

St. 12, Frederick, Md. 21701
11/12/77

Mrs. Lynne Zusman
Chief, FOIA Litigation Division
Civil Division
Department of Justice
Washington, D.C.

Dear Lynne,

In all my FOIA experiences far and away the most genuine gesture of good faith was Bill Schaffer's offer yesterday, to hire me as a consultant, staff and equip me as I wanted and to give me a place to work down there. It impresses me with his intent, as earlier I had been impressed with yours.

It is because of the spirit shown yesterday that I write in haste this morning. We have but one mail a day. It comes and goes at the same time. I don't have to be convinced that all of you want this case over with. I believe I desire this more than any of you. Were this not true I'd not be making any compromises or repeating offers of them after these offers were rebuffed to so long and so often.

If it is my personal feeling that the Department will in the end be better off in following the suggestion Jim first made on the second, make virtually all of the records available, and if I believe that to at least a large degree the judge would agree, as you saw yesterday, when Bill made a real gesture I immediately offered a practical compromise. The judge has imposed a very close deadline. I will do what I can to enable us to avoid a trial but there is a limit beyond which I will not and now cannot compromise. I believe it will be helpful all around if I give you a frank explanation. I think that taking this time now can be constructive and with you and Bill I do not have the prior fears of being misunderstood, of having ulterior purpose read in.

First of all I believe the exemptions to the Act are necessary. I was satisfied with them in the 1966 Act. It is quite literally true that I have censored myself in my own writing to protect those in whose rights to privacy the FBI could not have had less concern. I have no desire for the FBI or anyone else to violate these rights for others. Nor do I believe that legitimate national security secrets should be disclosed. All police do require informants and the identities of these informants need to be protected. If I have seen many illustrations of the unwise, indeed illegal use of such informants I do not question the principle. I have in fact alerted the FBI to its own careless disclosure of identification. In these areas we have no dispute. If I am certain that in all I have gone over there is no real need to claim privacy and if I agree with Jim that the Department's long-range as well as immediate interests are served best by the wholesale abandonment of the privacy claim in this case, you saw yesterday that I am not now pressing on this and if we can resolve all the problems without trial will abandon it. I am not looking for debating point or to humiliate the FBI as it can regard humiliation. I am looking for meaningful and what I can today accept as reasonable compliance.

At the same time I must learn from experience and not permit my willingness to be misused against me as it was in the stipulations. They had quite literally been violated before the negotiations for them commenced. They were violated throughout. I am prepared to prove this. I assure you that if I do there will be official embarrassment. I have no doubt that in this you personally acted entirely in good faith. If I did I'd not be writing. But that this could happen despite your good intentions represents a reality that I confront and have confronted from the first in this and in all other cases.

One of my purposes in writing now is to make a resolution of remaining problems possible because we have so little time. This requires some candor. It will probably lead me into the avuncular. I hope you and Bill will not misread it.

When Jim sought to warn Dugan the Charles of what could confront the FBI Charles actually accused Jim of seeking to blackmail the FBI. We had a meeting at Dugan's suggestion after the calendar call of the second. The offer Bill found acceptable (then was rejected) out of hand. However, yesterday we all learned that in part it was accepted afterward and Jim and I were not told about it. If I had been, with the help I could and would have offered by yesterday all of that, I believe a major part, could have been over. That with all the gestures of cooperation and help I have made and the tremendous amount of time I have taken to write the FBI about this, with countless specifics and despite non-responsiveness this represents a mind-set that continues to be a basic problem. I was, of course, much encouraged by Bill's forthrightness on this yesterday. His recognition of it and his willingness to state his recognition of it may be the most significant aspect of yesterday's meeting to me.

Because of this attitude, because there can be legitimate problems for the FBI in general in some disclosures and I believe for other reasons they are bitter-ending. On the one hand I can and do recognize Harp's concern for prisoners who have spoken to the FBI as genuine on his part. On the other I am entirely without doubt that in no single case is there any danger to any of the prisoners involved. Harp has not interviewed some I have. The actuality is that he began by withholding a prisoner's name when that prisoner had been interviewed by the FBI with total disregard for keeping that fact secret. I learned of it from James Ray's brother John, it was that public. He is still withholding some and all good pictures of that man, Walter Terry Rife, on the claim of privacy. (With pictures alone this as of today extends to xeroxes of many pictures of James Earl Ray and his family.)

