

Dear Richard,

9/24/91

Early this morning I ^{dashed} ~~skipped~~ off something of which I was reminded in reviewing my Memphis notes. In part it may duplicate what I wrote years ago. In major part it can't. I finished the 7 1/2 pages about six then got up to go out to get the Sunday paper, as I did remembering a little touch I'd forgotten. When I got up from my chair I realized that I had some pressure, not much but some, at the lower end of the plastic artery in my left thigh. No change in the position of the TED support stocking made any difference. I got the paper and skimmed most of it, sitting as Dr. Segal told me, with my legs horizontal, moving around a bit from time to time, and gradually I began to feel that the leg and thigh were swollen. So, at a little after 8 I sat most of the time until now, five hours later, with it elevated. There is no local doctor of whom I know who can tell me anything, including our family doctor, so, because this made me very uneasy, I took a valium and by trying to get my mind off of this concern, maybe ^{that} can make a difference. At least in my uneasiness. When Lil took her usual Sunday morning hot soak when she sleeps in the tub for an hour or more, I phoned our friend Jerry McKnight, the local history professor, he came, and I told him of some of the preparations we had made for possible future needs and then I went into the exculpatory evidence of which I'd told you only a little. He has a few more of the details now. I also explained to him that I'm trying to arrange for copies of relevant records, even some that will duplicate what I've already copied, to be at one point in the event they are to be used by others.

This is probably nothing to be really concerned about. While it has been some time, such things have happened in the past. The difference now is that my heart is not as strong and I am much weaker.

So you can understand why I say what I do about the local doctors, ^{in 1981} once when there was a real emergency and I phoned the family physician after hours, his calls were being taken by a doctor who was and is a stranger to me. When I described to him how the leg and thigh were he told me there was no local specialist and that if I went to the local hospital I'd be lunky if all that happened would be that I'd lose the leg and thigh. By the time I got to Georgetown in an ambulance and, fortunately Dr. Lufnagel had not yet left, there really was an emergency and the next morning his assistant told me they'd not expected me to survive because they had expected my heart to quit. Dr. H. is the one to whom Dr. Segal referred me.

I was not able to concentrate on the paper so I decided not to try to correct what I dashed off early this morning and that is why I write. Also hoping that it and the valium and a drink of that great Scotch you sent will help me relax. Even with this recollection of the past. To which I add, knowing of your morning walks, don't stop them. I was older and mine were more difficult, walking up the mountain, but they told me ~~that~~ that plus the physical life I'd led earlier while ^{living} leading a basically sedentary life, are what developed a strong heart, stronger than they'd expected at my age.

In going over these Memphis notes I was reminded of what I was well aware of but was not in mind, that the FBI was party to both a violation of Ray's rights by the Tenn. authorities ^{and} ~~but~~ ^{and benefited from} participated in it. I may not have noted all such FBI records I saw and what I was able to force them to disgorge may well not be all the FBI has, but I'd say that there must be 10 at least, including one after the local judge ordered that Ray's mail not be read, that it might only be skimmed to ascertain whether he was scheming to escape. That would have been given the conditions of his confinement, an absolute impossibility anyway.

They continued to intercept and xerox all his mail but when they told the FBI and Memphis told HQ, HQ instructed Memphis to accept no more xeroxes but to be sure to get and report the contents of all the communications.

It seems to me that this in itself ought be enough to get Ray a trial, to get the guilty plea thrown out. I was well aware of the violation of his rights when I made the crack about a father-son criminal-law practise but I did not ^{have} ~~have~~ ^{added} these details in mind.

The reason I decided to write what I did this morning was to make you aware of it and to get some of it down in the event ^{some} it is not included in what I wrote 15 years ago.

I am beginning to feel a bit less uneasy and concerned and if I continue this way I will read and correct it, probably missing more than I usually miss, and send ~~it~~ it.

My purpose, of course, is to indicate more of the potential I see in this book.

McKnight is, by the way, one of my executors and I've told him that I'd written you about the possibility that if I cannot complete the book David might want to. If it comes to that, busy as he is (he is the most conscientious of professors and perhaps the most loved one on that campus), I'm ^{sure} he'll help.

