

Mr. Hedrick Smith
New York Times
1000 Connecticut Ave., NW
Washington, D.C. 20036

1/18/85

Dear Mr. Smith,

It was thoughtful of you to write when you were about to be away from the office. I appreciate it and thank you for it. I write not because of what I'd just mailed you before your letter came but because of one sentence in particular. And because, with all the stuff that crosses your desk, you read too rapidly and missed what I'm going.

You refer to my efforts to make the FOIA system work, and for years I have made such efforts, establishing good precedents while a total blackout in the press permitted misusing me to establish evil, authoritarian precedents. Which hurt almost everyone else more than they hurt me.

Our late friend Mo is the only print press reporter who ever expressed the correct understanding, that I've been trying to make the system itself work. While it kicks and screams and occasionally lands one on me.

Too few people stop to think today and too many reporters do not even have time to stop and think. I could not be more establishmentarian, as you'll see if you take time to reread what you skimmed. I did not send you that petition for me, in my interest, or because, as you did not understand, the assessment of fees against me is affirmed.

For years when I addressed college audiences and in honesty had to paint a glum picture, I was troubled because, on the one hand, honesty required the truth and on the other hand, I hated to depress impressionable young minds. Finally, after 1974, or about then, I hit upon an honest solution. I told the kids that if they'd stop to think they'd not think of another country in which one could do what I do and survive it, referring to the British Official Secrets Act and the sanitaria in the USSR. I also told them that impossible as the odds may seem to be, the system can work. And I illustrated with the 1974 amending of FOIA's investigatory files exemption over what Judge Gesell once referred to as my persistence. (No direct quotes in Gardner's enclosed piece, but Gesell told all seven DJ lawyers present - which means I could recognize seven, there may have been more - that it is because of me that we then had the FOIA as amended by Congress.) It might have seemed impossible, but the Congress did listen to one unimportant man who is absolutely without any kind of influence.

Because I am the plaintiff-appellant it is impossible for me not to be in the petition. It is my litigation. But what I was fighting for is not myself but the rights of others, and not only under FOIA, the rights and freedom of lawyers and their clients, and the right not to have either the government or judges lie. When they do the system crumbles, the judiciary has surrendered its constitutional independence, there is less of any kind of freedom and some form of authoritarian society creeps a little closer. Whether it continues only to creep depends on how much use the dedicated wrong in the executive agencies try to make of that decision and the degree to which they get away with it, which will vary with the judge.

Your letter fairly represent the actual state of affairs, and if after what I've been through it were possible for me to be depressed it would depress me. It is today's actuality that official and judicial corruption, warfully documented - and I put myself on the line to do it, making myself subject to the penalties of perjury if I erred in any way - has no news value.

Before receiving your letter I enclosed a note in what I sent you indicating my belief that incredible official and judicial corruption is not news but Ann Landers is. Your confirmation was on its way.

My unpaid lawyer and I are penalized without trial, without any kind of hearing, without a finding of fact, without any recourse at all of any kind (other than my effort, which I did not expect to succeed) without even a pretense of evidence against us, only the proven and unrefuted, deliberate lies of government counsel, and this represents constitutional rights, what you and I were taught in school, what supposedly distinguishes our system from those we dislike and criticize?

And it is not news when errant officialdom and activist judges can create a precedent under which anything a lawyer does - or does not - do makes him subject to sanctions? Is any lawyer free? Free to be an adversary in the adversary system? Free to represent a client as lawyers are supposedly required to?

And what do you think the situation would have been if the DJ's lawyers had told the appeals court that on two of the most basic points involved I had lied to it, knowingly and deliberately? Under those circumstances would there have been a total press blackout?

My familiarity with shibboleths goes back to the early 1930s, when I'd handed in a really attractive feature. The city editor called me over and said, "Son (to distinguish me from the older copy 'boy') Mr. Dupont wouldn't like this." Pierre then owned the Wilmington Morning News, where I worked while going to the University of Delaware. But he also made a suggestion, quiet, kindly, fatherly Carl Wise who I remember so well, and that shibboleth made me a syndicated feature writer in the forerunner of today's Sunday Supplements. I doubt you are old enough to remember the old Philadelphia Ledger and its supplement.

