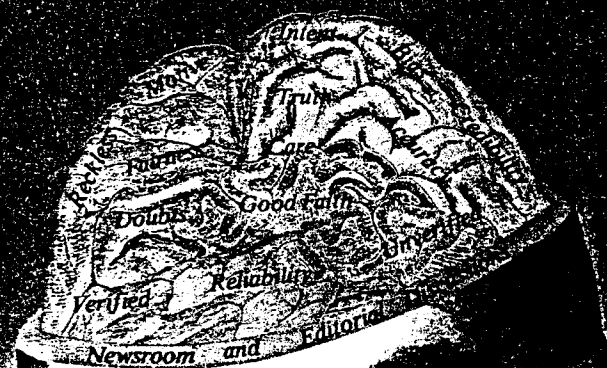


THE NEWS MEDIA & THE LAW

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**High Court Rejects Gag Order Appeals
New York Seals Many Crime Hearings
Justice Dept. Supports Newsroom Raids**



*Supreme Court
To Review*

*Probe of
Newsmen's Mind*

CBS's Mike Wallace

**Five Indicted for Printing Youth's Name
New CIA Rules Permit Newsroom Spies
Justice Dept. Asks CIA Book Ban**

WASHINGTON, D.C.

Press Opposes FOI Act Charges

Media Claims Search, Reproduction Fees Are Too High

Evidence is mounting that many government agencies are imposing high search and reproduction fees on the press as a way to discourage press requests for information under the Freedom of Information Act.

This new government tactic has been documented by a Senate subcommittee study showing a pattern of arbitrary charges imposed on the press by different agencies, some of which analyze the influence and motives of the particular news publication in assessing the charges. The report's conclusions have been bolstered by two recent incidents of apparently arbitrary government agency decisions.

First, the Federal Bureau of Investigation gave a writer a free copy of the more than 80,000 documents released on the Kennedy assassination, but charged the wire services and other news groups \$9,000 for the same information. Second, the General Services Administration charged one reporter \$336 and another \$2,000 for supplying identical information involving the agency's administrator.

The incidents may prompt a test lawsuit arguing that the Freedom of Information Act prohibits the government from charging the press search and reproduction fees unless the government agency can show that public disclosure of the information would not be "in the public interest." Currently, the government allows each agency the freedom to set its own rules and charges for press requests.

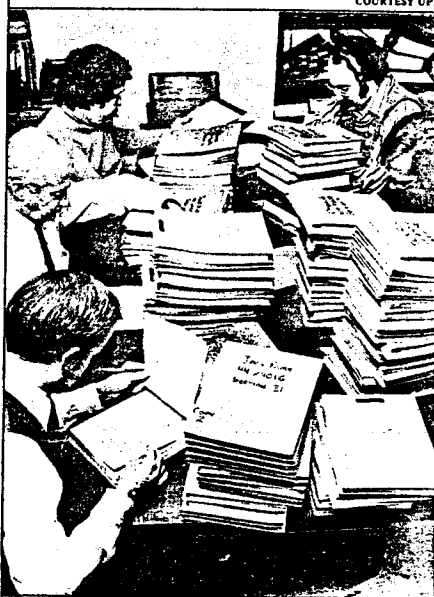
The controversy between the press and the federal government over search and reproduction fees stems from a provision of the FOIA which states that "[D]ocuments shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

The press maintains that the act was passed to insure press—and, consequently, public—access to government information. The press argues that no request is more "in the public interest" than that made by a reporter. Therefore, the press insists that the government must waive the fee because the Act says that the fee "shall" be waived.

The government, on the other hand,

argues that the Act gives each agency discretion to decide whether the fee shall be waived in each individual press request. Government officials say they evaluate content of the information sought, how it will be used, the motive behind the press request and the audience of the news organization that the reporter represents.

The press generally responds that the motives, content and circulation of the news publication are not legitimate factors to consider because the government would violate the First Amendment if it were to release or withhold information based on whether the materials were requested by a particular news organization.



Press scans FBI Kennedy papers: \$9,000 for some, free for others

Even the general rules set by government officials are not uniformly followed.

According to a Senate study, the Veterans Administration, the Department of Defense, the Department of Agriculture and other federal agencies routinely waive search and reproduction fees for the press.

Therefore, the press argues that, even if the Act does not require waiver of fees for the press, the government may be forced to waive fees because the equal protection clause of the Constitution

does not permit some agencies to charge while other agencies do not.

Wire Services Request Fee Refunds

The Associated Press and United Press International dispute with the Justice Department arose over payment of \$9,000 for 80,000 documents concerning the department's investigation of the Kennedy assassination. A request made by author-critic Harold Weisberg, which has been in the courts for over five years, eventually led to a January 16 ruling from U.S. District Court Judge Gerhard Gesell forcing the FBI to provide Weisberg with a complete set of documents without cost.

When the FBI released the documents December 7, the Justice Department placed one copy for the news media in a public reading room. Hampered by inadequate telephone links and insufficient room to work, the wire services and other groups organized by the newspapers *Newsday* and *The Washington Post* purchased copies.

Both AP and UPI requested that the money be refunded, and those requests were denied. Subsequently, UPI Washington bureau chief Grant Dillman filed an appeal February 9 with the Justice Department again asking for repayment. AP also appealed.

Dillman contended that the FBI virtually forced UPI to purchase the copies because the FBI imposed "arbitrary conditions" in its reading room.

Dillman also stated that "UPI fails to understand" how the government, pursuant to court order, would provide Weisberg a free copy, but deny a major wire service the same privilege.

Fee Assessments Challenged

The fee charge dispute with the General Services Administration involves attempts by two reporters—Charles Thompson of *CBS News* and freelance writer David Rothman—to obtain copies of leases and other financial information involving extensive real-estate transactions between GSA and Arlen Realty Company, a real-estate firm in which the current GSA administrator, Joel Solomon, held substantial stock.

The reporters, working independently, previously published stories indicating possible conflicts of interest between the administrator's current position, heading the federal government's major real-estate agency, and Solomon's former role in the real-estate firm.

Both reporters requested similar information. Thompson was asked to pay \$336 and Rothman to pay \$2,000. They appealed the costs, and their appeals were denied. □