copy with attachments in 78-0324/0826 case file

Dear Les, 8/6/84

You said you'd be away this week, so I had time to make copies of relevant records and they will await your return.

The rest of your letter is: "I agree that if we can do a piece showing that Justice charged and the judge agreed that you had been obstreperous on a day you weren't there, then we ought damn well to do it."

It is not 100% this way and I think it is even worse. This is now before the federal appeals court, which is limited to what is in the case record and takes no testimony. And it wasn't on a day I wasn't there - if was for a period of five years when I wasn't there! And the FBI and DOJ lawyers knew not only that I wasn't there but that it was impossible for me to have been there for (or for what they alleged to have happened.)

Moreover, they deliberately fabricated this in an effort to phony up a case against my lawyer, Jim Lesar, and that they fully intend(ed?) to seek severe sanctions is clear enough in their brief, of which I include xeroxes of the appropriate pages.

Don't be dismayed by the apparent volume. I'm going to mark up the relatively little for your attention.

And because this is part of an official effort against FOIA, which they once tried to rewrite through me -and it kicked back on them, as I'll explain - I'm including another very basic, knowing and deliberate lie that, I believe, were it under oath were be felonious.

Background for the above: in my C.A. 2301-70 they actually claimed and got the courts to believe that the FBI was exempt from FOIA. It wasn't, of course. As a result, and this is specific in the debates, Congress amended FOIA in 1974 to assure that such files as those of the FBI and CIA were included. Instead of hating themselves for the amending of the Act, they hate me. (I opened their folks.)

Now they are trying to pull two new dirty tricks that can negate the Act, plus threatening every requester and every lawyer. They are reversing the burden of proof, which the Act places clearly on the government, by trying to get a decision that enables them to exercise "discovery" on requesters. (In this case even though I had voluntarily and for other purposes already provided all the info I had that they pretended to seek through "discovery" and they had actually admitted this to the district court.) And they are trying to get a decision which holds that they can comply with the Act without making a search to comply with the request. What may in the end be even more sinister and a broader assault on the system of justice is that they seek sanctions against a lawyer who has done no more than pursue his client's right to appeal, and on this as with the other things the district court has already found for them.

John Lewis Smith is the district court judge. I believe that Richard Bast has a page of a transcript of another proceeding before him in which he stated that he generally took his leads from the FBI. If not this and if my memory isn't off, Bast has something else like it.

All the enclosures are xeroxes of portions of the case record or other official records, all identified for you. With the single exception of a page from a decision in another case they are all in the case record in this litigation.

What I'll do is give you memos by subject, in each case citing the official record, and I think I'll identify them with letters to make it easier for you. (with a hit.)

This entire thing is contrived, even the claimed need and basis for their "discovery" trick. So I'm including their diametrically opposite versions to the two courts, what they alleged to Smith to get him to go along with them and the exact opposite that they represent to the appeals court because as a matter of law if they did not they were automatically lost.

On this "discovery" ploy, please understand that this amounts to a threat against all lawyers and a fair proportion of their clients. The most prestigeous and affluent firms representing the largest corporations, if this attempt succeeds, can be compelled to spend fortunes in time and money responding to utterly frivolous "discovery" demands by the government, and if the big corporations refuse their prestigeous counsel will be subject to sanctions. It is not just me and my counsel. Unless I get the appeals court to reverse Smith and remand the case, they already have this - it is an accomplished fact and totally unreported.

I'm also sending Jim what I send you and I'll have copies here, so we'll be ready for any questions.

Please also understand that what I do not address on the enclosed DJ pages is in all instances irrelevant or just plain lies. I don't think that the DJ tainted itself with a single truthful statement in their long appeals brief or at district court, it is that bad. But if you have questions about any portions other than what I refer to please ask.

I hope the letter and number identification I have in mind saves you time and is convenient to follow.

Best,

Hal

Enclosures:

A DJ/FBI appeals brief excerpts, cover illegible but included

B Public Citizen Litigation Group brief for Lesar, excerpts

C ACLU Foundation brief for me, excerpts

D First page of Stanton decision, D.C.

