

Center for National Security Studies

January 6, 1984

Mr. Harold Weisberg
7627 Old Receiver Rd.
Frederick, Md. 21701

Dear Mr. Weisberg,

With regard to your December 13 letter concerning S.1324, I hope this response proves useful. I am familiar with a number of the FOIA suits that you have brought and your views on S.1324 are of great interest to me in following the course of that legislation.

If I am not mistaken, the list of cases given to you by Jim Lesar is probably the one that I gave to Mark Allen, another of his FOIA clients with a particular interest in files concerning the JFK assassination. The list was compiled by the CIA in response to a request from Senator Leahy to analyze the bill's anticipated impact on pending FOIA litigation; it does not, therefore, examine the effect S.1324 would have had on cases that are now closed or on requests that never entered the litigation phase. We did, however, present the CIA with a list of documents previously released to the Center, or released to others and obtained by the Center, so that an analysis of the bill's potential impact could be done on these materials as well. It is our understanding that the CIA's analysis will be published as part of the hearing record of the Senate Select Committee on Intelligence regarding S.1324. In the meantime, we have urged anyone having documents released by the CIA pursuant to FOIA to send them to us for similar analysis if they believe the documents would not have been subject to search and review under the provisions of S.1324 (see attached).

I would be interested to see the relevant papers in your consolidated cases, C.A. 78-0322/0420, if you believe that they should have been on the CIA's list of affected cases. If the case involves CIA documents, it is curious that the case does not appear on the list at all. Although the CIA's withholding of information concerning the JFK assassination (i.e., their claims of exemption) would not, in our view, be affected by S.1324, there is evidently some controversy regarding the bill's potential impact on the agency's obligation to search and review such materials in response to a FOIA request (e.g., inclusion of the Shaw suits as "affected cases").

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I could not tell from your letter whether you have read the Select Committee's report (S.Rpt. 98-305) explaining S.1324. Although we are still studying it to determine the extent to which it responds to criticism of the bill, it is clear that the report is essential to any discussion of the bill's likely impact on current practice. The question of impact on JFK assassination files requests, for example, would seem to fall squarely within the concern raised by the ACLU regarding the obligation to continue to search and review files involving the subjects of alleged abuses or improprieties by the CIA. (see Report, p. 25-28 on the "Provision Regarding Improprieties.")

Similarly, regarding your comments on the Office of Security, the report makes clear that S.1324 would only apply to OS files concerning investigations conducted to determine suitability of potential foreign intelligence or counterintelligence sources of the Directorate of Operations and the Directorate for Science and Technology, and not, for example, files on activities within the U.S. to protect the physical security of agency facilities. The bill's proviso regarding "disseminated materials" is also explained at length as a broad limitation on the application of the bill's exclusion from FOIA's search and review requirements.

We share your concern that the "operational files" concept of S.1324 might be subject to abuse if not tightly circumscribed. We believe, however, that the current dismal situation regarding CIA responsiveness to FOIA requests makes it an idea that is worthy of continued exploration, so long as it continues to hold out the possibility of improving FOIA responsiveness on the part of the CIA, without any meaningful loss of information currently accessible under the Act.

If you haven't yet read the committee report, I would urge you to do so. I would be most interested to hear your views on it.

Sincerely,



Allan Adler
Legislative Counsel

LETTERS.

SLAUGHTER'S 'PIE-IN-THE-SKYISM'

Washington

Jane Slaughter's article on industrial policy and the Chrysler bail-out is pure pie-in-the-skyism ["A Preview of Industrial Policy," *The Nation*, Oct. 15]. Chrysler has survived, and is thriving, thanks to the sacrifices and vision of a lot of people—most of all, the workers whose jobs were on the line.

Every union bargaining situation must deal with the facts at hand. By the time the existing contract expires, Chrysler workers' earnings will equal those of General Motors and Ford workers—not a bad achievement for a company once destined for extinction.

There is no perfect path to a U.S. industrial policy, but the Chrysler rescue contains many practical lessons. Of course one can always bay at the moon and hope for the millenium. That, I presume, is what Slaughter would have us do when faced with industrial decline and bankruptcies.

Frank Wallick, Editor
UAW Washington Report

A CALL FOR DOCUMENTS

Washington

Congress is now considering legislation that would exempt certain Central Intelligence Agency files from the search and review requirements of the Freedom of Information Act [Angus Mackenzie, "The Operational Files Exemption," and Morton H. Halperin and Allan Adler, "There Is No Deal," *The Nation*, Sept. 24]. The Senate Intelligence Committee unanimously approved a revised version of the bill (S. 1324) on October 4, and should issue its accompanying report by October 21.

