

Route 8, Frederick, Md. 21701

2/12/73

Dear Dick,

As I remember it, the last time we spoke you indicated the belief that the Freedom of Information law might well be used more by the major media. Perhaps the regret that it had not been.

The Whitten case provides what I believe are possibilities for using it where refusals to provide the information asked would in itself make legitimate news. I would anticipate that the investigatory files exemption would be invoked. This exemption does not cover all investigatory files, although the FBI would like it to be believed that it does. Claiming the exemption would be a kind of answer, as you may remember from the letter I sent you that I got from Philip Dean. One doesn't claim the non-existent is exempt, for one example. And under some circumstances the exemption is waived, if involuntarily.

I know of this case only what has been reported. Of the stories I've seen, one request I'd recommend, if anyone had any interest in using the law for reporting, is for a picture of the top of each of the cartons. If the answer is that no pictures were taken, then the FBI denied Whitten and the others their right to exculpatory evidence, a right since the days of Aaron Burr. If it refused under the exemption, then it exists and is the right of the accused under Jencks, in addition to the pre-existing right. There are other possibilities, I think.

If anyone were to want to attempt some investigative-reporting on this, I think the law could be a valuable aid. I have some things that could be helpful in it.

Reference to the typewriter in today's story makes me wonder if there is to be an attempt to link this case with some strange doings in the State of Washington, where some of the FBI's finks were among the farthest out. If my memory is correct, they did some bombings with federal materials.

If this interests you and I can help, let me know. The Post has several copies of the Attorney General's Memorandum on this law. I provided them. It is a good guide but no more than that because it precedes any of the decisions. There is also an unpublished study by the Administrative Conference of the United States, which I have. It is not binding but does suggest some new approaches and possibilities. It is not generally understood, but this law can work fast. Any case under it goes to the head of the dock.

Sincerely,

Harold Weisberg