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Dear Doug:

Thanks for your letter of March 14. Since you will not be spending your time writing a book at least in the near term, I have an idea for you. How about a law review-type article which would deal with the subject of pre-trial publicity and a fair trial in any of the Watergate cases? I happen to be convinced that ultimately the Supreme Court is going to decide that no one accused in a Watergate-related case can possibly get a fair trial. (My learned former partners do not necessarily agree with me.)

The article would be very helpful to me not only in terms of basic research (obviously much has already been written on this subject) but most importantly in terms of applying the Watergate publicity to the specific types of charges that have been made. I have just read the Shepherd and Estes cases. Shepherd is very much on point, Estes is not but the dictum is good. If the yardstick, as described in the Shepherd case is applied to Watergate, I can't conceive of the Supreme Court ultimately sustaining any convictions. Actually the test should be easier today because of the pervasiveness of the television.

All of the lawyers for all of the Watergate defendants will be arguing this point at various times during the proceedings beginning of course with motions on May 1 for change of venue. The typical trial lawyer, however, is not really the best person to construct this argument. What we are talking about is the impact of press on the public psychology, of what motivates people, what kinds of impressions

people already have -- that is the stuff that politicians think about, not lawyers. For that reason, I think you could do a particularly useful service, if in fact, as you indicated in your letter, you would like to help.

Without having done much research, I can tell you the arguments in this case will be novel to say the least. Therefore, it needs to be written creatively, something you do especially well. We have been accumulating all of the press clips here in this office. Our records are by no means complete but we have everything that came out during the Ervin hearings and everything that involves me. I assume most of it you could find in the periodical indexes at Harvard. You could at least get enough to make illustrative points or we can help you from here.

What intrigues me most and what will undoubtedly be novel in the Watergate case is the extent to which various defendants will be able to argue that this is one Government and that much of the adverse press was deliberately created. In my particular case, the CIA sanctioned leaking of stories that attempted to implicate me in criminal acts. The original prosecutors were leaking Grand Jury transcripts. Mr. Dash and his minions had a well orchestrated program for leaking everything possible that would reflect adversely on witnesses and others. And now Judge Sirica has shipped off selective portions of the Grand Jury transcript to the Rodino Committee. In other words, not only has the Government not taken steps to discourage prejudicial pre-trial publicity, the Government has actually participated in creating it.

Moreover, the word Watergate itself has taken on a meaning all of its own. People undoubtedly have strong subconscious feelings about the connotation of that term.

I would think that a very well written treatise on this subject would be publishable. Whether it is or isn't, whatever you might do in this area would be damned helpful to me. Attached for your possible use is a memo one of our associates gave me on some of the leading pre-trial publicity cases. There are many more as you will see from the court's references when you start reading a few of them.

I am sorry about Cap Weinberger. Would you like me to try to get that reversed at the White House or would you like to take a crack at another commission? Let me know.

By the way, the Harvard seminar I was going to attend on April 26 and 27 has been cancelled, so you can cancel the flyers you were going to have printed up! I hope to get up to Boston soon, however, and I'll call you.

Sincerely,