

Mt. Tom Susman (Ropes & Gray)
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7/24/84

Dear Tom,

What remarkable coincidences! In today's mail with your letter is the superb reply brief Mark Lynch did in the litigation about which I wrote you, and you represented Stephen Schlesinger and on my morning's walking therapy (which requires more resting than walking), I'm reading his truly fine Bitter Fruit.

If you are still in touch with Schlesinger and he ever reprints again, I have a few suggestions. They may interest him in any event. He omitted part of Peurifoy's career at State. He was a clerk in the security office when I knew him, and it was worth your life to be on stairs when he was. I was one of 10 people, almost all Jews, he succeeded in having fired without hearing or any kind of process and I led the fight and we actually beat him. That was before McCarty and I do not recall any such "security" case of the period that was retracted with an apology. When he phoned Hoover to boast of his accomplishment, Hoover was not available and Tamm took the call, according to a record I have. Yes, he sat on one of my cases, at least *one*. ...There is reference to William Gaudet of Latin American Reports. He figured in the JFK assassination investigation and the disclosed FBI records do not include the fact that in several cities his address was the same as that of the Mullen (also CIA) agency...There is no mention of the late Dominican Colonel Samuel Fernando Castillo, Trujillo's relative and military attache in Washington. Nando was more or less a friend when I farmed, he was a customer, and he was absent, in Venezuela, at precisely the time of the book, *of the guatemala over there*.

I'm sorry my letter wasn't clear. I continue to rush, perhaps more when I'm at my desk because I can now spend less time at it. I spend three hours six days a week at a nearby mall, doctor's orders, walking until I must rest and elevate the left leg, and that's a big hunk out of every day other than Sunday.

My major interest was defense of FOIA and of lawyers willing to represent clients who can't pay them. There were such excesses. In fact, all lawyers are in potential jeopardy from what the FBI and DJ connived on, knowing they had a fink judge.

What was afoot became obvious to me long, long ago and I kept asking my lawyer, Jim Lesar, to try to interest the ACLU and the Nader law group but he kept putting it off, even after they were in a position to ask that I be cited *for* contempt.

I'd filed an FOIA request for the records of the Dallas and New Orleans field offices relating to the JFK assassination investigation and persons and organizations that figured in it. Dallas never conducted a search. I mean until this very day. Instead the request was sent to Tom Brasson at HQ, and he arbitrarily decided to disclose only the companion files of those in the general HQ disclosures of seven and a half years ago. New Orleans used some old search slips, dated almost a year before I filed my request, and then withheld most of what they listed, without claim to exemption. I kept documenting failure to search, they kept filing lies I proved were lies, and the record was such that even their fink judge had to hold that they had failed to search with regard to a number of items. Instead of making the belated searches the FBI moved for discovery. They demanded each and every relevant document I have, each and every reason I had for alleging failure to search, and for a number of specified reasons I refused. Disregarding his own finding, Judge John Lewis Smith ordered me to comply, I again refused, even though Lesar came up here and twisted my arm, and they demanded and got costs. I refused to pay them, all the time asking Lesar to tell them that I dare them to ask for a contempt citation and go to trial on it. So, they then asked Smith to issue a judgement against Lesar, who had counselled compliance. At that point he did talk to the Public Citizen

and he did

Jim

Litigation Group, which saw the issues as they relate to others, and sent Jim to the ACLU because they saw what I saw, a conflict of interest over my refusing to heed my lawyer's advice. Cornish Hitchcock filed the brief for Jim and Mark Lynch for me. In response the government achieved the absolute perfection in mendacity in its brief, not eschewing total fabrication, and our two reply briefs were filed. I've read Lynch's, which came today, and it is really great, a fine and lucid job in which he masterfully summarizes a great deal in a few pages. Now we'll have to see what kind of panel we get and how they go. It simply is not possible for the government to deny what we have alleged without further fabrications, departures from the record and just plain lies. And I think that now is much riskier since our reply briefs present the fact that this is what they've done in the most polite and understated lawyerlike language that still is direct and clear.

