Mf. Mike Perlin
Fund for Open Information and Accountability
145 W. Fourth St.,
New York, N.Y. 10012

1/14/87

Dear Mike,

I'm sure you and the fund have experience with official misrepresentations in FOIA cases, perhaps crossing over into perjury and fraud. However, I believe that I have moved this to a unique position in an old case in which, perforce, I am pro se - to where it is the issue on appeal and is undenied. It is a strange business coming from FBI/DJ excesses, their lust to "get" me and the fact that they were before the finkiest of the judges I've been before. This is the first FOIA case in which they sought discovery. When Judge John Lewis Smith ignored all I filed in response and issued an order and I declined to comply with that order and after the DJ lawyer threatened to seek a contempt citation, which I dared him to do, he sought and got a money judgement against me. I ignored that, seeking a trial, so they sought and got a duplicating judgement against Jim Lesar, until then my lawyer and still my friend. On remand the judgement against him was revoked, I was pro se, and I sought relief under Rule 60(b), based on new evidence, and it is literally new, - FBI records disclosed to another friend, the Mark Allen in Ann Mari Buitago's letter in the Nation. I'd argued before Smith that I had in fact already provided all that was demanded all over again as discovery, two file drawers of it, that doing that over or making new searches was physically impossible for me (as, sadly, because of serious health problems it is), that in this case discovery was inappropriate and a few other things. Their argument is that they require discovery from me because it would prove compliance (when they still haven't made the required initial searches) or, if it didn't, my unique subject-matter expertise was required for them to know what they had not disclosed. Their major affiant was FBI SA John N. Phillips, supervisor, and as supervisor he disclosed to Allen the FBI records that prove he knew both sides of their claim were false, fraudulent and misrepresentative. All of this and much, much more is in the case record and is undenied. It is no exaggeration to say almost entirely ignored, for it is irrefutable. (And the stuff is also pretty hairy.) I exhausted my remedies before Smith as completely as I could, including with a lengthy, thoroughly documented Motion to Reconsider, and then went up on appeal. After I filed my Brief and out of order they filed a Motion for Summary Affirmance and it has been quite some time since I filed my Opposition. Until this is settled they won't file any brief and when that time comes there isn't much they can honestly do. So, why am I writing you?

Because my medical and physical limitations are such that oral argument would first be a problem for me and second, perhaps blow what I see as a fine opportunity, even before this Reaganized appeals court, to hoist the bastards on their own petard. If, as the odds seem to be, I do not prevail, I'll first make the gesture of an en banc petition and then, again despite the odds, petition cert. If I do nothing else I'll paper those courts and file with embarrassing records that perhaps, at some point, might attract attention and if they do not, will at least serve history.

You can get a partial but independent appraisal of the record and what I've done from an old friend of mine you may know, Sol Rabkin, 75 Henry Street, Brooklyn. Sol and I worked together on the old Senate Civil Liberties Committee. I've sent him just about all I filed pro se, and the government's filings. I can send you copies.

I'm hoping against hope that a clerk who might have a little human quality sees these papers not only because I've charged felonies and they are not even denied but also because of the other indecencies, their abuses of on aging and severely handicapped man whose work they've been unable to fault, who has challeneged them for years to charge him with perjury in an enormous number of enormous affidavits, and who the FBI approved, years ago, [redacted] - and I use the word of two different SAs - had to be "stopped." Approval was up to and including Hoover and they were to do it

by having an agent front for the bureau and file a spurious libel suit against me. Years later, when I learned of this, I wrote and dared him to do it, with a written waiver of the statute of limitations and a written offer to pay his filing costs. (I had no income then, wasn't even getting the Social Security I now live on.) I got no response.

Please do not think that I was just acting out a tough-guy part. I have a long history with such people and I've beaten them with great regularity - every time, in fact, other than in the FOIA cases and before FOIA. Surving them, going back to the late 1930s, taught me how to fight. Dies had a law passed to get me and I took the grand jury away from the USA, DC, and got his agent indicted. Dies had to cop a plea for him to get the sentence suspended. State fired me and nine others in a virtual pogrom of which, if you remember the name, the late John Peurifoy was involved, I organized us, got us a defense, and we got State to withdraw the firings (under the McCarran rider - no charges, no hearing) and apologize. We then quit. Even in ecology law, when military helicopters ruined my poultry farming, and even after the FBI corrupted the man who worked for me, I won and established a pirmcipal of law, property rights to the air space as part of the contitutional right to own and enjoy property. You'll find this one in the law books. Winning it the second time, for subsequent damages, is what got me out of debt. Even though my lawyer had let the statute run they still settled out of court on personal injury form these trespasses. So, I know the odds and I know that the impossible sometimes is possible.

