

Dear Jim,

8/14/86

As I told you, when I've been able to I've been trying to clean up the great accumulation on my desk so that I may have space to work on the appeal and so that there will be less probability of anything getting lost in a stack. I've been responding to long-overdue letters, filing, etc. I've come to a letter I wrote Mark Lynch that I think it not inappropriate to let you have. I think you are aware that we had some earlier correspondence of which I didn't send you copies as well, I'm sure, of which I did send you copies.

When I wrote this letter I did not know that he was at Covington, Burling, which you told me later. I got no response. Then a long time passed and one day, I think in May, I got a call from Susan Schaffer (approx). She told me that the letter had been there, not forwarded to him and not responded to by anyone there. She appears to have come across it when cleaning up her own stuff because she also was getting ready to leave ACLU. She was apologetic, pleasant, offered to do what she could do, and she told me that making copies of what Smith cited was more than they could then do. So, from that, it is apparent that she did read my letter. However, she said nothing about the other things in it and I then had no recollection of what they were. I do not think that some of the other things I asked represented much time and effort.

As I think I wrote you recently, I wrote Mary at Covington quite some time ago and I've had no response. I told him, as I think I told you I did, about the new evidence when I got it and wanted it used on appeal. He said what surprised me, that he'd use it on remand. Only he had not agree to represent me other than on appeal. So, what I wrote him about at Covington is that I'd like to say, only if it would not be embarrassing to him, that he'd said he would use it on remand and thus I can invoke the excusable neglect provision of Rule 60(b). I would still like to and I still do not want to embarrass him. However, with my letter not returned, and I always wrote him using a window envelope and my printed return address so I believe he got it, I am inclined to feel that if this is an argument I should make and if it turns out that it does embarrass him, it is his own fault. Particularly because if there was a one-year limit only, and I know that applies to the first three clauses, he also should have known that and that it had to be presented to the district court. What do you think?

I've still never met him in person. I think he was in ~~the~~ an appeals courtroom years ago when I was there and you pointed him out but we've never spoken except by phone. When we seemed to get along OK. He also seemed not to resent what I wrote him when he was off on his kick and when he told me that my recollections of days long ago, of New Deal lawyers and the ACLU of that time, he said he would like to come up and talk to me more about those matters. I invited him but he never did.

I do not draw any other conclusions.

As I glanced at this particular stack, I now notice that the next thing in it is a carbon of my 5/30 letter to Shaffer in response to her letter to me of 5/28, which has attached a copy of ~~her letter to the court clerk~~ her letter to the court clerk of the day before and I now see that this is what led her to respond to my 3/11 letter more than two months later. They'd sent her to papers to file for appeal and she returned them, saying they no longer represented me. Copies are indicated to me and Mark, but she didn't say Mark was no longer with the ACLU.

The then ACLU letterhead has only two staff counsel on it, those two, so they now have none or new people.

Also in that stack is the enclosed carbon of a letter I wrote Bud when you were away and hadn't told me how to get in touch with what Bernie later identified as Cjristic Institute for me. I wrote them again, having heard nothing....I've now only two desk stacks left! But others the only place I have to spread any papers out.

Best,

Harold

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

3/11/86

Dear Mark,

This is the first time I've used my typewriter in two months. Two months ago today I was unable to urinate, was hospitalized overnight and fitted with a catheter and a bag and was operated on after the anticoagulant was out of my system. Another venous thrombosis developed and for about a month I was permitted to walk only to the bathroom, spending the rest of the time lying down or sitting with my legs elevated. Then I was permitted to walk in the house. I've been out only to be driven to the doctors. I am under strict orders not to stand and when I go to the refrigerator, the foot swells by the time I've gotten a drink. Of which I must have more daily as a flush. At the moment there may be a new complication. I won't know until Friday whether or not a urinary track infection has developed. I've just provided the sample for culturing. The reason I've not typed when it was physically possible because my office has been arranged for a decade so I can type with the legs up is because it is small and cramped, with large windows, any in typing my left, the more severely damaged leg, is right against the window and the radiated cold, despite the adequate heat of the house, would have been too much for the already severely impaired circulation in that foot, leg and thigh. I've not had any real pain, haven't needed any pain or sleeping medication, and the usual irritations, never really great, have almost disappeared. However, I am anxious and uneasy and further weakened and am tired most of the time. Otherwise I'm OK. But I'll be anxious until I've been able to get a determination of the severity of the new impairments of the return circulation. Which was limited too much earlier!

I do not regard the ACLU's agreement to represent me on appeal in C.A.s 78-0322/0420 as binding on it now, although I'd welcome such help very much, not only because I'll not now be able to do as well as however well I've handled the past but because I think the case is now very much simplified and very much more important and for the latter reason I'd like it to be handled as a nonlawyer cannot.

If I am to handle this alone my immediate need is to file notice of appeal, of which I know nothing, and for that I'd appreciate a copy of one to follow and knowing how much of a check I have to provide and anything else required for the notice. Once I get the notice filed if I prepare the appeal I'd appreciate a little help on that, such things as requirements, limitations and appendix. For the appendix as of this moment, on the assumption that the case record is before the appeals court, I have in mind only what I filed before Smith pro se. I believe that the case is now entirely limited to whether or not the judgement was procured by fraud, perjury and misrepresentation.

