

Mr. David Isbell  
Covington, Burling  
1201 Pennsylvania Ave., NW  
Washington, D.C.

2/23/84

Dear Mr. Isbell,

Coinciding with what the Department of Justice did to the bar in the LRIS matter it took similar steps against me, resulting in a threat against all lawyers because it has sought and obtained a judgement against my lawyer because I also refused to comply with what I regard as an entirely improper and completely unnecessary discovery order. Because the initiation of these moves, unprecedented within my now not inconsiderable experience, coincides so closely in time I'd be quite surprised if research did not disclose that the Department did not take similar repressive actions in other jurisdictions and perhaps other types of litigation. (Mine is FOIA.)

Toward the end of 1966 or early in 1967, if you do not remember, you accompanied me to the Archives once or twice when I was seeking help in bringing to light withheld information relating to the assassination of President Kennedy and its investigation. I then had the Zapruder film projected for you as well as slides of individual frames. If you do recall, then perhaps you may also recall that I did not allege any monstrous conspiracy against the government and was focusing on how government worked at that time of great crisis and since then. This and one other thing still distinguishes me from all the others generally referred to as "critics." The other thing is that I have tried very hard to make the system work. (My background, reporter, investigative reporter, Senate investigator and wartime intelligence analyst are also unique in this field.)

At your suggestion I wrote Monroe Freeman of the ACLU for help. FOIA had just been enacted. I never heard from him.

Thereafter, pro se and with a friend as counsel I filed a number of suits and never hit a dry well. I've obtained, used and made widely available at least a quarter or a million pages of once-withheld records, including quite a number that are and will be seriously embarrassing to the government.

Official abuses and excesses in one of my early cases led to the 1974 amending of the investigatory files exemption. This is explicit in the legislative history. So, I am even less popular. Beginning in 1967 the FBI articulated the scheme to "stop" me and my writing with frivolous litigation. The word is the FBI's in records I've obtained. Not long thereafter, again put on paper, the FBI decided that because it does not like me FOIA entitles it to completely ignore my information requests. The record since then is simply beyond belief, it is that bad. It never complies until I file suit and then it stonewalls. It does not eschew what I believe quite literally is perjury and, encouraged by a lack of public attention, resorts to all sorts of improprieties to prolong the litigation, thus escalating the costs of all parties and pursuing the scheme to "stop" me and my writing.

In C.A. 78-0322/0420 combined, which is for the relevant records of the FBI's Dallas and New Orleans field offices, when for a brief period an honest lawyer was assigned to the case, he disclosed that instead of making the required initial searches in the field offices, FBIHQ decided what would be disclosed. Carelessly thereafter an FBI SA assigned as supervisor to the case actually swore to this. To this day searches to comply with my requests have not been made. When this was a little embarrassing, although we were before a judge who did not hide his bias and prejudices, John Lewis Smith, New Orleans produced and swore to a palpably fraudulent series of search slips not responsive to my request and dated almost a year before I made my request. They nonetheless disclose the existence of many relevant records that remain withheld, without claim to any exemption.

At about the time the Department moved for discovery against the bar it moved for discovery against me, claiming, in what I regard as ~~utterly~~ utterly shameless contradiction of the entirely undisputed case record that this discovery would enable it to prove that it had in fact complied with my request. I'll expand on this below. My lawyer, for whom all of this was ruinous because of all the time the government wasted for him in a number of major suits, tried to talk me into complying as the lesser evil. On principle, because compliance with extraordinary and excessive discovery demands was quite literally impossible and because for other reasons I had earlier provided all the pertinent information I know of - actually about two file drawers of it - I refused. I also refused because of burdensomeness. Typically, both the judge and the Department ignored all I provided under oath and the government made no effort to refute, ~~it~~ although it did make a few nasty cracks to which I provided considerable documentation in response. Smith, without holding a hearing of any kind or taking any testimony, ruled against me on just one of my objections, that discovery against an FOIA plaintiff is not envisioned in the Act. I did not comply and made it clear that I would go up on appeal.

