

SEP 13 1975

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 things 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 things 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, *Hideon v Wainright*, 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 out on in the minitrial.) He said 10 or a dozen and I asked him to name them. I agreed maybe they would have put snipe 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 ~~xxxx~~

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 out 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 ~~main bathroom~~ 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 practise, 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 along 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 ever 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 ~~main~~ 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 have to go over Ray's coming testimony with him, during lunch hours, he dropped that. I then pointed out that Halle 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 Halle 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 I'd 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.)