I intend this as illustration. Aside from those that are essential now because of the OPR report I am quite prepared to waive on prisoners other than those who have on their own gone public. The Succelli case I cited yesterday is not the only one.

The same generality applies to informants, whether of the FBI or of the Memphis police. I regard them as exempt - but only if they are not known. Here I have been specific with the FBI. It has been totally non-responsive. Its own Birmingham informant whose name I believe is Morris Davis exposed himself to the House assassins committee. It in turn made Davis available to Mark Lane, who met with him. There is no confidentiality. The investigator of the committee arranged to destroy what little confidentiality the informer had prior to turning him over to Lane. Davis complained about this to the FBI.

Because I knew the FBI would withhold on another informer who is of significance to me I told it in advance that Marrell McCullough was known as an informer. However, they still withheld published pictures of him and the groups he penetrated. I mean by this other pictures when their pictures had been published and they provided copies of those published. One of the problems here is a lack of fidelity in the OPR report and as it relates to the FBI. It did meet with this police informer. Another is that incredible as it may seem the first person to reach King's side after King fell was McCullough, the informer. This leads to a hangup on the Low/Life pictures: I believe they show McCullough crouching over King's body. If I am correct, as I believe I am, this is one of the world's most widely published pictures. The FBI has provided xeroxes of it even though claiming it never does. There are many reasons why the withholding of his and other pictures those in them agreed to ~~xxxx~~ have taken is wrong. If you want I'll take time to give them. My point here is that to the FBI's knowledge there is no legitimate question of either confidentiality or privacy. There are other such cases. I cannot disclose all I know to obtain compliance. In these cases I did because they were important to me. With the McCullough picture I also illustrate how wrongful withholding creates confusions and is the one way in which harm to the innocent can be assured. These cases also illustrate how from Doug Mitchell's review to Bill's policy determinations you have no way of knowing the actualities if the FBI withholds them.

On the second I learned that they withheld from Mitchell to this degree - they did not even provide him with the books that were indexed or tell him that there had been publication in books that have indexes.

The FBI's claim of uselessness of these indexes yesterday is ludicrous and gets to that mind-set if not an attempt to justify it. This also illustrates the wholesale violation of the stipulations. Among the last records I received was the wholesale obliteration of what is in great and ridiculous detail in Gerald Frank's book -- and is indexed in it. This by the way is the case in which Jim filled in the withheld names in what I believe was a CRD withholding. Since Frank's book was published another was written about this one man and incident. It labels that man, which gets to one of the dangers from improper withholding. The author of that book is a friend of mine, one of the reporters all of whom were made to look like FBI informers by the withholding of their names. I have undertaken to let him know the right name and to avoid the harm to the innocent to which I have referred.

(Oddly perhaps the one journalistic name in Memphis never withheld is that of a former FBI employee who is a regular source for it. I also know him.)

With regard to this withholding I can make out a case of potential added embarrassment to the FBI because of what is not in the indexed books, as I am certain the Washington FBI FOIA people had no way of knowing. The name of the lawyer, Russell X. Thompson, was withheld. Later the obliteration of his name was removed. Initially he was of counsel to Ray. At that time he was threatened by the judge, now dead and in our requests. It was then arranged for him to counsel with a former FBI agent. Thompson was counsel to the NAACP legal defense fund. When he went to New York to consult with them it was also arranged for this former FBI agent to accompany him, as both bodyguard and counsel. And the only possible significance of the actual events of which Thompson was part is as disinformation, which can be taken to reflect aspects of a conspiracy. But without regard to this, to whether or not it has meaning, I think I have illustrated the continuing problem from the refusal to make any use of the indexes for more than a year after I was assured they were being used. It also shows that the use of the indexes could have had value.

The same attitude extends to what is called "national Security." I do not know what Bill had read that he said was national security information but I do tell you I believe there is virtually none in this case. I can give you a fairly decent collection of records of this case that the FBI had stamped as exempt from automatic declassification. There was no basis for it. Determinations can be made only on the basis of factual knowledge of this complex case with such a great volume of records. Outside of Washington there are more than 200,000 FBI records alone.

