Dear Sol,

9/17/86

What you sent Stavis is ink today's mail. Thanks. I write in haste because one of the minor errors might influence his/their judgement, decision. I did not have a volunteer ACLU lawyer when the case was first before the district court. My lawyer then was Jim Lesar. It was on and supposedly for the first appeal only that the ACLU represented me, Mark Lynch, about which and whom more below.

It was when the case was first at district court that the judgement was amended with the same fees being assessed against Lesar and me. On remand - and I believe and hope this is important - that the judgement was again amended, to eliminate Lesar. This can be important because if it is a substantive change in the judgement that tolls the on-year limit of the first three clauses of Rule 69(b) and because I filed, pro se, under Rule 59, within the 10 days. That disgrace to the judiciary Smith held that the time began to run when he issued his judgement order before the first appeal. (You had this inclusion of Lesar after remand when it was before. The DJ lawyer's threat to have me cited for contempt was when I ignored the first judgement order and dared him to try to cite me, which could require the trial they'd never dare, with their record in this (and other) cases.

Those serious factual errors were made not in granting the FBI's motion to dismiss but in the district court's Memorandum of as I recall 3/4/86, the one I'm now appealing. (I caught him changing the language of one of hos citations, too. I've gotten copies of only six and can't get to a law library. I don't know of any local source on federal cases anyway.)

Odd you should refer to the Warren Commission as the Marshall Commission. I've just been reading (appropriate) quotations of that chief justice in another decision.

% It was when the district court rejected the FBI's motion for summary judgement on the searches that they responded by demanding discovery.

You are essentially correct in your interpretation of what they'd accomplish by a Vaughn before this fin judge. They never searched to comply with my requests, but my requests are inclusive, so the net effect would be for them to have an immunity for all they withheld from the files from which they disclosed (limited to those to which they - actually - limited the Warren Commission) as well as for all the many they did not disclose to me or the Commission.

There are other factual errors in the Memorandum, the others just happen to be idenitcal with the errors of DJ counsel.

My position was and is that I'd already complied with the later discovery demands in providing all that I did, those two file drawers of informational memos and xeroxes of FBI records. I have a letter from the appeals office admitting that nobody had ever provided so much info.

The new evidence has a different meaning as I used it, not to argue that they had not complied with my request, which is inherent, but to argue that they committed those undenied felonies to procure the judgement, with these FBI documents being irrefutable proof of it - that no discovery from me would have nebaled them to prove compliance or that discovery from me was necessary for them to locate anything not processed for disclosure. That they did not comply with my request cannot be used under this rule as I understand what I've read, that no matter how wrong the judge was, that's it. Except for new evidence. I don't know about Rule 59, which I read long ago. But if the amending of the judgement is sybstantive, as I believe it is, then I can use 59 to and argue that the judge erred. (In what I'm preparing to use if I remain pro se I'm arguing abuse of discretion and bias and prejudice.)

The Memorandum says that the judge held an exhaustive hearing. That liar! He would not even let me read my prepared oral argument. Made me ad lib from a wheelchair with no notes. And it was onlyoral argument, with no testimony, not even a single question from him, to either side, about the evidence. What I'd prepared took me about a quarter of an hour to read. What I ad libbed took much less, and the DJ lawyer spoke only briefly, saying only that under the rule time had run. The judge picked this up and actually said in his Memorandum that there is an "ironclad" limit of a year, although he later tried to weaken this gross lie a bit. The last three clauses are intended to toll that year, and the standard there is "Reasonable" time.

Above I refer to Lynch and the ACLU, which has become again the ACLU of our younger years. When what the DJ/FBI were up to became apparent to me I kept asking Lesar to speak to the public/interests law groups because of the enormous precedent involved in demanding discovery in an FOIA case when the Act says that the burden of proof in any litigation is on the government. He stalled and stalled and finally went to see Cornish Hitchcock, of the Nader group. Hitchcock, expressing dislike of me (we've never met or spoken) sent him to Lynch because of the obvious conflict of interest with him also in the judgement. (This, too, I think was precedent because the only evidence is that Lesar tried to talk me into it and I refused to make any pro forma compliance when I had to attest to having provided #eac h and every" reason and document. So, Smith ordered a duplicating judgement against the lawyer when his client refused to take his advice! And thus I argue that the amended judgement is substantially different and that tolls the year under the rule.)

Why the Nader people don't like me it funny. When they were dickering with the Congress and the Ford administration over the amending the Act and Jim Lesar and I visited them once, I told them that Gerald Ford would doublecross them, deal or no deal, and forecast what then would follow. I was right and they were wrong. Political infants. I also chided them for elitism in a case they lost, bad precedent, Open America or Better America, something like that. Nader's case. **

To this day I've never met Lynch. He prepared his appeals brief without ever talking to me. We had a few phone conversations after I got his draft. He was too timid by far, but they were all scared of the Reaganized courts. He not long thereafter got the Congress to amend FOIA to in effect immunize the CIA. I'm not suggesting payoff, but not long after that, he joined Covington, Burling.

He told me what I'd suspected, that my present troubles come from Lesar's failure to do exactly what I asked, to tell the court why I would not comply with the discovery order. Lynch said that all were legitimate and recognized reasons. Instead Lesar indicated the opposite, that I would not comply, although I soon forced him to state explicitly why I wouldn't. Having told me this, Lynch then did as bad. I sent him the new evidence when I got it, with explanatory memos, and he said he'd use it on remand. I assumed this he would do but he didn't. If he'd have used it within six ++ months I'd have been within the year on the first three clauses. So, when I began to get things like the appropriate parts of Wright and Miller and the several decisions I have and I saw the possibility of using this as excusable neglect under that rule I wrote him and asked him if that would embarrass him. I said that if he thought it would I'd not do it. Months have passed and he hasn't responded.

** At that time, remarkably, over Ford's veto Congress amended the investigatory files exemtpion to open the FBI, CIA, etc. files and expose their dirty works - citing one of my cases as requiring this. So, the FBI et al have hated me more since then.

++ He should have known as I learned later that appeal did not toll the year and he had to go to the district court while on appeal.

Again thanks, and best wishes,

Harold