

Hon. Michael M. Potoker (Jan. 30, 1986)

Respectfully request that everything be transcribed:

I respectfully desire to be (1) identified all material received by His Honor thus far; (2) all substance of oral communications thus far received or attempted with regard with respect to this matter.

Hereafter, I respectfully request that His Honor at the first available opportunity report on the record (1) any communications related to this matter; (2) any attempt to communicate with His Honor. This includes witnesses and prospective witnesses, who should be advised to communicate with counsel who will in turn communicate with His Honor.

I respectfully request that this matter be conducted in an anticeptically clean atmosphere, more like an operating room in the best of hospitals. No ex parte or "off the record" discussions, except on exceptional and legally recognizable circumstances.

I would respectfully request that His Honor supply me with some telephone number that so that I might communicate with him in the event of an emergency, such as an illness so that His Honor would not have to appear. I represent that I will not otherwise make use of such number.

I will make the same request of Mr. Straus. I desire Mr. Straus home number for emergency and only emergency purposes.

* * *

I wish to begin immediately, tomorrow will be fine. Unless reason shown I wish to begin Monday afternoon, since I have a court engagement Monday morning, and a conference at the Circuit Court of Appeals immediately thereafter.

I draw Your Honor's attention that the Appellate Division ordered, upon my application, that this matter be expeditiously processed.

I respectfully request that these hearings be on a continuous basis, day after day, morning and afternoon, except where circumstances do not permit same.

I draw Your Honor's attention that immediately upon receipt of the complaint from the Grievance Committee, more than a year ago, I requested expeditious hearings since the fact of such complaint had been publicized before I even knew of it, Judiciary Law §90[10] to the contrary notwithstanding. Mr. Straus, I will show has been uncooperative, even to the extent of making no complaint about such unauthorized publication.

I desire that His Honor present to the Appellate Division, his findings, his opinion, his report, not merely copy what someone else thought, said, or did. In this respect I draw Your Honor's attention to Gilberg v. Barbier (), and the fact that Judge Melia, took issue with all his colleagues, including the Appellate Division, based upon such case, and stated that they had been continually fooled and misled by my adversary.

The Appellate Division may choose to disregard His Honor's opinion and rely on the opinions of other judges, but I desire, and I believe that is implicit in the order of the Appellate Division, that it is His Honor who is to hold a full hearing and render His opinion and report.

I respectfully submit that the essential question is whether, on charges one, two, and three, I was given (a) a full and fair hearing, and a (2) hearing mandated by law. In short, I contend that such criminal convictions have no preclusive effect on res judicata or collateral estoppel principals. The preclusive rule of the Appellate Division implies that a full and fair hearing was given (see Gilberg v. Barbieri,). I will request that His Honor report that fact in the negative, based on the evidence, and then the Appellate Division may choose to disregard such finding by His Honor.

* * *

I have stated that His Honor, will need help in this case, and thus will at the outset press hard and fair upon Mr. Straus, who I have contended is disqualified.

No matter what I have said, justified or otherwise, I expect Mr. Straus to perform in the best and finest tradition of a prosecutor, as a member of the bar, and as a high official of a disciplinary committee, appointed by the Appellate Division, obviously because they have confidence in his ability and integrity.

If he so performs, I will have no complaints. If he fails to do so, I will clearly enunciate my perceived failings on his part.

His papers and actions, thus far, have in my opinion been seriously wanting. But, in this respect, I am willing to afford Mr. Straus the option of writing on a clean slate.

* * *

So that I might be guided accordingly, am I to expect from Mr. Straus that he will produce any and all exculpatory and mitigating evidence and witnesses (Giles v. Md. 386 US 66; Brady v. Md. 373 US 83; Moore v. Ill. 408 US 786; U.S. v. Agurs)?

On my part Your Honor can expect the professional performance of any attorney practicing 35 years, with some personal notes.

I have no objection if Your Honor calms me down if I become overheated by the events occurring. Indeed, I respectfully request Your Honor to so act.

Generally, on a non-jury case, I follow completely the orchestration and desires of the justice presiding. In this case, I must always bear in mind that it is also the App. Div. that I must convince, and thus must sometimes belabor a point even if His Honor seems satisfied by the evidence already presented, and a must resoundingly vindicate a public impression that has been damaged by pre-trial extensive disclosure.

Handwritten:
Haupt
No

These things

For me this is a murder 1 case, I must win on every charge to avoid punishment. Thus far my score is 32-0. Indeed, on one case the Appellate Division to reveal the charges were meritless, granted my motion for leave to move for sanctions against the GC for bringing a meritless proceeding, which they should have known was meritless. I did not make that further motion because it was only the point established that the bringing of the charges were in bad faith.

I have decided that I probably will take temporary quarters in the vicinity of the courthouse, and thus need to have day by day hearings. It is impossible to drag files back and forth from White Plains to Brooklyn or Queens, if not on a daily basis.

If there is any point of substantive law or evidence that Your Honor would desire briefed, please make such request at the earliest possible time.

Because of some unusual facts I will probably present first to Your Honor and then possibly to the Court some quasi-poor person application. That should come within a day or two and no later than Feb. 4, 1986 (for reasons which will be set forth hereinafter. I am being deprived to access to the courts by tactics which are nothing less than barbaric (Bounds v. Smith).

News from AD on public hearings?

Would prefer hearings in a courthouse building, not in some distant corner of an office-courthouse building, which may prove difficult for observers to find.

Would desire a letter to excuse me from calendar calls, which would give a spurious title, and assert that I am counsel in this proceeding.

Like subpoenas signed in blank, as I understand is the practice of the GC, who so orders Ref or AD? prior case GC subpoenaed all witnesses that I desired.

I wish Your Honor to sign them in blank, with the notation contained thereon that it was signed in blank and need not be responded to until communicated with by Your Honor and that they should communicate not with you but with the Clerk of the Court.

All witness treated the same, by me and the court, even if it be a judge from the court of appeals.

Opinions must be supported by permitting cross-examination.

Subpoena all files, while I do not need certification, the fact that a paper is filed does not make itadmissible to prove truth, only that it was filed, and not that I received a copy of same beforehand.

Add conviction by Hon. Martin Evans.

Know people Sinclair, Danzig, Kupferman, Kassal, Fein, Ellerin. etc.

Mother award, proud of me as I am of her.