I read Smith's decision once and prefer not to go over it with great care until I get down to the nitty'ritty. However, aside from having some questions about his citations, which I'd like very much to be able to read and perhaps quote (because I put nothing past him), I recall some things, particularly his avoidance of what is most basic in my argument and evidence, that fraud and the rest were perpetrated on me. He says <sup>such</sup> ~~that~~ undenied criminal offenses make no difference to a court! And I have a few other things marked on the decision and in mind, such as that not a shred of evidence was presented by the government, there was no attempt to even deny my serious allegations and thus there was no other evidence before the court, only mine, undisputed, his factual error, including that the suit ~~is~~ for New Haven FBI records and that I was given 200,000 pages and others more serious, as those relating to the alleged searches, which were never made. Oh, yes, the two requests and some of the search slips for the appendix, if necessary. (This is off the top of the head.)

And the records reporting the finding of the recording of the Dallas police broadcasts, which Phillips swore the FBI never had, exactly where I'd indicated and the fact that since December 1984, when I was notified, they've not been provided and my letters and appeals remain ignored.

Because I am not a lawyer my opinion ~~may~~ not be valid but I do think that with the issues now so narrow and severely limited, to official criminality, there is less hazard for a lawyer, perhaps none for a properly plumed White Knight.

If you cannot represent me or would prefer not to, could you, as a stated courtesy because of my present added infirmities, file the notice of appeal only? I understand that it is merely a notice of intent, with no argument. If you can, please let me know what check you've provided and I'll mail mine to you.

As I remember it, Smith fudged over the last three clauses of Rule 60(b) with the opinion he regarded them as "inappropriate." That word may have a special meaning to lawyers but in its everyday meaning it is meaningless because, without question, as is undisputed in what I filed and in oral argument, they are specifically intended to toll the year limitation of the first three clauses. (What I filed is in my office and presents no real searching problem so I can get it easily.) Am I, in your opinion, correct in this, that they have this purpose and thus are quite appropriate and, in fact, are controlling?

Of course I'll welcome any suggestions, too.

You should have received a copy of his decision by now. If you haven't, he dated it 3/4/86.

Thanks for anything you can do. I hope you can respond promptly with regard to the notice so that I can file it in time if you do not.

Best wishes,



Arnold Weisberg

case file

Ms. Susan Shaffer  
122 Maryland Ave., NE  
Washington, D.C. 20002

5/30/86

Dear Ms. Shaffer,

You are quite right, that is very much xeroxing, and I can understand that it is too much. I read Judge Smith's decision when I got it and not since, postponing further reading until I am working on the appeal. In large part this is because I am now more limited in what I can do, stay weary and in addition to the three hours off the top of the day I spend in therapy am supposed to spend two hours lying down with my legs elevated. Not much time left for any kind of work.

I am not able to get to Washington and if I were it is likely that I'd not be able to do any work in a law library because I can't stand still and when I sit I must keep my legs elevated, which is, among other things, rather conspicuous.

I know only one local lawyer. He devotes himself to estate work and I doubt if he has any real law library.

Thanks for your offer, however, and the best of luck in whatever you do after your vacation. You and Mark (to whom my best if and when you speak to him) have paid your dues.

Sincerely,

Harold Weisberg

AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
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MARK H. LYNCH  
SUSAN W. SHAFFER  
*Staff Counsel*

May 28, 1986

Harold Weisberg  
7627 Old Receiver Road  
Frederick, Maryland 21701

Dear Mr. Weisberg:

I am sorry that you were not informed that Mark Lynch left our office some time ago. I just recently read your letter to him of March 11, 1986. I am somewhat unclear as to what assistance you need from the ACLU, but I would be happy to help you in obtaining material that you cannot otherwise locate. Our resources do not permit us, however, to xerox the approximately twenty-five cases cited by the court in its opinion. They are available at any law library, and I would hope that you could recruit someone to obtain them for you if you cannot get there yourself. In addition to the expense, we quite frankly do not have the personnel to undertake such a task.

If, however, there is something of a more limited nature we can do for you, please let us know. I am leaving for vacation on June 12, 1986, and will be leaving my position here at the ACLU on July 18, 1986. So do let me know soon if there is something you need from your files.

Sincerely,



Susan W. Shaffer

SS/skh

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MARK H. LYNCH  
SUSAN W. SHAFFER  
Staff Counsel

May 27, 1986

George A. Fisher  
Clerk, U.S. Court of Appeals for the  
District of Columbia Circuit  
United States Courthouse  
3d & Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: Weisberg v. FBI, No. 86-5290.

Dear Mr. Fisher:

Our office recently received from you a copy of the docketing statement in the above-noted case, with instructions that it be returned no later than June 2, 1986. Mr. Weisberg filed his notice of appeal pro se in this matter, and we are not representing him on appeal. Although your office informed me that you sent the original docketing statement to Mr. Weisberg with instructions to return it, I write to ensure that there is no misunderstanding in this matter. We are not returning the copy of the statement which you addressed to us because we are not presently representing Mr. Weisberg.

Thank you for your attention to this.

Sincerely,

  
Susan W. Shaffer

SS/skh  
cc: Mark H. Lynch  
Harold Weisberg