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FEELINGS FOR FLEM, FAULKNER AND FEDERALISM  
*E. Grady Jolly\**

William Faulkner has always been, at least since my junior year in college, someone who is alive and present. William Faulkner has helped me immeasurably in understanding Mississippi and myself. I think that this is especially true for those of us who grew up during the time of the civil rights revolution. William Faulkner is, in significant part, responsible for my decision to remain in Mississippi, because he helped me to understand Mississippi as a place and as my place in the world during a critical time.

I can remember as a freshman and sophomore at Ole Miss, in 1955 and 1956, seeing Mr. Faulkner walking the streets of Oxford, particularly University Avenue, while it was raining, decked out in a trench coat and a tweed hat, smoking his pipe which was upside down in his mouth. I remember seeing him from time to time in The Mansion, the little restaurant with its false columns in front, at the location where a Fred's Dollar Store now stands. I don't believe that I ever saw him on the Ole Miss campus.

I never did know Mr. Faulkner; I never even met him. Nevertheless, I feel as though I've had many personal conversations with him. These memories are attributable to my roommate. He knew a lot about horses and somehow got himself invited to train Mr. Faulkner's horses. I think Mr. Faulkner probably took a little shine to him because he invited him to dinner on several occasions. At any rate, many of these conversations (all were about little or nothing) were given to me by my roommate firsthand. They, of course, never really amounted to anything — just a few otherwise pedestrian words said by a great man.

Of course, living in Oxford for seven years as a student, and three years as Assistant United States Attorney, I came to know Mr. Faulkner vicariously through many other people. Among them are the Will Lewises; some of you may be familiar with the Lewis family who presently own the J.E. Neilsen Company, a department store which has been on the square at Oxford since 1839. Will, Jr., is my age and was a classmate of mine; Mr. Will, Sr., is over eighty years old and very active in the management of the store. A letter from Faulkner, in response to a demand for payment on his account with J.E. Neilson Company, has been kept by Mr. Lewis all these years — it's dated 31 January 1941. Because it illustrates that Faulkner, like many of his characters,

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\*Judge, United States Court of Appeals for the Fifth Circuit.

knew how to take the law into his own hands, and because, indeed, it shows Mr. Faulkner's admirable sense of priorities, I thought it might be worthwhile reading.

Oxford, Miss.  
31 January, 1941

J.E. Lewison Co.,  
City.

Dear Will:

I'm not going to sign these checks anymore than I ever signed the checks and notes you have filled out and sent to me in the past. Attached is my own check for ten. I will send more on the account when I can. I make no promise as to when that will be.

I tried last summer to explain to you about \$1600.00 additional 1937 income tax which I was trying to pay, two years after my Hollywood income had ceased and wehn [sic] for two years my income had been reduced about 95%, but naturally I did not expect you to listen to it much, since J.E. Neilson cant be anymote [sic] interested in Wm Faulkner's hard luck stories than Wm Faulkner can be interested in J.E. Neilson's. But that's the situation. I am trying now to meet the last \$853.00 payment, for which demand (also with threats) was made Dec. 20. So if I were going to give anyone a series of signed checks, I would give them to the grocers and fuel people who in their kindness have supplied myself and my dependents with food and heat during this time, and to whom I owe a lot more than even Estelle et al managed to get into you for.

If this dont suit you, the only alternative I can think of is, in the old Miltonic phrase, sue and be damned. If you decide on that step, be assured that I shall do my best to see that the people who have fed me and my family will be protected, and after Uncle Sam gets through with his meat-cutting, J.E. Neilson can have what is left. You may even get an autographed book. That will be worth a damn sight more than my autograph on a check dated ten months from now.