While we were chatting I discussed what I've proposed about Oliver Stone/Garrison with him adding a few more stories that had him laughing. His non-~~porfes~~ professional opinion is mine, that the book can have a real potential and create the most natural and sensational ^{much} promotion without cost or effort merely from its contents and Stone's prominence. So, if you see no more than you indicated, which would seem to mean that you have no real interest in it, please let me know so I can explore a couple of options. I would not write it myself, my first choice as a writer may not be interested, and I've ^{begun} ~~begun~~ to arrange to get in touch with the second. I'll phone the first tomorrow.

It is Jerry who suggested Helen Wilson as the assistant. He told me that she had gone to see him to tell him how much she is enjoying it. Several times before leaving she has remained briefly to chat and she told me that she enjoys them and learns from them. She also told me that she is finding what she is doing to be a valuable educational experience. In the past I've tried to locate journalism and prelaw students to help, without success but two who were friends have gone on to fine careers. Do not exaggerate my importance in their successes. Both were bright and able. But I think that as so many older men who

spent time with me when I was young were so important to me and my understanding, I may have been of some value to them. One who was in high school when he started spending most of his summers here, through college and with visits for a week or more at a time when in law school, was after two years clerking for a federal appeals court judge in the 5th district and a year with a major law firm, hired by Lucas films as assistant general counsel and in a couple of years was general counsel. another has gone on to be a successful investigative reporter now working mostly for PBS, has won honors for his work, and has done some fine expose writing.

So I feel good that Helen finds what she is doing, besides helping her meet her bills, also is a valuable educational experience.

If I'd thought in advance to ask Lil, knowing that we were going to the oriental restaurant ~~that~~ you enjoyed, I'd have invited her. I think she'd have enjoyed it and she is working very well and deserves a treat. Which is also a way of showing appreciation.

This reminds me, as I explained to Jerry. I think the most important thing I can now do is try to make all possible records available. If I don't later use them, and I'm not suggesting that I feel like I won't but that either way they should be at one point - who can take time to go through some 60,000 pages and who has the knowledge to select them - So that is what I've have her concentrate on doing. She yesterday, before she left, got the volumes from which she is to make copies tomorrow all collected, I think to finish those I flagged from HQ. I've already asked her when she returns to locate the Memphis notes I made, make copies, and give them to me to mark up and then go over to designate what should be copied.

It is likely that I've already made copies of most for subject filing but I think incurring the extra cost is a good precaution.

I know, for example, that I have a file about an inch or more thick on the violations of Ray's right by the FBI. But I want to take no chances that I overlooked making a copy or that I could not because the machine was broken.

*Best
filed*

Although Ray was charged with the most costly crime in our history, his unsuccessful effort to be tried for it was a civil, not a criminal ^{case} proceeding. Court rules differ for the two kinds of proceedings. Unlike criminal trials, in a civil case ^{each} both sides ^{is} are permitted to obtain evidence from the other. The process is called "discovery."

Ray was permitted two days for his discovery prior to the evidentiary hearing of _____ . With Fensterwald on vacation in Europe and Livingstone for all practical purposes a non-participating ^N and there was no choice - Jim Lesar, who then had never taken a case before a jury, and I exercised discovery on _____ .

There were few dirty tricks the prosecution, technically the State of Tennessee and the defendant in the civil case, did not pull to obstruct us. _____ Haynes, the assistant state attorney general second in charge in this case, got alleged phone calls that lasted as long as a half hour when we were examining the nine cartons of case "evidence" the clerk of the court, _____ "Bubba" Blackwell had, and each time he was called to the phone in another room we had to just sit and wait for his return. When we wanted to examine and get copies of ^{two} a few of the King autopsy photographs for use of ^{by} an expert witness, Haynes refused.

that John Carlisle, District Attorney General Stanton's chief investigator, as he had been for ^{Phil} Canale had in his files, ^{This meant} and insisted that we take the matter to Judge MacRae. ^{Haynes} He kept us waiting outside the judge's office until we learned that he was hearing another case. We then went to that courtroom. MacRae interrupted the case he was hearing and then, ^{s/} on Haynes's false representation that we were trying to get and disclose pictures of "human nakedness" the judge in his ^{summarily} Solomonic wisdom, denied us copies of the pictures.

