Ms. Miriam M. Nisbet, Deputy Director
OIP
Department of Justice
Washington, D.C. 20530

2/10/90

Dear Ms. Nisbet, AG/89-R0287 -appeal

Your yesterday's mailing reminds me still again that in dealing with your office and your Department patience - INFINITE patience - is required and is helped by an appreciation of the ridiculous. In this instance, really ridiculous.

You sent me two memoranda to Mr. (Adrian) Fisher, who I'd met earlier, dated in 1940, February 9 and March 6, and assert two privacy claims for the names you withheld. The one legislated for this ostensible purpose, of protecting privacy, (b)(7)(c), was not enough. You had to invoke (b)(6), which as legislated was not for this purpose. But the Department was able, over the years, to extend its meaning.

Now what did you find it necessary to withhold from me, after 50 years? As the second paragraph of the first memo states you withheld these names - that I gave you! Names that were nationally all over the front pages. Names that figured in public and thoroughly reported Congressional hearings that in transcript were themselves published. The names of people who there, in public, testified, and of their organization, which hasn't existed for almost 50 years. (Do organizations have privacy rights, too?) And the names of people who figured prominently, particularly one as a defendant, in a public trial in the federal district Court in Washington. There also was a grand jury, with news accounts almost daily.

So, assuming that David D. Mayne and William Dudley Pelley, whose names you withhold, are still alive, which I believe they have not been for years, and assuming that Pelley's native-nazi Silver Shirts of America were extant, as for five decades it has not been, and forgetting for the moment that you are withholding from me information I gave you, what "privacy" is there to be protected?

I have no clear recollection of all that was in those 12 large envelopes I loaned the FBI but I have a clear picture in my mind still of the carton that had held whiskey I got to put all those vicious, racist, pro-nazi pamphlets in. I gave them to the University of Wisconsin in the same box 10 years or more ago.

I hope you will not disagree with my referring to this as ridiculous that unfortunately is so typical of what is referred to as your appeals function. You should not, really, be surprised that what you now withhold the FBI disclosed only recently. Not ridiculous?

You have in this also underscored the Department's great concern for living with both the word and the spirit of two laws, freedom of information and privacy, the latter Act as it pertains to me and my requests under it and under FOIA.

My first request for all records on or about me, made of all Department components, including the FBI, was made shortly after the Act was amended. You should recall that the investigatory filed exemption was amended over the Department's and the FBI's -permit me to be exeessively polite - misrepresentations to the courts of one of my earlier FOIA requests and the nature of the information sought. Over the years I renewed this request often and filed a number of detailed and thoroughly documented appeals, all of which were ignored - by your office. What I state above is in considerable detail in those appeals. I spent a considerable amount of time conferring with the FBI and your office about this. If Ms. Phyllis Hubbell is still there, she should remember at least some of that.

At one point, when - had counsel, my counsel wrote the attorney general and the FBI director, both without any response at all. With regard to this particular matter, the same request was made of the United States Attorney for the District of Columbia, without any response, as was true also of the office of all the United States Attorneys.

I describe some of the information that did exist and in some form should still exist so you can understand the determination with which all components violated both Acts.

The then House Committee on Un-American activities, known as the Dies committee, got Mayne, then Washington representative of Pelley and his gang, to entrap me with forgeries he fabricated when he was in their pay. Rather than, as the second memo states, being "various papers which also were purportedly taken (my emphasis) from the files of (obliterated) by Weisburg (sic)" they were voluntarily, as part of his conspiracy with the Dies committee, given to me by Mayne. It wasn't my idea even. The Dies committee sent him to me. They knew I was researching a book about them.

However, and neither the FBI nor any Department component has produced its copy, I required Mayne to attest to his truthfulness and to the authenticity of the records he and the Dies gang thought they could use to hurt me. He sat in my apartment, before a court reporter, I asked questions, he answered them knowing he'd be under oath, and we then went to a notary and he did attest to his truthfulness and the authenticity of the documents he'd given me.

I believed then and still believe that I was not the primary target of those who cooked up and engaged in this conspiracy and that their primary target was the union labor movement. I was associated with the late Gardner Jackson and he was the legislative representative of Labor's Non-Partisan League, which was the political arm of John L. Lewis' United Mine Workers.

But even had we been guilty of anything at all, as we were not, there was no law to cover what would be alleged against us. So, Dies et al, got one passed. It is still on the books and it is the law cited by Senator Weicker when he threw Mr. Nixon's Charles Colson out of his office. It is a law to make it a crime to interfere with the proper functioning of a Congressional committee. (Those characters considered conspiring and entrapping and uttering and forging and false pretense to be the proper functioning of a Congressional committee, apparently.)