[sgn Faulkner]  
Wm Faulkner

If I may continue to have your indulgence on another personal note, you may be interested to know that I am the unapologetic owner of a number of shares in a corporation known as "The Flem Snopes Corporation." This is a genuine corporation registered with the Secretary of State of Mississippi. A few years back, some of us fellow Snopeses had a burning ambition to make money as quickly and with as little effort as possible. One of us had the very handy acquaintance of a commodity futures broker by the name of Charles McVane, though known to us and many of his friends as "Smelly." At any rate, we decided to buy futures on live cattle, feeders, hog bellies, sometimes corn.

It is not surprising, of course, that we reminded me of Flem Snopes. As Cleanth Brooks rather succinctly described him:

Flem Snopes is a man so completely committed to making money that one feels he is almost too good — or rather too bad — to be true. A caricature of him would be a dollar sign walking around on two hind legs, quietly seeking whom it may devour. Though he grinds away interminably on his little wad of chewing gum, his only appetite seems to be for money. We never have a scene in which he seems to be enjoying a meal, or savoring a drink, or listening to someone tell a good story. His lust is a cold and almost abstract craving for money and nothing else.

Thus, when it became important for us to form a corporation for the good Snopesian reason that we wanted to avoid any liability that we might incur, it was natural — in fact, more than natural, it was compelling and irresistible — that our corporation be called the Flem Snopes Corporation. After we made a little money, and continuing our “cold lust” and “almost abstract craving” for more, the solid consensus of the group was that we needed other conservative investments and so we began investing in wildcat and wildcard oil explorations. Soon Flem Snopes was an idea that had caught on. Unwilling to allow other investors into the original company, we formed a subsidiary. For its name, we consulted the English Department of the University of Mississippi, which aptly suggested the name of Flem’s erstwhile partner, an investor in livestock himself, Buck Hipps. The Buck Hipps Corporation was accordingly duly licensed to do business and chartered under the laws of the State of Mississippi. Unfortunately, like its namesake, after having eaten all the gingersnaps of its stockholders, it has faded into oblivion to the State of Texas or beyond. While I cannot say that the Flem Snopes Corporation has prevailed, it has at least endured. Thus, in connection with my nomination and confirmation as a judge, when I had to make full disclosure of all the stock that I owned, more than one eyebrow was raised, and perhaps more than a few second thoughts given, when it became known that I was a principal, indeed a guiding light, of a company called Flem Snopes. Perhaps better Flem though than Wall Street Panic Snopes, and certainly better to Faulkner insiders than a corporation dealing in cattle called the Ike Snopes Corporation.

Thank you for your indulgence.

I thought today that it may be appropriate to make some attempt to place the Faulkner lawyer in the context of the United States Court of Appeals for the Fifth Circuit during the 1960’s, in which our court made itself felt into the farthest reaches of even Beat Four of Yoknapatawpha County. First, as surely it is ob-

vious to you, I do not speak as a Faulkner scholar. I do not speak to you as one who has read every book of Faulkner's. In truth, I do not speak as one who has read many of his books lately. I do speak to you as one who has a lay familiarity with his works, one who continues periodically to read some Faulkner, and one who truly loves Faulkner.

The period of time that I've suggested presented the greatest challenge to the courage, not only of the legal profession but to other institutions in Mississippi as well, such as our churches and institutions of higher education, not even daring to mention our governmental institutions. Suffice it to say, as a general matter, and in nearly every instance in specific matters, each failed to demonstrate the slightest degree of courage. The one institution that consistently exhibited courage, though most certainly not in every instance, was the federal court system, including, of course, the United States Court of Appeals for the Fifth Circuit. Indeed, many of you may well have read a recent publication called *Unlikely Heroes* dealing with our court during that period of time. I should hasten to point out, lest some other cynic beat me to it, that our federal courts are manned (and womanned) by persons possessing lifetime tenure whose economic livelihood is secure. It must be admitted that courage comes more easily under those circumstances.

