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Dear Js, 12/24/72

I return herewith the Northern Calif. ACLU News 12/72 story "ACLUsues Army, FBI, for secret documents". I had heard of both suits. With Epsteinss, for the Operation Keelhaul documents, I have political misgivings but I think he is on solid legal footing. There is a prejudgement of the Army here and that is unfair in absence of proof that the Army knew what the consequences would be and that there was no treaty obligation to return those refugees, not all of whom were simple refugees.

I have many toubles with the Weinsetin suit for the Hiss files, and not because I am not satisfied he was the victim of a vicious, deliberate frame-up.

Thus is hokum about the dedication to openness by the historians. I have enough correspondence to prove it, incouding with the president for the year I wrote him, Carel Deutsch, with whom I served in O.S.S. The key here is in the quote from Weinsetin, open to "competent researchers". He means professional historians, I might say commercial historians, and this is quite contrary to the intent and language of the law. The inference that it is these professional historians who are "maing the larger effort" to open in also false.

The legal problem with the Weinstein suit as I see if is that there really is a blanket immunity against it and it is certain to establish a bad precedent. The law does exclude files compiled for a law-enforcement purpose except as they would be available to a litigant. There can be no doubt of the law-enforcement purpose, and that purpose did not end with the court decision. I had not thought this through when I first noted that suit. There is an oldexemption preceeding enactment of this law of 75 years on such things, and it is legitimate. However, where the end of the litigation can hurt and in my view makes this a cheap-publicity suit is that the file sought was not available to Hiss at the time of the trial, so that part of the exemption does not seem like a worthwhile test in this case.

There is possible evil in the timing, in the washoff effect on other pending cases.

I approached t e ACLU for help in such matters in 1966. I was asked to write a memo. They havengt even bothered to answer. Bud Fensterwald and I had lunch with their Wash. rep. several years ago to ask them to consider several viable cases. They would not even consider. So, they apply their own political tests to the cases they take, take tainted cases that serve publicity and political ends, but have refused to take cases that could establish viable precedents.

I would very much like to be wrong. I also believe it is essential that foolish cases not be filed. I have not filed serious cases where at the time of enactment there should have been automatic victory out of concern for what the new courts might do. There is every reason not to play into the hands of ill-intentioned officials.

If Weinstein wins, there will be no limitation upon all the terrible things his many political enemies said about Hiss, all in that file. There will be no limit on what the FBI did to those it questioned about Hiss. A personal example: in the 30s Lil had worked with him. They looked her up at the farm and questioned her about him. They broadened this into an investigation of her and in doing it told those they asked about her not to let her know they were investigating her.. They had no damned business investigating Lil and every reason not to, but they did, and God knows what kins of gutters they dredged into the very sewers. One thing that file will NOT show, betcha, is that during the war, when Lil was dining with a Congressman not friendly toward Hoover, Hoover sent to their table a bottle of Cherry Heering.

There are legitimate reasons for keeping files secret. It is disgusting to see the ACLU engaged in an effort to deny innocent people their rights and in a context that denies them recourse if they are damaged. I am not concerned about any truth in the files about Lil. I don't think the indignation of those she knows were questioned about her will be reflected honestly, if at all. There were a large number of for that day liberal people working with Hiss at the Senate. Every one of them may well be defamed in that file. We know too much about the nature of FBI reporting in political matters to view this kind of suit with less than deep apprehension.

Best,

cc Jim Lesar