This "human nakedness" consisted of a picture of the fatal wound in the face and neck and one of the middle of the back which showed where what remained of the bullet was a slight bulge under the skin, quite visible. 14/85

~~These kinds of improper intrusions into the short time we had to examine a great volume of records were such a severe limitation that in the public~~

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(When Henry Haile, Haynes's superior, got to Memphis he told the judge with great and expressive indignation that I had treated Carlisle so "ugly" he was in the hospital with a heart attack that he inferred I had caused. I saw Carlisle at ~~work~~ work a week later.

"Shortest heart attack on r^{ec}ord, John?" I asked him.

"Arthritis in the chest. Had it before, " he grumbled through a ~~hor r~~ broad smile.)

This was to demonstrate that Foreman had not really prepared the readily-available defense ^{had} and ^{as} thus ^{and} ^{of} been ineffective of counsel, thus denying Ray his rights.

When Stanton finally saw us he showed us a file cabinet next to his desk, said the records were in there, and then refused us any of it. There just was nothing ^{then} we could do about it, ~~either~~.

These kinds of improper intrusions into the very short time we had for ~~discovery~~ examination of a great volume of records impose so severe a limitation on us that when we got to the public defender's office, the only place I recall that we were not stonewalled, we were reduced to taking a quick look at a double-space list of the ~~the~~ file titles taking up less than a page and telling him which ones we ~~were~~ wanted copies of. We did get them.

We "discovered" on a Thursday and ~~Friday~~ ^{Friday} and returned to Washington after seeing a few people who could have helped and didn't on Saturday. ^{Two a week later} Monday ~~we were to return~~ ~~back~~ ^{to} Memphis for the preliminaries to the evidentiary hearings, which began _____ and lasted two weeks.

^I It fell to Jim and me to ~~make~~ ^{prepare} make the preliminary decisions on how to proceed and to begin ^{doing} it. We decided that Jim would handle all the legal aspects and I would prepare for presentation of the factual, the evidence.

One of the ~~the~~ ^{basic} legal bases of ~~the~~ ^{Ray's} demand for what is technically a "new" trial when Ray had not had any trial at all was that he had had the ineffective assistance of counsel. How does one prove this about the then most ~~of~~ famous and most successful criminal lawyer in the country, and one of the most unscrupulous, Percy Foreman?

I decided ~~that~~ ^{that} the only way to do it was to try the case on the ~~alleged~~ evidence alleged against Ray, ignoring all the irrelevant c scrimshaw of his travels after the crime and other such matters that actually ^d make up most of what the "voire fire" or in this instance the ~~the~~ statement of fact to which Ray was confessing in entering his clearly coerced plea of guilty and to stick to ~~the~~ crime ~~itself~~. ^{2A}

Sitting where I now sit to type this, using the same Hermes portable I then used, I made up a list of the ~~witnesses~~ ^{should} witnesses we would subpoena, ~~some~~ ^{(most of whom ~~them~~ had located earlier and} a few relating ^{el} to the records we ~~discovered~~. ^{I summarized what they could testify to.}

In the sheriff's office, where we encountered less obstruction than ~~in any other~~

For Ray to escape, unarmed he had to overpower two armed guards, then get through two locked steel doors to get into the corridor, from which he had at least one and probably two more ~~ste~~ ^{heavy} locked steel doors to ~~get~~ past. He had a similar problem and similar barriers to get to the first floor, where there were more locked steel doors and additional armed guards.. It would have required a company of commandos to break into the jail, ^{and} past all ^{the} ~~that~~ ^{armed sheriffs} security to spring Ray, then face the same obstacles ^{reaching him and} in ^{with him} leaving. Obviously, there was no possibility of anything like this, but the Department in Washington and the local authorities connived to ~~garibitaxi~~ describe this fiction as essential to Ray's "security."