Concerning where Faulkner came down on this controversial question, I ran across this letter recently republished in a special anniversary issue of *Time* magazine:

In New York last month . . . I gave an interview to a representative of the London *Sunday Times*, who imputed to me opinions which I have never held, and statements which no sober man would make and, it seems to me, no sane man believe. That statement that I or anyone else in his right mind would choose any one state against the whole remaining Union of States, down to the ultimate price of shooting other human beings in the streets, is not only foolish but dangerous . . . . The idea can further inflame those people who might still believe such a situation possible . . . .

WILLIAM FAULKNER  
Oxford, Miss.

Says Russell Warren Howe, New York correspondent for the London *Sunday Times*: "If Mr. Faulkner no longer agrees with the more Dixiecratic of his statements I, for one, am very glad, but that is what he said." — ED.

Nevertheless, and back to our subject, it has always been my general impression that Faulkner was realistic in dealing with Mississippi, with an occasional tendency to shade his realism with a touch of romanticism. I clearly recall one instance in which Faulkner totally missed the mark in treating lawyers realistically

and that is when he had Gavin Stevens reject the offer of a cash fee from Lucas Beauchamp. That does not comport with reality as I know lawyers and as most of you know them.

It is my general impression that Faulkner gave to his lawyers (and we're really talking about Gavin Stevens, though a very few other lawyers were in and out from time to time) were men of integrity and I would say quiet courage. The image I have of the Faulkner lawyer is one of good family background, far-above-average education, and though he may be somewhat ineffectual, he is certainly not a fool. The image I have is that of one who does not jump to the forefront to correct the wrongs of the community, but one who will usually respond to such challenges when called upon.

It must be said that such lawyers have most certainly existed at all times, and still exist in this state. While such lawyers do not exist in every county in Mississippi, if we review Yoknapatawpha County as generally representative then I would affirm Faulkner's portrayal as an accurate one. However, this is Mississippi's small town lawyer at his best. More often, in the small towns of Mississippi, a lawyer is not exceptionally well educated, and indeed makes an effort to present himself in education, background, principles and prejudice as representative of the common man or woman of the county. This portrayal has usually been felt by lawyers as necessary to assure success before juries. While we certainly get a large dose of such characters in Faulkner's works, they usually are not in the profession of the law. Today I am not referring to that particular breed of lawyer. My remarks are in reference to the likes of Gavin Stevens.

So what I consider briefly today is whether the best, the most honorable, the most courageous, and indeed the most sensitive lawyer in Yoknapatawpha County would have been a hero, likely or unlikely in the 1960's. In *Intruder in the Dust*, in which Gavin Stevens figures prominently in preventing the lynching of Lucas Beauchamp, Gavin is speaking to his sixteen-year-old nephew, Charles, when he explains:

So we're not really resisting what the outland calls (and we, too) progress and enlightenment. We're defending not actually our politics or beliefs or even our way of life, but simply our homogeneity from a federal government to which in simple desperation the rest of this country has had to surrender voluntarily more and more of its personal and private liberty in order to continue to afford the United States. And, of course, we will continue to defend it [meaning the south]. We don't know why it is valuable. We don't need to know. Only a few of us know that only from homogeneity comes anything of a people or for a people of durable and lasting value — the literature, the art, the science, that minimum of government and police which is the meaning of freedom and liberty.

That's why we must resist the north: not just to preserve ourselves or even the two of us as one to remain one nation because that will be the inescapable by-product of what we will preserve: which is the very thing that three generations ago we lost a bloody war in our own backyards so that it remain intact: the postulate that the negro is a human being living in a free country and hence must be free. That's what we're really defending: the privilege of setting him free ourselves: which we will have to do for the reason that nobody else can since going on a century ago now the north tried it and having been admitting for seventy-five years now that they failed. So it will have to be us. Soon now this sort of thing [the threat of lynching to Lucas Beauchamp] won't even threaten any more. It shouldn't now. It should never have. Yet it did last Saturday and it probably will again, perhaps once more, perhaps twice more. But then no more, it will be finished; the shame will be there, of course, but then the whole chronicle of man's immortality is in the suffering he has endured, his struggle toward the stars in the stepping stones of his expiations. Someday Lucas Beauchamp can shoot a white man in the back with the same impunity to lynch rope or gasoline as a white man; in time he will vote anywhen and anywhere a white man can and send his children to the same school anywhere the white man's children go and travel anywhere the white man travels as the white man does it. But it won't be next Tuesday. Yet the people in the north believe it can be compelled even into next Monday by the simple ratification by votes of a printed paragraph: who have forgotten that although a long quarter century ago Lucas Beauchamp's freedom was made an article in our Constitution and Lucas Beauchamp's master was not merely beaten to his knees but trampled for ten years on his face in the dust to make him swallow it, yet only three short generations later they are faced once more with the necessity of passing legislation to set Lucas Beauchamp free (153-55).

