

Mr. Mark Lynch
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6/19/85

Dear Mark,

I'm not writing to continue our discussion of an hour or so ago. I have other purposes that I hope will become clear. I'm still exhausted from this trip and things earlier this week and still a little fuzzy-headed, which is not usual, and I can't lie down for another 45 minutes or so because of a medication I've just taken. I had to take my wife shopping, so I've had a little time to think. I did not think about my/our situation in the litigation and have nothing to add about that.

When we spoke I told you a little-known FDR story. There is something well-known that Judge Sam Rosenman wrote for Jim to say in one of his truly great "fireside chats." I was young then and it was more than 50 years ago but it impressed me so much that I can now tell you exactly where I was, the surrounding circumstances and even describe the radio to which I was listening as I sat on the floor before it.

"We have nothing to fear but fear itself." My long life and difficult experiences (in which I never forgot this) tell me that this is one of the wisest simplifications ever uttered.

Our country is in a very difficult situation and whatever anyone may or may not do, this will prevail for some time and it will get worse. I do not believe that anything that I may be able to do can alter this. I do believe, however, that it may be possible to accomplish some good, for the present or/and the future. I believe that it is possible to deter evil and I believe that whatever the form, exposure of evil and wrongdoing of any kind is in itself both worthwhile and a public good.

I am confronted by evil when I am in a public role and when I am least able to do anything about it. But I do not and I cannot tell myself that I'm not up to it, as I guess I'm not, really, or that I've paid my dues, as I believe I have. I have a long life to which I must be true and I have the obligations with which I was born, the first member of my family to be born into freedom, going back at least to biblical times.

To me, and as you know my experiences with them are extensive, the government people with whom I've dealt ~~that~~ differ from those in the Gestapo and KGB only in degree. Of course the degree is great, but the principles are the same. The difference between the KGB putting me in the booby hatch and the FBI and DJ fabricating a case for any kind of sanctions is very large, but in principle they are identical. To me they are genuinely subversive, and to me the judges who knowing better, for whatever reason, accept their evil are also truly subversive. Despite his record, Skelly Wright and despite her credentials, Pat Wald, too. They accepted the highest responsibilities in our society and I recognize no political expediency as justifying their not meeting the obligations they accepted. This is not simplistic; it is basic.

Who else is left? Only the lawyers. And when lawyers are afraid the existing danger, to individuals, to the nation and to our system, is greatly magnified. In some circumstances, lawyers are justified in being afraid, witness what they tried to do to Jim Lesar. That, however, is not the typical situation and I've believed for some time that for some time virtually all of you lawyers who try to do good (and do do much good) have been not only afraid but dominated by your fear. To the point where you - and please believe me, I'm not chiding you - found it intolerable that I referred to omnipresent, gross and deliberate official lying as lies. My saying it and your saying to a judge are two different things, and I was talking to you not a judge and you were not talking to a judge. (Fact is I believe you could say the same thing ever so much more effectively by eschewing the word.) What is the root of your objection to my using an obviously appropriate word, without any exaggeration?

I think it is a defensive state of mind from fear. One of the reasons I write is to ask you to think of this, for several reasons. One is that it can make you much less effective and diminish the good you can do. Another is that perhaps when you are my age it may trouble you. We all do look back. And we all do learn and do see more every day. It is not so much wisdom, as I think I once said in a different way, that comes with age and experiences. Rather is it more understanding. And it has always been difficult for the older to communicate their understanding from their experiences to those who are younger and have not personally had those experiences.

I was no exception. I both accepted and resisted and I suppose that this is a general truth.

Life is perhaps simpler for me than for most and even now I do not know what it is not to sleep well. I am not suggesting that this was true when I was younger and had the earlier fights to fight of which you have some knowledge. But I have no recollection of sleeplessness then and I'm certain that it has never been true in recent years. Not during any of my hospitalizations, not after any of my surgeries or before them, not since. Pain pills were prescribed ad lib and I never took one. Ditto for sleeping pills. And I did take one: when I stayed up to see a west-coast world series game and was keyed up by it.

I think this is because the Rosenman/FDR wisdom has been part of my life. Do not confuse not being afraid with bravery. For they are not the same and I'm not laying claim to bravery. Bravery, for one thing, requires that there be some form of danger, and there is none for me in my course. To me the only danger lies in any other course and thus it is not relevant.

So, quite aside from me, please do not be afraid as long as you do no wrong. If you are not you will accomplish more, it will result in more good, and you will be happier for it.

As you should have observed, when I have much cause for complaint I've not complained. Whatever you do or do not do, I will be without complaint. And whatever you do or do not do, I do appreciate what you've done and I do thank you for it.

Best wishes,

P.S. I have another story for you. Fiorello LaGuardia, who was one of the shortest men I ever met (and his rotundity and affection for enormous hats magnified his shortness) when he was a Republican Congressman from New York, wanted to make a point and out of genuine concern for his hungry and starving constituents he wanted to make it with as much force as he could. So, when he was arguing their need on the floor he actually had with him and he waved around - a pork chop! Boy did he make his point and did it get attention!

I did not propose anything that extreme and I'm sure that while I have no knowledge of prior instances, ~~I'm sure that~~ wheeling a file cabinet into a courtroom (which I only wanted to offer to do but am not unwilling to display) is not without precedent and would make a legitimate point graphically and dramatically and as a result effectively.

This reminds me: cannot we move for reconsideration based on the factual error that I had not provided the information when I had? Please don't you argue form; let them!

We can't remember the future but we can prepare for it. And we do not know what will and will not be important then.

Additional P.S. What I should have remembered when we spoke, and didn't bears very much on their vulnerability to and fear from the "new evidence." The very same SA who swore to all the relevant falsehood in this case, to the alleged nonexistence of such things as records on the critics and the police broadcast recordings, among others, and ticklers being discarded routinely, etc., appears to be the case agent in the litigation in which the new evidence was disclosed. I asked you whether, if you were the government attorney, this new evidence would scare you some and you said it would. Add Phillips to that legitimate fear. He had under his control the very information he claimed did not exist, under ~~Smith~~ oath at that, and he also swore to what this new evidence leaves without any real doubt, that the discovery demanded, if provided, could not possibly enable them to prove compliance when he had the irrefutable proof on noncompliance in his hot little file cabinet, if not hands. I say only that Phillips appears to be the supervisor because I know only that he filed the FBI's affidavit in the Mark Allen litigation. I've asked Jim to try and remove any doubt by learning whether he is the supervisor, although I can't see how anyone else could have filed the FBI's affidavit and he appears to be assigned to supervise the political assassination cases. Including my King case and Gary Shaw's, in which the appeals court held his attestations to be incompetent because he lacked personal knowledge. You won't have to use the word, they'll see perjury and then you'll see things happen that you can't visualize now. And it appears to me that there is real perjury. In any event, even before Smith and with what has happened in the appeals court they won't dare ignore the possibility, perhaps especially because of what they have done to the judges once this is in the record. If Smith were a Gesell, if you remember what he told Axelrad, he'd be forced to recuse himself, as Gesell did. ...I have his affidavit, executed 1/12/82. He does not describe himself as the supervisor but as one. However, his attestation is as the supervisor and he attests to the correspondence in the case.