

Mr. Fred Graham
CBS News
2020 M St, NW
Washington, D.C. 20036

6/11/83

Dear Fred,

When I wrote George Herman I planned to write a few reporters who knew me and correctly understood my work because there was no doubt that the FBI and DJ were again trying to use me to rewrite FOIA and because they were making it clear they were going to move for contempt because I was absolutely refusing to conform to the revision they had already procured from Judge John Lewis Smith. If that came to pass, and unless the FBI backed down it was, I did not want only the official version to be known to reporters.

I didn't get many letters written before I had to return to preparing affidavits in opposition to the FBI's moves. After I wrote George I remembered that you are the legal correspondent but I never got time to write any more letters. I have just finished the draft of that affidavit, so this update.

When I did not comply with Smith's order and told my attorney that I am resolute in this the FBI's lawyer made pretext calls to my lawyer to warn him that he was going to have me "thrown in jail" and to scoff at the state of my health. When my lawyer gave him no indication that he was getting anywhere and when I still refused to comply with Smith's order, he shifted to another sanction and asked that the case be dismissed - with the initial searches still not made after more than five years and without even a pro forma attempt at justifying the withholdings.

Meanwhile, I'm in contempt on another basis - I've not and will not pay the FBI's counsel fees in seeking discovery and sanctions. So, unless they back down again, they'll face the need to cite me for contempt and Smith flails a nonstop FBI rubber stamp.

However they may back down, I see them as establishing another limitation on FOIA that they'll use against all requesters and for most it will largely nullify

the Act. Whether they try to jail me or get dismissal, they'll have what they'll use as a precedent unless I can stop them. So, I've been spending what time I can perfecting the record. This means nothing to Smith, who ignores anything that is not from or favorable to the FBI, with incredible consistency, and more than any judge I've ever been before, is comfortable with overt and proven perjury. And while the appeals court is growing increasingly weary of FOIA cases, particularly when confronted with FBI bad faith, which they apparently fear to confront, I'm making the strongest case yet of this, with the issue still on searches, where in the past I've established a few precedents on appeal. I see no real choice and there is always the off chance that Congress will pick it up, as they did with one of my early cases, which it cited as requiring the 1974 amending of the investigatory files exemption.

We've asked Smith to make some of his rulings interlocutory so we can take them up on appeal before the end of the case. I don't know if my lawyer will be able to persist, these cases have been that costly to him.

Until there was this clear and present danger to the Act, I made no effort to interest anyone in the press because just about everyone seems to have adapted to official mendacity and to find it not newsworthy. However, for all of my experience with that, and it taints all my cases, it has never been as total as in this case. I think this is in part because the FBI and DJ assume Smith will take anything from them and will be as prejudiced as he has been and thus they can largely nullify the Act, at least for a time, and probably because of the potential embarrassment of the records they've refused even to search for. In what has been disclosed there is much that is embarrassing to them. Unless you are interested, I won't take your time for those items.

I have a copy of the complete case record, as does my lawyer, Jim Lesar, 1000 Wilson Blvd., Arlington 22209; 276-0404.

One of the matters on which I've prevailed, without yet having accepted the

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FBI's proposed compromise, is photographs, of which they've offered me 100 8x10 glossies. If CBS would like any for its archive, I'll be glad to ask for them and make them available.

Speaking of making available, circumstances have forced me into a public role, not what a writer prefers, and I do my best to serve it well. I make everything I've obtained available to anyone, including those whose beliefs I detest. By now I have close to a half-million pages of once secret official records and they are fairly well arranged for access. (Unsupervised and we have an ancient but still laboring copier.)

Because George also referred my letter to Robert Schakne I'll be writing him, too. I hope neither of you minds my providing each with a copy of my letter to the other to save me time. I'll not get to mail either letter until my wife is able to make the copies. I'm not permitted to stand still at all - and I've adapted to brushing my teeth sitting down, shaving sitting down and without a mirror, etc. Nothing is a problem after you once feel the breeze of the flapping wings of angels!

I'll also send copies to my lawyer so he'll know that if either of you has any interest I'd like you to have access to the entire file.

Best wishes,


Harold Wdisberg