You say that you "frequently think about those days of a decade ago when the advocates of open government were on the offensive." While there is at least one exception, you are, unfortunately, correct. I've not been on the defensive and the records I've built, with considerable effort, in all this litigation, is never defensive. Long ago I learned that the weak do not survive the strong if they merely defend themselves against attack. In this case I was able to persuade Lynch to change his draft from a defensive approach and he did it remarkably well, with very little time. The court can now ~~totally~~ ignore the subject matter of the FOIA requests and, if for once it decides to, it can address official dishonesties to a court of law. It can remand for search with ~~no~~ options in how. I'd like to think that we can get a decent panel and it will, for once, defend the independence of the judiciary by having things to say about lies to the courts. They can now do this without any attention to the subject matter of the requests. The prejudice persists there.

I'm not disposed to forgive and forget, not for FOIA and not for myself and not for decency in government. As I told Lynch, I'm old enough to have a clear recollection of the post World War I repressive governments and how they came to power, usually by the abdications of decent people, and I see that ~~is~~ developing in a uniquely American way.

In and out of court the FBI has done some pretty terrible things to me, some clearly hurtful. I think that what they have done to me in court, with the background their records of both in and out of court, ought be actionable. Not, perhaps, under FOIA, which has no such provision. I think that, for example, I ought be able to sue over failure to perform assigned official duties and I think there is DC precedent on this but I can't recall the case. They did put on paper that they had to "stop" me and they planned doing this with a civil suit only to have the special agent in whose name they were going to sue me chicken out. "Stop" is their word. They've followed this basic scheme by tying me up in the FOIA litigation, with an assortment of dirty tricks that I think exceed what can be considered as only diligent advocacy. I think I can show damages and I doubt there is much prospect of a better, more detailed or more careful and accurate record that I have already made, under oath and subject to refutation which was never really attempted. I think that the few efforts made are overt perjury and quite likely its subornation. And they have used the processes of the court to malign me and most recently my counsel, Jim Lesar. I am aware that there is a bar committee but I'm not aware that it would not be inclined toward timidity. So, I want to do something that I regard as essential and constructive and I'm not certain how and have no knowledge of what is possible under the existing laws.

Unless there is a terrible panel there should be a remand. I don't think that Smith's health permits him to handle it and if he thinks otherwise I'll move recusal. Whatever happens, if there is a remand I will want to begin it with a demand that Smith has already rejected, a judicial inquiry into the character of

the government's attestations. Almost none are first-person and first-person attestations were available. The few that are first-person are untruthful and I think actionably so.

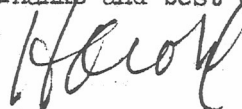
I'm afraid that if there are lawyers who might be willing to make some effort it might take more time than they'd feel able to find. I've filed many ~~and~~ detailed & documented affidavits and they'd have to be read. There is other litigation in which the same things were done, one still on appeal, a 1975 case at that. (I did establish a good FOIA copyright precedent in it, by the way.)

But most of all I want to get back to writing. If you ever take a weekend drive and could come up this way, about an hour 's time, I'd like to tell you what and its possible significance. If you do, we have a 40-foot pool and much to please children.

If you are interested in any of the case records, please phone Jim Lesat, who is in Bud Fensterwald's office, 276-0404, and tell him I asked that he provide whatever copies might interest you. At district level, the case about which I wrote you is C.A.s 78-0322-0420 combined, Nos. 84-5058 and 5201 and 5054 and ~~505~~ 5202. The King case was C.A. 75-1996, and on appeal I think is 84-1229. He'll know.

You speak lightly about mail interception. There is no doubt that my mail to my London agent was intercepted. While I have no knowledge of bugging, there is no doubt that my phone conversations were eavesdropped upon and the FBI merely lies about it. They haven't liked me for a long time and I suspect that it is related to my having defeated them once when a frameup was pulled and in the security matter. They dislike my work because I'm not a conspiracy theoriest and because my work is accurate and exposes them. And I'm sure they do not like what I've done to them in court and because I stand up to them, as perhaps most do not and they do not expect.

Thanks and best wishes,



Harold Weisberg