This phony security Moreover, all authorities on all levels insisted that ~~Ray~~ was a ~~line as~~ ~~sassin~~, although the FBI had charged him with conspiring with a brother. ~~that~~ there was no conspiracy, although the FBI had charged him in Birmingham with conspiring with a brother - to go deer hunting in Wisconsin!

from any other official, Captian Billy Joe (check) ^{Pressed for time,} Smith let us have what we asked for and Jim and I took turns looking at what he produced. I've forgotten what I was examining when Jim tapped me on the ^{arm} ~~should~~ and handed me a neat loose-leaf notebook with a hard cored, index tabs and a table on contents identifying its contents. This was the Department of Justice's ^{instructions} ~~preparation~~ for Shelby County on how it should "protect" Ray while in custody.

An entire cell block was selected for what as of the time of the hearing was still known as the Ray ^{"tank"} cell. He alone, with two guards, was to be in the entire cell block. And to "protect" him, when only the guards had access to him, steel plates were placed over the barred windows so for nine (check) months he never knew when it was day or when it was night. It consisted also of ^{check} installing microphones connected to a tape recorder and of ^{that was always turned on} closed-circuit TV cameras the mountings for which were still in place in 1974. ^{3A} ~~How~~ these ¹ ~~were designed to "protect him is ludicrous! They were intended to spy on him and on intrusions into his private life. It was reported but of course we could not confirm that the sheriff invited friends into to watch Ray use the toilet. into on his conferences with his lawyers. Arthur Hanes confirmed that they'd lie on the floor and whisper to each other, in the hope of not being overheard. It could in any way "defend" Ray from those who did not exist, who wanted to harm him, was never ~~except~~ explained and it could not be.~~ ^{his office} ^{the worst spying was on} ^{how these arrangements} ^{was a con for improper or illegal spying, nothing else.} ^H

(Prior to the hearing I had interviewed two men at Brushy ^{MO} Mountain, the state's maximum-security prison, and both told me that they had seen microphones after Ray was no longer there in the toilets tanks. At Brushy Mountain two different wardens told me that, fearing black prisoners might kill Ray, ^{each} he had personally read all their mail and not a single one of them believed that Ray was guilty. In Memphis outside officialdom I did not meet a single person who believed Ray was guilty and I actual ^{ly} taped an interview with one of the guard ^{was} ~~who~~ had spent those nine months in that tank with Ray and ^{would have} ~~was~~ willing to testify ^{that} he believed Ray ^{was} ~~had~~ not ~~been~~ the assassination and that he was not the kind of man who was capable of it.)

This ^{"Security"} ~~Notebook~~ was the most exciting evidence we got from the sheriff because it was specific in directing the systematic violation of Ray's most important constitutional right, of confidentiality in his communications with his lawyers.

)Get and use verbatim from pre-1996 Ray files)

The next evening when I returned to my room a bottle of Chivas Regal was conspicuously where I would see it. The next day I ~~thanked~~ Bob and he smiled.

Said "Thank, Bob."

Together with other things I had learned in the course of my investigation I believed that we had a solid case of ^f and should argue that Ray was in fact untriable and had to be turned free because of the irremediable violation of his Constitutional rights.

Jim agree but Fensterwald didn't when we conferred with him the weekend before leaving ~~for the ev~~ Washington for Memphis for the evidentiary hearing. ^{funeral preparations!} However, Fensterwald's then law partner, Bill Ohlhausen, not only agreed- he offered to and he did prepare what we ~~w~~ would file in court on this.

Only Fensterwald ~~we~~ never filed it or argued its contents. Lawyers often have reasons for what they do and do not do that are not clear to non-lawyers. In this matter, I believe that ^{local counsel Bob} Livingstone talked him out of it.

Once during the hearing I did catch Livingstone up to so e thing like that, the abandonment of some of the case we had decided to ^{present.} ~~prepare.~~

^Mine was the only motel room not filled with lawyers' papers so it was used as our conference room. One evening I returned to it and Livingstone was giving Fensterwald his argument for dropping part of the case.

"Do that and I'll tell Ray," I said in anger.

