

5/14/83

While I do not expect it to happen Monday, it is possible that I will be cited for contempt in an FOIA case in which I'm refusing to be party to a new effort to negate the Act by the FBI and DJ with a rubber-stamp judge. I became eligible for a contempt citation at the close of court business yesterday.

Probably Judge John Lewis Smith will not act on his own but will await a motion by the FBI.

Judicial outrages are possible today because it just isn't possible for the press to cover all the court sessions. I have two current cases, both filed in 1975, with more than 50 sessions of the courts, and never once was a reporter present.

In the two combined cases before Judge Smith, both filed in 1978, I seek assassination the JFK/and related records of the Dallas and New Orleans field offices, the main ones in that and Garrison's investigations. From the time of my second emergency operation two years ago, with the FBI stonewalling from the outset, I've been trying to compromise and end the litigation but the FBI has refused because it wants to use me and this litigation as a means of ending all JFK assassination disclosures - without yet having made the initial required searches to comply with those FOIA requests. If it can get this litigation dismissed with prejudice or by summary judgement it can forever withhold what it still withholds - from anyone, not just me.

The newest FOIA innovation turns the Act and its intent completely around. The Act is quite specific in placing the burden of proof on the government. So, while completely ignoring the undisputed evidence in the case record, and it is extensive and thoroughly documented, the FBI has moved for discovery against me, ~~demanding~~ demanding every reason I have ever had for any allegation and each and every document I have supporting or bearing on each. In and of itself, this is impossible.

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Although to me the big thing is that this violates the Act and is wrong, one of the established bases for not granting such a motion is burdensomeness. For me, with my medical and physical disabilities and limitations, it is extraordinarily burdensome.

The FBI and its DJ lawyers have not presented any evidence at all on this or on the legal questions as related to the Act or even need. There isn't even a claim that they need this discovery, and for more than one reason they don't. The uncontested evidence I've provided is that they do not need the information, that it is outside the Act, and that in any event I've already provided it voluntarily, as I have, in great detail. I've provided the information pretendedly wanted in many documented affidavits and in extensive and even more extensively documented appeals. With the documentation, about two file drawers!

Judge Smith made no findings of fact at all. He can't because of the case record, and judges can do just about any damned thing they want to. (Joe Goulden, in his The Benchwarmers, says that Smith ignored the evidence and votes his prejudices and within my experience Goulden is 100% correct.)

He merely ordered me to comply with these incredible discovery demands of the FBI, pertaining to searches. Yet the FBI is required to prove that it made the required searches "and the burden of proof is on the agency to sustain its action."

The case record is undisputed, that the required searches have not yet been made, after five years, under an Act that requires response within 10 days.

The FBI has also asked that I be required to pay its costs in seeking this improper and unnecessary discovery and Smith issued the order. If and when the end comes, without interest it will take two months of my Social Security, my only regular income.

When it became clear that Smith was going to rubberstamp and the FBI knew it and that the FBI was so unworried it provided only false affidavits, I took an unusual course, of stating, under oath and myself subject to perjury for what I said, that the FBI's affirmations are untrue. As of today, they've filed 10 and

I've proven all 10 to be untruthful, the last two when truthfulness was the material point, a requirement of a perjury charge. I filed a motion to expunge the FBI's attestations (they now use declarations instead of affidavits) as falsely sworn and again in defiance of all the evidence and without making any finding of fact, Smith ruled against me and for the FBI. Or, he has ruled that perjury is perfectly acceptable in his court.

It is not only that perjury is a felony, the Act charges the judge with certain responsibilities when faced with such things. The obligations range from referral to the Civil Service Commission to finding the government's people in contempt.

What is important to me is the Act, which I regard as vital to any concept of freedom, particularly that of the press. As this now stands, the agencies, like the FBI and CIA, can frustrate any case that goes to court by claiming the need to discover what the requester knows and has. This makes it impossible for ordinary people and costly and burdensome for the stonewalled organizations who have the means and are willing to contest interminable delays by the agencies in these and other improper legal maneuvers. If the FBI had not made it impossible to end this case without prejudice, it would have ended two years ago when I made the offer. So, whether or not I now get the withheld information is not central in my resistance and risktaking in fighting the corruption and nullification of FOIA, which is what it largely will be. I run these risks to preserve the Act.

Which reminds me - and I'm not suggesting I expect history to repeat itself.

Back in a case that began in 1970, the corruption was so glaring that even though I lost all the way to the Supreme Court, Congress amended the Act in 1974 to open the FBI and CIA files, citing my case and perseverance as the reason. (Of course, I'm not loved by the spookeries for this.)

I would always tell my collegiate audiences this story to show ~~that~~ ^{them} that whatever the odds against it, the system can work, and that for all its defects

the system can work better than any other.

My personal situation may well be worse because my pro bono lawyer, who has faced financial ruin over his unpaid services for so many years, is just exhausted. His state of mind is such that I would not be willing for him to defend me if he could because he is so frustrated and worn out. If I can't get the kind of counsel I need for fighting this ~~me~~ kind of case and the precedents involved in it, I'll run the risk of defending myself because while I'm not a lawyer I have a better command of the facts and issues than anyone else can be expected to acquire in a reasonable time.

I've asked my lawyer to speak to the ACLU, Reporters Committee on Freedom of the Press and the ~~MMK~~ Nader people. He said he would as soon as he could.

Meanwhile, as I can, I'm trying to prepare for a possible press conference if and when I'm charged with perjury. I've already located one of the several FBI records in which they spell out that they must "stop" me and my writing, ~~EMK~~ in the first instance by filing a phony libel action against me. And some of the more incredible vilification, like telling LBJ, the AGs and god knows who else that my wife and I celebrated the Russian Revolution every year. Big Brother could not have done better with an annual religious gathering at the farm we then had, arranged by a rabbi, not me, and for service personnel and their families.

But can you imagine the reaction of the DJ's lawyers when they saw this kind of stuff, as they did, because I have copies routed to them? Or judges to whom it may have been slipped?

Soon it will be eyeball to eyeball, and we'll see whether an ailing 70-year man of officials blink. I've been thinking of this lately (the question is now several months old), and I'd like to believe that the press that can't find time to cover such proceedings might not ignore an official effort to "stop" a critic who is 70, is engaged in a pro bono work of some magnitude and respectability, by throwing him in jail and/or taking his Social Security checks back.

If you have any ideas, please let me know. Best wishes,

Harold Weisberg

