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2/6/84

Mr. Steve Bell  
ABC News  
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Washington, D.C. 20036

Dear Steve,

Thanks very much for forwarding my letter to your people who monitor freedom of the press issues. This update also may interest them.

So they won't have to check the files, the underlying issue is government discovery in FOIA cases, which I believe is not visualized in the Act or its legislative history. This is but one of the objections I raised before Judge John Lewis Smith. None were addressed in any way by the government, which did not even bother to make pro forma denial of my allegations, which were under oath. Smith ignored all the other objections, made no findings of fact, pretended that my opposition was limited entirely to the one above and as usual rubber-stamped for the government. It then asked for and automatically received judgements, as indicated in the enclosures. I wrote you when the government lawyer indicated that instead of trying to collect from me they would move against my lawyer, without waiting for the appeal to be heard.

My other objections included that complying would be excessively burdensome and might take the rest of my life, that there was no need for such discovery and that to the degree possible I had already provided all the requested information voluntarily to the appeals office, which had asked for my help several years earlier. In fact I provided almost two file drawers of appeals and attachments. What makes this even more incredible is that the DJ admitted more than a year ago that I had provided this information. I explained that I can handle stairs only a few times a day, that the records in question are in the basement and my copier is upstairs in my office, and that because of my age and serious health problems I also have to spend about three hours a day in therapy. All this and more is entirely undisputed.

I wrote you when it became apparent that the move against my lawyer, to require him to pay the appealed judgement against me, is a threat to all lawyers who handle FOIA cases and a threat to the Act.

It now turns out that Smith was so anxious to issue the judgement against my lawyer that he had it typed up and waiting for expiration of the time allowed for response. He then issued it three days early, he was that anxious. A copy is enclosed.

When counsel submit the draft of a proposed order they leave blanks for the date, but if this one had been typed the day he issued it, a matter of minutes only, there would not have been any need for leaving any blanks.

Within the time limit my lawyer did file my Opposition, together with a motion to vacate the amended judgement, both enclosed. Actually, he understates in both, I presume in what he regards as my interest. The truth is that he tried to talk me into complying with discovery. Aside from efforts by phone he drove up and spent most of a day going over the whole thing. He says only that he did not counsel me not to comply.

It now turns out, and I have just learned, that had he insisted on his position over mine he would be subject to sanctions up to and including losing his lawyer's license. I enclose the pages of the Law Reporter with that decision, this year's.

My appealing what I regard as an improper and unjust decision that imperils FOIA is, obviously, a "lawful objective." (This is marked on page 1 and elsewhere.) My lawyer was under "direct instruction to do" what he did, oppose discovery in my name. He did "advise his client that" my opposition "was so unlikely to succeed" before Judge Smith, spending much time on it. Even though, in the language of the enclosed

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decision (on the second page), successfully opposing the government's ploy before Judge Smith "would have been a difficult undertaking indeed," my lawyer was still required to do as I asked because "a lawyer is not excused from performing legitimate tasks on behalf of his client simply because of their difficulty." A lawyer, the D.C. Court of Appeals states, "owes his clients an obligation to pursue their objectives as they (i.e., the clients) see them," once the lawyer "is satisfied that the client understands the advice that he is giving and . . . is satisfied that the client's choice in the matter is a lawful choice." Thereafter, according to this controlling decision, the lawyer "owes his client a legal duty to pursue the client's stated objectives."

In this instance, in addition to all else, clearly a precedent and an important precedent is involved in the appeal. One, I add, that is much more important to the media and corporations than it is to me. I want only to ~~see~~<sup>end</sup> the cases the government has been stonewalling for years so I can spend what time I have left writing. The one thing I cannot do is let the government use my litigation as a means of suppressing from others what it did not disclose to me, and that it refuses. Even without having made the searches required of it by the law, which is very important in FOIA cases. I offered to dismiss this litigation and never refile it but the government actually refused that. But can you imagine the cost to say CBS or the Post, both having used FOIA, if the government could require them to provide endless discovery! Just the cost in the time of reporters, researchers and counsel! Plus the inordinate delay under a law that requires promptness.

What a whipsaw for lawyers! Whatever they do they suffer costly hurt, Either way, if this DJ/FBI move prevails.

To the best of my knowledge, in order to collect from me all DJ has to do is take Smith's judgement to a Maryland court. That, however, risks a trial not before their rubber stamp, and that, like the contempt they did not dare file against me after threatening it, they do not dare risk. So, at the very least they hassle my lawyer and seek a precedent separate from the filed appeal on the issues. Rather I filed notice of appeal, the appeal to follow. I think I sent you a copy earlier.

It is all the more outrageous in my case because at the request of the appeals office I had provided all pertinent information and records I have, years ago and in considerable and costly volume, and they admitted this in this litigation. Also because they know I am past 70 and suffer serious and quite limiting circulatory problems, with two dangerous emergencies following surgery, both requiring still more surgery. At the time in question, after they made nasty cracks about other illnesses I filed copies of some 15 bills for visits to one of my several doctors for the period in question. I then (twice) had pneumonia, pleurisy, bronchitis, influenza, ecchymosis ( a kind of hemorrhaging internally and I live on a high level of anticoagulant) and other things I now do not remember.

Because Smith is clearly in error in deciding prematurely I suppose this may be allowed down a bit, but I cannot imagine him not flailing his rubber stamp again as soon as he can. If and when anything develops I'll let you know. And again thanks,

Best wishes,

  
Harold Weisberg