

Dear Jim,

3/17/75

Thanks for your yesterday's call. If I had not been working on other matters I'd probably have made the following suggestions then. However, the Penthouse/O'Toole operation is so dishonest and does in a way involve Jim and me, I spent time on it because that was largely reading and the muscles were in protest over wood-cutting and hailing. The Penthouse thing is one of the separate matters I thought might interest you.

Of course you will do your story your way. My purpose is merely to suggest what I think is unusual and makes good copy.

This really gets back to what I suggested in Memphis is the way that seems to me to be a method of handling.

Jim established precedents of law that are entirely unknown because there has been no real coverage. Even at Supreme-Court level.

This was possible because he had taken a novel approach in the appeal to sixth circuit, an approach lawyers almost never take. He had mastered all the fact I had assembled, in itself a considerable ~~xxxxxx~~ amount of work - more than most lawyers spend on a case - and then, while not ignoring precedents and decisions that are relevant, turned out a longer appeal than most lawyers will consider. They all fear the judges won't read long papers. In this case Jim's was more than just good reading. He put together an exciting story, exciting to concerned judges. It was also a solid case, a kind of J'Accuse, aggressive rather than defensive, and it included an exculpation of Ray.

The combination of the firmest factual basis and Jim's excellent handling resulted in not only an order for a hearing but a hard charge, for a full scale judicial inquiry.

This then made two entirely new approaches possible, one Jim's and one mine. He saw in a decision Abe Fortas wrote what other lawyers had not, authority for discovery under habeas corpus. (He has been upheld ~~twice~~ by the Supreme Court.) The judge was chicken so he did not enforce his discovery orders, but in a ~~short~~ dramatic two days in which we worked together sometimes spontaneously we got much. The other was mine, a non-lawyer's way of addressing "effectiveness of counsel." Who can say that Percy Foreman is not competent?

So, while Jim was overly busy on the legal preparation and new motions and too many other things for which there was no time, while Bud was living it up in Europe, I took this tack on effectiveness of counsel:

We address the kind of investigation Foreman made (none) and show by the evidence that he was ineffective. And where he had exculpatory evidence he ignored it. Jim and I had figured out a way of getting the results of what defense investigation there was. Again it was dramatic and a tense period, but we not only got it, we got it without paying for the xeroxing. Some of the information Foreman had overlapped what I had developed independently and thoroughly as possible under the limitations of no funding.

Basically we addressed effectiveness of counsel by addressing the case alleged against Ray. In doing this we destroyed the entire case against him, each and every allegation even connecting him with the crime. You and other reporters may not have picked this up while it was happening because the judge kept too much time pressure on us and we had to put too much in too fast. We went farther and put in cases against those who alleged false evidence against Ray, as perjurers; and against the prosecution as suborners of perjury. A judge will balls would have seen to it that they were charged.

It had been our original plan for the defense witnesses to be essentially two, Ray and me. Bud changed his mind on me. I had all this worked up for him before he returned from his vacation in the form of a draft affidavit that would also be an outline of my expert testimony. I gave it to Bud as soon as he returned, which was only four days before we had to leave for Memphis, complete with keyed-in exhibits. When he pulled the switch I had witnesses all listed in advance but no time to interview them in advance of their testimony.

There were hectic days and nights but we accomplished the same end, handicapped as we were by the judge's attitude and performance, by the non-performance of senior counsel, and by an incredible series of dirty tricks by Henry Halle the judge and Bud both tolerated. As soon as Henry started pulling than I tackled him head-on, at first in writing because I was not there. Then when it was possible Jim, nit Bud, joined in under oath.

This is why Henry was so anxious to "get" me that he said it in front of a witness, this and the fact that we were making a direct, frontal assault on the case against Ray.

Every aspect of this is I think unusual if not in a number of aspects without precedent. I think it will be interesting reading.

And then you have the most usual aspect, of a supposedly liberal judge ignoring completely that we exculpated Ray - proved not only that he had not been ~~proven~~ not been proven guilty beyond reasonable doubt but had proven him innocent - and that the State did not dare even to attack this. All the totally exculpatory evidence went unchallenged.

We went farther, again I think interesting copy in this day of conspiracy interest. We put in a prima facie case of a conspiracy against Ray withing the language and meaning of the federal law. It also remains unchallenged and ~~xxx~~ you remember that Frasier, for example, was absent, along with Foreman and Hais.

I all aspects I think this is unusual.

If any of this appeals to you - and it can mean that Playboy will exculpate Ray in public prior to the time an appeal can be filed - I again suggest that you consider interview form. I have no reluctance at all in tackling the judge head-on. And documenting that case thoroughly with documents and with witnesses where there are no documents, as what happened in chambers.

So that you can have this for your consideration as fast as possible, while you are thinking it all through, I'll mail this immediately without correcting it. I now have to take my wife to work and will mail it at the post office then. Sorry if the haste and the typos make for any incomprehensibility.

As I told you in Memphis, I think this should focus on Lesar. Imagine all his accomplishments when he had not even taken the bar exams when he first started work on this case and has yet to appear before a jury!

And remember his accomplishments in the litigation that got me that Top Secret transcript. We even proved what lawyers say they can, a negative.

hastily,