

Mr. Mark Lynch  
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12/10/85

Dear Mark,

Instead of phoning to tell you what happened today I'm writing, because tonight it is fresher in mind and because I'll not have a transcript and this can substitute ~~for~~ <sup>for</sup> it for archival purposes.

Because there was little time I prepared, off the top of the head, what I thought I should say, intending to read it, if permitted. I'd phoned Judge Smith's office, as you suggested, about my need to use a wheelchair and to arrange for the friend who drove me down to be able to park her car within my limited walking capability. The secretary told me that I could use the wheelchair at the counsel table and if necessary a microphone would be moved to it and that (after speaking to the judge), I'd be able to park at the 3rd St. entrance. So, before leaving home, in addition to preparing a statement I added a few lines of introduction thanking him for his consideration. At the door, by the way, the guard was expecting us and had the parking space closest to that door roped off for us, which is as nice as could be. After thinking the judge I explained that I wanted not to wander in ad libbing and get off the narrow limits of the motion under consideration and therefore I had it written out to read and that, if permitted, it would take about 20 minutes. He said he thought I'd be more effective if I did not read and I said I was afraid I'd forget, might wander, and had exhibits keyed in. What he said he'd take my statement for the record and would read it I then did ad lib. What I did not say is that I <sup>also</sup> did not want to get worked up and emotional but in retrospect that feeling was not correct. I know I didn't remember most of it but I think I said enough if anything I said was to be effective, and if the judge is genuine I've the best of two worlds, the content of the prepared statement (11 1/2 pages only, plus exhibits) and the benefit of more informality and spontaneity. ~~and I thought I did it.~~

And, from time to time, I did, without so intending, get a little emotional. ~~I~~ I added what I should have had in the statement and didn't. I'll come to that.

I was also apprehensive over great weariness. I'd gotten unsteady Sunday bringing firewood into the house and bending much to restack small stuff and I wasn't fit for anything the rest of Sunday. Monday I began and ended the morning with medical appointments. They sandwiched my daily therapy and in all this took the entire morning. I'd planned to take a nap after lunch Monday because that night I had my annual seminar at Wood College but we'd no sooner finished eating when London Weekend TV phoned from London and kept me on the phone consulting over a special on the JFK assassination they plan. It was only two minutes after I'd finishing packing my bag for today after that call that the professor for whose students I have this seminar came for me. My seminars, I'm pleased to know, last longer than any professor there can hold a class and if I'd not have wanted it to end it would have run more than the three hours it took. (They've run up to six hours, which astounds the people there.) When I left for court I'd been able to read what I'd prepared only once, to time it!

I'd broken the prepared statement down by a few subjects and tried to recall them and use at least one illustration from each. I don't know if I recalled them all. I was so tired I was barely able to walk. But I did take the ticklers, with I think enough recollection to make it apparent that Phillips had lied under oath about them. I compared his attestations with what was disclosed to Mark Allen, more than is in my en banc petition, and I used excerpts <sup>from</sup> of a joint FBI/Archives report to Harold Greene on the FBI's filing, which did include Dallas! I'd just gotten that. This included the need to preserve ticklers and the reasons, ~~for that and the fact,~~ with illustrations from what was disclosed to Allen to back the Greene report up, <sup>also</sup> ~~saying~~ without equivocation, that Phillips <sup>also</sup> lied about what is included in ticklers <sup>says</sup>

and the fact that the tickles<sup>3</sup> held what is not in the case files.

I showed that Phillips lied in attesting that all relevant information was in the case file with two illustrations from a recent disclosure to Allen (by Phillips, I remind you), an Oswald in Cuba matter, which was in a 64 file and not the case file, and an Oswald as an FBI <sup>INFORMER</sup> ~~inform~~ report, which was in two different 94 files. I then explained that the FBI hid the sensitive in the 94s by titling them "Research Matters" when in fact they include the press and the dirty things the FBI accumulates on the press, its lobbying and propaganda and other pertinent and withheld matters. With this and with several other things I said that the FBI did not need discovery from me to know this and that no discovery from me would have enabled it to prove that it had complied, its claims to get discovery. I then, using the Greene report to back up what I'd attested earlier, said that in the field offices the 80s parallel the 94s at FBIHQ. I said 80 is "Laboratory Research Matters" but in fact only "matters" applies to the content of that series because it has nothing to do with either the lab or its research. I said it also included local police contacts and info.

