

Add on Lesier's 9/12/75 visit

HW 9/12/75

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I said if he'd tell me where he was going I'd tell him the best way for the traffic conditions he could expect and the shortest. He said he knew how to get back. He had options that could have made a big difference and if he took wrong turns that a stranger could easily he'd waste much time. So, I told him to take exit 14 on the Beltway and it would take him around north-west Washington traffic. When he seemed reluctant to tell me what part of Washington he was going to I told him to take the Roosevelt bridge if he were going to anywhere near the CBS offices and how to know when he reached that exit. The man's attitude was odd. What is wrong with asking or being offered suggestions when he is strange to the area? What would be strange ~~ix~~ about his going to his own offices or to a hotel or to a friend or anywhere? I was not prying and it made no difference to me where he went or why. I was trying to be helpful, no more, but he had some kind of block against it. His attitude was such I can imagine his going wrong although he had expressed gratitude for the details and accurate instructions that made getting here so easy.

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I asked Lil to read the memo and suggest anything I may have forgotten. There came a point when, after he had argued rather than asked questions I apparently asked him a series of questions or made statements that began like questions, "Do you think that..." and he said, "I'm not here to answer questions." (I asked him nothing about their show except was he working on more than MLK.) The kind of "do you think" I can recall are about the "window dressing" part of the minitrial as he had quoted Beasley. Did he think the prosecution was composed of ~~incompetent~~ incompetent lawyers who did not know what they were doing, that they'd have gone to all the trouble to present all the irrelevant if they had no purpose or perceived no need. If there were other areas where this happened I do not recall them but I was responding to his defenses of the prosecution with rhetorical questions that required no answer. I remember following this with asking him what real evidence they had against Ray, how they could even place him at the scene of the crime or even in the city for two hours before it, matters dealing with evidence and his presumed purpose in coming here. In the end he was faced with his inability to respond. He didn't think of Carpenter, so I offered Carpenter as a witness. He said Stephens and I laughed. He said Canipe and I said maybe, who else? He had none to offer except what is in the earlier memo on Brewer (a reflection of his knowledge or his honesty). It is then that I noted the list of 400 witnesses and how any defense could prepare for so many and the purpose of listing so many when they had nothing to do with the crime itself. I am sure that he said what Lil remembers. I do not remember it.

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When she told me these things and that what I'd put in quotes attributed to Policoff was her representation of what Jerry had said and not necessarily his, I was reminded that there is no real purpose in his having lunched with Policoff, if that is what happened if he is working on the King case only except to try to get what he can use prejudicially against us.

Memo on Ernie Leiser's visit between about 3:30 and 5:15 today, 9/11/75

Waldron took the wrong exit and was late getting here. We then decided he would wait until Lesier left before he and I got into the substance of the purpose of his visit. We chatted until Lesier came. Prior to Leiser's coming we discussed what I would and would not do. Martin said that if they want to use my work they should pay for it, as he had last night. He stayed almost until the end. He then picked up a set of the Whitewash books, walked into the kitchen with Lil, and paid her for them. He then told her under his breath, "Dull Thursday." For him it must have been. (He said he'd be back in a couple of weeks. In talking with Leiser, who asked him what the Times feels about what CBS is up to, he said other than I understood last night, that one particular man in the Times "bullpen" of editorial brains wants a reinvestigation.)

Leiser never did say what he came for. When he left Lil asked me if I knew. She sat in on all of it and was in the next room at the time she was most distant. The rooms have an open connection and she was there but momentarily.

I made clear at the outset that there were some thing I would not say unless we taped and that I was prepared to make tapes for each of us. He did not accept this offer and I did not press it. (I had discussed it with Martin, who had agreed that we would do it when we spoke when I explained my reasons had nothing to do with him or any question about his integrity.) The two tape recorders are where they were still, out in the open with an extension cord to which neither was connected also in the open.

I explained that he could remember only so much of what had to be off the record and without a way of knowing he could make a mistake so that if he did not have a tape I'd have to restrict this. There were a few things I felt I had to tell him but I also told him they had to be off the record and why.