You and all other reporters still live with them, with the owners and more important editors still not having learned how to be intelligently selfish, how to safeguard their real interests while they served others. Is there a paper today that does not publish and headline known lies without question with a quotable source of high position or like mind? So please understand I'm not being personal. I'm not. Not about you. But now I will be, as I have not been, about myself, and in terms of what in my day would have been regarded as a story. At least a feature.

Here I am, an old man whose only regular income in two decades has finally exceeded \$350 a month for the first time and by only a very small sum. With no resources at all I've done a work represented by about 60 files cabinets, most overfilled and most of once secret government records I've forced out of suppression. Aside from the uses I make of them now, I've given them all away without any quid pro quo and with the understanding that the university make them freely available to all. Aside from the content of all this material, and it includes some of the most significant records in our history, and some of the seamiest, most disgusting, most dishonest, my knowledge is freely available to all, including the press. And in the press quite a few Times reporters, at all hours, from all over, saving the Times not inconsiderable sums and covering not a few asses. I get the Congress to enact legislation, ^{making} ~~making~~ the system work, and when that happened that, too, was not news. This opens ^{up} closed files and thus we know about so many anti-American evils, like Cointelpro and so much other rottenness. And I keep fighting in court, once with a DJ "get Weisberg" crew of six lawyers opposing me, after which they shifted to uninhibited mendacity when the law and all their lawyers couldn't do their job. Finally they get a rubberstamp disgrace for a judge and they come after me, phonying up a contempt case, which they actually threaten to my lawyer. I tell him I dare them to try, knowing full well that it would mean what they dare not let happen, a public trial. So they shift to extorting a few buck from me, and that gets rubber-stamped. Still believe, ^{no} that under our system there must be a trial before punishment

I tell my lawyer to tell them where I'd like them to go and what they should do to themselves while going there. When I flaunt my contempt of them and their judge (thank you so very much for your honesty in putting it in these very words!) they shift to my lawyer, who has done everything short of clubbing me to do what they want, and hold him responsible for the sum I've refused to pay. (I've lost track of it but it is at least a third of my annual Social Security, maybe more.) Not him instead of me. Both of us. Talk about Shylock! One set of claimed expenses, all fraud and no records of them, to be paid in full by both of us, with interest.

Then it gets to the appeals court, which in government cases is generally the equivalent of the Supreme Court, and what happens? It ignores all the evidence, cites Jonathan Swift inappropriately instead of law, conjectures what is both unreasonable and impossible, makes up its own findings of fact for those that do not exist and to which, as I understand it, the appeals court is limited, doesn't even bother to get the basic facts straight, and lies to boot itself.

If something like FOIA is not rewritten that is not news.

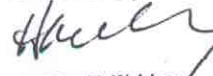
If lawyers, large and small, wealthy and struggling, are now potentially always in jeopardy, that is not news. Nor is what can now happen to their clients, including the largest corporations. Even the Times, as it may in time learn.

.. I've never had any interest in personal publicity and I'm not seeking any now. My concern is for the country and what has happened and is happening to it. I do ~~not~~ not consider myself abused ~~by~~ rather am fortunate, as may not be apparent to anyone not from my background. I'm the first member of my family to be born here. Both parents were young when they fled the pogroms, and it was no easy thing even for them to get here. So I was born with what I have always regarded as a debt to pay and I am fortunate, very fortunate and happy about it, that I have been able to try and perhaps do so more than most. For all my many illnesses and their limitations, I am still fortunate that as yet my mind survives fairly well. Each of the two things I've filed and sent you I thought through during my daily morning therapy, then came home and did by supertime. My wife, also a septagenarian and also unwell, retyped them and that is the way they got filed. What I mailed you (and the court and others) this morning I didn't even think of until ~~yesterday~~ day before yesterday morning. I had it xeroxed in Frederick yesterday, despite the snow storm I was not supposed to be out in, addressed envelopes while it was being xeroxed, skipped my therapy for the first time in four years this morning, did all the packaging myself after picking the xeroxes up, and there went another month's Social Security. Which I'm fortunate to get and was part of the fight for in the 1930s, with others on the Senate committee for which I then worked. No, I'm fortunate, not to have been born where I might have been and to have been able to do what I've done. Fortunate, too, that none of hundreds of reporters has ever complained that I was in any way inaccurate, that all seven of my books have stood the testing of time, without a significant error in any of them or thousands of pages of affidavits I am quite confident the FBI, CIA and DJ lawyers finecombed.

