! He prepare based on the caviar and vodka he enjoyed indulging his wife's desire to visit the USSR? Or on the work he has not done in the past? I told him I had the part I thought he should handle already outlined and that my worry was not about Jim's ability to handle the evidence in the other part but in the immediate and the consequences of these procurements on the preparation. Plus his and Jim's inability to be other than decent guys in a nasty situation and I thought that busy as he has been handling Bud's work and his own if there is this hearing this Thursday the partner should be there to do this kind of fighting because it will be inappropriate for a non-lawyer and I can't cite cases and statutes. He seemed to think that he would have to take the entire case over from Jim. But this will be no problem. The real in-court problem will be handling the dirties and watching for traps into which any lawyer can fall and with his lack of experience Jim may more easily. Once we get to that point. But it will be necessary to be pointed with Bud today and find some way without offending him to get him to recognize his inability to fight dirties and his lack of detailed factual knowledge of the evidence we'll be presenting. Plus the immediate need, to counter what is afoot.

The kind of pressure I have been applying is a kind of what I call intellectual judo and it has worked. I filed a lengthy and probably convoluted combination of motions in the form of a letter to the judge in which I took the offensive by making charges against the state, abuse of process, contempt and unprofessional conduct. I did this in such haste this past Monday that I did not have time to read and correct her retyping of it. While she was on the last pages I was making special local arrangement that made it possible for that letter to go out in the last mail that, by air and special delivery, should have had it in the judge's hands the next morning. It was there. With the chief of the State's dirties, Henry Hails. A reporter friend just happened to be there when Hails left the judge's chambers and described his appearance as downcast. Or, we have blunted most of his current array of trickery.

The pressures Jim and I have kept on him and our successes and the fact that he has a loser for a case have driven him to excesses just a little excessive. Not realizing the extent of the case we have he made the mistake of considering that the discovery on which we were engaged is essential to our case. So, after first delaying us a full day in explaining the discovery - he thought - and then the day after made the same mistake of going to Cincinnati to lobby for a quick decision on a motion opposing discovery he has on file. His own description to Jim is that he "nagged." Well, it succeeded in giving us a unanimous victory where in the past we had a link-liberal Calabrese, who you should remember from his political career, in strong opposition. He, Hails has already filed a petition cert, the only way we know the nature of the decision, the court not having sent it. If the Court takes it we have a beartrap yarning in the form of the nature of the content of some of the discovery. I don't think that even a Nixon court would be able to ignore that. Meanwhile, he has succeeded in establishing a precedent for the accused in criminal and political habeas corpus cases by contesting the decision of the district judge. Crazy but great.

We learned this because "in has a young, unmarried lawyer filed checking his mail and I hope staying at his home during his absence. He told Jim, in Illinois, by phone and Jim told me. This, of course, provides the means of giving the federal judge a little back-stiffener. We must seek to use it. Without antagonizing him. Possible is Bud is willing, more if his partner does it.

In retrospect but from too close it seems to me that coping with this has been the most difficult of these situations I have faced. I have been anxious to forget the Bay case since early 1971, when Bud used me waste about three months needlessly. There is other work and I want to do and you know what I've had to lay aside and will pick up with difficulty and perhaps not until after trial. I was very, very tired. And these are the rottenest specimens with whom I've ever jostled. However, I think it is this, their very evil, that generated the necessary adrenalin. Yet it meant that I had to do a combination of things while they did but one. Without in any way undercutting "in's self-confidence (and he was absolutely superb except for that one incident) and while continuing to push as hard as possible and accomplish as much discovery as possible I also had to fight these rascals off and wage my own kind of pyrrhic war on them. They, not we, get hysterical. They became easy to read. Only the depths to which they could and did sink is what I failed to anticipate. I could and did figure the moment Maile knew he had lost at 6th circuit because I knew what his Cree was up to in his frequent taking of delaying breaks and phoning.

Meanwhile, the long nights of heavy drinking were worthwhile. There is one Memphis reporter who is friendly and who I know well, Wayne Chastain. He has become embroiled and is off the story, so he has no conflict. We drank until as late as 2:30 a.m., and that on a day he was due to report to his desk at 4:00 a.m. (To make that a very hard day for him one of his sources gave him a major political and financial scandal just as his trick was ending and he worked until after 3 p.m., partly fighting his desk to get the accumulated story used. He then joined me for supper and the bar again.) He has just passed his bars so he could understand when I explained that because I was covered by the protective order there were things I could not tell him and I would not be explaining some of my interests in our conversation. He knew I was not putting him on. He was very helpful, if not fully aware of the nature of some of the stories he has been sitting on. In fact, it is from him, not former local counsel, that I learned the important evidence on which this lawyer also was sitting, so I arranged to interview him and was able to on tape and with his retrieving documents from his files to substantiate what he told me. It is enough, should be fail, to start all over again. And it provides the missing proof for my ability to initiate a still larger scandal than anything that has yet come out. Because there was discovery on this point, even though this is not discovery material I'd best say nothing about that part. It is the part I wanted Bud to come up to go over and prepare for Yesterday and went uncollected today because there will not be enough time for the more immediate.

I've been going at such a pace preparing that for the week plus I've been here I haven't even taken a morning walk. Now I'll do that and then get to the few odds and ends of preparation remaining.

As I see the present situation, with decent performance from the lawyers the unusual situation is that in mandating a "full judicial inquiry" into these things Foreman and Nease and the Public Defender did that the court said "recks" the central issue in this hearing is not the financial crookedness but the entire performance of counsel. Alayer could be crooked and still do a good job. Thus we have to address the job these lawyers did. And that gets to what really is a throwing of the case and I'll address in terms of a few selected items of evidence on the issue we argued from the first (on my insistence first rejected), the "effectiveness of counsel." We could hardly argue Percy Foreman is incompetent! This means that unless the lawyers blow it we have the close to unprecedented, where the issues in the criminal trial provide the means of establishing ineffectiveness of counsel, the mandated issue to be resolved in this "full judicial inquiry."

Best,