### With respect to the negro, Gavin Stevens said:

He has a better homogeneity than we have and proved it by finding himself roots into the land where he actually had to displace white men to put them down: because he had the patience even when he didn't have hope, the long view even when there was nothing to see at the end of it, not even just the will but the desire to endure because he loved the old few simple things which no one wanted to take from him: not an automobile nor flash clothes nor his picture in the paper, but a little of music (his own), a hearth, not his child but any child, a God, a heaven which a man may avail himself a little of at any time without having to wait to die, a little earth for his own sweat to fall on among his own green shoots and plants. (155-56)

And then, in the next sentence, Gavin says: "We — he and us — should confederate. Together we would dominate the United States."

Later in the novel Gavin is again talking to his nephew, Charles. Of his role in averting the lynching of Lucas Beauchamp, he said:

I'm defending Lucas Beauchamp. I'm defending the negro from the north and east and west — the outlanders who will fling him decades back not merely into injustice but into grief and agony and violence, too, by forcing on us laws based on the idea that man's injustice to man can be abolished overnight by police. The negro will suffer it, of course; there are not enough of him yet to do anything else and he will endure it, absorb it and survive because he is negro and has that capacity; he will even beat us because he has the capacity to endure and survive, but he will be thrown back decades and what survives, too, may not be worth having because by that time, divided we may have lost America. (203-4)

His nephew continues: "But you're still excusing it."

"No," says Gavin.

I only say that the injustice is ours, the south's. We must expiate and abolish it ourselves, alone, and without help or even (with thanks) advice. We owe that to Lucas whether he wants it or not, not because of his past since a man or a race either if he's any good can survive his past without even needing to escape from it and not because of the high, quite often only too rhetorical rhetoric of humanity, but for the simple, indubitable, practical reason of his future: that capacity to survive and absorb and endure and still be steadfast.

Gavin Stevens made these statements in the context of the period of 1946 - 1948 when President Truman's advocacy of fair employment practice laws were making headlines and gaining some momentum in certain parts of the country.

Thus today I am posing whether, if we use these excerpts from *Intruder in the Dust* as a basis, we can draw any conclusions as to the positions the Faulkner lawyer would have taken before our court in some of the landmark cases of the 1960's. Well, probably not, but secure in my lifetime tenure, and in the firm belief that such conjecture is not impeachable misconduct, I will offer a few thoughts.

Generally, I speculate that the Faulkner lawyer would have been a likely hero in the early phases of the civil rights movement, but his ardor would have gradually dissipated.

The first phase of the civil rights movement was the enforcement of voting rights. Federal lawsuits sought not to enjoin state laws, but rather enforce them. It was state law that was being violated by the state itself and, of course, through the fourteenth amendment, that violated the federal rights of those black citizens. The discrimination we witnessed then was blatant. College professors, for example, were denied their right to vote for no reason other than that they were black; while at the same time illiterate whites were registered and voted by the thousands. The Faulkner lawyer obviously had great respect for the black man and woman. The denial of the right to vote to a qualified black person would have offended his sense of justice and fairness as well as his sensitivity to the black person as an individual. Indeed, it would be my guess that this kind of injustice and indecency would have been just the sort of thing that would have provoked the Faulkner lawyer to a role of leadership in the fight to correct this community wrong. Now I remind you that this early phase of the civil rights movement occurred several years before the Voting Rights Act of 1965, which granted the federal government the massive power to obliterate state laws establishing voter qualifications and



to assure through force, if necessary, that every black person had the opportunity to vote. As clear as it is to me that the Faulkner lawyer could be counted on to assure no blatant or personal discrimination against the qualified black in exercising his right to vote, it is equally clear to me that the Voting Rights Act of 1965 would have incurred his deep-rooted opposition.

