

Mr. Fred Graham
CBS News
2020 M St., NW
Washington, D.C. 20036

2/24/84

Dear Fred,

George Herman told me that he routed to you what I'd sent him on this.

Unless I hear that you do not want me to, I'll send you anything else I get because of the repressiveness of what the Reagan administration is up to and because it can mean the de facto end of FOIA.

I'm sending copies separately, as I have in the past, to the "Reporters Committee, addressed to Mandau.

I'll be surprised if the government's cost in this #discovery# trick does not already exceed the amount it can hope to collect, about \$1,000.

There is no doubt at all that the government's costs in forcing me to litigate this and my prior FOIA requests greatly exceed the cost of compliance, which in varying degrees was compelled in each and every instance.

Some of the appeals cost it precedents it did not want, too.

You may not have known it because it was not reported outside the Congressional Record, but one of my early cases, 2301-70, caused the 1974 amending of the investigatory files exemption, thus opening FBI and CIA files.

Sincerely,

Harold Weisberg

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Smith-Times

Larnder-Post

Graham-CBS

Bell-ABC

Payne-Newsday

from NBC

Repulse Committee

Demington, built here

Whittier

Theroux

DW

From Harold Weisberg, 7627 Old Receiver Road, Frederick, Md. 21701 301/473-8186

This updates the information I have provided to a few reporters about the Reagan administration's threats to FOIA requesters and their counsel in its efforts to effectively nullify FOIA by what I regard as the inappropriate device of spurious and improper discovery demands in ~~litigation~~ litigation, in this instance my C.A. 78-0322/0420 combined.

Earlier I informed you of my reasons for refusing to comply with the discovery order of Judge ~~John~~ ^{John} Lewis Smith, of the DJ's successful demand for sanctions that include a judgement for litigating costs against me which I also refused to pay, both so I could take this unprecedented repression to the appeals court, and of the DJ's obtaining a judgement against my lawyer instead of making any effort to compel me to pay. I have sent you my motion to vacate the judgement against my lawyer for reasons that include its untimeliness and my Opposition. I also sent you a copy of a decision under which my lawyer is subject to sanctions that include losing his license if he refused to pursue my lawful purposes, of which appeal, without question, is one, and I said that the DJ thus has whipsawed him, making him subject to sanctions whichever course he elected. In the pleadings I sent you is my counsel's statement that he was verbally threatened by the FBI's lawyer, Henry LaHaie, of the Civil Division, who stated that instead of making any effort to collect from me he would move against my counsel.

My counsel had, in fact, urged me to comply as the lesser evil, and I refused for the reasons of which I have informed you.

I have just received the FBI's Opposition to my motions and I attach a copy. As you will see, there is no indication that the DJ has any intention of making any move against me and it denies that it threatened my lawyer. It then, at the very same point (page 3) spells out exactly how it did threaten him.

DJ follows this with the pretense that it is in accord with an appeals court decision on the issue. If that were true it would not have caused these further delays, made some effort to collect from me, and had no visible purpose in making

any move against my lawyer. And, of course, it knew that from the outset I intended to appeal and in fact filed the requisite notice of appeal.

It also pretends relevance of the Roadway Express decision while at the same time disclosing that it is not relevant because in that case the respondents were the counsel ("The respondents (i.e., the counsel)....., bottom of page 2) whereas in this case my lawyer is not and cannot be because he does not have my files or my knowledge, both of which are demanded by DJ/FBI, and because I alone am the respondent.

I do not know what it means by claiming the issue has already been litigated twice. There was no hearing, no taking of any testimony, no evidence of any kind refuting my prior evidence, which remains undisputed.

I have also just learned that in two matters not involving FOIA ~~but~~ ^{but} involving counsel for plaintiffs without means DJ has taken the same steps. I lack details about an order it obtained for a lawyer to pay \$19,000 litigating costs in what I understand is a civil rights matter and that the District bar was subjected to similar pressure. The action against the District bar coincides in time with the making of discovery demands against me, thus indicating a ^{Reagan} administration ~~plan~~ orchestration of such threats against lawyers by means of "discovery" schemes. When the District bar's committee members were threatened with a fine of \$100 a day, a majority of one of those present but a minority of the committee decided to comply with the discovery demand in large part because of the damage to a lawyer's reputation if he is charged with contempt, even if subsequently acquitted.

The cost of unnecessary and/or improper discovery can be enormous. What is demanded of me could, it is undisputed, take the rest of my life. Even wealthy corporations would find use of FOIA excessively costly. And, of course, the delays caused by the time required for discovery in itself negates the clear language and intent of the act, which places the burden of proof entirely on the government and requires fastest possible disclosure of the information sought. DJ now threatens the lawyers who handle the litigation, even those who counsel their clients to comply with the government's improper demands.