

Mr. Colman McCarthy
Washington Post
1150 15 St., NW
Washington, D.C. 20071

2/21/88

Dear Mr. McCarthy,

"New Heights in Victim-Blaming" is a fine column for which we all owe you thanks.

The title only suggests that this is not new. Because it remains largely unreported that we have these new heights, Willson's being one of the more tragic and heroic, this is largely the fault of the press, including very much the WxPost.

I write this not in the expectation of a ~~new~~ column but on the chance you may find it useful in a journalism class.

I do not intend to single the Post out. It is just that I've had more personal experience with it. And I'm familiar with it from the early 1930s, when as a reporter on the Wilmington Morning News I began my since-continuous reading of it. For years I enjoyed and admired it and spent much more time with a thinner paper than it had more news and it was much more enterprising.

What does not get reported today but certainly qualified as legitimate news in my days is, I believe, largely responsible for many of our troubles today, much of the disenchantment of youth and success of corruption and corrupters. I'll get to Meese as a more recent example.

The Freedom of Information Act was passed after I wrote my first book on the political assassinations that, in my view, are the most subversive of crimes, with serious consequences never mentioned in other writings. (I've since published six others, none reviewed in the Post. In fact, the planned review of the first was killed. The reviewer told me the story and I avoid names because I do not intend for this to even appear to be personal.)

Before the Act was effective I approached the ACLU for help with it. I took a lawyer with a prestigious law firm to the Archives and frightened him with what he saw. Instead of arranging to file for me under FOIA he arranged for defense counsel for me in the expectation that the government would be coming after me.

When I got a lawyer I borrowed the money to hold a press conference at the Mayflower. Three reporters only showed up. The one from the Post filed a column not a single word of which was used. He was told they were over-up.

Not a word appeared later when the Department of Justice and the FBI combined to rewrite the Act before a willing judge. I persevered, lost all the way to the Supreme Court, and in 1974 the Congress amended the investigatory~~ly~~ filed exemption over that suit. Andy Jackson was right, one determined ~~sun~~ could become a majority, but his making the system work was not news to the Post or any other paper of which

I know. Four years later there was a mention because it was mentioned by a ^{good} Judge.

To get that attention I had to make it appear that I was seeking to delay the availability of information. I wasn't. I wanted only to be in a position to provide unbiased information to reporters.

In return some were kind enough to phone and tell me about some of the awful stuff about me ~~the~~ FBI called to their attention and decent enough not to print it. Like telling the LBJ White House that my wife and I annually celebrated the Russian revolution with a gathering for 35 strangers at our home. Translated from this Cointelpro language, we had a farm and every year after the Jewish high holidays the Jewish Welfare Board had an outing for Washington area service personnel and their children, where the kids could see eggs hatch, play with the chicks, gather eggs and ride the backs of tame cattle. This is but one of many such examples of what we once expected from the KGB and Gestapo only.

But I was hated more because my perseverance led to the opening of the CIA and FBI files and what about Cointelpro since became public.

This kind of evil was widely distributed. Nobody came after me but the Department, until the suit reported in the enclosed Post story, had a "get Weisberg" crew of six lawyers assigned to frustrating my requests and seeking again to rewrite the Act because of the unpopularity of the subject-matter of my inquiry and by making me unpopular with the judges.

The easiest way to do this is by stonewalling the cases and they did that regularly, always resorting to perjury when they were before the judges I had. The case records abound with undenied proof.

So you can better understand, a case I filed in 1975 still has not reached its end. I tried to dismiss it a decade ago because of the first of the thromboses I've suffered and they would not agree.

Throughout they tried to rewrite the Act in several cases, sometimes succeeding and sometimes failing.

They got their best shot when a case I filed in 1978 was assigned to Judge (excuse the expression) John Lewis Smith and their prospects improved under the Reagan administration. Under Smith they were able to stall for more than four years.

With this favorable environment they decided to remove the burden of proof under the Act from the government and place it on the requester. They demanded, for the first time, "discovery" from me and when Smith ignored all the evidence, not the least of which is that I had already complied voluntarily for different reasons, they got their order.

Because this was what the attorney general had decided is an historical case, when Justice's appeals office asked me to provide information I did, at my own cost, provide two full file drawers of it.

There were other and legitimate and recognized reasons, one of which was the complete physical impossibility of my doing what they demanded. I'll be 75 in a few weeks and for years have had ~~an~~ limited mobility.

I refused to comply with Smith's order while simultaneously insisting that I had already provided the demanded information. Ironically, the Department's lawyer admitted this but that didn't deter Smith.

So, they demanded and got both a money judgement from me and one from my then lawyer, who will confirm all of this to you. (Jim Lesar, 393-1921) He had tried to get me to make a gesture at pro forma compliance but I refused, on principle and because it would not be honest. I could, in fact, have been charged with perjury if, as required, I had sworn to full compliance *when it would have been only pro forma.*

Here you have a case of a judgement against a lawyer because his client refused to do what he asked the client to do and that was entirely unreported!

They even tried to get his license lifted over this and that also was not news and not reported.

They did by it create ^{ing} a conflict of interest between us and I lost my lawyer over it.

