

DEC 12 1974

Dear Jim,

12/12/74

FYI and my notes, an appraisal of the Ray legal situation as of this moment.

Lesar's Memorandum, the designation used instead of closing argument, is in every way a fine piece of work, particularly because of the limitations imposed upon him for none of which he is really responsible. Not, in my view, even for his own earlier errors. Conditions were such that the real marvel is that he made no more than he did. Pressures on him were such that I stopped reminding him of oversights, afraid that any one real or imagined pressure would be too much.

He has organized and expressed it very well. I was not able to evaluate some aspects as I perhaps should have because I had just completed my own half-book length combination of analysis, commentary, recommendations and diatribe that because of the actualities of the situation had to look more to the appeal stage and it was not possible by the time I was finished reading what he wrote (which I could not and did not get until after he filed it) to distinguish in my own mind between what I had in mind and he had on paper, by subject, that is.

He intended to be spare and he succeeded. The judgement rightfully was his. In general I agree with that approach. However, there are a few places where I think the bones may be too bare. As an example, where he belatedly is able to deal with the surveillance and its Constitutional violations, he falls short of the real argument, the one with which Bud was to have opened with force, that these violations are irremedial. He says this as he opens that section yet he ignores it in the conclusion and fails to accompany the Memorandum with a draft of the motion to that effect. This was the major possibility of an out the Establishment could accept to get their monkey off their backs.

He fell short of the full potential with the exculpatory evidence I got in while addressing effectiveness of counsel, one of the central issues, not spelling out enough for the judge or for pressure that we exculpated Ray while addressing other issues. There is thus missing the charge that I think should have been included, that would have taken the initiative in another way, have anticipated the State's lies and put more pressures on all others: Ray was the victim of a conspiracy to frame him, as a matter of law of a conspiracy to violate his civil rights under that statute.

In other instances there could have been easier understanding and more force with a few more words or illustrations.

But overall it is a truly fine piece of work under adverse conditions, more so because this is Jim's first case and while he is older than most first-case lawyers still lacks the legal experience his age would ordinarily have supplied.

To a degree I anticipated some of the deficiencies and made a recommendation he did not follow and perhaps won't or won't have time for in his rebuttal, which at the latest has to be in today's mail. As I got into the State's Memorandum I came to believe that particularly because of the appeals-court mandate we never did exploit (despite my strong efforts) it was necessary to itemize all the deliberate lies to the courts by the State. He had little time to prepare a response. He was still preparing, not having had time to start writing, day before yesterday. He knew this would be so, so I asked him to get a young lawyer friend who was at the hearing to read a copy and make a list of each of the State's lies. This puts another monkey on their backs and is right and proper and leans on all judges and the State's whore lawyers but lawyers just don't do that to each other. I suggested that he note he would be filing an appendix of this after making the charge but I doubt he will. I think not doing it leaves pressures on the judge(s) it could ease if not remove. Jim still does not fully comprehend the political aspects of trying a political case and giving the other side political problems of its own and the judges a mixture of outs and pressures to meet. However, in the long run it is more important for him now to do it his way and learn by mistakes as well as successes. He has become independent, as was necessary and as I facilitated and encouraged beginning months ago when it became apparent that he'd be having to stand on his own feet too soon. Hastily, HW