Not content with this the Department sought and obtained a judgement against me for its claimed costs. It asked Smith to dismiss and he did and it also claims <sup>ed</sup> those costs. I again refused to pay them and let the government know I would appeal this also. Meanwhile, by phone, government counsel made threats, first to have me cited for contempt and ~~what~~ that didn't work, to assert the judgement against my counsel. It moved to amend the judgement to include this and Smith was so anxious to accomodate the government ~~that~~ he issued the amendment three days before my time to respond expired. Prior to this last step government counsel again threatened my lawyer by phone, telling him that it would not try to recover from me but would from him.

I filed motions to vacate the premature order and an Opposition <sup>article</sup> within the time permitted, copies enclosed. Today, along with Tom Dunlavey's ~~article~~ quoting you, I received a copy of the government's Opposition, copy enclosed. True to Orwell, while denying threatening my lawyer (on page 3) this spells out exactly how it was done. The citation of Roadway Express appears to be entirely irrelevant because its "counsel" were ordered to provide discovery and this was impossible for my counsel, who has neither my knowledge nor files. (Bottom of page 2) What the government alleges on page 1 is new to me because I recall no hearing, no testimony and not even arguments in court on this issue. Please note also that there is no hint of moving to exercise the judgement against me, which government counsel told my lawyer it would not do, although if there is an offender, it is I, not my lawyer, who took a day off to drive up here and try and talk me into some form of compliance with what I read as entirely wrong. (He even tried to pressure me into this by indicating in court that I would comply. I am not complaining against him for this in any way. He is a cherished friend, a good and honorable man and he has engaged me to do much public good.) I think it is apparent that for all its power the government is just plain afraid to make this move against me and enable me to provide a court with what it knows I have and because the government knows that despite my serious medical problems and limitations I will fight it vigorously.

In all of this the Department has created a situation in which whatever he does or does not do, my lawyer is subject to sanctions. To illustrate this I also enclose the Law Reporter on the Stanton case. Stanton's license was lifted because he did not "pursue his client's lawful objectives." My objectives, I believe, are not only "lawful," they are basic in our system of laws. Yet having done what is required of him by Stanton, the Department has procured a judgement against him for doing only that. And before this he filed the notice of appeal the government had been informed would be filed, also enclosed.

My permanent and serious medical and physical limitations are well known to the FBI and its counsel. In 1975 I suffered acute thrombophlebitis an both legs and thighs,

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with permanent and irremedial damage. In 1977 arterial blockages were diagnosed in my chest. In 1980, after successful surgery in the left thigh, the implantation of a teflon artery to bypass two blockages, I suffered additional thrombophlebitis while in the hospital, blood clots broke loose the day I left the hospital, resulting in emergency surgery that could not remove all of them, and a few months later I suffered a total arterial blockage on the left side that, while I survived it, left me with even more limitations. Today I may not stand still, must hold my legs elevated when I am not walking (you can see what this means when I have to type sort of side-saddle) have difficulty with ~~stairs~~ stairs and can use them only a few times a day, spend three hours each morning in therapy, and can walk only about a city block, sometimes a little more, before having to rest and elevate the legs. This in fact has been true since 1980. Keeping the legs elevated has been required since early 1976.

As the FBI and Department also know, I have deeded, without any quid quo pro, all my records to a permanent university public archive and I preserve all records I obtain under FOIA exactly as I receive them. The only space for them in my home is in the basement, thus requiring stairs for using them. (I read them as I obtain them and, with my copier, which is in my office, not in the basement, I make duplicate copies for my own planned writing and have them in subject files, but these are not the records sought under discovery, which requires countless trips to and from the basement if I were to attempt to comply. Moreover, the clearly and intendedly excessive nature of the discovery demanded, makes compliance a complete physical impossibility.)

