

Dear Jim,

9/21/85

By phone this afternoon I read portions of the enclosed letter from the FBI because of its relevance to the FBI boilerplated falsehood, that I need never sue, need only wait and in order I'll get what I ask for. After we spoke a few other things came to mind, thus I write.

This Nosenko request was first appealed in 1978, when the FBI wrote and told me it was then reviewing the records. I received nothing at all until these pages came with the enclosed letter. In recent years I've renewed the ignored appeals a number of time, without any response. Now, after more than seven years, I have more misrepresentation, more dirty tricks and incomplete compliance, as I'll indicate. Moreover, this is but one of two Nosenko requests I filed. The second was in 1978. Compliance required merely xeroxing records already disclose to another, Edward J. Epstein. I've never had a word from the FBI about that request and I've never had any response on appeals.

The records I've just received end with the first reference to the coming serialization of Epstein's book.

In providing the records I received the FBI departed from its usual practise of providing records by sections and there is an apparent purpose in this. Can you imagine how unmanageable a single volume of 507 pages is? The apparent reason is to disguise the fact that most of these 507 pages is a separate volume, Sub A, which not only is not subject to withholding, it required virtually no work at all to disclose. It consists entirely of printed matter - the public domain. It is obvious that if the FBI had not intended not to comply with these requests at the least it could have provided the copies of what was published (here and abroad and quite valuable) seven years ago.

This FBI letter fails to mention the age of my request or the appeals and it misrepresents in pretending that the only records withheld entirely are subsequent to 11/16/78. It also misrepresents with regard to information of earlier date because of the extensive appendices of the HSCA. The HSCA's Nosenko information is not limited to the cited testimony of John L. Hart for the CIA. There is extensive withholding of entire serials that come much earlier and in fact throughout the records disclosed. There thus is no reference to them, no explanation of any claimed basis for withholding and none for any appeal. How can I possibly provide any information on appeal from this canard?

It likewise is not true that any release after 11/16/78 would violate Nosenko's right to privacy. Assuming that he is not a public person and that the public interest is not overriding. Given the unprecedented and admitted physical and emotional abuse of him by the CIA there is, obviously, a great public interest. So also is there in the misrepresentations to the Presidential commission relating to him and what he said. Let me cite just one of the areas of embarrassment in addition. These records disclose that before his defection Nosenko was quite successful in recruiting American and British tourists for the KGB! Have you ever seen anything indicating any action based on his personal attestations to what he did? No public interest? Nosenko's right to privacy does not include withholding what was public domain, does it? If on no other basis, and I believe there is other basis, does this not require processing the records to determine whether they must be disclosed under the Act? And assuming that there is personal information, until it is processed is there any basis for total withholding, any basis for withholding anything at all? It might all be of different character, there might be nothing of personal nature in it, and it is hardly secret that Nosenko is the subject of FBI, CIA and other interest and files. In fact he figures in litigation.

It will not surprise you that ~~much~~^{of} what was continued in classification as b1 and b3 in 1978 and is now disclosed~~ed~~ was then in the public domain.

It occurred to me that I ought remind you of a few more illustrations of what I regard as deliberate FBI untruthfulness in its claim that I need never sue. Of course I can provide many illustrations because this is so big a lie. I get virtually nothing, not even what has already been disclosed to later requesters, without continuing fighting and litigation.

To illustrate this, in this litigation, I prepared a list of about 25 requests, dating to 1/1/68, that as of later 1976 the FBI was continuing to ignore. Thereafter the Senate FOIA subcommittee asked the Department about this and Lynn Zusman and Schafer swore that those requests would be taken care of. With few exceptions they remain ignored. One exception was proving a document a year or more after I'd gotten it from the Archives. Another was providing copies of two films long after they had been disclosed to later requesters and were withheld from me. That is all I remember from this list of 25 and except for the single document I refer to above there was only partial compliance with regard to the films.

Then there is the Dallas police broadcast recordings. After a series of attested to lies by John Phillips, each of which I established to be lies myself under oath, the FBI fell silent and didn't respond. I'd even told it where to look and that never happened. Then, by accident, more than a year ago, the appeals office blundered into some of this exactly where I'd indicated they had been moved. I was notified of this in writing, responded offering to pay for extra copies for others, and in more than a year after finding I've not had another word. There is no possible claim to exemption for the recordings, which in fact the FBI transcribed for the Warren Commission, which published its transcription. (Imagine, even after this Phillips swore that the FBI had never had the tapes!) There is no probable basis for withholding of the relevant records also then located, and I've not received a single page or a single claim to exemption of a single word about when I may expect any copies at all. You have this correspondence and it is without dispute in the case record in 78-0322-0420.

Because I regard this as a significant illustration of the FBI's purposeful untruth to Judge Green (and I regard that as an effort to defraud me) and because possible if not probable additional political motive is apparent, I provide a chronology. I omit the series of lies by Phillips but if the judge wants them I'll provide them. My request was of 1977. I filed suit in 1978. In 1978 or 1979 I specified exactly where in Dallas, outside file cabinets, the tapes were stored. When HSCA decided that there had been a fourth shot fired when President Kennedy was assassinated, based on these recordings, it asked the Attorney General to have additional studies made. After much footdragged he got NSA, which is outside FOIA, to appoint a scientific panel to make this study. The FBI was thus forced to provide recordings. But it did not provide its own, which Phillips had sworn falsely it never had. I provided even the make of the tape recorder on which the FBI had made its tapes (Wollensak) and of the original equipment used (Discobelt and Gray Audiograph, the latter a disc recordings) and the means by which the duplicate recordings were made - playing the original recordings aloud, both in the same room, and re-recording them, known as an air tape. It thus was possible for there to have been crosstalk. And the basis for disputing HSCA's conclusions by the NSA panel may well have been such crosstalk. This and its original and of me significant failing can be seriously embarrassing to the FBI. Its original failing (which I regard as an enormous understatement) is in failing to investigate the blockage of the police channel intended for use during the President's visit for five minutes that just exactly coincide with the assassination. And I mean absolutely no FBI investigation of this untoward event at all! And to this day it has offered

no explanation at all. Instead, while telling Judge Green one thing, it is still, after more than a year following admitting finding of it, withholding from me the recording that may enable me to prove, through scientific analysis, that its recording is unoriginal and holds crosstalk. The extra dub for which I said I'd pay was intended for this purpose, to provide to another who can draw on such scientific sources.

If necessary, I can provide many other such illustrations.

Judge Green may recall the prolonged FBI effort to withhold the FBI's filed offices holdings on Dr. King from me. After I received them I showed them to Professor David Garrow. I showed and explained them to him and the enclosed copy of a recent New York Times story reporting the book that results I think addresses one of the many public uses of the information I received that I think establish the public usefulness of this litigation. Since she last saw me there has been a number of other scholarly uses ranging from college honors papers to publication in scholarly journals of this information that I made available. The FBI's representations to her to withhold this inventory are all untruthful and are duplicated in its present false claims to her that I need only wait for my number to come up to receive the information I request.

This may not reach you by the time you meet in camera. It is too late for today's mail but I'll take it into town tomorrow and mail it then. Because I remember my own in camera experiences only too well and because I do not want the FBI or its counsel to have to depend on recollection of any verbal presentation, I'll enclose extra copies for it and for Judge Green and I would like very much for you to give them these copies. The FBI thus will be able to make any effort it may desire to respond with specificity, and I think that would be helpful to me and probably to Judge Green.

Sincerely,