In its testimony on S. 1324, the American Civil Liberties Union said it would oppose the bill if its passage would result in any loss of access to information that had previously been released under the F.O.I.A. In order to determine if there would be any loss, the committee asked the C.I.A. to examine a list of documents it had already released. The C.I.A. studied "From Official Files," a Center for National Security Studies report which summarizes all documents released to the center as well as other C.I.A. documents that were reported in the press or otherwise came to the attention of the center. The C.I.A.'s analysis indicates that none of these documents would be exempt under the terms of S. 1324 and explains why.

That analysis, which will be published in the record of the committee's hearings, is important in assessing the bill's impact. The A.C.L.U., however, wants to be sure that certain types of documents are not missing from the center's summary. For this reason, the A.C.L.U. is asking people who have received C.I.A. documents under the act and who suspect that those documents would not be subject to search and review under the

proposed bill to submit copies of the documents for review. The A.C.L.U. will try to ascertain if the types of documents submitted would be exempt. The material will not be disseminated if so requested; the A.C.L.U. will pay copying costs if necessary. Documents should be sent to Allan Adler, Center for National Security Studies, 122 Maryland Avenue, N.E., Washington, D.C. 20002. The center is a project of the A.C.L.U. Foundation and the Fund for Peace.

Morton H. Halperin, Director
Center for National Security Studies

LIBEL AND CLASS STRUGGLE

New York City

I am pleased that Paul Berman finds my book *Class Struggle Is the Name of the Game: True Confessions of a Marxist Businessman* "funny" and "amusing" ["But Will It Sell?" *The Nation*, Oct. 8], but I would have been happier if he had paid more attention to what the book is about—to wit, the condition of small businesses in America today; what happens to *anyone* who goes into business (the capitalist as an "embodiment" of capital); the ongoing validity of Marx's theory of class struggle; and the possibility of using the market as part of a strategy for attacking the market. The autobiographical form of the book is just that, the form, and I had hoped that a journal concerned with radical thought would devote less space to recounting my anecdotes and more to evaluating these main themes.

As to particulars, I shall leave it to readers of my book to decide whether the people who are criticized, corrected, mocked or simply kidded (important distinctions that Berman ignores) get their just deserts or no. More serious—and what does require a response—is Berman's distorted account of my libel suit against Rowland Evans and Robert Novak, an act which strikes him as both un-Marxist and illiberal.

First, a correction: the three judges on the U.S. Court of Appeals for the District of Columbia did not decide that my suit should go forward to trial, as Berman says, on the ground that an "expression of opinion, which was previously exempt from libel suits, ought not to be exempt if it contains wrong facts." That is a possible reading of one judge's opinion. The other two judges came down on my side for other reasons, the main one being that what Evans and Novak had written about me concerned facts, not opinion. That was also the main contention in the brief submitted by my lawyer.

Berman suggests that my suit is in some way directed against the press and is a threat to the First Amendment. Though the libel laws allow me to sue each of the several hundred newspapers that carried the column, I am suing only the people who wrote it. According to Berman, radicals should never sue anyone for libel. Admittedly, in a "good

society," there would probably be no libel laws, but that is not the issue or the relevant context here. Libel laws, as Berman points out, are used chiefly by the rich and powerful to silence their critics. Of course that is unfair, but how is anything changed, for better or worse, if an occasional poor or powerless person tries to use the same laws to protect himself or herself? In our imperfect capitalist society, imperfect laws can some times—usually with great difficulty and a no little sacrifice—be used in this way. Will the courts use these occasions to further restrict freedom of the press and people's rights generally? If they want to. But if they want to, there are many occasions they can use besides my one suit.

In the same issue of *The Nation*, Martin Garbus argues that individuals who hold public office or who are otherwise public figures should not be able to sue for libel ["Abolish Libel—The Only Answer"]. To anyone seriously concerned about reforming the libel laws, that is a crucial point, because suits (and the threat of suits) by public figures are the real danger to whatever freedom of the press exists in this country. In 1978 when the Evans and Novak column appeared I was not in any sense a "public figure." And even Garbus, extreme civil libertarian that he is, believes that some kind of libel law is needed to protect the rest of us from serious damage inflicted by dishonest writing.

Unlike most victims of libel, I suffered more than "mental anguish." Evans and Novak's remarks, some of which were directed against my work and reputation as a professor, had a clear impact on the decision to reject me as chairman of the department of government and politics at the University of Maryland (whose Board of Regents chairman circulated the column extensively).

Rather than contributing to our oppression (Berman's view), I believe that using their imperfect laws against them (are there still any readers who don't know who Evans and Novak are?) can play an important role in our liberation. Reacting passively to injustice only makes those who are responsible believe they can get away with even worse the next time. No doubt, this conviction also accounts, in part, for why I felt I had to respond to Berman.

Bertell Ollman
Professor of Politics,
New York University

BERMAN REPLIES

New York City

Professor Ollman, as is his wont, takes his writings more seriously than I do. Concerning his suit, the civil libertarians I have consulted, including Martin Garbus, think he's following an unfortunate course. Sometimes people must sue, but because Ollman is a public figure, his case is not one of those instances

Paul Berman