

Dear Elmer, Gertz

12/15/74

Long ago you said that whenever I publish anything you want it. So, with apologies for not sending it sooner, here it is. I am still a one-man publisher so I have to do all the mailing myself and without a cent for advertising I sell only by calls from radio stations, talk shows and news beepers. It all takes time and then there is what always kept me working more than 18 hours any day. Some will interest you, I am sure.

I take the time to write you to save your soul if not your reputation, including in your own eyes. Sinner! It is never too late to repent!

(And if you've forgotten, the inscription is a direct quote of an Elmer Gertz compliment I did appreciate.)

Seriously, I take this time not to needle you at all. I regard you, despite our disagreements, as a man of principle, not in any sense a hack lawyer. However, I also know that we are a passionate people and often confuse emotion and thought. I really think that from the first Warren blinded you and your capability of thinking from fact only. If I am correct in this, then I strongly encourage you to read the transcript closely and carefully. It is one of the first of many proofs ~~me~~ I have of what happened to that fine old man. If you do not see it on your own, then and only then will I explain it. But I think the impact and the effect on your understanding of the overall will be greater if you see for yourself.

If you think this is some new concept with me, then reread the introduction to my first book. I wrote that part the end of 1964.

This is the complete and unaltered transcript except that I left the appearances out. They served no purpose and I could not begin to illuminate with the documents I have and would have liked to have included. I recognize there is always a question of judgment in what to include and what not to. But I have, literally, hundreds of relevant pages.

Worse, I had to rush it out. The possibility of Nixonian misuse is only one of the possible explanations of this most bizarre of 5 U.S.C. suits, including my own four. Another reason is for possible use in what I alone correctly anticipated (fact, Elmer, not bragging, and if you doubt me phone the Hader lawyers), that Ford would veto the amendments and that Congress would attempt to override. (See Congressional Record 5/30/74 and you'll see that one of mine if the prime of four suits cited as the need for changing back to its original meaning the investigatory-file exemption.)

Worse yet, this all coincided with essential work on the Ray case in which my colleague in this book and I did all the work. He is the junior defense lawyer but has and does do all the real work. I'm the investigator and his general handy-man. This is also his first real case. Understand, I'm bragging him up! Not hiding it.

I don't know what coverage the Chicago papers gave the recent evidentiary hearing. They had no reporter there. And the wire services had the local incompetents who also have to depend on local sources. But the record is and generally. What we put into it makes the abuses in Rugg (the Ellsberg case) look decent! Believe me.

The habeas corpus petition Jim Besar did in this case is his first. We came out of 6th circuit with, among other things, this mandate: the case reeks of every kind of legal, professional and ethical impropriety and cries out for a "full scale judicial inquiry." The local district judge elected to limit this to conflicts of interest, voluntariness and effectiveness of counsel. I prepared all on effectiveness of counsel and it came out as a case of totally exculpatory evidence. (You read and refused to believe most of it in Franklin.) I was certain, as the book says, that the FBI agent perjured himself on the ballistics evidence. I got to see it, produced a criminalist, he directly challenged the FBI, and not only did the State not cross examine, they produced no single rebuttal witness, not even the false-swearing Fraxier. This remains entirely uncontested. So does every single item of evidence we used, narrowly as we used it in addressing effectiveness of counsel. Who can say that Percy Foreman is incompetent?

We also established a new precedent that may interest you. This is Jim's imaginative-ness in using Harris V. Nelson as none of you experienced buys every tried. We got discovery. The Supreme Court is now considering the State's request for cert. They lost in 6th circuit. I can't imagine a better case for this court. We have samples to attach, what we got. We can prove much of what was withheld in violation of court orders, too. With samples yet!

It was like a movie. I'm sorry there were no cameras because the new dirty tricks invented and the old ones practiced with skill and all the stalls and delays inflicted on us not all of which we anticipated made even trying to exercise discovery close to impossible. "ere was bright and able but inexperienced Jim on his first case and as so tied I can't begin to tell you and the whole local legal and police and State Establishments were out to frustrate us however they could. But we came out of it with evidence that would be hard to credit in a novel. We even forced them to surrender some of what the former D.A. has squirreled away in his home! Samples from the prosecutor's files of intercepted and copied communications between Ray and even lawyer up to the present defense! Even intercepted and copied registered letters to the judge, in one case three different versions. From the prosecutor, stolen copies of his talking papers for use in his defense, with both lawyers, Hanes and Foreman. I could go on and on. We even got the directives on violating his rights. They had a whole book on what to do with him. They kept him in a light- and air-proof vault federally designed and under constant electronic surveillance despite two guards always in the cell with him. I think that in all your extensive experience and reading you have come across nothing like this. If only we had had an experienced and courageous criminal lawyer for some of the courtroom work most of which Jim handled remarkably well although by then past exhaustion. We were by the hearing so pressed for time and so without time for preparation that one night, beginning at 11 p.m., I typed up the questions that would be asked of five witnesses none of the lawyers had ever interviewed. They had to ask these questions cold! I gave them the questions early the next morning so I could work prior to the beginning of the hearing. When these were being questioned is the only time I could take the criminalist to examine that evidence, so I heard none of it. Our four stacked marvelously. The fifth, who should have been declared hostile, not merely court, the medical examiner, perjured himself but because he was "our" witness we could not cross him. In the end he'll help, too. Particularly if there is someone in his profession with the balls to move for discrediting him. The case is airtight. And it sure would have a decent effect on the course of criminal justice if one of these guys had to pay. The situation was so hot the judge would not declare any of those who prosecuted and by then clearly framed Ray to be hostile. Only a couple did he call as his own. None of these.

What a way to try a precedent and sensational case, huh?

Now remember, I'm taking this time not to needle you. You can't withdraw the effect of your review of "Rise-Up" and you can't withdraw anything you have ever said about the Warren Commission. Could you I'm not asking it. The one thing you can do is open your mind. ...

In order to bring this book out, after several efforts in New York, Jim, who has no income but can sustain debt better than an albatross of 61 who is already in debt, borrowed the money to pay the printer. We then got into the "Ray" work and before we could bring the book out the note had expired! He paid the interest and the bank renewed it. As I sell copies my wife sends a check to the bank to reduce the interest and show good faith. It has been out only three weeks. This also is a hell of a way to publish a book, isn't it? So, if you can see your way clear to pay, our thanks. We are doing this under such hazardous that I could not arrange a mailing to our mailing list until I sold auxiliary use of part to a scandal sheet. Then only after all the decent ones by standard measure declined. I haven't gotten their checks yet so I can't buy the stamps. And students are doing the inserting and labelling during the holiday recess.

Blmer, we are both accumulating years. We have both fought for what we believe in, each in his own way and on his own thing. I think you had your mind on Warren when you should have had your eye on Rankin and Hoover. (And in this book, Ford.) I tell only part of the Russell story and it is all documented. I don't use them because there was no space. I'm not asking you to put a soap box in front of your building and proclaim aga culpa! But I am asking you to open your mind, to read this without the initial prejudice you have held, and then ask yourself if you owe yourself and society something you can yet do. And want to. I'll try to simplify this for you: what had to be investigated thoroughly could in utmost secrecy be called without investigation a "dirty rumor" and the question was not of investigating it but of "wiping it out," aga there have been honest intent and could there have been a real investigation?

My best,