

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

5/13/85

Dear Mark,

Some years ago, in an (unsuccessful) effort to get Jim Cesar to see and do what he could not see and did not do I told him that Alger Hiss' failure to behave and react as our society expects amounted to self-condemnation and was fatal. Also some years ago in an (also unsuccessful) effort to get the ACLU interested in FOIA cases when the best case law could be written I told John Shattuck that Hiss could and should have been acquitted and, that while I could not then provide details, an investigation that could have been made and wasn't would be exculpatory. (That was not my first unsuccessful effort to interest the ACLU in FOIA. My first was before the effective date of the Act and was without any response. There thereafter were several more, before your time in Washington. I hope you can see, in retrospect, that the time indeed was then and the cases would have been open-and-shut.)

This came to mind after I went over the DJ's Supplemental Memo this morning. I did not do it earlier because I've not felt up to it but I felt I could not delay it any longer, regardless of how I feel. After radding it I'm also sorry that you have not come up, at any time and unannounced, to see for yourself the actual state of affairs here, which is pertinent to this newest official mendacity.

This memo, which was prepared by different people, one who did not even know Jim's name and consistently spelled it incorrectly and another who didn't read the first part but had it correct in the second part, tells me that I was correct in asking you to explore two areas of Whittaker's lies in deposing her because they are pertinent in the memo.

This memo represents that the only basis for my refusing to provide the demanded discovery was age and health, and that is a gross and deliberate lie. So is the allegation, also central, that the seven affidavits referred to "undeniably show that Mr. Weisberg's ill health and age were not a genuine ~~factor~~ impediment to his complying with the Court's discovery orders." (16)

(Meanwhile, exactly as I'd anticipated, Whittaker represents that she spent much time in reading that/included my affidavits.)

Now there is no evidence in the case record in any way relating to my capabilities other than two of those seven affidavits, the second triggered by indecent reference to the first. When Jim should have done what I'm going to ask you to do. I detailed precisely how it is not physically possible for me to do what was demanded and that what I used in the affidavits was at hand in my stacked-full office, that I am limited in my ability to use stairs and cannot stand before file cabinets. So, the ~~new~~ new memo is based upon an earlier unsworn and refuted conjecture and the refutation is in fact the only evidence in the case record. I believe that if DJ had the slightest doubt at all about what I attested to it had the obligation to undertake proper refutation, and to make this possible I went out of my way not only to give it a basis but to waive privacy by providing a long series of detailed medical and surgical and hospital bills. I could claim no privilege for them and, if DJ had not intended evil it could have shown them to doctors and asked doctors to provide counteraffidavits.

Right now there is a stack of material to be taken to the cellar and filed that is stacked in the kitchen for when I feel like making a trip to the basement and do not have to do something else when I do. I can use only one hand and must use the other on the handrail. In fact, we have and require handrails on both sides of the stairs. In the ~~basement~~ basement, at many places, there are stacks and stacks of records to be refiled, something I have not been able to do. They go back more than a

year. I've not even been able to connect the dehumidifier that those records require. It was taken up by others for me so it could be repaired and was returned to the basement by others when it was returned, but in the new position recommended for it on repair it requires an extension cord I cannot string because that requires that I go up two steps on a ladder and that is medically prohibited.

Again I'm reminded because I am expecting the daughter of a friend I'll ask to do this for me, many if not most of ~~these~~ those seven affidavits were not typed by my (73 year old) wife who then was not able to type them and this young woman did that typing, quite visibly different.

<sup>do</sup> I have never lied about what I can and cannot do. I exult in some of what I can pretty often, even if I do it in what almost anyone with such experience will consider ridiculous: I split firewood sitting down. It takes forever, but it is good for me, requires no use of the legs or stairs, and I often can do it for an hour at a time. But just the trip to see the surgeon in DC every six weeks exhausts me for a couple of days, and I'm not driving, can and do keep the worse leg elevated, and get out and walk several times on the trip to restore circulation. It may not make sense but it is the actuality. Truth is I've been under medical instructions to sit even when I urinate, not normal for a man.

And the fact is I am outraged and hope that you can be over this repetition of a gross and deliberate misrepresentation that also is defamatory and insulting given the unrefuted clarity of the case record. It is designed to defraud me, too.

There is another kind of deliberate dishonesty at this point where, on 15, it states that "Based on the transcript, it is difficult to tell precisely what Mr. Deser told Mr. Weisberg." This is followed with additional dishonesties based upon it. What they did not find in the transcript they do find in the affidavits about which they made so big a deal, and it is specific, detailed and unrefuted. Jim did come up and try to talk me into some kind of pro forma deal that, among other objections, I did not consider would have been honest and could have been risky, and I steadfastly refused. And rather than merely "obstructing," the false representation to justify sanctions against him, at my request Jim asked Smith to enable me to go up on appeal promptly. Smith refused. That is not obstructing, that is legal and proper, and it is not a basis for sanctions against him or, from now on, other lawyers.