Then + realized that large and powerful Bob Livingstone always carried, it was said in other cases even into the courtroom, a powerful revolver he did not even have to stop to reload. He had loaded cylinders ~~he could rplace~~ with which he could replace any he emptied of ^{its} bullets. However, I had inisted that he place it in my closet when he entered my room, he always did, and at that moment when he faced turned a very angry red he was not armed. ^{YA}

(Once before, when the Department of ^{United States Senate} Justice had borrowed me from the ~~Senate~~ for which I was then a committee editor, my room was used as the conference room. That was ^{for} ^{TD} in the 1938 "Bloody Harlan" conspiracy case. The government had charged more than sixty ~~cor~~ coal-mining corporations, their association and their deputized gun thugs with the bloody murders and other violence to prevent union organization. The year before there had been more murders in that Southeastern Kentucky county with a population of about 50,000 than there had been in the entire State of New York and almost all of them were ^{from a} ^{m/} bush.)

Robert

Judge MacRea was ~~so~~ so clearly determined not to open that can of worms, not to permit a trial when he ^a had seen that there was no case against Ray at all with ^{from} the evidence we had presented that had survived ~~cross~~ examination and was established fact, I doubt that had we presented ~~xxxxxxx~~ the case we had of the ~~ire~~ irremediable ~~c~~ ^{vi} violation of Ray's right it would have made any difference, but it well could have on appeal to the Sixth Circuit Court of Appeals or, if necessary, to the Supreme Court of that era.

Sup notes

Jim Lesar had, and I've forgotten how he got it, one of the interceptions of his ^{to} communications with Percy Foreman. ^{Jimmy} Jimmy had told me about it. He had all that time to do little but sit and think and wonder whether the sun or the moon was out or if neither was, and he had finally, ~~pre~~ pretty much figured out what had actually happened when

King was killed. (Get from file and use) He told me he had handed it to Foreman, that Foreman had ^{without reading it and that on learning he} put it inside a newspaper he was carrying, and that when Foreman discarded ~~it~~ that newspaper a guard ^{and gave it to the sheriff} had seized it. MacRae ingored that, too.

Canale, under subpoena, had found ^{and they} what he said was all of the interceptions, ^{and they} copying of Jimmy's communications of all kinds, and he produced in court a couple that ^{were he said, in his basement of the few he produced were meaningless, hardly the best souvenirs of his most famous prosecution.} and no real significance that he said was all.

all this official mockery of a judge's order was

It was years before I was to learn how big a lie ~~this was!~~

Arthur Hanes, at Ray's insistence, had complained to Judge Battle that Ray's communications were being intercepted, Battle then ruled that his communications could only be skimmed, to ~~ascertain~~ ^{ascertain} whether he was conniving to escape, an absolute impossibility, of course, and they were not to be copied (Get from file and use)

or cite

But in C.A.75-1996 I got proof ~~that~~ ^{by the sheriff who gave copies to Canale's office which gave copies} from the FBI that in open violation of ~~this~~ order all Ray's communications were xeroxed and copies were given to the FBI.

After ~~Battle's~~ ^{that} order FBIHQ ^{But it ordered} learned of Battle's order it still insisted on the FBI participating in and benefitting from violation of the court's order. It told its Memphis office to continue to report the contents but to no longer accept copies. (Get from ^{current} copying and use and cite)

It is not now possible for me to ~~go~~ ^{go} over all those many thousands of FBI records so many of which are poor xeroxes of the poorest copies to ascertain how many instances

was disclosed, which need not be all, But

of ~~this there are~~ but in ~~we~~ reviewing the hasty notes I made as I read those records when they were ^{produced} disclosed -- and a large number of them were and remain withheld -- I found that I had noted ___ instances. They are in the FBIHQ's "main case" file or its MURKIN files, 44-38861-, Serials (list)

defeat

Jimmy Ray, being the kind of paranoid person he is, contributed to his own loss at the evidentiary hearing because of his ignorance of the law when he believed himself to be a pretty good "jailhouse lawyer." As he'd once told me, he gave the lawyers only what information he thought they needed. My caution about the foolhardiness of this was wasted.

