Mr. Mark Lynch
122 Maryland Ave., NE
Washington, D.C. 20002

6/4/85

Dear Mark,

Hitchcock's Memorandum for Jim (for which thanks) does what I regard as a very good job for him. I regret that he is unable to entirely restrain his prejudices and perhaps without realizing it indulged them, as (10) referring to my position with the government's word, "conduct," which has its own connotations. One of his omissions would have been helpful to Jim's cause and, I think, can properly be corrected. By him, if as I asked you remembered to ask them to include what they didn't, some indication that all my reasons were not itemized by the use of "among other things," if he is not unwilling; and unless there is some compelling reason of which I may well be unaware, by you. It is, I think, one of the most important reasons I gave from the first and figured largely in my refusal to make pro forma compliance. I think it may, before this is all over, be important to have explicitly in the case record at this point, and in his revised affidavit, Jim makes a kind of reference to it. I do not recall that he argued it when he should have, particularly when he filed the affidavit I prepared.

Hitchcock even gets up to the very edge and then ignores it when (on 12, top) he cites Societa Internationale," when it has been established that the failure to comply has been due to inability, and not to willfulness, bad faith or any fault of (the noncomplying party" in Hitchcocks opening words, "Sanctions are also not to be imposed." In his 5. (his 2) Jim recalls that I said that "because of his ill health and the burdensomeness of the FBI's discovery demands, it was physcially impossible for him to comply with the discovery demands." I omit what he also remembers,"that the FBI had no need for the discovery it was requesting," which will be addressed in the new evidence and not thus any kind of rehash that might be objected to here.

Before I spell this out, Hitchcock (p. 3-4) skips from Lesar's 4 to his 6, thus omitting his 5. He thus at this point limits my opposition to one of principle, which at the least is prejudicial and unfair. Hitchcock skirts it on 4, beginning line 14, in saying that I had provided "detailed affidavits about(sic) how his poor health prevented his conducting the extensive review of his records as requested by the government."

I am certain that my affidavit(s) state much more, that it is impossible for me to comply with requests for information and documentation that in each and every instance is for "each and every" document and bit of information, that "each and every" is not required by any ligitimate discovery, if needed, and that the effort alone might well consume the rest of my life.

It is obvious that there is no need for "each and every" to indicate the existence of pertinent records not provided or searched for, that any document or any bit of relevant information is all that is required if there is a legitimate need for the discovery. (I'm sure that I spelled this out and characterized it as harassment and stonewalling.)

It is this excessiveness, and I'm sure I used that word or a synonym, which made it physically impossible for me to comply, as Jim now attests and as Hitchcock should have argued under Societa to exculpate him and thus me also, instead of being prejudicial to me.

It might be good to have this in this new form, not as old stuff, before Smith, (and I think it will for the future in any event) if Smith faces any kind of need to grasp at something to avoid something, a possibility almost always.

Jim reflects in a way a partial recollection of what was in my mind in swearing to anything less in response to the "each and every" demand when (on 5) beginning 15

lines up, he says "I was concerned about the possibility of sanctions being imposed against me as well as my client if I filed an unresponsive document." If I had sworn to something pro forma I'd have been doing that and inviting sanctions.

Please think about this, and I hope you'll see that the rectification can be simple, require little work, and at some point have a major impact. And isn't improper.

In Hitchcock's Memorandum there are indications of the date(s) of my affidavit(s) and if I can before I mail this later this afternoon I'll try to go over it or them.

I'm sorry I cannot be certain because I'm not using my feet well today and because of that I was late getting the mail. I read this at the dentist's office! I've not been able to wear decent shoes for more than a week and for the last part of last week the doctor told me to stay off them. Yesterday the podiatrist removed several rather painful small calluses from the lttile toe of the more damaged foot (the indicated minor surgery is precluded) and today I was able to wear thmoughly disreputable slippers and take my morning therapy. But to go to the dentist I thought I'd try something less disreputable, and my feet would not take it.

Depends on how I feel but if I can't include the affidavits or pages of them I'll do that as soon as possible and save you looking them up. They may be the early citations in the Memorandum.

I hope that Hitchcock, in his and Jim's interest, will be willing to make this correction, attributing it perhaps to an oversight, but if he isn't I do hope you'll file a correction. He fails to give my reasons, even though at one point I think he gave two of them.

Hopefully,

Harold

I recall at least two, the second including medical bills, and I've not found either one. If it is not too much trouble for your secretary to make copies, I'd appreciate them. Thanks.