There were two emergency operations after successful arterial surgery in 1980, the second not uncommonly fatal. It was a left femoral bypass. As a result I can walk only about a city block before leg and thigh pain and at my best can then make about another block. I may not stand still and thus can't search files, have trouble with stairs (and most of my records are in the basement), which also can be dangerous to me, must sit with my legs elevated (I type sort of side-saddle, and it shows) and ought get up and walk around about every 20 mimutes, and I'm enfeebled from it all. I'm to spend five hours a day taking care of myself, three hours in walking/resting therapy at a nearby mall, where I can sit and elevate the left leg every 75 feet or so, and two hours lying flat on my back with the legs slightly elevated, to get the heels higher than the heart. I'd had thrombophlebitis in both legs and thighs in 1975 and the consequences of the 1980 surgery included new thromboses. (Had another a year ago after prostate surgery.) Of course the DJ and FBI knew all of this and more, but they still came after me because Smith is in their pocket and, I think, because they saw the possibilities of getting new precedents from him. One is overturned, the duplicating judgement against the lawyer whose advice the client refused to take. (Jim wanted me to make a gesture at compliance and I would not, in part because I'd have had to swear to that.) There may or may not be remaining precedents. Remember, I'm not a lawyer. There may be Rule 60(b) precedents. They've argued that the time had run and to now(which I'll explain because I forgot it above) they've pretended that there is a one-year limit to all of that rule. If you are not familiar, there is for the first three clauses but not the last three. I invoked the fifth (inequitability) and the 6th, "any other reasons." Neither the judge nor the government addressed this. On the first three clauses I've argued, among other things, that eliminating the lawyer from the judgement is a substantial substantive change and that tolls the year, as in precedents it does. They have not denied perjury, nor withdrawn it, and instead they merely said that clause six is redundant, I have to use clause one.

So, the question now before the appeals court is reduced to whether or not the government got this judgement in a FOIA case only by undenied perjury, fraud and misrepresentation. They've lied again to the appeals court, claiming that I seek to reopen the underlying litigation, which I was specific in stating earlier that I could not and did not seek to do. In fact, and this isn't and can't be denied, I tried to dismiss with prejudice against myself years ago because of my health and its limitations and they successfully opposed me. In fact they insisted they wanted to do a

Vaughn index when their own estimate of a full Vaughn was 126,000 man-hours.

The case record holds my medical bills for the dicovery period because, it happend, I then and for about six months suffered a series of other illnesses, including pneumonia and pleurisy twice, so I was additionally disabled then. I think that with any attention they'll look awfully bad. (I'll be 74 in less than three months and remember, the investigatory files exemption was amended over me in 1974, and you know what that opened and how it hurt them all.) So in addition, if there were to be any news interest, this is a man-bites-dog story, too.

In all, despite the climate, I think this may be an ideal case for doing something to these terrible authoritarians. Also official felons.

There is much that is so terrible it is beautiful in the district court's Memorandu, and I did, politely, ridicule him to the appeals court. He claimed to have made an "exhaustive" review of the case record, out of compassion, naturally, and I note that it was so exhaustive he didn't know who was being sued or what was sued for, the errors repeated and not an accident. Wrong field office, and wrong assassination - he said it was for King assassination records and it isn't. He boasted of the "extensive" hearing he'd held when it was only, as his order states with specificity, oral arguments. (And that great humanitarian, that compassionate judge, refused to let me read my statement from my wheelchair and I had to ad lib, without notes or the ability to have any.) In fact he'd refused me both an evidentiary hearing and a trial, in the case record and in my appeals brief. I caught him changing decisions within quotation marks and eliminating the parts that said the opposite of what he said. If the case record and what is before the appeals court means anything today, it is a good and entirely unrefuted record on fact and I think on law.

I've also used some I think fine American history, going back to The Federalist Paprs (No 25, the people have most to fear from those they think they need fear the least, the government), Chief Justice Marshall on one can't be the beneficiary of his own misdeeds, Cardoza, Stone, etc., raw material for fine oratory already collected.

I've even gotten into the case record and into the appeal some of their Gestapo-like dirty tricks, like saying to White House tomes that my wife an I annually celebrated the Russian Revolution which was an annual gathering at our farm by the Jewish Welfare Board after the fall high holidays and before the anniversary of that revolution. I've made the case that they've been out to "get" me and it is undenied.

What I think has to be unique is that the major affiant in my case, after it was first on appeal and then only under the compulsion of another court, disclosed to Allen what proved earlier my allegations, so he had personal knowledge and thus it is at the least perjury, and to this day he has not withdrawn or apologized for it. I think that maybe even a Reaganzied court might find this demeaning and insulting to it.

I can drive only about 20 minutes at a time but I can probably get someone to drive me to the courthouse if I can arrange to be parked close enough to get to the courtroom (I did before Smith in December 1985) and I can make notes and try to argue, assuming their summary affirmance is rejected, and while it will tired me very much, I might even enjoy the challenge, but if I am correct in my estimation of the possibilities it would be ever so much better if an able lawyer did the arguing. To illustrate what I mean about getting knocked out, I see the cardiovasuclar surgeon in Washington every six weeks, driven by a professional driver. Today was that day and just being driven there was, as it has been, exhausting. So, I write to ask if you would consider handling oral argument for me and if not if you know a Washington lawyer who need not fear the kind of retaliation that is possible.

Sincerely,

Harold

Harold Weisberg

cc: A.H Buitrago