

Rt. 12, Frederick, Md. 21701
7/15/77

Mr. Charles W. Hinkle, Director
FOIA/Security Review
Department of Defense
Washington, D.C. 20301

REF: FPA 460

Dear Mr. Hinkle,

Thanks you very much for the spirit and the fact of your letter stamp dated July 13 and the two attachments.

I will now give you more details on each branch of the service, I think in each branch at least JAG. Having recently seen a few of my records that are not in my possession I can also give you an idea of the volume of records that are withheld. And of the existence of which there are written records, some permanent.

There have finally been referrals from the Justice Department, Civil Division, to them. The time for them to respond to me has expired. I have heard nothing. Not even a letter claiming the need for more time when none claims an backlog.

As I have written all many times, the records in question were delivered to me under court order. While I do not now know why copies were not given to me, the norm, I do know the volume of these records - a stack nine inches high delivered by the Army - and I have a few hasty notes I made when I examined them. Unfortunately, without adequate time. At the time of the request I was not able to provide the inflexible court identification by number I did cite and identify both cases. A phone call is all that was required in any good-faith search. I now know that the number of the complaint, federal district court in Baltimore, is Civil No. 16392T. I regard it as simply impossible for any JAG not to have known all that was necessary. Although the first case was presented by a lawyer who did not even interview a witness prior to trial, which had a very bad influence on the judge and his reactions, it nonetheless is in the law books, readily available from my name in the standard legal sources and involved a precedent affirmed by the Supreme Court when used in a subsequent aviation case. Can you believe the flyboys were totally ignorant? In addition, the problems presented were faced in Congressional hearings that did not resolve the problems to aviation people. Can you believe that when under the Secretary's order the Army took over the representation for all services Army JAG has no single record?

These records now have special significance and importance to me, more because of impaired health. My requests go very far back, so far back that they predate any possible automatic destruction schedule. We did not sign the release in the negotiated settlement in the second case until March 1974.

It also should be apparent that with respect to records made available to me in that litigation and under court order there now cannot be any possible claim to exemption. So I see no possible reason for the continuing delay. Let me rephrase this: no provision of the Acts that justify or permit it. I can see reason. It was a wretched business with some pretty corrupt stuff in those files. Even details on how official transcripts were altered, details on how the lower-level operating personnel were misleading higher authority. I'm without reason to believe the statute has not run on the deliberate lies that resulted in what in fact if not in law is fraud. Why records supposedly can't be found is not hard to explain if one ignored the language of the Acts.

The Civil Division at Justice has referred files to the JAGs of all branches. Unless you disagree with my belief that the discovery materials produced under court order are not immune and are not subject to any "sanitizing" I do hope you will pick up the phone and ask each to provide copies of those records forthwith.

While I am inclined to believe that by now you need no explanations of my impatience you may wonder about my inability to cite my own records.

I am 64. I have some serious circulatory impairments. These also impose physical limitations. Once I was taken ill I began arrangements for an estate and the deposit of all my papers in a university archive. Making copies of all these records is impossible for me. I have turned some over to one of the executors who is also my lawyer, Mr. James H. Lesar whose Washington phones are 484-6023 and 223-5587. He has those records send me by Civil.

However, it is my recollection that quite some time ago one of the government lawyers involved in this did follow my suggestion, did speak to Mr. Lesar, and I think in this did eliminate any justification for the continuing delays.

It is my view that over an exceptionally long period of time I have asked for identifiable records and in this have met the requirements imposed upon me. I believe I have done more than the minimum to enable a good-faith search. The proof now exists that the records also exist. Yet to date and, through this long and wearying effort no part of DoD has come up with a single one. I don't know your terminology - no part of the military or defense.

It will be a surprise ~~to~~ to me if you get any farther with NSA than I have. They are utterly impervious, totally unresponsive and entirely shameless in this and more.

Their business is not entirely strange to me. I was in it years ago. There are certain basic things that do not change. I keep asking have you searched certain files and they ignore this and pontificate about unrelated matters. I am without response to my repeated inquiries about the searches of those places where various kinds of records of interceptions of communications are stored. I have both general and specific knowledge. Obviously I cannot disclose the specific knowledge. But I have repeated over and over again that Congressional testimony by officials involved leaves no doubt that there were such interceptions relating to me.

I tell them I have the names of NSA agents who conducted investigations of me. They stonewall and make no response. Now I am not inventing this. Were I to rush into court with this and other proofs it would not make officialdom look good. I don't want that. All I want is compliance. They blindly, obdurately insist no record on me until they have one referred back to them. It has me in some paranoid concept of contact with representatives of foreign governments. NSA ~~did~~ originated that record. If it were all there is can you believe they would have and keep no files of this nature? It is not all. At various times in my government employment I worked with those who were involved in some rather spectacular cases. At one point some of this washed off on me. There is more, but do you need more? Does common sense? (I did work with British intelligence at the suggestion of the Department of Justice but clearly this is not the thrust of that one NSA record not provided by any NSA search.)

What does one do with those who equate perjury with the ultimate in patriotism, those who regard their self-conceived roles as above the law and normal human concepts? Within my experience to which you refer perjury is commonplace and immune. Unless someone in high position and with both power and a disposition to use it is determined to end these abuses, abuses that to me are subversive, they will continue, the dedicated wrong will not change and we creep more and more toward an authoritarian society.

I do appreciate the efforts you and your assistants have made and any more you may undertake. I hope they are made aware of my appreciation.

Sincerely,

Harold Weisberg