

Dear Dave,

5/28/80

If I can still find the carbon of the affidavit Jim did not use, after we discussed what here regarded as problems with it, I'll send it. Otherwise I'll send a xerox of the xerox I have after Rae gets back and can dig it out. I was aware of the fact that it was not the usual kind and that there could be allegations that it went afield, but there was basis for it and if one lives in fear life holds nothing but fear and fear of fear. Besides, it is the only way remaining for getting anything into the record. What it said has to be in the record. Jim will not admit it but part of his apprehension was because he should have done something about those matters contemporaneously and was afraid to.

Incompetence is not the right word because Jim is far from incompetent.

We started taking depositions in the King case almost a year ago. From the records I was able to put together in the right order so they'd make sense I proved that FBI file 97 had to be searched to comply with item 7 of the 4/15/75 request. Then DJ counsel, Metsy Ginsberg, refused to have the file searched. Jim has yet to present that question and that refusal to the judge. After that we got the FBI to admit that it has NAA records not provided and we got the admission from the guy who supposedly made the searches, Kilty. I got Jim to ask that this be provided. He did. Cole asked that Jim write him a letter and before I could say anything to him Jim agreed. I complained afterward, but he did not call Cole and say it is within the request and my client has no need to repeat his request. Or anything. And he had not done anything since. We don't have the spectro plates and in four and a half years he hasn't found time or gumption to do anything about that.

Long ago I asked him to consolidate Motions for Partial Summary Judgement because he hasn't time for any other way. His answer is that it has not been done and isn't done. What I did in 226 isn't done, but read the appeals court decision to see it if was right, even if wrong by the norm. You remember those affidavits. There is no reason he has given me why he couldn't take a half-dozen of these matters and present them in a single motion by just listing them. Like the two of many above.

He acts as though it is the judge's job to do his job for him - in a tough political case with which any judge has problems. The only way to prevail is to limit the judge's alternatives and to keep the other side defending, which is not all that difficult if one has the willingness.

I even caught them eliminating parts of the prosecutorial index in their liberalizing reprocessing and at the deposition we got Hartingh to say he would explain and justify this. So Jim has done nothing about that, either.

Behavior was so bad I tried to get him to take it and the other questions to the judge during the despotisms, but he wouldn't. Can you imagine how bad it was when a court reporter, a fine and cultured woman, refused to return? Or what kind of witness she'd have made? We had many others, those with whom Jim had office space. One told me that if Cole raised his voice again he'd throw Cole out physically. But with only DJ lawyers as witnesses thereafter Cole was a different cat. He was rough and tough only when he had FBI agents as witnesses.

Jim has made the most frightful mess imaginable out of the King case. It has ruined four years of my work, save for the historical record I've made in affidavits. Of course he complains about not having time and the personal problems this makes for him but he refuses to face the fact that he is responsible for all the time it takes and for all it has wasted by what he has not done as well as by what he has done. This case could have been over long ago.

He now admits that he should never have agreed to the Stipulation. But what he could do he hasn't done. They violated the Stipulation, which by its terms nullifies it. That was in 1977. He hasn't done anything about it yet and all there is in the record on this I shoehorned in.

This characterizes everything in the case. Take his Motion for Partial Summary Judgement on the Memphis Index. I caught them lying and came as close as possible to providing proof of a negative. They did not provide any first-person affidavit and I proved the existence of cards not provided from where they claimed it was consolidated. I could not do this to the court so I did it in a documented appeal to Shea. Jim still did nothing, so I got it into affidavits used for other purposes and it is in the record for Jim to cite but he has done nothing about that, either. She hasn't even replied to them response. The judge is not acting against me in doing nothing about this. She is still waiting for Jim to do his job.

I'd made a mistake in a long affidavit that Jim had to file because he had no alternative. It included what he also did not want. (I told him long ago that the way to get around that was to eliminate my need to do it.) Fortunately he caught the mistake. Lil and I broke our backs to get that affidavit done three weeks ago and I had it hand-carried to Washington. But he did not get around to reading it until the artificial last-minute he had created for himself. I told him immediately to ask for a month's extension of time but for some reason he can't explain he asked for only less than three weeks. This, of course, meant that he could not go over the affidavit in advance. He'd agreed to come up and read the draft but didn't. So I eliminated the error, ~~as~~ in a paragraph of about 8 lines. When he phoned he did not ask me to read him or tell him what I'd done. He asked only if I'd gotten what he sent. In order to bypass what I knew he was driving at I went into the other of the two things he'd sent only. I'd asked him to call me yesterday morning to tell me how to send this page, if he wanted it by bus because it has to be filed today. I could have read it to him then and he could have been satisfied. Instead he didn't phone until about 2:30, long after I'd decided to try mail special delivery. Even this problem would not have existed if he'd not asked for less time than we needed. One exhibit to what we answered was of over 200 pages! But the point is, he asked nothing about the correction of an actual mistake. So you know ~~about~~ what was on his mind.

Gradually I'm working my way through the appeals about which, with this kind of inhibition in court, Shea is doing nothing. Once he said that the records have to be reprocessed and he awaits agreement of both sides (an impossibility, as he knew) or instructions from the court, why expect him to do something when Jim doesn't? Once I get them cleaned up I want to return to writing. But I have to do them, if only for the record they make. With four years wasted I don't know what I'll be able to do with this writing but if I get it on paper that now also will make some kind of record.

Whatever the underlying cause, Jim has real problems. I'm sorry not to have been able to help him but as of now he doesn't want to be helped. There is nothing he doesn't stonewall. He even blew an open-and-shut malpractice case against Edward Bennett Williams, for letting the statute of limitations run. (I've not complained to him about it.) When he did nothing about drawing up the papers for the archive I prepared a will, several years ago. But he then didn't even tell me he saw defects in it until I started to pressure him after Eagon asked Lil something about it, which she didn't mention to me until long afterward. I guess that what I'm saying is that he has a compulsive need to keep himself without time to do anything so that he can excuse anything to himself by telling himself that he hasn't time for anything and thus explains everything to himself.

It is tragic. Sincerely,