

6/20/71

Dear Alan,

When I phoned you Friday night I had just heard the first report of Judge Gesell's decision in favor of The Washington Post. I am, of course, aware of the major media attention this story was and is getting. The purpose of the call was to give you something different on Gesell, who had just that week, on the afternoon of the 15th, sat on his first "Freedom of Information" Law case.

Who knows what is in the mind of a judge on collateral matters when he renders a decision on a point of law? But in that Tuesday case he sure had gotten a full education in government suppression and the dodges and devices by which it is accomplished as well as its willingness to circumvent and violate the law and applicable regulations. He had more than 100 pages of just this specification before him before the hearing, and at the hearing he displayed a knowledge of their contents.

At no time in pre-hearing papers and at no time at the hearing did the government address these charges against it, something one might presume might influence a judge's thinking. These undenied and proved charges ranged from misrepresentation and misquotation of law, regulation and the record in the case up to perjury, so it is rather serious charges that were undenied- and could not be because they are true.

My knowledge is personal. It was my case and I had to be my own lawyer. One of the matters about which they lied came up on his questioning (and innocently involved CBS, the government having said it had taken certain pictures for CBS when in fact it had not).

In a narrow interpretation of the contract with the Kennedy family he dismissed the case on the government's promise that it would take for me the pictures for which I asked but would not give me copies to keep. If this is a legal defeat on the point of law (and if I can I'll appeal that), it is a victory in getting me access to suppressed evidence I have sought for some years.

Regardless, it did contribute to his education and understanding at a critical time for the "establishment" press which, typically, with a reporters present, did not cover it. That is, did not report it.

What may not have been reflected to you is symptom of changing major-media attitude toward press and reporter freedoms. I know of one case where a net has filed a brief amicus curiae where a printed-press reporter (black) refused to disclose information given him in confidence. And I know that one net has retained special counsel in just this area.

Maybe, when it is perhaps too late, they have come to the beginning of understanding.

Best,