

Mr. Emil Moschella  
Chief, FOIPA section  
FBIHQ  
Washington, D.C. 20535

4/6/89

Dear Mr. Moschella,

Finishing Carl Bernstein's book "Royalties" and remembering that day after tomorrow will be my 76th birthday set me to thinking, thinking other than I have before in writing you and in appealing your withholdings and other noncompliances under both Acts. I hope that I can get you to thinking other than you have reflect having thought in the past, as I deduce from your assorted nonresponses of the past.

Because I believe that FOIA makes any requester surrogate for all the people I have preserved all the records I've received under it exactly as I received them. In this form they have always been available to anyone. In practise this means for the most part people with whose ideas and writing I do not agree. In this form they will be available in the future in a collegiate archive. Some that relate to me are pretty rotten stuff. This ranges from careful angling through distortions and misrepresentations to outright fabrications. I have not altered any ~~one~~ page of any disclosed record in any way and those official acts that I regard as differing only in degree from what we once expected only from the Gestapo and KGB will forever be available, including for use against me, as they were intended when created. In some instances I have made copies and filed the copies separately and in some instances I have written memoranda about pages of these copies. I have also, as you know, written the FBI about these things in considerable detail, and have filed lengthier and more detailed appeals. For the most part all of this has been ignored, was neither responded to nor used as the basis for further searching for the legally required compliance. The FBI and the Department as well as the CIA and other agencies have violated the law. In this they are likely to be as they have been immune. As a practical matter, when I am not able to file suit, a condition that can be changed, however, there is nothing that I can really do about it.

As I thought about this after finishing the book, it occurred to me that as I seek to meet my obligations by preserving all these records as I get them for the future, for our history and for the use of posterity, I also owe an obligation to serve history and the future by leaving more of a record identifying those who, in my view, did not meet their obligations and have violated the laws. To a degree this kind of information now does exist in my records in the copies of my appeals and other correspondence and in the case files of all the many lawsuits.

Neither you nor Mr. Huff nor I is Merlin and we can't remember the future. We do not know what use may be made of these records and those I create. But as Director Hoover testified and as the court of appeals has stated more specifically, interest in the major political assassinations will never end. My own experience is that for almost a year this interest is greater than it has been in years. That it currently is increasing rather than slacking off surprises me. It also pleases me because, as I believe you know, I have devoted two and a half unpaid decades to this work, and because unlike others I have not been pursuing a whodunit but instead have made a rather large study of how our basic institutions worked in those times of great stress and since then. Our society has no more basic institutions than government agencies.

In thinking of Bernstein's book after I finished it earlier this morning, particularly several parts in which some of the most eminent did what they knew was not proper in this country and under its basic beliefs, I was reminded that institutions function through individuals and that understanding these records and these individuals as well as institutional failings requires some personalization. So, I believe for the first time in a truly large effort, beginning with you - and if only as a record for the future although obviously I hope for more - I am asking you (plural) to meet your obligations under both acts as I understand those obligations. and I believe I understand them correctly.

When, as it turned out correctly, I anticipated the FBI's intentions in its general releases of 1977-8 and what it would undertake to do with them clandestinely, I sought to exercise my rights under the Privacy Act, I had counsel make the appropriate requests under it. The FBI Director and the attorney general both ignored him and my rights. We did not receive even an acknowledgement of these requests. Instead the FBI pointed out to reporters some of its prejudicial records relating to me. I know because these reporters phoned me immediately, before I was able to see those records. As you may recall, I had to file suit to get them. Because you then did not have your present responsibilities, fairness requires that I tell you that the FBI complied with the court's directive as rapidly as it possibly could but it could not comply before it had made them available to the press and made its special effort to defame me. This also meant that I, too, had many thousands of unindexed pages in one large shipment and it took much time to go over them.

As I did go over them I found many references to other and existing records that were not disclosed. And to much nastiness to which I refer above, including complete and really defamatory fabrications. I filed appeals that were ignored, then and since then, including to you personally.

We are not Merlins and we can't remember the future but we can anticipate that as Carl Bernstein, after so long a time, decided to write a book about what happened to his parents, so also can we see it is possible that others may want to write other books. These can relate to you and to others and they can embarrass the agencies, their employees, including you, and their families. Children, grandchildren, great grandchildren. More than 20 years ago the children of FBI and Secret Service children began to speak to me but because I wanted to avoid personalization I did not even make notes of this. One FBI SA's daughter even offered to help me, an offer I declined. In fact, I can now remember making notes of only what two FBI SAs told me and many more spoke to me, none in confidence.

Because I want to protect one of your people I am indirect in telling you that parents of students who used to come and see me were warned by one of your people that you were keeping tabs on all of this and on them and their relationships with me and those records could at some time be used against them. As of the time of my FOIPA request of HQ and all field offices such records could have been at a residency but were and are within my requests. They are entirely withheld.