Not only was nothing I said refuted, it wasn't even mentioned once by the less than lady Liar Wohlenhaus. I don't want to forget this.

On critics I did ad lib a bit to explain us and to say that I differ from all the others in that I'm not a conspiracy theorist, am not trying to solve the crime and alone am making the study of how our institutions function. I used the "sex dossier" business to state that to be able to prepare any such dossiers the FBI first required retrievable information and then had to retrieve it, so it needed nothing from me and it did, contrary to Phillips' attestations, obviously have such info and that under FBI practise it was routed to the Office of Origin, Dallas.

I used the recordings of the police assassination period broadcasts as another illustration of nonstop lying, saying that as soon as I'd proven one of Phillips lies (I didn't use that word, ever) to be a lie he improvised another and that, although without discovery I'd told them exactly where they'd find one version it was never even looked for after I provided the information, I think I said that this illustrated that they didn't want and certainly didn't use the information I provided and I know I went into the extent of it, two full file drawers in this litigation and two full file cabinets in all. I said I invite inspection if anyone doesn't believe me and I then said that OIP had told me that nobody had ever provided that much info. They needed any kind of discovery from me after I provided all that info, only to have it entirely ignored? Then I said that a year ago the recordings had been blundered into in other litigation, exactly where I'd indicated they'd be, and that in the year since then I still haven't received them or any of the related records, neither subject to my claim to exemption, and that my correspondence to this day remains ignored.

Right now I don't recall if I used anything else from what I'd prepared on the FBI but I did refer to two offenses by FBI counsel, one in saying only that I was "rehashing" when I restricted myself entirely to new evidence not disclosed until the case was on appeal, and the untrue representation, repeated after I quoted all of Rule 60(b) verbatim, that the time of a year had run. I said that the limitation applied to the first three of six clauses only and that in any event the government was hoist on its own petard because in seeking to increase the judgement it had obtained a new judgement much less than a year ago, so there is now no time limitation. (Wohlenhaus didn't agree anything, by the way, and didn't dispute this except indirectly.) And I concluded by stating simply that under Rule 52 the Court had erred in not making any Finding of Fact. Smith asked no questions and made no comment after we both spoke, save one I'll come to.)

Wohlenhaus repeated her rehash line, saying that the Court had already considered the case, which is kind of bankrupt and also ought be insulting to the judge

because unless this happened 60(b) could not be invoked and thus it is worse than irrelevant. She merely repeated again, without trying to make any argument, that the time had run, and she made the mistake of suggesting that there is no new evidence, only rehash of what he'd ruled on. This is so large a lie I decided to restrict my comment on it. I used the sex dossiers as an illustration. I said the critics are within my request, for which no search was ever made, and that there certainly had not been anything released in this litigation reflecting the preparation of sex dossiers on us. I repeated sex dossiers as a question, perhaps twice. Then I said and dossiers on the chief justice, the House minority leader, a couple of senators and even the former head of the CIA?

Oh, something I forget about which he did ask a question. After I finished the one reading I was able to make of my prepared statement I remembered something I'd intended to include and hadn't. So at the end of what I said to begin with I said I wanted to remind the court of something for context for all of this. I am sure the court recalls that several years ago it had suggested that we confer to try and resolve the case, that from the courthouse my lawyer had phoned me and that, because I'd for years wanted to end this and other litigation - and the FBI, which dislikes me and my work wants to keep me tied up in court wouldn't. I offered to dismiss this case and I emphasized with prejudice to myself, subject only to the preservation of the rights of other to seek what had not been disclosed to me and the FBI and its counsel refused outright. Without even consulting higher authority. When they returned to the courtroom they stated they instead insisted on preparing a Vaughn. Then I said from their own attestations this means that while they could have ended the case once and for all and favorably to them instead they <sup>chose the</sup> ~~chose the~~ enormous expense of a Vaughn on all those records - their own estimate being 123,000 man hours for a full Vaughn and 1,300 for a 1/100. With emphasis and I think an occasional rising voice because it means so much that they were really demanding to waste up to 123,000 man hours instead of simply winning the case by default. I think it impressed him. He asked me how many documents that involved and I replied that because documents vary in length the FBI had attested to total pagers. (Would you as FBI counsel want that, undenied, to go up on appeal?)