The first time he asked me a question that goes to my own work I told him politely but explicitly that I would not give my work away and had no intention of doing it. I told him he is paid for his. (He argued later and said he gives away things on the history of TV.) I also told him there were some thing I could not tell him because of the obligations my role imposes on me. When he came to these kinds of questions, as he did often (he took no notes) in each case I told him explicitly why I would not answer it.

He argued from the first without, apparently, realizing it. I don't think he understands that he doesn't hide his partisanship and may have deceived himself into believing he is not partisan. He also persisted in casting me in the wrong role, no matter how many times I corrected him. One example, "why do you and Lesar bleed so for a man like Ray," close to an exact quote. I had told him earlier and several times that our interest is not a personal one, that we are interested in the law, in justice and the kind of society we have. When he came back to this for the last time I tried to equate it with what lawyers do in taking cases like Miranda, Gideon v Wainwright, and what prominent firms do with their pro bono work and some of what the ACLU does. After this he did not again misrepresent this.

He argued the story of Ray buying the rifle. Here I told him a Jerry story off the record, about driving. After this explanation he dropped that.

He said that Beasley had told him that if he had it to do over again he'd drop all the window dressing. Here I asked him what there was by way of evidence other than this public-relations stuff that had no other purpose. He said there was the stipulation and I said, right, that is what is at issue now. But other than that what witnesses and evidence does the state have? (He didn't mention any of the live ones put on in the minitrial.) He said 10 or a dozen and I asked him to name them. I agreed maybe they would have put anipe on during a trial but said I doubted it. Who is 2? He said Stephens and I laughed. I reminded him that Stanton said the only person who could put Ray in Memphis that day was Carpenter and that was two hours earlier. He said

Bessie Brewer and I reminded him she refused to identify a picture of Ray. And here he ran out. I then asked him why the state told the defense it was calling 400 ~~that~~ witnesses from all over the world and how could a defense possibly prepare a defense against so many so spread out. I then told him the admission by Dwyer, that they would have called less than 10 from Memphis and asked why all the others if they were not

deemed necessary for some purpose by the not incompetent lawyers (now judges) of the prosecution - but what did any of these have to do with the actual killing or any part Ray could have had in it? Here he admitted that they were not relevant.

I then said that there was no case without all the window-dressing and that it was a substitute for a case. I then asked him what there was without this, with no witnesses and nothing to connect Ray with the crime. He tried to argue the ballistics and I asked him why when we could and before an impartial judge should have gotten a trial order on what we produced on this alone and when Haile knew there was this risk he did not cross examine or put a single rebuttal witness on. He had no answer. Here I also said that I did not think that Haile and McRae conspired in the dark of night and I therefore felt Haile knew the danger he was running, so this can mean only that he did not dare cross because that would have made our case firmer.

I explained that I am a partisan, that while it is wrong for the media it is not wrong and is right for a citizen and a writer not of news. I also said that I was as I see it Establishmentarian, that my purpose is to make the system work and to use the system to make it work. Thus I am in court.

He seems to have some unarticulated strange notion of what we are interested in and seems unable to understand the obvious, that with Jim and me this is a question of principle and that there is no chance of personal reward. But he can't hide this in his manner or in his questions, not one of which had anything to do with my work, income, experience, competence or anything like that.

He asked me how Bud got me into this. I said I got Bud into it and he went no farther. He asked me about Livingston's theories, including Youngblood and "Cliff" and I told him I did not share them and wasn't really that familiar with them. When he said that Livingston seemed to connect the two I said I was unaware of this or any reason for it. I told him I did not believe it to be either fact or my function to pursue such things, that my role as investigator was to develop fact for evidence and use in defending Ray, not in or to solve the crime and specifically that in no case had I tried to, although I had come across some leads and believe they can lead to something.

