

Mr. Shris Gordon
WDVM-TV
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2/14/84

Dear Chris,

Seeing you on tonight's local news reminded me that you are again reporting and are a lawyer. Of course I do not assume that you are free to do what you like or that the station will air what interests you. So, whether or not it serves other purposes, I inform you of the government's newest, unreported and thus far quite successful effort to defeat if not destroy FOIA through me as a presumed unpopular litigant pursuing inquiry on a subject of presumed unpopularity.

Because it is not possible for the print or electronic media to cover FOIA litigation, not uncommonly the government is abusive and excessive. When it has a judge of known bias it therefore can be and in my experience is tempted to go farthur, secure in the belief that there will be no reporting.

In one of my cases it has, with the lusty collaboration of the judge, gone so far that the subject matter is immaterial, I need not be of any significance and the establishment itself is the victim. Both lawyers and the major enterprises that use FOIA. (I understand that the major users have been the major corporations.)

In this case, I believe both entirely wrongfully and improperly, Judge John Lewis Smith (who doesn't even bother to hide his prejudices) granted an FBI motion for discovery, I believe unprecedented in FOIA litigation. I opposed it unsuccessfully, as almost any FOIA litigant opposes anything before him. Intending to carry this up on appeal, I did not comply. The government kept threatening my lawyer that it would seek a contempt citation against me. He knew that I wanted that so the appeal could be clear and more limited. When I did not cave the FBI got a judgement for costs against me and I ignored that, again to appeal. It then threatened my lawyer verbally, telling him that it would not exercise the judgement against me but would get one on him and use it in the District. Smith was so anxious for this to happen he amended the judgement three days prematurely. My countermoves were within time but that did not bother the FBI. Its lawyer wrote mine demanding that he pay the judgement against me within 48 hours after his receipt of that letter or else. I've heard nothing since because, if there have been any developments my lawyer has been tied up with an appeal for another client.

I spare you the horrors of the case record, entirely ignored by the FBI and Smith. But I do suggest that with this precedent for all practical purposes FOIA is wiped out. Wealthy requesters will not be able, for the most part, to bear the cost and delays of discovery and the added legal fees and costs, and lawyers will be reluctant to run the added risks of being held responsible for their clients' quite proper acts and decisions.

My health has not improved, I am a little wearier than usual, so instead of trying to explain more I'll enclose a few copies, extras. Ordinarily I would not include the name of an addressee, so I hope you will ignore and forget that. If you are interested and want the other things to which I refer or other relevant information, please ask.

I hope you are enjoying being back at reporting.

Best wishes,



Harold Weisberg
7627 Old Receiver Rd.
Frederick, MD 21701