Moreover, at the time in question, I suffered a series of other illnesses for about six months, and these further weakened me and reduced my capabilities. When government counsel made nasty cracks indicating that I was lying I provided copies of the doctor's bills, which specified pneumonia, pleurisy, bronchitis, influenza, ecchymosis and other things I do not recall. There were then two bouts of these things, repeated after apparent recovery. In addition, since 1977 I have had serious balance problems from a circulatory obstruction to the head that, combined with the high level of anticoagulant on which I live, ~~has~~ resulted in strict medical cautions against simple bruising, any falling or cutting, so even trying to get at the records sought unnecessarily in the volume demanded provides this additional hazard. What is insignificant to another can be fatal to me. The bills I provided also include those for my three surgeries and hospitalizations, so aside from what it knew earlier, the Department was well aware that at the very least its discovery demands are extraordinarily burdensome, as I had informed the court and the Department made no effort to refute. And in six weeks I'll be 71.

I believe the government's excesses and abuses if not also indecencies in this case, along with the case record, lends itself to doing something, if there are those desiring that something be done about them and other things like them, like what was done to the bar, particularly because of the duly recorded motive with me. I believe the case record justifies and might even lead to sanctions against the government, including its attorneys.

Because of prior experiences with this judge and those attorneys and the FBI, in this case, forewarned that my requests were not going to be complied with, I ~~decided~~ decided to document all departures from fact and truth, under oath, and I believe there is no single government filing with which I did not do this. For the most part they ignored this and still pretend it is not in the case record and unrefuted. My documentation ~~was~~ almost entirely the FBI's own records. So, while I have no reason to believe that any judge will welcome such charges as perjury and its subornation, I do believe that both are established in the case record and were, without refutation, before Smith flailed his every-ready rubber stamp. In addition, and it is beyond my capabilities, I do believe that these kinds of abuses by lawyers ought be considered by the bar. Perhaps even their

consideration might discourage them in the future. Without some form of vigorous opposition to them, my life and my experience tell me that they will increase and expand in the future.

In all of this FOIA and its purposes so indispensable in a representative society have been largely negated.

And if the government gets away with this, aside from the threat to all lawyers the Act will be effectively nullified.

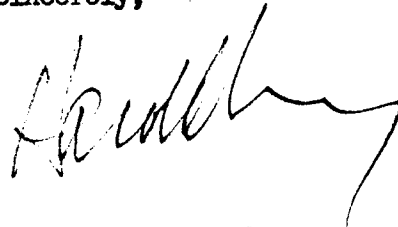
You can judge the costs of wealthy and corporate litigants and their counsel better than I, but I believe that aside from the hazard to lawyers handling the litigation, the cost of discovery can be so great that suits would not be filed.

There is some awareness of the misuse of discovery by some courts. I also enclose a clipping reporting this.

Aside from my willingness to assist in ending such threats and abuses of others I may face a need for counsel because there may be a conflict between my lawyer/friend and me because I refused to take his advice and because he indicated in court that I would comply when I had refused absolutely.

Busy lawyers do not welcome long letters but I hope that if nothing else the information I provide is worth the time it took you to read it. Please feel free, if you so desire, to make this available to the other possibly interested lawyers of whom the Dunlavey article names Mr. Perdue and Ms. Gorelick.

Sincerely,



Harold Weisberg  
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Frederick, MD 21701

P.S. I've just remembered something for which I must thank you. At the time you suggested that I write Freeman you also had some fear of retribution against me and you sent me to a lawyer who did say he would defend me if any such thing eventuated. As I remember it his name was Rockefeller and his office then was in the Associations Building. I carried his card in my wallet until I lost the wallet in 1976. The FBI's retribution took other forms, libel and slander. For example, when LBJ asked it about my books it replied instead with such fabrications as that my wife and I annually celebrated the Russian revolution with a gathering at our home. This in fact was a religious gathering, led by a rabbi, long before the November revolution and after the Jewish high holidays, September this year. They made wide distribution of such defamations. If those processing records had not believe them I doubt they'd have been disclosed to me.