

Lardner - Post
At the Bell
H Smith - Times
Aron - NBC
Quinn - CBS
Rep. Conn.
Payne - Hurstey
Amy Dr. Edwards
Mrs. McNeil
Isbell
Flesh
Belt, Ann
Whittier
Thomson
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ADDITIONAL UPDATE - REAGAN ADMINISTRATION'S
SUPPRESSIVE/REPRESSIVE/ OPPRESSIVE EFFORTS
AGAINST FOIA REQUESTERS AND THEIR COUNSEL

Harold Weisberg
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2/28/84

Previously I have informed you of the FBI/DJ's so far successful effort to negate FOIA by placing the burden of proof on the requester, which is contrary to the specific language and intent of the Act, by getting an Order from Judge John Lewis Smith for me to provide "discovery" - almost entirely in the form of FBI records disclosed to me by the FBI - granted in complete disregard of the case record and without the initial searches having been made after more than five years.

Judge Smith did not await receipt of my Reply to the DJ/FBI's Opposition to my motions to stay and to vacate. This is consistent with his prior record I have sent you in which he issued an Order before my time for response was up.

His attached 2/14/84 Order rubber-stamping his prior Orders apparently was delayed in reaching my counsel, who was ill, because the copy of it that he sent me and the copy of my Reply both reached me today, each mailed to me separately the same day. Copies of each enclosed.

As I indicated earlier the government's representations are not in accord with the facts and Judge Smith has departed from the requirements of the Rules in assessing against my counsel costs claimed of my by the government. I know of no other case in which the government has collected such costs from an FOIA requester in federal district court and no other case in which it sought and obtained a judgment against his counsel to collect what he refused to pay pending appeal, notice of which was duly and properly filed. To the best of my knowledge, discovery against an FOIA requester is unprecedented. In and of itself, this can nullify the Act and it will without question, make it possible for the government to make use of FOIA prohibitively costly to even wealthy requesters.

On a number of occasions government counsel has made threats to my counsel against me and against him. In each instance my counsel has phoned me immediately to inform me

and when the threats were against me, to charge me with contempt, I also notified most of the recipients of this then. It was only when I refused to be intimidated and insisted on carrying the precedent-making legal questions to the U.S. court of appeals that government counsel stopped threatening me and took the reported and rubber-stamped steps against my counsel. I believe this is a threat against all lawyers and, as I reported to you earlier, it coincides with a number of other such steps against other lawyers willing to represent clients who are not able to pay them.

When I sent you the government's Opposition of 2/10/84 I noted that it makes no reference to me at all although I am the presumed offender and in other ways simply is not truthful. It misrepresents the case record, pretends to cite what does not exist in the case record, and it specifically denies threatening my counsel while simultaneously spelling out exactly how it did threaten him. It also denied as "patently untrue" not wanting the matters in question to go up on appeal. (It can move against my counsel in the District of Columbia courts but cannot do this with regard to me.) My enclosed Reply adds a few details on the threat against my lawyer (pages 2-3). That government counsel gave my lawyer only five days "to pay up" is stated in his letter a copy of which I sent you earlier. *(This was after I filed notice of appeal.)*

If any of you doubts that "(t)he papers to which the Court is referred (by the government) contained no factual basis or legal argument for assessing expenses against plaintiff's ~~attorney~~ attorney" (page 1) or that the papers I filed and are cited by the government do not relate to the government's cited footnote (page 1) or that my lawyer did try to get me to make some kind of compliance with Judge Smith's Orders (as a lesser evil) and thus is not within the sanctions of Rule 37(b) I can provide copies. With regard to the latter point, not only did I so swear in an affidavit but earlier and without contradiction my counsel stated it in court, so both the government and Judge Smith were aware of it. (That rule requires that counsel advise his client not to obey and my counsel advised me to obey.) Thus the government's repressive and oppressive intentions are apparent.