When he said that Bud told him he believes the shot could have been fired from the ~~underside of the~~ bathroom I told him I did not know what Bud believes, that Bud is a lawyer who is busy because he also owes responsibility to other clients, that I, not Bud, did the investigating, and my investigation satisfies me a shot from there is impossible from the State's evidence. This is one of the points where I reminded him that Jim began with no practice, that neither of us has any income, and that Bud can't put in the time we have. I also told him there is a big difference between proving that Ray has not been proven guilty beyond reasonable doubt and solving the crime.

When I told him I was satisfied I had airtight alibis in the proper not slang sense and refused to tell him what they are - I emphasized the plural - he tried to argue. Martin laughed and said I tried and it won't work. He won't talk about these things. Leiser's line is that we should have used this in the hearing. He even argued that we conducted ourselves improperly at it. My responses to this were that this was not relevant at that hearing and that the line of showing counsel was ineffective by counsel's handling of the case and evidence was relevant to both the issue of effectiveness of counsel and the mandate for a full-scale judicial inquiry. I said that what I regard as the most important alibi is not and could not be relevant to Foreman's effectiveness. He continued to argue, so I put it differently, asking him where we would be if we had put this evidence in and Haile had objected on grounds of relevance and McRae had sustained him. I told him we tried to belong to white hats, that we tried to do things the right way, and that unless we did we would not be either honest or capable of doing a good job. We knew it was not relevant. So, we did not use it and it would have been wrong if we had. Besides, why blow it by tipping it to the ~~State~~ State?

He tried to argue - and I don't think he is aware of the extent to which he argues - that we owed it to Ray to use this because if we lose in 6th circuit we are legally lost. I said there is more besides the Supreme Court and that we do not expect to lose.

I also told him that if we did lose that did not exhaust the legal possibilities. When he actually asked what others there are I said that this was a defense matter I would not discuss, that I had started working on this aspect years ago and laid much work aside until the day it would be needed, but that Jim and I were aware of and believe there is good prospect for other legal approaches. Martin added "political." I do think that Leiser here was doing more than arguing, that he is unaware of them.

There came a point when he said he was impartial when I'd suggested he had a preconception that showed. He said he was not defending Beasley and would take the same approach about me. (That would be the day!)

He even argued that McRae was wrong in favoring us. I did not start this. I told him the opposite is true and gave him examples. When I told him how we had to go over Ray's coming testimony with him, during lunch hours, he dropped that. I then pointed out that Haile had blackmailed McRae and that McRae had violated our rights and made adequate preparation impossible by ordering untimely discovery against Ray when we should have been to McRae's knowledge preparing, that he continued to keep time pressures on us thereafter, and that after Haile had threatened to seize Ray's files if McRae did not order discovery long after the time for it expired and then did the minute Ray reached Memphis McRae ruled it immaterial. I also noted that McRae had to be reminded that we had not been given a witness list and was silent when to his knowledge we were given a 100% fraudulent one the night before the State put on its case. I used Temkin as an example of what this meant to us.

Bubba Blackwell, who had refused access to the evidence to me as defense investigatory seems to have opened it for CBS. Leiser told me about going through a box and finding all sorts of stuff kept in, dumped into and out of, that blue bag.

This much I wrote immediately on his leaving. After supper:

It could be argued that he was trying to get the feel of me, but he asked me nothing about myself, my work on the case, how I did it, with or without what support, how I got Bud into it, etc. He said this was preparatory to a filming to Rather, and he by then understood my position well enough to add on what I would not consider improper. I agreed but said I would not be able to afford to do this at my expense, having no income. He said that was, of course, understood. But he asked me no questions having to do with my role in the case that he could use in writing a script for Rather. I had placed only one limitation on evidence at the outset: that I would not discuss what might be covered by the protective order but have no inhibitions about any of the rest that is in evidence. He asked me no question, not one, about this. He did try to argue me into telling him what I said I would not, which prompted Martin's laughing interjection. He did argue that we should have conducted the content of the hearing other than we did. He did not ask me how I came upon any evidence, what I think any of it means or can mean, who I interviewed or when - nothing that I can think of as ordinary preparation for the Rather filmed interview.

So, as Lil asked after he left, what did he come for?

It certainly was not to learn about my qualification or about the substance of the Ray side of the legal questions or facts.