Going back as far as about 1938, when I lived and worked with a fine crew of SAs and Department people after I'd been borrowed from the Senate to assist in the then significant case of Mary Helen et al, the so-called Bloody Harlan conspiracy case, one SA drew me aside and told me to be careful because they were all required to make reports and some would get into trouble if they did not report what others did. I was then quite young. I think I'd been able to vote only once. However, I remember his name and his seriousness so impressed me I have a clear mental picture of his face and where we were when, with nobody else around, he gave me this caution. The FBI has not produced a single record indicating I was on that prosecution, with that staff and working with the SAs. Nor, for that matter, has the Department, which borrowed me. And I did do improper things, including acting as the party's rumrunner when the bootleggers raised their prices too high. I (alone) drove an official vehicle to Lexington, Ky. or Jellico, TN and procured the weekly supplies. The men in charge, AAG Brien McMahon and SA J.M. McNerny, are both dead.

As a Senate employee and later, when I was in OSS, I have Bureau contacts no record of which was disclosed to me. In that time frame I was also overheard on an FBI bug, as I was informed by an AAG who had been informed by the Bureau, yet neither that field office nor HQ has disclosed any such records or made any claim to withhold them. Before continuing with more of this I repeat what I've already told you (plural), that when I was a magazine correspondent I arranged to get out of Chile in a pouch for first delivery to the FBI and then to me through the then head of the Department's Criminal

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Division, George McNulty, information of Nazi activity there that President Roosevelt used in one of his "fireside chats." I did want, and it was my idea alone, for the FBI to have first access to this. It has provided no such records and none of those pictures, which were delivered to me printed, not as negatives. I am aware that the FBI regards me as other than genuinely patriotic and that it might have motive for withholding what reflects the exact opposite but there is no such exemption in either Act and I would like to have all of that information because it is today of historical value.

Back to the electronic surveillances, which are within my PA request and some of my FOIA litigation, where they were an item of the litigated requests: the FBI knowingly and deliberately misrepresented to that court in order to withhold the relevant information on me it had picked up. It misrepresented that it indexed only the subjects of surveillances. It in fact also indexed those overheard and those mentioned. It has disclosed to me, after considerable misrepresentation to the court, records that leave it beyond question that it had wiretapped Jerry Ray, brother of the accused assassin of Dr. King, and it picked me up. It has disclosed to others pages of transcripts, copies of some of which I have, in which I am mentioned. The results of that tap on Jerry Ray are, of all improper places, filed in at least six different 91 or bank-robbery files, and I am confident there are more. (You do have a problem here because you were never given permission to do any tapping when you asked for it.) In this regard you have never disclosed any relevant records from the file in which such things are usually hidden, the 65 admats. I here am repeating only what I have provided earlier but I do not mean to indicate that these are all. There are not.

Other records you have disclosed leave it beyond question that, not only was I picked up on other surveillances the existence of which has been officially disclosed, the FBI misrepresented them. Here again I am repeating for you what I filed earlier.

Fifty years ago, when I was a magazine correspondent in Washington (and this goes back to my "Click" request with which you still have not complied after all these years), it was general knowledge that you photographed everyone entering and leaving the USSR's embassy. I was never there except as a correspondent or in connection with book publishing. I was in phone contact with it for another purpose, at the request of the State Department at about the time of Mr. Nixon's "kitchen" debate with Khrushchev. You have disclosed garbled and false paraphrases of the withheld original records and you have, despite my prior invocation of the Privacy Act, given them general distribution with what we might term the "assist" I referred to above. It is not true that I had a personal relationship with a Soviet national inside that embassy and it is not true that someone from there visited me when I farmed. Yet this is what the disclosed records state. The FBI did and does have the underlying records it misrepresented and others relating to this and it withholds them despite my appeals and providing copies of the paraphrases.

There were quite a few people, some close friends and some merely people I knew, who were of considerable interest to the FBI. The FBI has records, Headquarters and field, within my requests and withheld. To repeat merely one example, the late Congressman Vito Marcantonio was a close friend. For a while he lived with me. The few paraphrases in files the numbers of which I provided establish the existence of other and relevant records not provided by either the field or HQ. (In passing you might be interested in evaluating the FBI's views of these days in a bit of research that would indicate that those positions of his it so disliked have, to the best of my recollection without a single exception, become national policy.) I lived with other people who were of interest to the Bureau and on whom it compiled files, not a single page of which has been disclosed (and this includes informant reports), and Bernstein's book reminds me of others which should at the least mean see cards on me, none disclosed.

I know the Bureau can't and doesn't cover everything but it has disclosed to me records reflecting the existence of other records on which they are based and that are still withheld. Most of what I have in mind here is field records.

