

3/29/71

Several have indicated optimism about the probable results were John to refile his unsuccessful action, limiting it to certain things not as clearly ruled out in the decision. Without exception, as those with whom I have corresponded on this will know, I disagreed without even reading the decision, for I know John well and have gone over all his papers with care. I felt that his lawyers, regardless of their reputation, had done poorly, particularly with a revision, after abandonment of the first suit, and that despite the careful wording, it was apparent that John was seeking a sensation. If this is not the case (and several of us know where he intended publishing), the selection and language was subject to such interpretation.

After a hasty reading of this decision, I now feel that almost any FOI suit in that court is doomed to failure. This judge concedes the right of bureaucrats to frustrate, even to violate the law. Moreover, he has come up with a crazy interpretation of "records", pretty much invited.

Whether or not legally sound, this decision affirms the wisdom of several things, and of the apprehension first Bud and then I had about this litigation. Above all, it validates Bud's conviction that each suit should be limited to a specific item or related items. It validates my step-by-step approach. And, although I think all lawyers are horrified at the great length of the pleadings I entered in my suit for pictures of the clothing, the judge will have to invent guinea pigs at which to strain to decide on "records" and the meaning of the Family-GSA deal as this one did. Moreover, I think it tells me I was right, regardless of length and great effort, to attack every single argument by the government, expose each as false, fraudulent or even perjurious, rather than leave a record subject to the kind of decision John almost invited. This is not to say I will succeed, but it is to say that the defects in 4761 do not exist in 2569-70. I may have others I am too ignorant of the law to have detected, but leaving anything unexamined is not one, and not exhaustively addressing both the contract as it relates to my suit and the various definitions of "records", are not among them. John's lawyers didn't even use the excellent one provided them by the government, and the judge did not see its point.

As to PH's belief that after five years John is "clearly entitled" to access, which I disputed earlier today, I suggest he note one particular sentence on page 10 in this context, "Other reasons may exist for such refusal but need not now be considered." This is not consistent with PH's belief or interpretation.

In this case I think it also was a fatal error not to attack the integrity of the government's various papers and affidavits, not to tell the judge, as was possible, that they are liars and are always liars. If it would have made no difference, it would have made it more difficult for him, and any reading of this decision shows he took the federal word for everything.

The basic purpose of the law was never invoked or cited, and the decision skirts around that, pretending, as John suggested, that he has special rights other citizens do not have.

Other defects, in the light of this decision, are irrelevant. There is language in the AG's memo that should have been invoked, especially with the meaning this decision gives it.

The inadequacy of the legal research is illuminated throughout, despite the seeming persuasiveness of the Nichols briefs. Example, from decision, "Because the term 'records' is not defined in the Act, the Court is initially put to the task of deciding which items requested by plaintiff may be so classified." The term is defined for the Archives. Thus, what this really means, is that we now have greater obstacles to overcome. If that is true of any court loss, it is more so in this case, and needlessly so. I think we can look forward to persistent and possibly effective misuse of this decision by the government from now on. I think it would be insane to invite broadening it to make our problems more serious. I may be wrong, and this will not make it easier, but I think my method of seeking essentially the same material is the only one that can succeed. I hope so.