There were several points where he said what I had not said or indicated or where he transposed my statements about one thing to relate to another. He did not hide his pique when I corrected him. One was my statement that Ray had engaged in criminal activity. I had said there was criminal activity after Ray left the pen. He interpreted this to mean by Ray and other than was public. When I corrected him his answer was that I had written of this. Mine was that I had written before meeting Ray and of what was public, with sources cited. He was actually saying that Ray had engaged in other criminal acts as though I had said this.

I did tell him off the record that DJ had offered Ray a deal and that Bud was not my source. ...He said of his interview with Jerry that Jerry had said he was working at the time and could prove where he was and offered his unsolicited opinion that Jerry's having a record of being at work did not prove he was not part of a conspiracy. I found this interesting and revealing. (My comments on all Rays, little as they were, were off the record.)

Dear Jim, Leiser's visit

9/11/75

Lil had been told by Jerry that Leiser is a "slick article." I think he is pretty transparent. However, my options were limited and throughout all I had to consider the possible impact on Ray. After the tick he pulled on you I'd rather not have anything to do with Leiser of the CBS Ray program. Were I alone involved I'd have done what my letter to the fan-mail dept. forecast. But I got to thinking about it and the nastiness they can work into a script they alone control and felt I'd best see him.

I had hardly taken the paper out of the machine on the memo I've laid aside for Lil to read when I thought of other things. He asked me about my Ray tapes, whose they are, can they be heard and had Ray placed any restrictions on them. I said that when you could you met the plane and debriefed me and that we dubbed these tapes when there was but the two of us. That no other had had any need to hear them so no other did. That Ray placed no restrictions but I did even though I regard them as my property. I made it clear that nobody will hear them unless it serves Ray's interest and that I have my set put where it can't be found easily and one set out of my possession. He asked me what we talked about and I told him everything, all sorts of things. That I never conduct a pre-structured interview but instead engage in and take the time for conversations in which I can more easily learn if I get different versions of the same incident. That I'm convinced that Ray has not lied to me but I was initially aware that in seeming to be responsive he wasn't. That then and more frequently later there were some things about which Ray simply said he did not want to talk. Leiser didn't even ask me what things. Nothing except what he could have asked as a prelude to a request for the tapes or access to them.

Reporters, writers and interrogators can differ in their methods and interests but this guy did not ask me what I would regard as preparation for the Rather interview. If he had do you think that after coming all the way here Waldron would have left 15 minutes after the time I said was the maximum this guy was going to stay? Would it have been that dull to Martin, even if Leiser had asked any probing questions of any kind?

There were a number of occasions on which I found it not easy to explain to myself his appearance of annoyance when I corrected a misrepresentation or misinterpretation of what I'd said, to the point that after it was over and I had a chance to think about it I actually wondered if he had an fm bug hidden on himself and a receiver-recorder in the nearby car. I don't think so and didn't while we were talking but when as soon as I could think for a second it was so apparent that he was not engaging in a normal preparation for Rather I had to wonder why and why he misrepresented what was plainly other than he said. On possibly not in the memo is on solving the crime and what I'd said. I then made it specific that I'd never made any effort to solve any of them, as my work shows. Martin laughed when I said I have no idea who killed anyone and said he does. I didn't ask who.

Lil said afterward that I should have taped it. I told her that I had made him the offer and felt it would be wrong to press him or make a unilateral decision.

Martin was careful not to give him a personal endorsement and to suggest that he has questionable connections, mob-type, but he did tell me that a Waco lawyer, David Copeland, has the Huie story about Foreman and that it was in Colliers. We should be able to get a xerox from Copeland. He should be listed in the directory. Copeland at one time represented one of the accused.

Leiser again: when an interviewee offers to tape the interview for the interviewer and the interviewer, who takes no notes, has no interest, it occurred to me after he left, there is something odd. I didn't even ask him to pay for the cassettes and he didn't take any notes. If I'd thought of it I'd have asked him why. But we began with

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Rt. 12, Frederick, Md. 21701
9/12/75

Mr. Robert Livingston
12 S. Main St., #940
Memphis, Tenn. 38103

Dear Bob,

This has been one of those days of countless interruptions and needs that kept me from what I wanted to spend the day doing.