The intensity of the past ~~week~~ two days added to the permanent physical tiredness, which leaves typing one of the few things I am able to do. Please understand that I'm not being critical of you personally, that I understand desk problems from many reporters and my own past. I can understand that you see nothing the Times would print. But I can also see that this might be because some editor might not understand a superficial story - and that there might not be time for any other kind.

I sent you nothing because I hear bells tolling for me.

Sincerely,


Harold Weisberg
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The New York Times

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HEDRICK SMITH
Chief Washington Correspondent

January 17, 1985

Mr. Harold Weisberg
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Dear Mr. Weisberg:

I appreciate your taking the trouble to send me your files on your case against the FBI under the Freedom of Information Act.

At this stage, however, I don't think there's a story in it for us. Sadly, the FBI and other agencies seem to hold all kinds of people at bay by asserting, in legal language, that technically, Freedom of Information Act applicants have not crossed all their Ts or dotted all their Is to the satisfaction of the FBI's courts.

It seemed pretty harsh that the district judge assessed the legal fees against you in this case, but I see you got absolved of that by appeals court.

In any case, I don't at the moment see any special news wrinkle for us in your sad trials and tribulations. But if you think future development or future litigation is worth a story, let me know.

With best regards and the hope that your future efforts are more fruitful. Lord knows we all need the Freedom of Information Act system to work better than it does.

Sincerely,



Hedrick L. Smith

Signed in his absence.

Critic to Get Free FBI Set Of JFK Files

By George Lardner Jr.
Washington Post Staff Writer

U.S. District Court Judge Gerhard Gesell refused yesterday to delay the FBI's impending release of thousands of additional documents bearing on the assassination of President Kennedy, but agreed that author-critic Harold Weisberg should get a free set "with all reasonable dispatch."

The FBI plans to make public on Wednesday some 40,000 pages of headquarters documents on the 1963 assassination at a cost of 10 cents a page for those who want their own copies. The bureau released an initial 40,000 pages last month on a similar basis.

An outspoken critic of the Warren Commission and author of six books on the JFK murder, Weisberg noted that he has had freedom-of-information requests for such documents pending for years and that he had asked for a waiver of fees in mid-November. He filed for a federal court injunction in late December, arguing that he was entitled to a free set at least by the time the final batch was made public.

Charging that such voluminous FBI releases amounted to "media events" that effectively camouflage unjustifiable deletions and paper over "a very careful job of sifting and concealing," Weisberg said the Justice Department and the FBI had completely ignored his request for a waiver of the fees, which he said he could not afford.

Announcing his decision from the bench after an hour-long hearing, Gesell was sharply critical of the government's delay in responding to Weisberg's request for more than 50 days. The Justice Department offered him a reduced rate of 6 cents a page last week, but Gesell said "it is apparent no consideration whatever" was given to Weisberg's claims of poor health and indigency.

"The equities are very substantially and overwhelmingly in plaintiff's favor," Gesell said. He said that the records would not be coming to light now were it not for earlier freedom-of-information litigation by Weisberg. This led to a congressional change in the law, opening the door to FBI investigatory records.

The judge, however, declined to hold up the Wednesday release, on grounds that the disclosure of the documents was the "pre-eminent consideration." Weisberg's lawyer, James H. Lesar, said later that he understood the FBI would mail Weisberg copies of the forthcoming 40,000 pages the same day.