E DJ/FBI 5-18-83 Motion to Dismiss, excerpt

F DJ/FBI Opposition of 6/20/83, excerpt

G My FOIA request of the New Orleans FBI field office

H My FOIA request of the Dallas FBU field office

I Two paragraphs from an FBI attestation in this case xeroxed in a draft of one of my affidavits

"The district court had closely observed plaintiff's counsel's relations with plaintiff in this litigation for more than five years," A44

"The district court had observed plaintiff's counsel's behavior during the five years since the action was filed. He saw the delays caused by plaintiff and his counsel's acquiescence and encouragement of plaintiff's interminable demands for an ever-increasing search." A46-1, A47-1

For the protection of counsel (generally affidavits are not presented to or accepted by the appeals court) I prepared an affidavit characterizing this as a complete fabrication and a complete lie and I sent copies of it to Lesar and Lynch. See particularly paragraphs 3, 7, 9, 10, 11, 16. (I have not made extra copies of this affidavit for Jim or this file but I have the original and he has the copy I sent him 7/2/84) This affidavit, not filed, also cites the proof in the case record that the governments' lawyers knew from the case record that they were lying and that they made the whole thing up for their own purposes.

While the affidavit itself is not in the case record, Lesar's counsel and mine have both noted that the government lied, while avoiding the word, in their briefs. (It happens that other and equally deliberate government lies are refuted on the same pages.) In the brief for Jim see pp. 3 and 4, marked B, in the brief for me, marked C, see footnote ** on p. 16. Both briefs at these points show that the government's allegation that I was stonewalling the case is also deliberately and knowingly false, but that allegation is basic to the attempt to hurt the lawyer, addressed on a separate page, and to defraud both of us of money demanded and awarded by Smith.

A series of lies in the government's brief so that it can retaliate against counsel (A45ff), for which the life about the judge "observing" me in court with Jim "closely" is essential.

So you can understand this better, as the case record establishes, the first four of these five years nothing at all happened in court because the government asked for that time to process the records, and the fifth was taken up in the controversy over their discovery demands. On this basis alone it is not possible that I or Jim and I stonewalled the litigation with "ever-increasing" demands (47), or that the judge "saw the delays caused by plaintiff and his counsel's acquiescence and encouragement..."(47)

The purpose of the constant references to Jim as an officer of the court atop all this lying is apparent in the case quoted on 47,"when the responsibility (for all their fabrications attributed to Jim) can be fixed, remedial action should be taken." This is a scarcely hidden threat to move to have him disbarred, all based on fabricated lies. (There is more on A 21, marked.)

This also was a whipsawing device. There is no question but that an appeal is legal, proper, necessary in t is case, and clearly and explicitly intended from the outset. In fact, I got Jim to ask Smith to expedite this and he refused. But if Jim had not done what I asked and had done what they entirely improperly demand of him, which amounts to his being their lawyer, not mine, he'd have been subject to severe sanctions, up to and including losing his license. I've attached the first page of the Washington Law Reporter of 1/17/84, the Stanton case, one of the many appropriate points marked in blue in the right-hand column. (Marked D) They actually created a sitation in which anything the lawyer did subjected him to sanctions! Counsel is legally obligated to pursue his client's lawful desires.

DJ/FBI effort to rewrite the FOIA!

1) By placing the burden of proof on the requester/plaintiff- and lying to the courts, again

FOIA (4)(B)(b) states, "and the burden of proof is on the agency to sustain its action." One of my stated reasons for wanting to appeal Smith's decision is that discovery in this litigatiin placed the governmentUs burden of proof on me. The government's brief (A23) denies this and says it could not have established that their alleged search was adequate. They also stated that they did not "undertake discovery to relieve themselves of the burden of proof that the FBI's search was adequate." (Actually, the record is quite explicit that they did not even make a search in Dallas, of which more follows.) This is precisely the exact opposite of what DJ/FBI alleged to get Smith to rule for them.

I do not include a xerox of their representation to Smith that Lynch used in the brief for me, C3, where they said (the opposite) that discovery "would enable them to demonstrate beyond (any) question that (their)original search was adequate." (This, I repeat, when they knew and attested that they had not searched in Dallas!)

They made the exactly opposite representation to Smith on a number of occasions. Two that I sent Lynch that he didn't use are enclosed. In their 5/18/83 Motion to Dismiss (E), they stated(bottom 4, top 5) that my refusal to provide the discovery demanded "deprived" the FBI "of a meaningful opportunity to demonstrate" that my "assertions about the adequacy (sic) of the FBI's search are baseless." (The other marks picked up in xeroxing were made earlier for other purposes.)

In the DJ/FBI Opposition of 6/20/83 they actually state that "the very reason" for demanding discovery "was to enable it (the FBI) to meet its burden of showing that its search was adequate."(F)

2) By getting a decision that holds they do not have to search and attest to search

As I've stated several times, they did not make any search in Dallas, and I caught them at this. In order to have a chance to prevail before the appeals court they had to lie about this and they did (A2) I filed two requests that they moved be consolidated in this one lawsuit and they were. Both were word-for-word identical, except that a single added paragraph was included in the New Orleans request. The only language not in the Dallas request (H) is marked on G, the N.O. request. Otherwise they are verbatim the same. The government quotes only the N.O. request in its brief (C2), representing that the Dallas request consisted of its introductory sentence only and that the actual request, the two paragraphs in both here marked "2", is an "addendum" to the N.O. request and no more. Without this lie there is no way they could even claim to the appeals court to have made the Dallas search [redacted]. (And to this day they have not made any search in Dallas to comply with my request. They wrote and claimed compliance 5/10/79 and the next year made a few searches

that the appeals office directed, and not even all of them. But to this day they have not searched to comply with my request.)

