

Dear Jim, Jimmy's 3/21, Kershaw and the committee

3/26/77

Fortunately in today's mail with this is a letter from Gary Schoener. His reminds me how much easier it is to give advice than it is to take advice.

I look back on much in this. If memory is both undependable and selective and thus can be unfaithful, what I do recall is that most of the time what I said we should do and then we did not do is what we now have regret over not having done.

Immediately I think you are going to have to decide whether you are or even can be defense counsel in a criminal case and continue with the manner of a flower-boy, dispensing posies when kicks in the ass are called for. If you do not with Kay and Kershaw you are going out of your way to make trouble for yourself and you are not serving Jimmy as best a lawyer can.

If you are not prepared to lay the law down to him firmly, clearly and in a way that also serves your interest I urge you just to resign and to use his letter, his conduct in going behind you back and Kershaw's behavior as your reasons. As an alternative you can give him a choice. But if you do pick a date for written decision.

In this you have to be aware of Kershaw, what he is capable of and how he may be driven by the consequences of what he has done. I'd be certain to send him a certified copy, return receipt. His will put him on notice.

And if you are not prepared to lay Jimmy out, firmly and clearly if not impolitely, just resign. I think your own interest requires an explicit letter, as does Jimmy's.

You really have to talk to him as Percy Foreman would - and I'm sure did. His failure to dismiss you limits you in consideration of your own interest. When you were chief counsel you were, perhaps, limited as I would not have been. After that, no, and I'm very sorry you did not accept my advice and lean on him.

There is nothing reasonable in his letter. Most of it is irrational. One of the problems is that none of the lawyers has ever told him that his head is stuffed with what usually is flushed away. And it is, despite the occasional good idea he gets from reading a decision.

Each time he has had a chance to make a decision he has been self-destructive. I've told him that but without support and also without denial from you or Bud. As a result he turned more and more against me and became more fortified in his belief that he and Wigmore came from the same seed. His letter reflects it. I know from Jerry that he thinks it is and that Jerry does, too. Thus he plots these chickenshit civil suits now and refused them when they counted and now longs for what they can yield when the time for that is totally past.

So one thing you should say is that if he is determined to be his own lawyer he has no need of you and you can't possibly serve his interest as you from your training and experience see it.

Make the point that he made his arrangement with Kershaw without consulting you and that Kershaw has plunged ahead, on tube and in headline, without real consultation or meaning anything about the facts of the case. On this he never asked me for anything. I never heard from him about anything, even indirectly, and rather than the plural to which Jimmy refers I wrote Kershaw just once. You have a copy. I doubt Jimmy does but if you want to mention it I'll stand it and I'm sure Kershaw won't. It is apparent that knowing Jimmy's mindset and prejudices Kershaw has sought to exploit this selfishly.

"I believe it would be foolish just to rush out and say 'I won't testify.'" Totally unreal. He had no occasion to. The reality is that he rushed in and said what was always interpreted as that I have something to confess and I am anxious to, regardless of what my lawyer may say.

When he talks about the committee subpoenaing records Kershaw did not give us he

sick, trying to pretend to himself and coming to believe that this committee exists for him and him alone and that for the noble personage he is it will risk what would collapse around it by trampling the first amendment. It has neither the sanction nor the mandate nor in any way the right to subpoena the files or writers who do not claim to have solved the crime. Even there it is doubtful. But nobody except me ever tells him these things. Now let Kershaw contend with it. He had Jimmy meet with the staff, over what I hope are your objections.

It is insane for him to either believe or pretend that the sequestered records of the surveillance of King can be of any help to him or are in any way relevant. Kershaw Kershaw has said the same thing, whether it is his idea or Jimmy's. It is nonsense-worse.

Except for whatever he can mean by the committee looking into the allegations he has made in civil suits - and I shudder to think if some are recalled? - this is all of his four points of such great importance.

Whatever his "heretofore" testimony may be it is not and cannot be related to the reasons people like Abzug and Church wanted all records of FBI intrusion into King's life destroyed. Kershaw, for his own political reasons, wants this stuff, so it seems to me to be a good one on which to lay the complete irrelevancy out. This also gets to whether if he wanted to Sprague could subpoena the sequestered material. But it is past time for telling him that no matter how much power he has managed to grab Sprague does not issue the subpoenas and some of the Members might worry about subpoenaing personal stuff of no relevance. You might remind him that the committee has black members and they have not thought of this.

Whereas he says it was his thinking that a waiver on Foreman would be his showing of good faith you can get out cleanly and completely now or turn that whole thing around. I suggest you think of this at least as a separate matter. I'd write Stokes and tell him that Ray has not fired you although you have asked him to; that this is not relevant or proper in his investigation except as an intended violation of Ray's rights that you are obligated to protect; that the committee knew this and engaged in commitments to you; that you consider Jimmy as is neither the judge nor competent to judge on this question; that you ask them to destroy the waiver; and that you tell them you are telling Jimmy by a carbon that if he does not withdraw it you are withdrawing from any responsibility toward him. They can't stand on the Foreman thing and you simply must make an issue with Jimmy now of his being his own lawyer in a context of your being held to account for it.

It is terribly sick for him to say a decision does not have to be made at this minute, 3/21, which is the day before he saw the Sprague crew - without the protections he would have had with a record and with members present. All of them can swear against him and Kershaw and nobody will believe him or Kershaw. I don't think will happen with 3.22 but it will soon, especially with Jimmy's cute way of acting above himself. And speaking with other than the words with which he is comfortable.

When he actually says desperation has nothing to do with his decision it is ~~pathetic~~ pathetic. I'd remind him of your general observations to him, ask him what he knows or even can know, and insist that it is only desperation - and incredible stupidity. He may not like forcefulness but your interest as well as his demands it now.

He really has delusions of grandeur. There is not a single word in his letter that even expresses any interest in his own defense or in getting a trial. He is sitting down there and living nightmares of pseudo-vengeance. Nothing else counts or can be real to him.

I fear this letter reverses the position in which I saw you when last I addressed this situation and suggested your best course was to do nothing. His letter can be used by those who might have an interest in hurting you. The Kershaws of the world and the Spragues. I'm worried about it because doing what I think you should is not your way, as doing things I should have and have not done is not my way. It is a torment to me right now. I hope you can avoid what can be a torment to you. Hastily,