

Mr. Steve Bell
ABC News
1717 De Sales St., NW
Washington, D.C. 20036

1/26/84

Dear Steve,

Several months ago, when the FBI and its Civil Division counsel had contrived a situation extremely dangerous to FOIA and had me technically in contempt because I would not be party to their gutting of FOIA, I wrote you and several other reporters not seeking a story but FYI because of the great danger to FOIA.

When they did this years ago it backfired and Congress amended FOIA, to open FBI and CIA files, over their then dishonesty.

The rubber-stamp decision of rubber-stamping Judge John Lewis Smith will be appealed and I have filed notice of appeal. If you want any particulars I can provide them. However, I write for a different purpose, to alert you and others to still another hazard to FOIA and all lawyers who handle FOIA cases.

Two weeks ago my lawyer told me that the FBI's lawyer had just informed him that while the FBI will not attempt to levy a judgement against me, they are going to move, in the District, to collect from him Smith's award to them for gutting FOIA, \$1,053.55.

I believe that the hazard to a lawyer if he can be made to pay what his client refuses to pay is obvious and that if it sticks most lawyers will have to think long and hard before taking any FOIA cases, especially for scholars and others who lack means.

The Civil Division, with U.S. Attorney Joseph E. diGenova also signatory, has ~~now~~ now moved to amend the judgement to include my lawyer. The underlying principles are the same and we will continue to refuse. However, it is apparent, as the DJ lawyer indicated, that they will move against my lawyer prior to the hearing of any appeal. I think it is apparent that for their immediate purposes they are not anxious to tangle with me.

If you have forgotten (and I presume you are not close to FOIA litigation anyway) the question is whether the FBI can assert discovery against an FOIA requester not only under any circumstances, when the law places the burden of proof on the government, but whether it can in this particular case, which is quite exceptional in a number of ways, ranging from the fact that the required initial searches have never been made to both my having already provided all the pertinent information of which I am aware voluntarily, at the request of the appeals office (about two file drawers of it, actually) and the FBI's admission in its earlier filings in this litigation that I had provided all such information. I think that some career-minded lawyer got carried away with the possibilities of gutting the Act through an unpopular litigant when he had started out only to hassle me and now can't back off.

Best wishes,
Harold Weisberg

Harold

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