To try to get his license lifted they lied to the appeals court, basing the effort on the statement that the district court had ^{very} "closely observed" my evil influence on Jim for the five years the case was there. I wasn't present once in those five years for this "close observation" of ^{non-existing} alleged but never spelled out misconduct. It was a medical and physical impossibility and the court record reflects my absence.

When this kind of mendacity, this felony, was not news it was easy for the appeals court to ignore it, and it was ignored. Except for unjustified nasty cracks about me.

On remand the case against him and that incredible precedent was dropped. I do not know whether it was regarded as a threat by other lawyers but it should have been.

On remand I was my own lawyer and it just happened that the major FBI affiant to get this crooked money judgement against a FOIA requester for the first time ^{was} also the supervisor in a case filed by a friend of mine. In this second case he disclosed absolutely irrefutable proof that he had knowingly lied, which is perjury because it is material, to get the judgement against me. I provided the documentation all from the FBI's own files in my brief, to which there never was any real response.

Smith flailed his rubber stamp and in the course of it rewrote Rule 60 (b) to eliminate half of its clauses and managed to display that with a case so long before him at its end he didn't know who was being sued or what was sued for. He had this wrong three times in his decision,

And, of course, none of this and much more was ever news. Not because despite my personal limitations I had not sent copies of the pleadings of both sides to the

media, 25-30 components and ^{to about} a half-dozen at the Post.

I filed my own brief on appeal and it was and remains without response. I had limited what was on appeal to whether or not the judgement was procured exclusively by means of fraud, perjury and misrepresentations, which was and remains completely undenied, and the judge's error and abuse of discretion. (I asked for and was denied an evidentiary hearing and a trial by Smith but the appeals court just held in a Post case that the judge must resolve questions of fact.)

Instead of responding to my brief the government resorted to what it admitted was both out of order and untimely. It filed for "summary affirmance," without ever addressing the questions before the appeals court or my brief. ^{and} It lied, ^{and} merely ^{to} say that there was nothing new in my brief when it was, without denial, all new "evidence" that the government itself had had and had withheld from me in the litigation.

The hurry-up appeals court, which had already set a date for oral argument, sat on this for more than a year and then in a few sentences ruled for the government.

Thus it left the felonies with their intended reward and once again it seems that they will have rewritten what Congress enacted before the courts. *Still no reporting*

This won't hurt me. It can hurt the media, as in the past such crooked decisions have. I wasn't able to respond, which means seek an en banc review, almost never granted. I asked for an extension of time and I've heard nothing. I also cited this new Post decision, which contradicts what they did to me, and maybe that is why I've heard nothing.

But that such things go without any reporting is my point. It makes victims of all of us and in FOIA litigation it makes victims of all the people, quite aside from the other consequences of these kinds of decisions. A FOIA requester is surrogate for all the people. I take this so literally that all my files are open to all and they are used by others all the time, freely and without even supervision.

I don't know what my physical capabilities will be but as of now when I lose again I want to try to continue to perfect the record for history, if not for the press, which has been the major beneficiary of FOIA and may become a major victim from such precedents. I'll see if I can file a petition cert, where the odds are about 4,000 to 1 against being heard.

And then they can come out here to Maryland and try to collect from one of their favorite enemies in his old age and decrepitude. I'd like to think they can't without a trial and I'm reasonably confident they will not risk a trial even if they can see a way of making it pro forma. There is no question at all about their undenied felonies.

Which leads me to Meese, under whom this is happening, and what the papers, including the Post, found without news value.

He went to the White House to handle the press conference Reagan didn't dare try to handle when he had to announce the Iran/Contra scandal. We now know that he then lied in stating when he first heard about it but that has not been pointed out by the Post or any other paper of which I know. He also told a very big and controlling lie when a reporter asked him if he had the FBI on the case. His response was that of a civil libertarian, that absent any suspicion of violation of any federal law (I suppose that neither he nor any of the reporters ever heard of the neutrality act) it would have been wrong to have an FBI investigation. Government employess have rights they would not dream of violating.

He and the FBI, including the director who now runs CIA, knew better. J. Edgar Hoover so testified, under oath, before the Warren Commission, Volume 5, page 98, and I'll send it if you want a copy.

The FBI has the right and the obligation to conduct special investigations for any president and it does. Not law enforcement investigations, information investigations. That was and remains its only basis for the vast JFK assassination investigation and it is still an active case with no added authority for it.

I sent copies of that testimony to several at the Post and to others, without any use or any response.

This knowing lie by Meese, to the accompanying silence of so many, including the FBI director, himself a former judge, is what made possible the North shredding and other memory-holing.

With all about Meese that is so troubling, all that now is reported, this is not.

Had he not lied, and had he not gotten away with it, who can even imagine what the consequences might have ~~been~~ been.

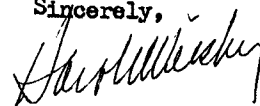
And are we not all victims? Is not our system itself a victim?

You have a fine quote from Willgan, on "the conflict between conscience and following orders." Having faced this myself, as far back as 1936 and on several occasions, I know what it can mean for others. I also know, as I hope your students can come to understand; that this can be survived and looked back on with satisfaction after 50 years.

There must be at least 10 FOIA cases in which government representatives confronted me with felonies, without it being reported even once. I do think this did contribute ^{to} the environment for new heights in victim-blaming in general.

Thanks for a fine piece.

Sincerely,



Harold Weisberg