12-13-94

Mr. David Marwell, Executive Director
Assassination Records Review Board
600 E St., NW, #208
Washington, DC 20004

Harold Weisberg
7627 Old Receiver Rd.
Frederick, MD 21702

Dear Mr. Marwell,

Please excuse my typing. I'm 81, unwell and limited in what I can do. My typing can be no better.

As a result I depend on others for information and I was misinformed about which member of your board spoke to the COPA meeting in Washington several months ago. As a result I wrote Mr. Graff, who I was told, was that speaker. I wrote him twice, without even an acknowledgement. I enclose those letters. And I fear that for the address my wife was given for me for your office she was told the wrong zip code.

My letters to Mr. Graff will speak for themselves. I believe his total silence about them speaks for him.

As you may know, I've had much experience with the executive agencies and their determined non-compliance with FOIA. I filed about a dozen lawsuits. FBI corruption in one of my earliest suits led to the 1974 amending of the investigatory files exemption. In form it was that, In fact it was to return the exemption to the Congressional intent when FOIA was enacted in 1966.

The third of a million pages I got have been deeded to local Hood College, where they will be a permanent public archive. In addition, all my work and our property are included. There was no quid pro quo.

My experience with the agencies convinces me, and I believe their record bears this out, that they treated FOIA as a withholding law. This experience with Mr. Graff persuades me that is his attitude. I believe that disqualifies him from his position on this board under the 1992 Act. I request that you call this to the attention of all the board. I believe that the course of honor requires him to resign. Otherwise, given the nature of what I told him, would have required some response, some action - if only to communicate it to you. And in my not inconsiderable experience this, aside from all else that is wrong with it, is one of the greatest causes of disenchantment with the government. Aside from innumerable phone calls and, when I was able to travel, innumerable public apprarances, what I say is reflected in more than 20,000 letters I have goten from strangers, for whom it was not easy to learn how to address me. I had to become a publisher to open the JFK assassination subject up. Most stores did not carry my books.

So you and the board can evaluate what I say, I am a former reporter, investigative reporter, Senate investigator and editor and I was an intelligence analyst in World War II and for several years after it. And rather than the media and perhaps the attitude of some of your board, that all who do not agree with the official assassination "solutions" are nuts, in my C.A. 78-0322/0420 the Department of Justice told that court that

I know more about the JFK assassination and its investigations than anyone working for the FBI. Meaning, of course, as of the time of that filing.

I have eight published books on the assassinations, one inexplicably delayed in being published, two more in rough draft and a third additional one largely completed. I have yet to get a call or a letter from anyone I mentioned complaining that I treated him unfairly or with inaccuracy.

Unlike others writing in the field, I am not a theorist. My work is entirely factual. It comes almost entirely from the official evidence.

Where I refer to "solutions" in the plural above, that is because the "solutions" of the FBI and the Secret Service are not those of the Warren Commission.

In addition, beginning in 1968 and until he died, I had a relationship with Senator Russell and until he died he encouraged my work. He and Senator Cooper both refused to agree with the Commission's single bullet theory that is basic to its conclusions. I have this from their archives, so it does not depend on my work. Senator Russell forced an executive session on September 18, 1964, to make a record for history of his disagreement and Cooper's. (He also told me that Boggs was less firm in his disagreement with that theory.) When I put in his hands the official proof that, contrary to early decision, there was no court reporter present to take it all down and that a fake "transcript" was phonied up and then not distributed, if it ever was, until after the Report was out, he broke his long friendship woth LBJ and never spoke to him again. He and Cooper were misled into believing that an alleged "compromise" incorporated their objections.

In this I am trying to indicate to you that I have a different backrgound and approach from most working and writing in the field. And that, with only a few exceptions, my books are different. This difference is true also of what I did in the FOIA litigation.

I have read lists of records ~~that~~ transferred by the agencies to the Archive. I am certain, if these lists are close to accurate, that a very considerable volume of relevant records remain withheld. I am sorry it is not possible for me to go to your office to discuss this with you or your staff. What remains withheld ranges from the FBI's Warren Commission records other than its "liaison" file, 62-109090, to most of the agency records relating to my FOIA litigation. In them I took a difficult approach of not limiting myself to my lawyer's pleadings. Most by volume, I believe, are my affidavits. I did intend, among other things, making a record for our history. In some areas I believe I did.