Another early phase of the civil rights movement constantly before the Fifth Circuit involved the prosecution under the federal criminal statutes of individuals engaging in physical violence and other acts of intimidation against the negro and civil rights workers. Here again, I think that the community could count on the Faulkner lawyer actually to assert a leadership role in seeing that this element of the community was punished to the fullest extent possible. Conduct such as this cannot be defended under any rationale or any set of values. But more important to him, these criminal acts are the acts of cowards. Its presence in the community offends fundamentally the integrity and decency of any citizen who accepts it silently. It is no less than a matter of personal honor that requires the Faulkner lawyer to assert a leadership role in the prosecution of such conduct. In the context of those times when nearly all lawyers in the community were publicly silent, the Faulkner lawyer would have been distinctive and many of his peers would have called him a liberal.

The final broad category of the civil rights movement to which I wish to refer involved the massive integration of our schools, including busing, the opening of public accommodations, the opening of the private workplace, and the institution of affirmative action programs. Here, I speculate that the Faulkner lawyer would have parted company with the civil rights movement and that departure would have been sharp. All of these laws require the use of federal power and, if necessary, force. In the fields of public accommodation and employment practices, the federal laws and the federal courts intrude with unabashed aggressiveness into private relationships and private property rights. The Faulkner lawyer had a general antipathy toward the federal government - not for the usual reasons voiced by the demagogues, but because it threatened the distinctiveness of the South; because it threatened to intrude into, to change, and ultimately destroy individual and personal relationships; because of its perceived paternalistic and big-brother character of forcing everybody to do "right"; because it undermined the responsibility of individuals and localities to take care of their own wrongs and injustices. The Faulkner lawyer was influenced by the history of his region; that

is, the federal government had failed once in what it was once again trying to do. "I only say," Gavin Stevens says, "that the injustice is ours, the south's. We must expiate and abolish it ourselves, alone."

The Faulkner lawyer did not personally oppose the integration of our schools or the full-fledged right of the qualified Negro to vote on the same basis as the white or the right to public accommodations. Indeed, the Faulkner lawyer looked forward to that day. But the Negro is seen by the Faulkner lawyer as an individual, not as one faceless race. The Faulkner lawyer is committed to "the postulate that the Negro is a human being living in a free country and hence must be free." For these reasons the Faulkner lawyer in the community was thought by his fellows to be liberal. But any examination of him would hardly place him in that category; he is fundamentally conservative, but with a sense of history, a reasoned foresight and a freedom from the prejudice that blinds.

Alas, time passed Gavin by. His prediction that "the outlanders will fling [the Negro] decades back into grief and agony and violence by forcing on us laws based on the idea that man's injustice to man can be abolished overnight by the police" is hardly borne out by the evidence we see today of the civil rights revolution, which was, in fact, accomplished by force, and in terms of history "overnight," and in method by the "police." Gavin in his last days before the Fifth Circuit would, I am afraid, have been flailing his arms before us, to no avail other than to beat the air. Issues arising from racial considerations are obviously far, far, far from settled or remedied. Who is to say whether the jury is still out on the postulate posed by Gavin. But really Gavin, like Faulkner, ends on a positive note, because he says that "he can survive his past without even needing to escape from it and not because of the high, quite often only too-rhetorical rhetoric of humanity, but for the simple indubitable and practical reason of his future: that capacity to survive and absorb and endure and still be steadfast."

