

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

12/10/84

Dear Mark,

Through three major and dangerous surgeries, the last not uncommonly fatal, and since then, I have not known a sleepless night and with one exception never required a sleeping pill. The one exception was the late-night world series when I was in the hospital and I was ~~not~~ given one because I was so keyed up.

Last night I went to sleep, as usual, within seconds of pillowing my head, happy over the Redskins come-from-behind victory and the pleasant visit of a great-niece and great nephew who ^{are} two little boys love us as we love them.

During my earliest writing, when I sometimes worked around the clock, it was not uncommon for me to awaken after an hour or two, with what I wanted to write clearly in mind, and I sat down at the typewriter and wrote, off the top of the head, work that has survived and received some praise. Two examples, if you have my books, are the sixth chapter of my first book and the epilogue to the second. The latter is both emotional and political, political in the sense of a J'Acuse.

I have lived the kind of life that despite its many tensions brings sleep to me almost instantaneously, a blessing. I have the contentment that comes from work that cannot be faulted on fact, has stood the testing of time and many and powerful enemies and, as I have been told often over two decades, including almost daily still, is worthwhile and a public service. I am aware of ^{the} magnitude of what I have undertaken and the degree to which I have succeeded. And now I would be true to this, am unwilling to ~~abdicate~~ abdicate the responsibility I undertook merely because I am old, unwell and in varying degrees always tired.

It may help you to understand what I'll be saying if you bear in mind that I am the first generation of my family born in this country through more than a quarter of its life I have lived.

Asleep within seconds of retiring last night I awoke at about 2 a.m., prompted by the problems of a prostate condition that increasingly indicates that surgery for it may not be far in the future. But instead of, as usually, falling asleep within seconds I remained awake, abed for more than two hours. After an hour I decided to take an old tranquilizer prescribed for other reasons long ago and I remain as wide awake.

Also in my thinking is what a week ago I was told by a local cardiovascular physician, not surgeon, consultation with whom was approved by ^{my} family doctor and Washington surgeon. After an hour he told me that he could not explain why he found no heart disease, that from my record he expected to, and he was surprised. That, while good, is also a kind of warning.

While from the past you may not be willing to assume this, I have always tried not to compromise others, although I have never been accused of not being outspoken. I will not compromise you, but I write to tell you what was in my mind and denied me sleep for the ^{first} time I can remember. (I hope you are so fortunate!)

In a short while I leave for the first of two weekly blood tests and then about two hours of walking therapy. When I return from it I will get a little upper-body exercise, splitting wood sitting down, may return to it again later in the day, and then will begin to prepare what came to mind and kept me awake most of the night.

It is something few lawyers would dare, few could hope to survive daring, and I think must be done. I plan to ignore all the stereotypes of a petition for an en banc rehearing and to do it in the form of a J'Acus. I am not telling Jim this because the conflict of interest persists, more after this judicial outrage. And although I cannot be certain until I get into it, a major part will assail the assaults on

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the freedom and independence of lawyers and on the constitutional independence of the judiciary, both forecasting the subversion of what for all its many failings remains the best system of freedom, self-government and justice man has yet evolved.

I am also thinking of giving these monsters more opposition, and I am not at all sure that I can accomplish it.

I remind you, in your own interest as well as mine, that ours is a confidential relationship.

And while I have no reason to believe that what I plan will attract much public attention and am limited in what I am able to do to achieve that, it just might and that could serve worthwhile and important purposes.

The explanation given by the government in asking that the costs be assessed against Jim is that to collect them from me they must resort to the Maryland courts. Fine! Without any reason to believe that I may not get an unfriendly reaction from it, I'll force them to take me to the Maryland courts, hopefully locally so I can get there without any major problem. And then I will launch a detailed, documented and factual assault on the totality of the dishonesty with which the issue was before my local courts.

I do not intend to make even an effort to copy the forms in what I'll send to the appeals court, except for copying the first page, and as of now there are only a few things in the Willkie disgrace to himself and the courts, some lies, some fabrications and all at variance with the record before him. And what he has that is not in the case record or any of the briefings, his own improvisation that it is no great burden for a lawyer to have to travel a hundred miles a day for a limitless number of days, without regard to the interest of his other clients, of his family, without thought of the great costs that would accumulate. ~~And assuming that they~~ see next page

Please understand that I am not even by indirection seeking to involve you in this. Nor am I, if you so desire, seeking to exclude you from this. I do believe that this would be quite hazardous for most lawyers and if I am correct in this I think you should not run any such risk. On the other hand, I am certain that I can benefit from good advice. The only local lawyer I know at all well, a fine human being, is ultra conservative in these matters and I would not trouble him.