For example, I was confronted by non-stop false swearing some of which without any question at all was perjury. I made myself subject to the charge of perjury by stating and proving this under oath myself. I believe that an important part of our history and that of the government's after the assassination is their deliberate violations of the law to deny nonexempt information and doing that with the felony of perjury, in some instances I am confident with the subornation of perjury.

Then there is the tolerance of the courts of all of this, including repeatedly proven perjury, when in not a single instance was there any sworn-to denial of refutation. One judge actually threatened my lawyer, Jim Lesar, and me!

While my writing is about the assassinations, its thrust is a rather large study of how our basic institutions functioned in those times of great stress and since then. I believe this is a vital part of the overall that should be available for scholars and so that we can learn from it. And, hopefully, never have anything like this happen to us again. (The title of the delayed book is NEVER AGAIN!)

As my letter to Mr. Woolsey indicates, the CIA has records it has not disclosed. There has been no response. This is not surprising. To the best of my recollection it has not complied with any of my JFK assassination requests. When I took it to court it still got away with non-compliance. But that Mr. Graff did not respond, which means that your board did ignore, my allegations that it interfered with my publishing and monitored what I said is shocking. One of the reasons we fought World War II was not to live in any society that interferes with publishing or monitors what citizens think and say.

But then there is at least one person at this archive who spies on what researchers are working on and interested in. That should be enough to get him fired.

If the agencies have any proper interest in knowing what those of us researching the assassinations think or write they can ask us.

This reminds me of what I believe the Department of Justice should have transferred, my lengthy, detailed and documented appeals. The then appeals director asked me to be definitive in them and at great cost to me I was and I documented those appeals. My suspicion is that those records, close to two file cabinets of them, have been disposed of. This also included the King assassination.

When I raised with the FBI, after the first reports of its transferring of records, delivering to me what it had withheld improperly, its first response was to tell me that it had transferred nothing I did not have. Its second was to refer me to the Archives. Before the 1992 law when I proved the existence of what was withheld and in some instances even where that information was, that was ignored, the information was withheld, and then it was transferred to the Archives. I had a fee waiver from the Department, not from the Archives. When I raised this question with the Archives it got no response.

Tricks there were without end, all not to comply with the Act.

I do believe that if you really want to have all the relevant records disclosed I can tell you how some are hidden to frustrate normal searches.

In my enclosed letters I refer to the deliberate denial to me of my rights under the Privacy Act. Those who have used the archive recently tell me that the deliberate distortion of some of what agency records say about me does make defamation of me part of

the assassination archive now. I believe this is opposed to all traditional American belief as well as possibly violating that law. I want very much to have all those defamations and to exercise the right I had under that Act as passed to file correcting statements. Without that the official effort to undermine my work officialdom does not like succeeds. I think your board has the right to see to it that such corrections are made and that the record for our history not be so successfully corrupted by those who had much to hide.

I believe, too, that those records improperly denied me should be disclosed and in the archive and delivered to me without cost to me. They were to have been delivered to me when I had a full fee waiver. As a relatively minor illustration of this, my FOIA requests of the New Orleans FBI office included all records on or about Clay Shaw and David Ferrie. None were disclosed and it was claimed that none exist. That New Orleans did have relevant records is reflected, proven, by the enclosed 62-109060-4720 record. Likewise in that case the FBI denied having any records on Jim Garrison. He and Shaw are both dead. Shaw was at the time of my request. And both offices denied having and relevant ticklers. They did. They required them. Snd they do hide information in their ticklers. I learned that in C.A.75-1996, for King assassination records. That request included all records on all surveillances of named persons of which I am one. The FBI denied having any such records but I found in a tickler I did with great effort get in that case information about me that could have come only from a telephone tap permission for which was denied by the John Attorney General. Who was lied to by the FBI with regard to Clay Shaw.

FBI leaks are important in both assassination cases. You will not find most records of them in the main files. I am confident I can tell you where you can find them. This is also true about what I believe is important, the files it kept on the media. Whether you will want to do what may be rquired to have them disgorged is another matter. But I do have proof of how and where they are filed.