Returning to my response to Wohlenhaus, I do not recall my exact words <sup>about</sup> ~~but~~ the evil I see in all of this and her failure to refute or even try to refute anything and the emptiness of what little she said, <sup>this</sup> ~~which~~ as much as said Judge, you're our boy and we depend entirely on you, <sup>got</sup> ~~go~~ to me, so often my comments on the nastiness of the dossier business, on the uninences, I said something about being the first member of my family born in freedom in this country, that my parents had escaped the kind of evil I faced, I remember <sup>ed</sup> the Federalist Papers on the people needing to fear those they think they need fear least, the government, which I'd used in my Motion, and I said simply that this is wrong, it ought not be and it ought not be allowed to stand, that the judgement deserved to be vacated. I'd like to have a transcript but I can't afford it. I asked Jim to let some time pass and see if the government has asked that it be typed up.

Forgetting that another case was to follow, as soon as the judge left I started to get out the copies of the statement for him and her and the exhibits when the clerk said the table was needed. I asked if I could use the front bench and was told I could and then, when I'd just started making <sup>EXHIBIT</sup> ~~the~~ separations, I was told that I was delaying court. So I moved to the <sup>MY VOICE</sup> ~~witness~~ room, where I knew Jim was. His status call was brief and had come and told ~~me~~ that's where he'd be.

Oh, yes, after my response to what Wohlenhaus said, as I was leaving the area of the podium where I'd been told to place my wheelchair, she said something I could not make out. I also could not understand what the judge said when I asked so I said I'd ask her and went over and did. She said she'd announced that if they

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prevail they'll seek costs and fees. (I <sup>did</sup> not hear Smith, who said that's premature.) I told her that if they did prevail they ought not presume that I've exhausted my options because I haven't and they ought not expect me to get too old, too ill or too infirm to resist what I regard as ~~very~~ wrong.

I'd given her a copy of the atetement and the first four exhibits, which I'd said I had separated by subject and without saying a word she started to leave. I told here there was more if she wanted it and without a word she returned. I went through each folder for her <sup>copies</sup> ~~alone~~ <sup>later</sup> because I had to repeat it for the judge and the <sup>and</sup> teotypist, and <sup>gave</sup> her a complete set. She left without a word, without tanks or farewell. She is a ~~very~~ real lady!

I'd taken a <sup>few</sup> ~~very~~ complete documents in a separate small portfolio of good quality, the complete report to Judge Greene ( of which I think I wrote you when I got it), "Equity" copies of Phillips' affestations, etc., and when I went to close my bag it wasn't there! It also was not on the bench where I'd been, so I reported this to both the marshal, a very nice black ~~I think too~~, and to Smith's secretary, who also ~~was~~ very nice. I decided to go back and tell her that I was tiring too much from the waiting and that if it was found I'd appreciate being told and then I returned to the witness room and lo! I saw this case! I'd been sitting on it! It is the same color as the wheelchair seat. a few minutes later, and I think this also was very nice, one of those I took to be <sup>was</sup> marshals came in to ask if I'd found it and I thanked him and told him I had. This ~~stupidity~~ <sup>portfolios</sup> took about an hour as we waited for the next case to end so we could look at the ~~cases~~ <sup>portfolios</sup> of similar size and color on the counsel table. We had a chance to chat then, Jim and I.

He is certain that those paranoids will spread the word that he was <sup>4</sup> lurking nearby for some kind of sinister purpose when the truth is he had a status call on a Vaughn in another case and was waiting for us all to have lunch together. I'd asked him to invite you but you were out of town yesterday. In summary, he said that maybe I've been able to do what we've not been able to do before. He may have said something about ~~any breakthrough~~ breakthrough. I'm sure he said more but I don't now remember it.

I've had much too much experience with some of these judges to base any expectation on kindness and consideration, which in the past has be prelude to swatting. But I am impressed, without placing any interpretation on it, by the thoroughness of Smith's efforts on my behalf before I got there. I was even waved through the Xray examination, besides having the best parking place at the entire courthouse held for me. I thanked them all, his secretary twice, the second time explaining just why I appreciated it.