As it relates to foreign police I believe that without exception the withholdings of names is frivolous. This is only one of the reasons I suggested that late as it is for use of it a list of those subpoenaed for the expected trial could be helpful to the FBI. I told it this more than a year ago. Almost without exception the same is true of the Memphis police. There is no legitimate secrecy. The same names are both released and withheld because in some cases it is possible to determine what name is withheld. There is importance in the names being available because this case is not closed and because I will not live forever. In no case would there be what the Act requires, a "disclosure." In virtually all cases the names are used only in the sense of having given the record to the FBI. With regard to the records themselves there is inconsistency. Hundreds of pages of them have been provided yet as many have been withheld. I believe there has been a waiver and that there was no basis for initial withholding. It was part of a domestic-intelligence rather than a law enforcement operation in addition. Whether or not it is relevant they were all ordered to be disclosed by the Memphis police by a federal district judge. The police then burned them and got away with it. The whole thing is pretty hairy. I'll give you details if you'd like. One should illustrate. The FBI had informers spying on the campaign of a black candidate for the seat won by man who was Nixon's most stalwart supporter after impeachment proceedings began. And that successful candidate hired for his staff the black Memphis police intelligence officer who first had been spying on King and all who

visited him at the ^{place} police where he was killed. This officer was then yanked. While I am virtually alone in believing that withdrawing him was not conspiratorial, the handling of the affair by the OPR report can be questioned and I do question it.

You and Bill have problems because of the OPR report. If I appear to be avuncular please do not misunderstand it. I strongly caution against getting worked into a position that can be interpreted as misusing the Act to defend the OPR report. I can see this danger. Bear in mind that I have read much of what it is supposed to be based on, interviewed some of those it uses ex parte, know what it excluded and can cite factual error in it, significant error. In addition, as you should know before next Friday, OPR manufactured a machine for non-compliance in this case. When I tell you this and will give you details I think you can see I am really seeking to avoid trial if I can outside the FBI part and am telling you what could be ruinous to you if I kept it for surprise in court. This is opposite Charles' interpretation, blackmail.

I was getting at this yesterday when I was out off after recommending that your searchers read the series of articles John Crewdson wrote for the New York Times about January 1976. He was in touch with me as he was in touch with a number of Departmental components including the FBI. He was in touch with me while he was working on the stories from as far away as California. Jim has not exaggerated in representing that I devote too much unpaid time to the press, even those who write opposite of what I believe. Crewdson is only one of these. His stories will establish possession of records that now are represented as not existing and thus not found on search. Here, the lack of knowledge of the searchers not their good faith is the question. If you can't get those stories easily I'll take the time to dig my copies out. They give a physical description of the files CRD then had for its "internal re-investigation." That did not begin until after time for compliance with my renewed requests had expired. Those files did not lead to a single paper from them being provided to me. They were in file cabinets and in storage boxes. Thereafter they were transferred to OPR. You will find that when I raised the question of OPR in this case Shaheen filed an affidavit saying he was not supposed to comply. This was about a year ago last July. I have every reason to believe that instead of complying with what by then was a suit in court or returning the files to places like Civil Rights OPR put them in storage. I believe you will find that at the Sutland depot. I am saying that there is no time that either CRD or OPR had these files that they were not clearly within this case and that there was no compliance from them. I am also telling you so you can know before Friday because we will be meeting with the judge the first working day after Friday.

Not unrelated to this is the political part of my requests. I'm running out of time if I am to make the mail. (So please also excuse the typos.) Some of the records not provided to me have been given to others. Some that have been used by the FBI before the Congress, have been testified to and have made international headlines, remain withheld after many repeated requests for just a few so I can avoid error that is possible from secondary sources. The testimony was before the Church committee. The records are known to the FBI as centering around the events of March 28, 1968, a week before King was killed.

Aside from the FBI there are components of the Department that are not in compliance. It might be good to take a look before Friday, which is too close to Monday following. In addition, while in writing to the FBI was not being inclusive but was being illustrative, I have provided it with many specifics of what remains to be complied with. not just these 29 volumes. Given the desire they can clean all of them up by Friday. If they do not there may well be remaining problems on which we will not be able to represent that we have reached agreement when we meet with the judge.... If you have any questions please do ask them or tell anyone else involved to ask. I do want to be able to clear this all up and will do all I reasonably can to that end. Sincerely,

Harold Weisberg