

Mr. Hedrick Smith  
New York Times  
1000 Connecticut Ave., NW  
Washington, D.C. 20036

1/27/84

Dear Mr. Smith,

Several months ago I wrote you and several other reporters that the DJ was again rewriting and negating FOIA and that as part of its campaign I was subject to being charged with contempt of court. When I ignored the articulated threats the DJ opted another course: seeking a judgement against my lawyer for the \$1053.55 I refused to pay and have appealed. I believe that this is a threat not only to FOIA but to requesters and their lawyers. Whether the principle can be applied under other circumstances I do not know.

Meanwhile, the FOIA case itself has been dismissed because I refused to comply with the discovery demanded by the FBI. With this as precedent, FOIA is effectively gutted again, as it was before the 1974 amendments, which was over similar official misconduct in an earlier case of mine.

The DJ lawyer told my lawyer two weeks ago that they would not seek a judgement against me and would seek one against him, as they have since then. I've just learned that. And, obviously, they are not waiting for the appeals court because I believe they hope to establish the separate precedent however the appeal goes.

I write only to inform you, as I will also write others to inform them.

The judge, in addition to all else, merely ignored the case record and as he has done in other lawsuits against the FBI, merely rubberstamped one of their arguments pertaining to which they didn't even bother to present any alleged evidence.

The case record is truly incredible. Among other things it is not merely undisputed that voluntarily I had presented all the information I have, the FBI admits it. It merely asked for the same information all over again as "discovery," even though I had earlier provided about two file drawers of it at the request of the DJ appeals office.

Can you imagine what will happen when all FOIA plaintiffs face discovery demands and orders? And their lawyers face judgments if the plaintiff's refuse?

The Act, by the way, is clear and unequivocal: the burden of proof is on the government.

Sincerely,

  
Harold Weisberg