

What is the law? What should it be?

Dear Jim, Thoughts on reading of your draft of brief in Ray appeal 9/13/75

I've just finished the 43-page instalment you sent. These are my immediate reactions and beliefs, not organized - off the top.

By and large I regard it as a first-rate job and your concerns as misplaced.

I do not think that in a case like this and before a court whose mandate is under challenge and whose precedent has made what has been possible possible, you ought to think in normal legal cliches.

I think your primary obligation to Ray and the most effective way of reaching this court is with a cogent arrangement of the outrageous fact more than with the normal, dry lawyer's approach.

This is the court that held the case reeks and mandate full-scale judicial inquiry. Your emphasis should be and properly is on showing how much more it reeks than even they suspected and how their mandate was nullified. These are questions of fact, not law. This court needs both, but most of all, to get its attention and to lay a basis for proper consideration of the law and basis for interpretation of it, you require a solid and an adequate factual foundation.

I think you have done this so well I strongly recommend against any major revision, almost not modification and not many additions. I have these written out, illegibly. This I suggested that I read them while you make notes and we tape them so your notes can be cryptic. If you bring your machine you can ponder them again as you go home. They won't take as long as the trip and there are some you should think of. If you do this as soon as you are home you can make the revisions you want and have these pages ready for retyping. I think you must complete the retyping as fast as you can lest in an emergency it become an albatross. We'd best not assume no emergencies.

Maybe you don't realize it but this is the kind of approach that made the initial appeal so effective and successful. It is the successful formula.

After you told me that this court does not like footnotes I paid closer attention to them. I agree with you on not getting hung up on them but I also feel that most of them, all I can remember, can be in the text, if no other way in separate paragraphs within parenthesis. I recommend this wherever it does not grate on you. It also will simplify typing.

As I told you, after reading the part you sent I am more convinced that what you want to reach this court belongs at the front, here, with later references to it where you believe it belongs in a legal argument. Later reference will suffice.

Psychologically it is the wrong approach to lean too heavily on legal interpretations. Except where we want to emphasize them. Psychologically the way you have opened is, I think, the best way. The case is not one in which we should be leaning on the stereotypes of the law. Going this route will necessarily be defensive and that, too, is psychologically wrong. You'll have more than enough of and on the law anyway. But the case, the record and the offenses are our strength. So, hit with them first and hard, which is how you've started.

You may wind up ridiculing McRae's interpretation of the law, ignoring the uncontested total destruction of the allegedly incriminating case, without even pretense of rebuttal, and saying by some stretching of his own or some extended technicality as he sees it Ray is guilty even if he is innocent and the unsolved heinous crime is solved and all good people can sleep in peace. If they go to his church on the day he designates as Sunday.

Whether or not the law is your way, and I think it is, in this case it and interpretations do rest on basic facts. Your taken the right approach with the right emphasis to begin with them and to deal with them adequately. Right on-lay it on!

Best!