At least I am reminded again of the David D. <sup>N</sup>ayhe case, where there are at the very

least HQ, Washington and either Phoenix and Albuquerque records not disclosed. This was appealed before you had your present responsibilities. Mayne was the Washington representative of the fascistic Silver Shirts. He also worked for the House UnAmerican Committee and for it he entrapped me. This led to, among other things, committee hearings and a grand jury in Washington. In connection with the latter I was interviewed by two SAs in the DJ building. They sought to get me to sign a statement that was, if I may put it mildly, not in accord with the facts. They also held me there in an effort to get me to sign it. I just sat until they permitted me to phone my lawyer. He came, they agree to prepare a statement in accord with the facts and I signed it. I also was before the grand jury quite a few times and it clearly had FBI information, if I may use the word in application to all of it, that was not disclosed to me in response to my requests. That was a rather significant case of that era and it has considerable historical importance. (The grand jury refused to indict me and it did indict Mayne and Chairman Dies copped a plea for him. This is public information, well reported at the time but no clipping was disclosed to me.) Despite his plea of guilty to two felonies, Mayne was actually employed on an atom bomb project, the field office sent a special agent to see me in his car and no record even indicating this was disclosed to me. There is other relevant information but not a single word on any of this was disclosed.

There was a lot of pressure then. The Dies gang had a law passed to get me and it is still on the books, making it a crime to interfere with the proper functioning of a Congressional committee. But, of course, I hadn't done that, although the effort to get me was the first effort under that law. I can't believe you don't have a single page, or a single reference of any kind. Yet none has been disclosed.

The confirmation of USA Dave Pine, who had used me as a witness in a prosecution in which the FBI was involved (not a word disclosed) to be a district judge was withheld to pressure him in this effort to get me. He and the other top men under him in that office are all dead so I have no reluctance in telling you that after the case was over they saw to it, much to my surprise, that I was made fully aware of what happened before that grand jury. From this you can gather that they were not happy with what they had been coerced into doing. I am also not reluctant to tell you they made their best effort.

There are also so-called loyalty investigations, to say nothing of investigations of my own loyalty. You even have me filed under an applicant category when I was not and would not be an applicant. Not a bad cover for an unauthorized and unjustified investigation no records of which were disclosed. and the business of my firing by State. And rehiring and resignation. Not a small part of that is attributable by me a major story by Bert Andrews after he interviewed Director Hoover. (Didn't Andrews get a Pulitzer?) Do you really think it can be believed that, with a banner-headed story syndicated from coast to coast and featuring the Hoover interview, the FBI didn't keep a single copy of that story? Not especially from both the Washington Post and the New York Herald-Tribune, both of which were on its printed clipping form? You provided none. It was FBI policy for all such clippings to be forwarded to HQ by the field offices.

Then there is my writing and many appearances. Almost nothing was provided about them and they were largely about the FBI. There has never been a time of which I am aware when the FBI wasn't sensitive to criticism of it and when the field offices were not even more sensitive, fearing criticism of oversight. Almost nothing has been provided. That almost nothing has been provided about my books, aside from generally adverse comment about me, may perhaps be attributable to your refusal to provide anything from the "research matters" files, 94 at HQ and 80 in the field. With what I have written about the FBI, not a word of which I have any reason to believe is other than accurate, it is not easy to believe that the FBI did not have my books read and analyzed, its practise with other books, yet no such records have been disclosed.

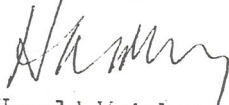
There is probably more. I've not consulted my files, which now is a problem for me. My purpose, here limited to records on or relating to me and within existing requests and litigation, is to indicate that you have not done your job, not complied with the Acts for the Bureau, and to ask again that belatedly you do this, in good faith and with due diligence, if I recall the words of a decision accurately.

I think that, in addition to owing it to me, you owe it to the Bureau and to yourself because interest in these matters is not going to end and because there will be at a single point, not requiring any future search of my files by writers and researchers of the future, this indication that to now you, your predecessors and the Bureau and the Department, have not met your obligations and persist in violating the Acts. I believe that all reputations will be better served by a proper search and processing and disclosure. This is, isn't it, what is required of you (plural)?

Of the other matters I could mention I add one, my undenied allegations of not mere lying but of perjury by the FBI. I made these allegations when I was myself subject to the penalties of perjury and when they were material. From what I have learned about the FBI from what you know is a rather large study I am confident that no such serious allegations before a court of law are ignored by the FBI. If you interpret this as a new request, please regard this ancient matter as a new request. I think it is within the standing requests not yet complied with.

As in the past, I'm being honest with you: I have no reason to believe that I would not be able to obtain counsel to carry this farther. However, if I hear nothing from you indicating that you will now make a real search and a genuine effort to comply, I certainly will be alert to any possibility of obtaining counsel. I suggest that you and others give real thought to what I will be able to produce in court bearing on what I say above and what else I can add to it, much of which is known to the FBI. And to the possibility that at a later date my wife or my estate might do this. Please also keep in mind in considering this that in violation of my Privacy Act rights the FBI did give the widest possible attention to false and defamatory records about me, has made them permanently part of the public record, including in its own public reading room, and even distributed them throughout the government, from the "White House down."

Sincerely,

  
Harold Weisberg