The fastest form in which I can cite the case record on their deliberate avoidance of any Dallas search to comply with my request was in a folder on my desk so I include it. As I. It is two pages of a draft of an affidavit I filed using two paragraphs of an FBI affidavit in this case to show that a) they are required to search in the field office (Graf 4) and in this instance they did not but sent my request to FBIHQ (Graf 6), where without search and without even being possible ~~the field~~ FBIHQ decided what it limit me to. (The pasted-in quotes are from a declaration (which is the equivalent of an affidavit) by the FBI case supervisor, SA John N. Phillips.)

So here they are, trying to rewrite the Act, to get severe sanctions against my lawyer and me, when the case record is clear, that they have not yet taken the very first step required by FOIA, making a search in the field office (I-4) And they claimed that if I provided discovery they could prove that what they knew had not happened because they had aborted it had actually happened, that they had searched and that their search was adequate.

Bearing on their singling me out for special discrimination, FYI, with some of these pages I also had xeroxes of three pages of 1976 Senate FOIA subcommittee hearings, where the Nader people gave the chairman something from one of my FOIA cases, a list of some 25 request the FBI had ignored for up to a decade when the Act required promptness. The DJ appeals officer (Quinlan Shea) could not defend what the FBI had done and wouldn't, and the Civil Division, which, it happens, provides counsel in FOIA cases, said I had cause for complaint and they were going to do something about it. They continue to ignore these requests, despite this promise to the Senate, and one of the things they have done about it is not comply but try to rewrite the Act through me and take vengeance on me and my counsel.

Afterthought:

As I remember your practise, you generally call on others to be fair and to give them a chance to comment. I hope you do in this case!

While it is a formality for them, in fact the signatories to the government's brief, which I'll copy and attach, include the United States Attorney for DC and the Acting Assistant Attorney General (Civil Division). If you were to read them what the brief alleges about Jim's supposed bad behavior and mine plus the threat against him in the decision quoted and ask them, suppose this is not true, as the briefs for Lesar and Weisberg allege? What could they say, or do? I can't think of anything that would not add to what you do in the column. It would be, I believe, unprecedented if they withdrew it. I've never heard of such a thing.*

Moreover, what they have done is defraud Jim and me of money (aside from rights) by their fabrications and we've refused to pay it, beginning with me, and appealed.

It would be bad enough if they just lied, as they have, completely. Or if they got the decision they want by their lying. And most people, other than lawyers and government officials, believe that lying to courts is bad. But in this case they've perpetrated a fraud based on knowing and complete fabrications, and by means of their fraud they seek to take money from us.

The way it works, as I understand it, is that the junior lawyer, in this case the woman, does the work and the others just sign it. But in the signing they lend their personal and official weights and endorsements. and accept responsibility

* Their Reply Brief is due now, or before you return and can read this.

It is bad enough to have government by lies, as we do, but "justice" and the "rule of law" by lies -by those who supposedly defend the rights of us all and preside over justice? In this case, with any attention at all, they are hoist by their own petard and I'd like to believe that much good could result from exposure. Including making it more difficult for the courts to accept official lies, as in all my many cases they have.

Afterthought -2

I'll send you anything relevant in their Reply Brief when I receive and read it.

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You may not recall the earlier correspondence but when it looked like they were crazy enough to try and get me cited for contempt, I did write you. They knew they were making impossible demands, as well as improper ones, and had reason to believe I would not comply. To leave no doubt their lawyer phoned Jim and actually threatened me, which he later denied and in an affidavit I showed was the only possible purpose of his phone call. It is when I dared them to charge me with contempt, which would have resulted in a trial they did not dare risk, that they switched to other sanctions.

The character who handled the case for them before the district court and made the threat is Henry LaHaie. He even tried to get Jim to drop me as a client.

JACK ANDERSON
1401 16th Street, N.W. Washington, D.C. 20036

LES WHITTEN

Aug. 3

Dear Hal,

I agree that if we can do a piece showing Justice charged ~~you~~ & and the judge agreed that you had been obstreperous in co rt on a day you weren't there, then we ought damn well to do it. I'll be gone next week but will try to reach you the week after.

Thanks and best,

Les