I'm not impressed by his lack of snide comments, his practise of the past, when he has also not bothered to hide his prejudice. Nor am I impressed by the fact that neither he nor the bitch in the form and clothes of a woman ~~did~~ interrupt or make any cracks. I think they've read enough to know I'm not ~~far~~ afraid and not going to be intimidated.

Jim thinks <sup>Smith's</sup> ~~his~~ comment on prematurity may be significant. I think not necessarily.

But I've been thinking since I got home, and I could barely stay awake some of the time and didn't some of the time, about his wanting me to ad lib. He didn't have to say he'd accept my prepared statement for the record and that he'd read it as if I'd spoken it. 20 minutes isn't that long, so I think that perhaps he did have something in mind and that perhaps this is wanting to try to find out just what kind of person I am and that he could not do this if I read a prepared statement. I'm glad this did not suggest itself to me until hours later because I was what I am, as perhaps I might not have been, and if this is what he wanted, it is to my interest for him to get what he wanted.

Because of my cataracts I will not recognize him if I see him again.

At lunch - and I'm sorry you were not there, not because it was an excellent Chinese meal, Szechuan cooking, as it was - but because we'd have met - Jim said he thinks that given what I was able to do he thinks that maybe Smith will just hold that the judgement now is not equitable and will try to wipe everything else out that way. I can see that. But we agreed that if he does we can both go for fees and costs, and will. And that anticipating this DJ will appeal. I said I think they have to be real crazy to let the record I've made, without any dispute or even denial of criminal misconduct, go up on appeal and he thinks they are that crazy, that power-mad, that determined, and my wife added that anxious to hurt me.

My own view is that it DJ wants to do this FBI may object because that will again focus on 'Phillips' undenied perjury and the perpetrated fraud.

Outside the courtroom I saw the woman I later knew is Wohlenhaus with four men but I paid no attention to them so I don't know if Phillips was there. Nobody was at the table with her. I've never known the FBI not to have its own lawyer present and its case agent at the least in the past.

On balance and with some reflection, I can't say that I did well, at least as well as I'd liked to have done, because there was so much I couldn't and didn't remember, but I'm inclined to believe that I did as well as I had any right to expect to be able to do, perhaps more, because I was so exhausted.

To the best of my knowledge nobody from the press was there. I didn't recognize anyone but on the other hand, when I left the counsel table I was tied up in trying to get the exhibits together for DJ. Lardner had told me he'd be there, so I suppose his desk nixed that. Before George phoned me the man I spoke to on the national desk said they'd have one of their people who covers the courts there. If so, nobody spoke to me. And I'm sure they were there for the next case, something high security from Lorton in a suit against the mayor and others.

If I think of anything else I'd add it when I go over this, but I don't know when that will be. My wife had a dental appointment tomorrow and we both have medical appointments the next day, and I have all this stuff to try to get refiled, in addition to other things.

Another reading on Wohlenhaus: when we got into the witness room I greeted Jim by saying, well, after all these years he's finally had a chance to see me! I then turned to her and asked is she is the one who'd said he'd closely observed all the terrible things I supposedly did all those years and she said she isn't. Jim later said she is. Real nice gal, just exactly where she belongs.

In sort of summary, I guess I have the feeling that I've reason to be optimistic and at the same time tell myself that given the Smith of the past I have no reason to be at all optimistic. But at the same time I do feel that I've made a record he does not want to go up to even the Reaganized appeals court. Or to get any kind of public attention.

I do think that as it stands this is an admirable record for appropriate use in Congress simply because the charges I've made are serious, are all documented, cross into the criminal and are abusive and evil in character, and because there is not a scintilla of any kind of denial. I wish I were able to get there because some of the stuff I used goes back to a hearing Don Edwards held in which he was conned by the FBI and these records, on the Hosty business, leave it and the deliberateness of it beyond question. And if he wants to do something about that, he now certainly can. If he calls Phillips as a witness, and he processed the records I used, he can ask Phillips also if he lied in my case and however Phillips answers Edwards has something that can make a black headline. If he says no it is perjury before Edwards and if he says yes it is perjury before the court. And his resort to semantics failed with me. I nailed him anyway. Oddly, Wohlenhaus also swore to what she filed and she lied and it is most material! Best wishes,

Scott