We have not moved. They've remembered the rural routes.

I now face a situation where I must drive from out of the city into it and make two stops in not much more than an hour and during a thunderstorm, so I'll have to be brief.

When I could not see him two earlier times Ernie Leiser was here yesterday afternoon. He is not for us. He did not come here for his ostensible purpose. And his intent to ridicule you is not only transparent, it is explicit. He says you talk nonsense, that he can't understand what you are talking about, that you have now connected "Cliff" and Youngblood, and that he has yet to film you but is going to Memphis next week.

Obviously none of this has anything to do with defending Ray and that, too, may at some point be embarrassing to you and yours as well as to the client and all of us.

I was reluctant to talk to him at all but felt I had no choice. There is only one defense investigator, but there are three lawyers and for legitimate purposes when they have only 30 minutes for the whole thing they need no more than one on file and they have at least one, the one who has been most active in the case and now is so overwhelmed by work that he alone does that he hasn't time to write letters.

Leiser was polite about it but he also tried to blackmail Jim. He backed off when Jim refused to be blackmailed. He has a part of which I can tell you if you want to know but not now.

I wanted to make two tapes of our conversation, one for him and one for us. Leiser declined. Two others not with him were here. I find his unwillingness to go away with a tape not typical for one in his business. The one purpose it served was for me not to have one also.

Jim, who has had more to do with these people, feels more strongly than I that you should not be filmed or taped or appear in any way. This will not prevent them from quoting whatever you may have said but it will deny them footage and it will not show your face or voice in what inevitably will be hurtful to you, your practice, your family and to Jimmy. Jim asked me to write Ray to this effect. I have also told Jimmy that if he has any questions to phone Jim. Bud is to call me later about another matter and I presume that Jim will have discussed this with him before then.

Jim is persuaded that these people are going to make a big thing out of disagreement among counsel. That alone can hurt the client and for that there is no legitimate journalistic need. I have less to go on than Jim but the clear indications to me from Leiser confirm Jim. So, please be careful henceforth and please do not agree to be interviewed for air use. If you have any questions please call me and if you think you will want to listen to it again or for any other purpose, be prepared to tape our conversation. I'll be able to do the same thing for Jim and Bud.

Hastily,
Harold Weisberg

9/12/75

Dear Jim,

After writing Jimmy it occurred to me that the State would open and read if not also copy this letter, too, despite everything. It is one that deals with his defense, is of a private nature, and was written at the specific request of counsel. So, I did take special measures with it.

I always enclose the letter in a separate, sealed envelope addressed to him but sent to the mail room. He has told me that he never gets one not opened and none is ever opened in his presence and he never gets the outside envelope.

In this case I added a confidential legend to the inside envelope, sealed it with magic tape, and then sent it certified, return receipt. The number is 161007. I made a special trip to the post office to get it and the letter to Bob both out today.

If for once they respect their own regulations we have lost nothing but a little of my time so much of which was wasted today anyway. If they open it, I believe that you have something of which to make an issue. And I think should as soon as circumstances permit.

To this end I ask you to ask Jimmy when you write him to let you know if it was opened before he received it. I'd then ask him again about your letters.

I got your messages when I got home. However, no circumstances outside our control have anything to do with the confidentiality, the privacy and the propriety of both the contents of this particular letter and the issue in general.

It is simply impossible for a prisoner to receive justice when all the mail having anything to do with his defense (and with nothing else) is opened and spied upon by the other side. To say nothing of copied.

If after Haynes' latest they open this letter I think your case before 6th circuit would be stronger and I would not even mention it to McRae. I'd raise the question directly, separately and along the lines I suggested earlier, emphasizing the deliberateness of the improprieties, violations and abuses and asking it to make its own "full scale judicial inquiry" on this Constitutional issue alone, unless the behavior of the lawyers of the other side is not Constitutional. If not, include it as a separate item.

Best,