The United States Marshals in Memphis could not have been more impartial, fairer or more careful in their handling and treatment of Jimmy. Their suite on the top floor corner of the federal building had two cells at the ~~enide~~ end of their offices. There was a conference room ~~ap~~ past these two cells. Every day of the hearing they had Jimmy there early so I could confer with him and no matter how late ^{*the court sat,*} onto the night we'd worked I was ^{*able*} there to see if Jimmy had anything on his mind. ^{*before they took him back to the jail*} After the end of the day's session, the marshals again made Jimmy available. ^{*produced him for me*} They did this again the morning after the end of the hearing, before he was returned to the State Penitentiary in which he ~~was~~ ^{*was*} then confined, in Nashville. ~~Then,~~ and not until then -- after the hearing was over -- in the course of conversation Jimmy mentioned that the very night ~~he was delivered into the~~

the State of Tennessee delivered him into the custody ^{*and kept overnight*} of Shelby County for this hearing the sheriff had grabbed all the many ~~papers~~ papers he had brought with him to be able to use in his own defense ^{*The State*} and then covered this by demanding "discovery" on those papers!

Jimmy had and could have had papers he wrote ~~out~~ while a prisoner or only what had been sent to him, all of which was examined ^{*and censured*} by his captors.

Whether or not we could have made any use of this may be a question today but then it would have been a major ~~scandal~~ scandal and embarrssment for all officialdom, including the judge himself.

Jerry Ray was no less stupid.

He stayed at the Albert Oick Motel, as Fensterwald, Desar and I also did. Once when after lunch we were walking back to the federal building for the afternoon hearing, Fensterwald with Jerry, Jim and I behind them, I overheard Jerry's argument for refusing to leave town, I walked up to them and gathered that Jerry also was loaded with his own records and all that Jimmy had written him and what he had done after each request from Jimmy that he do whatever Jimmy asked to help in the defense or gather other information for Jimmy. *as Fensterwald demanded.* *of him. If Haile learned that we would have subpoenaed Jerry and his papers. He would have made a circus of it from what I knew of Jerry and the foolish things he writes, thinking them smart.*

For some reason, ~~perhaps~~ *perhaps* because of all the time we had spent together, all the correspondence, his on cassettes ~~taped~~ taped on cassettes, perhaps because like his brother John and his sister Carol ~~pe~~ *of* Pepper, ~~they~~ *for them* appreciated what I had done and respected me for having done it, Jerry listened to me when I cursed him out. Not that he could not, as he'd often boasted, have beaten me up with ease.

"Now listen, you stupid ~~son-of-a-bitch~~ *Jackass*," I ~~told~~ *told* him. "Do you want to guarantee that Jimmy will spend the rest of his life in jail? You get the hell ~~out~~ *out* of town immediately and don't leave a scrap of paper behind." ~~I then~~ *I then* told him that if Henry Haile learned he had all those papers with him he'd be able to get access to them ~~and~~ *subpoena a* under discovery and would use them against Jimmy, I ~~ordered~~ *ordered* him to smile, in case we were being ~~followed~~ *followed* or watched, to saunter back to the motel, to show no sign of concern, to avoid showing any indication of the need for speed as he checked out and drove out of town, and then to stay off the major highways as he drove back to Chicago, *without getting my stopped for speeding.*

He did and that was one potential disaster avoided.

~~As~~ *The* disclosure that all Jimmy's papers had been seized as soon as he got to the Shelby County ~~jail~~ *jail* could have made a difference in the outcome of the hearing, I ~~am certain~~ *might not* that MacRae would not have been able to ignore, knowing he ~~would~~ *with, for* be reversed on appeal, ~~The~~ *The* xeroxing and ~~st~~ *st* distribution of all Ray's communications with his ~~layers~~ *w* in violation of Judge Battle's order ~~as he had ignored the mere fact that this violation of Rays rights ordered by the Department of Justice preserved in the Department~~ *with copies to the prosecution and to*

the along with its
 Department's own FBI, ~~even including~~ the caution to its Memphis office not to ~~get caught~~
 be in a position to get caught with copies of these interceptions, ~~could~~ have made an
 enormous scandal, ~~could~~ have caused a major outcry of protest, and could have led to the
 judicial determination that Ray had to be freed and was not subject to any trial, so gross
 and deliberate was the violation of his rights and of Judge Battle's specific order.

There ~~could~~ not have been a ~~more deliberate~~ *purposeful, wrongful and* more complete denial of Ray's
 rights, which are the rights of all Americans, by the county, by the state and by the
 federal government which, grotesquely, classified this as a "civil rights" ~~va~~ case!