One of the books I planned that I'll never be able to write has the working title, Tiger to Ride and I'll not take you time with details of it save one, that JOK quite literally had ordered the liquidation of our adventure in Vietnam, called his generals in one at a time, and in the language of one of the brightest, an intellectual I interviewed on tape in 1967 or 1968, told them that political problems are not susceptible of military solutions. I face a political problem from an activist political court which is hellbent on facilitating the establishment of an authoritarianism. Without disregard of the little law with which I am familiar, I propose addressing my - and I think the nation's - political problem politically. By legal considerations I have in mind what is in the decision that is not in the record before the appeals court. Like that atrocity of sentencing Jim to endless days on the beltway and superhighways and pawing through 300,000 pages of unindexed files. And the allegedly certain means of retrieval that I have, the latter quite explicitly and unrefutedly in the case record. (only my memory!)

What if anything I can accomplish within or without the court I am not even trying to guess. The local papers are Bircher owned, unimaginative and not staffed by any Lincoln Steffens. The major media is staffed by reporters whose continued employment is their major concern.

But hell, Mark, my parents did not flee a tyranny exceeded only by Hitler's in modern times for such considerations or any considerations of odds to deter me. And

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aside from my own personal interests I have history to serve.

Maybe, just maybe, in addition to serving my minimum purposes I can get some fat sizzling in the fire of the political activists who have corrupted the courts and the entire system of government and made themselves and the courts an arm of regressive, callous and indifferent government that seeks to make the nation more authoritarian, what I regard as truly subversive.

When I wrote you the other day and made a general reference to the interests of others what I really had in mind ~~is~~ that others, perhaps as or including amicae, might want to file for an en banc rehearing and review, if only to be of some help to those on the court who are decent judges in what was once a great tradition, if only to lay a foundation for a major effort before the Congress.

This may shock or frighten you, as I hope it does not, but I have written you before, for entirely different purposes, reminding you of what I remember that I lived through and will never forget, what may well have meant more to me because I am a first-generation American born free only because my parents dared the very, very difficulty to make it possible and to escape a murderous tyranny. If you are familiar with my work you may be able to see that it is an effort to defend our system of man's freedom, not the whimsical pursuit of any whodunit.

I do this in haste to inform you in confidence, to learn if there is any possibility of my compromising you or ⁱⁿ in any way, and to learn if in a few ways vaguely in my mind now, you may perhaps be of some help. For example, in providing what I'd need to address, what law, regulations and/or decisions mean by ~~XXXXXX~~ burdensomeness as it relates to what discovery requires.

I also would like to know if there are any length limitations and if I ~~want~~ want to exceed them, what I should do. Likewise, the minimum number of copies to send to the clerk. *And how much time there is.*

I am inclined to believe that the whole thing will be rejected out of hand, and if that happens I think there is a possibility that I may be able to get some attention to some of the content.

I have used a phrase with Jim rather often and never been able to make much progress with it in his thinking, no matter how much he can look back on what I have done and seen how it can work. The phrase is intellectual judo. In the most recent decisions and their frightful untruthfulness and dishonesty the appeals court has given me the possibilities of asserting intellectual judo, and I'll see if that and ~~the~~ Archimedes and his level concept may make part of the seemingly impossible possibility. Time to get my blood drawn and gobble breakfast and I'll read and correct this later. By the way, the cardiologist took me off one medicine and put me on another feared by my family doctor, and after a week there is indication of some slight benefit. I'm not getting dizzy as easily, can stay on my feet a little longer and can walk and handle hills a bit better. I've yet to make the experiment with stairs, but I'm hopeful that soon they'll be less of a limitation.

Later: from previous page: How in the world, based on the record of my steadfast refusal to be part of it, could Willkie presume the opposite, that if Jim did come up I'd have helped him in any way? This is insane! I filed a detailed affidavit on this, recounting that Jim did come up, spend most of a day trying to convince me, and I still refused to be part of it.

This reflects the emotion under which I wrote it and what I have in mind may not be entirely clear. It is two separate things, trying to force DJ to collect from me in the Maryland courts where I may be able to get a trial and filing my own petition for an en banc review. I did not mean that I would ignore forms entirely in the latter. I would, for example, begin with a statement of the issues or questions and then take them up one at a time, with documentation.

There also is the question of representation before Smith and to begin with I'd want to ~~be~~ file a motion to recuse.

I had time to give this further thought during my walking therapy this morning and I have it a bit more clearly in mind. I was not trying to be my own devil's advocate and I like even more the idea of my filing a political petition, which ought go to all the judges and I can circulate elsewhere, and because of my unique situation and the ignored record I've made in the litigation would, whatever the ultimate outcome, be no loss to me or anyone or anything else. It could be very powerful before the Congress if anyone in it gets interested.

~~Be~~ If I scare you, let me tell you a story I remember from my very young days, before high school. A French general, perhaps Foch at the Marne, faced what appeared to be certain disaster. What he decided, said and ultimately prevailed by doing is, "My left flank is turned, my center is retreating and my right flank is defeated. Good! I attack!" *He won!*

Best wishes,

Harold