They note that (on page 3) we have not sought an evidentiary hearing on attorney fees. You know that I've wanted a trial. I think that not only in my interest but in that of lawyers in general and of the Act we ought seek some kind of proceeding to address the permeating infidelity to fact that is not missing in a single government filing or verbal allegation. I think this miserable abuse of the courts provides an opportunity. And I think it really is past time for you to express some proper indignation about all of this. One of the reasons I'm sorry you never did observe the actualities here. While most of what I've sent you was intended for information and required no response, it is in this area that I did ask questions, about what I may be able to do.

As of now and to be increased they are demanding about \$10,000, now they say to be divided between Jim and me. I have a gross income of \$356 a month, with the first about \$100 going for medical insurance and other medical costs. They are well aware of my financial situation and at my age and in my health they demand anything at all and on the basis of untruthful representations only? With the untruthfulness spelled out under oath and not in any way refuted? Forget that I am and have been in a public role in all of this at least from the time FOIA was amended. Is this not actual fraud? Is it not indecent and outrageous enough for you to address it with deliberateness and vigor, if not also with indignation that would not be inappropriate and I hope not out of character.

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Is this not also necessary in the interest of lawyers and any kind of system of justice?

Is this situation not, save for a difference in degree, similar to what was contrived by the Gestapo and KGB?

Others, if few and infrequently, are now commenting upon what I noted long ago, that we have creeping authoritarianism, and this is part of that. I do hope you will give this some thought and come to see it as I do, and see also that it is necessary for all of us to do what we can to oppose it in any of its manifestations.

Now that they have lied all over again after being corrected with some point, I think you have both the peg to hang it on and, in fact, the need to address their misrepresentations and distortions. As I think I said in suggesting the line of questioning of Whittaker, I believe it will, in time, be necessary to have a succinct addressing of their untruthfulness at one point in the case record. This memo enables you to restate what is stated under oath and not refuted if, indeed, ever addressed in any way, about both departures from fact and what reasons I gave for not providing the discovery demanded, including not that I had provided most of it, which your brief states, but that I had provided all of which I have any knowledge, which is what my affidavit(s) state(s). You know, my copies of what I've provided them in this and the King case fill two file cabinets. Can you imagine a greater effort by any private citizen? And I did that after severe thrombosis and other circulatory impairments before the three surgeries, and I did it when I had no income or when it was even less than the slight amount I now have. My estimate of two file drawers pertinent in this case is certainly conservative because of their "previously processed" dodge.

Please understand that I'm not suggesting /ranting and raving but the opposite, a cold but ~~sharp~~ sharp and vigorous factual summary statement.

Coming along with this we now have "new evidence" some of which only I used pro se. This new material, which they knew they had all along, makes it clear that their attestations are perjurious, whether or not anyone would give perjury a serious thought. The tapes of the Dallas police broadcasts, which Phillips swore they never had, they admitted having in writing months ago and still have not disclosed anything. Phillips also swore that all ticklers are routinely destroyed in a short time and they have produced JFK assassination ticklers more than 20 years old to Mark Allen. Phillips also swore they have nothing on critics but they did, knew they did when he swore as he ~~did~~ did, and now we know and have their record that they prepared "sex dossiers" on the "critics."

In combination, I am inclined to believe that there just might be some press attention, particularly after Bitberg which, while not comparable with Watergate, has shocked many, many people.

And is not this "new evidence" only partly cited above enough for us to ask for an evidentiary hearing, overall, not just on computation of fees? Is it not also important to have such an effort in the case record even if it is denied by Smith? Reasons including subsequent use and eliminating any cracks that we didn't by them later.

These are dirty, tough people, without real principle, but I think it is not impossible that they'll back off if they confront what they can be made to confront. Or make more such misrepresentations which may later be of some usefulness.

I am glad for you that you have not had some of my experiences with official evil and evil-doers, but I am also sorry that because you have not had occasion to learn what I learned from those difficult and painful experiences. In all instances I fought back with vigor and in all instances in the end I prevailed. Some of those periods were more difficult than the present situation. In each instance I prevailed by what I refer to often as intellectual judo. They are by far the more powerful and in the end it was the turning around of their seeming strengths against them that did it.

Early in the New Deal period in which you've had some interest FDR got together some of the nation's most articulate men. They worked on and wrote his speeches. One was New York Judge Sam Rosenman, the early chief speech writer. He had FDR rally the nation with the magnificently simple and completely truthful line, "We have nothing to fear but fear itself."

While it may be outside your personal experience and training, please try to think as I do and see what it may tell you or suggest. I think we can turn this around and I would like very much to be able to try.

Sincerely,