

ACLU  
122 Maryland Ave., NE  
Washington, D.C. 20002

5/19/86

Dear ACLU,

Because sitting and typing is one of the few things I can do without varying degrees of difficulty (as long as I limit myself to about 20 minutes at a time) and not because I expect you to do what you have not done, I write again. I've not had even acknowledgement of my letter of early March.

Because of the present <sup>case</sup> involved, Mark Lynch represented me on appeal in two combined FOIA cases, 78-0322/0420. We never met, but I have a notion that he'd believed I have two heads and I suspect that he finally decided there is only one and that it is screwed on pointing the way the ACLU says it looks. After he lost on appeal I filed an en banc petition and a number of motions on remand. I sent the ACLU copies of all I filed and all I received. There are, I believe, several potentially evil precedents involved. When, as usually and without regard to the evidence before him, Judge John Lewis Smith found for the FBI, I sent you a copy of his order and made a simple request, that you please provide me with copies of the few things he cited. I filed notice of appeal pro se, having no choice, on April 25 and the cases were docketed by the appeals court May 13, as 86-5289 and 90.

As your file reflects, I suffer serious and severely limiting circulatory illnesses. I'm 73 and following apparently successful prostate surgery this past January I suffered additional thrombophlebitis. I am not supposed to stand still for even an instant, am limited in my use of stairs, cannot search files and while I can safely drive my car I can do this for only about 15 minutes. I've not driven to Washington since 1977 and I can't use the very poor public transportation, Greyhound. Since my first arterial surgery in 1980, I've been there just once for other than medical reasons and on all occasions was driven by another. So, I can't get there and if I could I can't do the simple research I've asked of the ACLU. Nor can I do it in Frederick, near which I live, and I don't know any local lawyer who is likely to have these things.

As I've known all along, it would have been cheaper and much easier if I'd just paid the judgement that, without even pro forma contradiction, was procured by undenied fraud, perjury and misrepresentation. That, however, would have let stand evil precedents that would hound, among others, the ACLU. Aside from making me, as I see it, party to evil. I would, had I capitulated, <sup>have</sup> agreed to a new official abrogation of first-amendment rights, and to a major and wrongful change in "discovery." Including, if not especially in, FOIA cases. And I do fear that because I am pro se the government's prospects are brighter.

I've lived through many different ACLUs, going back to the 1930s, when I was an investigator and editor of the old Senate Civil Liberties Committee. Every time government gets more authoritarian the ACLU gets more timid although, in my opinion, that is when it ought be more vigorous in defending rights and the Constitution. It has, in the past, done much of which it later was not proud. We are, today, in such an authoritarian situation, only now the courts, too, have <sup>been</sup> ~~been~~ <sup>corrupted</sup> and really corrupted with ideologues. So, I could understand why you feared to argue what was then proven beyond question, fraud, perjury and misrepresentation, and although I then disagreed, I was without complaint. (As best a non-lawyer can understand these things I believe that I have narrowed the case to just that, aside from Smith's pimping.) You think the bell doesn't toll for you? Maybe it doesn't. Time will tell. But it sure as hell tolls for others more than for me. And I'm sorry for you if fear is why you didn't respond and why you haven't done the very little I asked of you.

Sincerely,

HAROLD WEISBERG  
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*Harold Weisberg*