

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

8/6/85

Dear Mark,

On days like today, when for no apparent reason I am exhausted, I usually do not feel like reading and I sometimes sit and think. Today my thoughts turned to the situation in which I am, particularly but not entirely with regard to Smith and what I presume will be his finding of "fact." I know so little of what this entails, or can entail, that I can't think it through as I'd like to be able to, and this makes me regret even more than I cannot get to Washington so we can discuss it.

I presume he'll be as mean and miserable as he can and that he'll undertake to curtail me as much as he can. I also presume that the government will oppose all discovery, although I can see that they may not if they consider that not opposing it but seeking to (mis)use it can serve official purposes. If they do oppose, I presume that will delay anything before Smith for as long as appeal takes. But at some point this will be before him, soon or in the future. I'd like to know what at that point my rights are.

I know that judges can sentence for contempt without trial, but as yet I'm not charged with contempt. Can I demand a trial?

Can I, if I cannot demand a trial, demand a proceeding at which the government is required to produce evidence and have its witnesses subject to cross examination? Can I demand to produce my own witnesses, including myself, and then produce existing evidence in documentary form?

I am fully aware of the antagonism or worse at the appeals court, and I'll return to this, but if Smith refuses any of the above, is it possible to appeal? I ask this question separate from whether or not you consider appealing wise or likely as best you can now estimate it to antagonize the appeals court even more.

My work, unlike that of all others known as "critics," is a study of how our basic institutions worked or failed to work in time of great crisis and thereafter. In this sense the evil visited upon me is a major contribution to my study and the archive I'm leaving. The courts are as much an institution as the executive agencies.

This litigation continued after my more serious illnesses because I serve other than personal interests, and I believe these other interests are much involved in my present situation. They now, as I see it, coincide with my personal interests. Of my personal interests, personal integrity and the integrity of my work, impose requirements upon me that to the degree possible I want to meet. That this means confrontation with the executive and courts and all their enmity neither deters nor frightens me. They, not I, brought the present situation about and they, not I, created the situation in which I must defend myself - and in doing this expose them.

Many, many difficult situations not unlike this one have taught me that the only successful defense comes from a vigorous, principled and correct (factually) offense. There is no other way the weak ever survive the strong.

If I demand a trial, whether or not I get it, I've taken the offense and I put them on the defensive. If they succeed in denying me a trial I've served history along with trying to serve my personal interests. For me demanding and being refused a trial is not any kind of defeat and is important. Important not only as a means of not going to jail, which is an alternative I may opt.

If it were possible I'd want to take other initiatives, and I think they are not at all impossible and at this point in our national life could serve many proper if not really essential interests. I think that what the DJ and FBI have done ought to be actionable. I really think it is actionable, but I am not a lawyer. In simplest form, I think that knowing and deliberate lying to inflict any kind of financial or other penalty upon me, what I regard as ~~fraud~~ also defrauding me, is a criminal offense. I think it is abuse of process, and that is actionable. And I think that this would attract the attention that could offset some of the certain judicial antagonism and resentment.

If it has never been done is not a good reason for not doing it, if it can become possible.

And my, what good just an airing of this rotten stench would be!

The difference in degree is great, but can you see that I consider that I am in the position of writers in Hitler's and Stalin's days, of those in places like Chile and South Africa today, and that my obligations to my society are identical ~~with~~ ^{with} their obligations in their societies? That I do not want ~~my~~ ^{mine} to degenerate into what their's became, and that to the degree possible I must do what I can to prevent this?

Little by little it is happening, creeping up on us, and little by little it is succeeding in making fundamental changes that create an authoritarianism. Unless those who can confront it do confront it, it will neither stop nor be slowed down.

So, when you can, I'd like very much to know the ^{answers} to the questions with which I begin.

Sincerely,

Harold

P.D. 8/9 - you forgot to mail what you got from the appeals court

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