The late Judge David Pine was then USA and, given the disgusting demand made of him, was reluctant to prosecute Jackson and me. He also knew me well because I had helped him and his office when I worked for the Senate. So, Dies et al delayed consideration of his nomination for the judgeship until there was a prosecution. Pine did not handle the grand jury. The one assistant I recall clearly in that role was the late Ed Pihelly. I think he was later war-crimes prosecutor in Tokyo. He had me before the grand jury pretty often, for quite some time, and we had quite a tussle. But in the end I took his grand jury away from him, it refused to indict Jackson and me and it did indict Dies' creature, Mayne, for false pretense and for forgery. To keep Mayne's mouth closed, Dies appeared in person and copped a plea for him - two years suspended. (I had obtained documentary proof that Mayne was in his pay and did present it to the grand jury, only it did not get public because it was before the grand jury only so Dies was somewhat protected.)

As I'm sure you can imagine, this was all very, very public yet you now, after 50 years, withhold it.

Despite the historical nature of the records involved, depite my many repetitions of the requests and of the appeals, I received nothing, after all these many years, except what the FBI disclosed recently with the false assurance that it has nothing more about me than it has disclosed. Why the very records it just processed identifies some it still withholds and are not immune. If your office paid any attention to my appeals it would have seen to it that those pertinent records were processed for disclosure. Instead it wrote me that after consulting with the FBI it and the FBI hadn't the slightest idea what I was talking about. It requested the date of disclosure, which I had already provided, and the FBI's case number, which it did not provide with the records. As I told it.

Aside from the determination to corrupt the Acts into withholding rather than disclosing laws there seems to be the determination to make me appear as anti-government.

I'd known O. John Rogge and several other AAGs in charge of Criminal and other Divisions in those days and did make many efforts to help them. The late Brien McMahon borrowed me from the Senate less than three years earlier, to help with the prosecution in the "Bloody Harlan" case, U.S. v. Mary Helen et al, and I lived with him and his assistants amd with the FBI detail in Harlan and London, Kentucky, and worked with them for four months without a single penny in pay from the Department. I knew these AAGs slightly or very well. Later I gave the Department a great amount of documentation when I was exposing Nazi cartels. A little later I gave George McNulty, who was a friend and with whom I'd worked in the Senate, documentation for a Nazi putsch in Chile, for the FBI. I'm sure there were other efforts on my part to help the Department then, in any event, the FBI has come up with but a single refrence to me in the Harlan case and no component has provided any record relating to the rest. (FDR used those Chile documents in a fireside chat.)

Before the FBI succeeded in easing Quin Shea out he got interested in the Nazi-cartel part and concluded that Joe Borkin had taken all I'd given Anti-Trust with him when he left the Department.

In what wound up as the Mayne case, which you seem to have obliterated in the Swiss-cheesed pages you sent, the FBI Washington field office was involved. I filed FOIPA requests of each and every field office and Washington did not find and disclose any of the records it has, including the few FBIHq sent me relatively recently.

You people sure are the models of diligence in handling appeals! You see, none of what I tell you is new to your office. I provided it and much more. I still got no records and your office still ignores the irrefutable proof I've provided with regard to the recent disclosures of the existence of relevant records that are referred to in the disclosures. Instead I got the shameful, the shabby false pretenses that you and the FBI hadn't the slightest idea what I was talking about when I identified those records by date of disclosure, then only a few days earlier.

Of course it did offer to enter a new appeal, with a still later date, for my request of a decade and a half earlier. Right on! In two months I'll be 77 and you offer to put me on the botton of the stack once again.

As I wrote one of your co-directors recently, we are none of us Merlins and we can't remember the future. But the political assassinations and their investigations will forever be of interest, as the appeals court itself has stated, and in addition to my copies, which will be a permanent archive, and any copies the Department and its components do not destroy, I've provided copies to others that will be available and, I think, will be studied and used. I am not a conspiracy theorist and there is nothing like that in any of my seven books. Mine has been a study of how our institutions worked in those times of great stress and since and official stonewalling and other improprieties are illustrative and informative. Those involved also characterize themselves for our history. All of you write your own histories. In the dishonesties with which my requests and appeals are and have been treated you attempt also to write my history by defaming me with selective disclosures and withholdings. This concept of American belief does not coincide with mine.

I apologize for my typing, which can't be better under my limitations. And now that you are involved in the processing of Mayne-case records, I ask again that they all be processed and disclosed in accord with my 1975 and subsequent requests under both Acts.

Sincerely,

Harold Weisberg