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Mr. Ben Bradlee
Mr. Philip Geyelin
The Washington Post,

Dear Sirs,

Like my recent letter on the Joe Kraft column and your editorial hewing that line, this one is not intended for publication nor is it a solicitation for news attention to some of what will follow.

Today's editorial, "The Right to Know," is excellent and it is honest. But it is not good enough and it is not fully honest.

It is forthright but inadequate in taking "some" blame for the news media for the law's ineffectiveness. The inadequacy lies in not taking enough and personal blame and in avoiding others who are in some ways more to blame than the news media.

Rather than focusing on the Post - and I do not intend to personalize this - let me point to Carl Stern, who did do a fine thing. I have every reason to believe that I am responsible for his first interest in this law. I gave him and NBC's staff counsel copies of the Attorney General's Memorandum on the law (as I also did the Post, which then did not even have it in its library). I was sent to Carl by his editor, among other reasons for possible reporting of one of my FOI law suits, one that ended in a summary judgement against the Department of Justice. Stern did not report what quite aside from other content is generally newsworthy, a summary judgement against DJ.

I am certain I am the first writer to try to use the law and I believe I am the first who actually did, in court, about four years ago. From your editorial I have used it more than all the news media combined. It was not necessary to go to court in all cases. Four times I did, which must be close to a record.

About the time in 1966 Mr. Bradlee may remember my showing him copies of some FBI reports I asked help of the ACLU. I was asked to write a memo, I did, and to this day it is without response. So, the ACLU's record is less than exemplary. In fact, I twice later made additional approaches, at least once with a lawyer urging the ACLU to take such cases, yet as of that time, only a couple of years ago, it would not. (Not that in its later work it has not found it expedient to cite my cases.)

One of the real problems is that the Post and the New York Times (not alone) found policy determinations more urgent than traditional news judgements. Thus the earlier and for that reason more important cases were entirely unreported. Even when stories were filed. The lack of reporting when reporters were witness to official criminal behavior gave encouragement to that behavior and to its repetition. Lying by the Attorney General and perjury by lawyers working for him was not news. When it was charged it remained not news. When a federal judge in one case actually wrote a decision concluding that a writer should be forever forfended from pursuing his inquiries to the newspapers that had fought prior restraint, this, which makes that look like a blessing, was not news.

I think it can be argued that with this kind of news determinations The Watergate became inevitable. Certainly this kind of non-reporting was encouraging to Watergaters, a number of whom inside the Justice Department figure in these suits. Mitchell, Kleindienst, Gray and Ruckelshaus (not as Mr. Clean) figure in them, as does the grossest misrepresentations by the FBI. At one point the Department was forced to certify to the appeals court that Kleindienst was a liar but its certification of the Attorney General as a liar was not news.

It is always easier to see more clearly looking backward. I think it today is certain that had precedents been sought against suppressive officialdom when this law was first enacted, the probability of good precedents would be better than with courts packed and dominated by the Nixonisti/Mitchellisti. I believe it is also true that if some of the unreported cases had been reported, all the official Watergate-like activity in them would have been at least deterred and the prospects of better precedent would be better than they now are.

To illustrate this, I cite a case of mine in which my petition cert has been filed before the Supreme Court and Justice has misbehaved even at this point, to delay further. This case will be precedent on the investigatory-files exemption, the one I believe most commonly used and most often misused (true in that case, too). It has gone to the Supreme Court without the taking on any evidence. Law-enforcement purpose is essential to this exemption. When called on to cite the law, the federal attorney's answer was that there had to be one for such a circumstance, human or natural, and on this the judge ruled there was a law-enforcement purpose! This is the forever-forfend case, the one in which the Attorney General is certified as a liar and in which there was the most deliberate misrepresentation to the courts, all unreported. And this is an understatement of the defects and misdeeds that will control whether in the future you or anyone else ever has access to what some dishonest bureaucrat choses to describe as an "investigatory" file.

It was my experience in the beginning of this case that caused me not to seek news attention to these cases, although in no instance did I fail to inform the Post at some level. On initial filing I held a press conference. A Post reporter was there. He left with xeroxes of the Attorney General's claim that a public court record is an "investigatory file." There was a point: the Department of Justice had actually confiscated all copies of this court record and alone possessed them and the file copies (this, too, was not news). Your reporter left with additional proof of official lying, the response on behalf of the Secretary of State saying that he had given the then Deputy Attorney General what that same Deputy alleged he did not have.

Broke as I am I can't afford press conferences when these things are not news and when they are without possibility of question, when I also provide proofs.

In a current and also unreported case I have charged official perjury, under oath. I have supplied documentary proof of it, if less than all the proof that I have. Some I am reserving for possible in-court use. Even after Watergate this seems to meet normal standards for what is news.

Were I working in other areas I believe that what is a matter of public, official record on these cases might have received the normal treatment from the press. But the press is hungup on the subjects with which I work and this, I believe, is the control factor. If not hangups on me, not influenced by any accreditation of my accuracy, most recently by the sixth circuit court of appeals in Cincinnati.

When the White House began to attack the Post over its fine Watergate reporting, I provided you with leads, including copies of correspondence with officials. If you had followed them under FOI would have given you a clean break on Nixon's crookedness with property and taxes, where the full story and what I believe is the clearest fraud are still unreported.

I would like to believe that this excellent editorial could be the beginning of not just the Post's self-analysis on all FOI matters and subjects. It is always time for the eating of notes and we all have them.

If you doubt any of my representations, I offer unlimited access to files greater in length than several books. This represents the kind of effort I have made, without income or subsidy or resources, so that the Post, too, can have "The Right to Know."

Sincerely,