

30th anniv. FOIA

Es. Maggio Balough, editor
Quill
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Harold Weisberg
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11/11/06

Dear Es. Balough,

Commemorating FOIA and encouraging use of it are fine ideas but the special issue fell far short of what it could and should have been, as reporting, as commentary and in informing those who would use the Act. The omissions in its Hall of Fame are significant. Some do not belong there, not really. And although there are references to the really significant 1974 amendments, with credit given where it has nothing at all to do with those amendments, the issue contains nothing at all about those amendments. Can it be because of their political importances, a consideration I did not detect in this issue? Does SPJ duck on this?

(Please excuse my typing. I'm 83 and in impaired health. It cannot be any better.)

What so many people who lacked influence, connections or the support of existing organizations did to give FOIA viability is not indicated in any way.

In the beginning, when it was so important, it was not as you say, that "The news media led the way...." It did not even report the efforts of those who did lead the way.

I think you may in the future find some of the actual history useful.

To give you an idea of how it really was after Johnson delivered his Fourth of July speech on enactment- what else could he do? and then he and his administration did all they could to frustrate the Act and its intent, I asked the Washington ACLU to represent me in my efforts to use the Act to obtain withheld information relating to the assassination of President Kennedy and its investigations. That crime and that investigation are not the fun-and-games the major media makes of writing about it. That is the most deeply subversive of crimes. Mine is not theoretical writing about it, ^{It is} really reporting in books.

After several trips to The National Archives with me, after I gave him to see the kind of existing information that was withheld, instead of getting a lawyer to help me obtain the withheld information ^{the ACLU man} he got me a lawyer to defend me when ~~as~~ he expected the FBI would come after me!

In the end a young friend who had not yet taken the District of Columbia bar examination did represent me in at least a dozen FOIA lawsuits. Some were precedential, including on copyright, and one is given credit in the legislative history for the 1974 amending of the Act's investigatory files exempted. ¹⁰⁷ Yet he,

James H. Cesar, is not mentioned in your issue.

Of all the many in the Congress to whom we are indebted for those amendments that gave the Act viability the senator most responsible was the late Phil Hart of Michigan. He is not mentioned in this special issue but he does belong in the "Hall of FOIA Fame" for that and for much of his political activity in support of the Act.

In that early request I could not get ACLU help on I sought the nonsecret results of the FBI's testing of alleged assassination evidence. (The FBI prevailed on overt mendacity.) The Senator who saw to it that the legislative history would be clear was the sole surviving Kennedy brother, Edward.

No reporting of the amending mentioned that or that it was one determined man, Andy Jackson's phrase, who by his persistence became the majority when the Act was amended.

The Act did provide for the waiver of fees under some conditions. I was the first to use that provision. I had by then been engaged in an unsupported pro bono endeavor for almost 15 years when I had no regular income and worked by adding to my debt. Jack Landau of the Reporters Committee for Freedom of Information and his committee publicly opposed the granting of that fee waiver to me!

Your Hall of Fame quite properly includes Sheryl L. Walter for her role in getting fees waived - years later. But it makes no reference to the first to whom credit and thanks are due, Jim Jessr.

And contrary to the position of Landau and the Reporters Committee, the judge who granted that fee waiver stated that the records then to be disclosed would not be coming to light if it had not been for my earlier litigation that was cited in the legislative history of the 1974 amending of the Act. (Neither he nor Senator Kennedy credited ASNE and its counsel, Richard M. Schmitt, Jr. for that 1974 amending, *as you do.*)

Before my health problems compelled me to discontinue lawsuits under FOIA I obtained more than a third of a million pages of once-withheld records and, in the spirit of FOIA, have always given free and unsupervised access to them to all writing in the field. They have also been decided to a college that will make them permanently available.

There is more for which I do not take your time or mine but I do want to call your attention to what can lead to considerable frustration if those who read it act on it. Under "How to file FOIA request" on page 48 you say that, "If an agency does not meet the time deadline [of ten working days], you may consider the request denied and appeal on due..."

If suit is filed without appeal of the denial the judge can throw that suit out forthwith on the ground that all administrative remedies have not been exhausted.

Gordon Winslow's failure to get compliance from the CIA after 17 years is not the record. There may be those older than mine but I'm still awaiting compliance with requests I made of it in 1970 ^{and earlier.} Winslow's request relates to the late Rolando, not Ronaldo Masferrer. He was not known as El Tigre over his anti-Castro activities after he got to this country. He earned that nickname when he was part of the Batista regime Castro overthrew.

I enclose a copy of the page of the Congressional Record with Senator Kennedy's remarks, the Washington Post story quoting the judge on what the Post had not reported, my responsibility for the amending of the Act's investigatory files exemption in 1974, and a part of an FBI filing in my CA 75-226 in which it through its counsel, the Department of Justice, told that court that I knew more about the JFK assassination and its investigations than anyone employed by the FBI.

That ~~is~~ ^{is} suits, by the way, is the one over which that exemption was amended that I refiled as the first suit under the amended Act. The FBI prevailed in the earlier suit over what I referred to as mendacity. In the second suit it resorted to perjury that I charged. The defense says I could make and prove that charge "ad infinitum," as in fact I did, but instead of doing something about the perjury that judge actually, literally, threatened ~~for~~ ^{for} Lescar and me!

In the early days, when those with wealth and influence did not use the Act, giving it viability was not a pink tea. It required some risks, much effort and faith but there was no real help anywhere.

I'm sorry to tell you that the records of some of those you include in the Hall of Fame are not what you represent them to be although what you report is the general understanding. Not Landy alone and not him alone at the Reporters Committee. While I have no reason for this I guess it is because they did not like independent journalists doing what they should have been doing and were not.

Sincerely,

Harold Weisberg
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