I could ramble on and tell you more but I do not want to take all the time from you or from the work I fear I have but little time to complete as much as I an complete it. I not only believe that everything should be disclosed, I practise this by making all I have available to all working in the field even though I know almost all will write of what I do not agree with. All those people have also unsupervised access to our copier. I continue with this practise even after proof of thievery from me. We practise what we believe if we do believe.

I hope you will please see to it that this is available to all your board and to any others on your staff you think should know what I say and offer.

Sincerely,

Harold Weisberg

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

WASHINGTON, D.C. 20535

March 2, 1967

ASSASSINATION OF PRESIDENT JOHN FITZGERALD KENNEDY
NOVEMBER 22, 1963, DALLAS, TEXAS

This Bureau received allegations as early as 1954 that Clay Shaw, former managing director of the International Trade Mart in New Orleans, Louisiana, was a homosexual. One source informed this Bureau on March 19, 1964, that he has had relations of a homosexual nature with Clay Shaw. The source described Shaw as a brilliant and powerful man, given to sadism and masochism in his homosexual activities. On February 24, 1967, we received information from two other sources that information available to them led them to believe Clay Shaw has homosexual tendencies.

On February 24, 1967, we received information from two sources that Clay Shaw reportedly is identical with an individual by the name of Clay Bertrand, who allegedly was in contact with Dean Andrews, a New Orleans attorney, in connection with Lee Harvey Oswald, the facts of which are as follows:

On November 25, 1963, Andrews informed Agents of this Bureau that he had met Lee Harvey Oswald in late June, 1963, at which time Oswald appeared at his office with several individuals who impressed him as being homosexuals. Andrews claimed that Oswald requested assistance in making inquiries concerning Oswald's bad conduct discharge from the United States Marine Corps. Andrews further stated that Oswald asked him questions concerning the citizenship status of Oswald and his wife.

Andrews further stated that on the evening of November 23, 1963, at which time he was in a hospital in New Orleans under heavy sedation, he received a telephone call from an individual who said his name was Clay Bertrand. He added that Bertrand asked him if he would be interested in handling the defense of Lee Harvey Oswald in Dallas, Texas, for the murder of President Kennedy.

62-109060 - 4720

ENCLOSURE

the agencies operated illegally. The problem is that in the quest for law and order, case after case after case has been thrown out because the law enforcement and intelligence communities acted illegally. So I do not think we attain any particular status of accomplishment in conquering organized crime, or any crime whatsoever for that matter, with illegal activities resulting in cases being thrown out of court.

I would suggest that the record speaks for itself. Frankly, I never thought the record of former Attorney General Ramsey Clark was that good. But, comparing his record with that achieved by succeeding Attorneys General, he looks like Tom Dewey in his prosecutorial heyday.

Mr. HRUSKA. That record is bad, but do we want to make it worse by adopting this amendment which threatens to tie the hands of the FBI and dry up their sources of information? I say, with that, the soup or the broth is spoiled, and I see no use in adding a few dosages of poison.

The pending amendment should be rejected.

Mr. KENNEDY. Mr. President, I do not recognize the amendment, as it has been described by the Senator from Nebraska, as the amendment we are now considering. I feel there has been a gross misinterpretation of the actual words of the amendment and its intention, as well as what it would actually achieve and accomplish. So I think it is important for the record to be extremely clear about this.

If we accept the amendment of the Senator from Michigan, we will not open up the community to rapists, muggers, and killers, as the Senator from Nebraska has almost suggested by his direct comments and statements on the amendment. What I am trying to do, as I understand the thrust of the amendment, is that it be specific about safeguarding the legitimate investigations that would be conducted by the Federal agencies and also the investigative files of the FBI.

As a matter of fact, looking back over the development of legislation under the 1966 act and looking at the Senate report language from that legislation, it was clearly the interpretation in the Senate's development of that legislation that the "investigatory file" exemption would be extremely narrowly defined. It was so until recent times—really, until about the past few months. It is to remedy that different interpretation that the amendment of the Senator from Michigan which we are now considering was proposed.

I should like to ask the Senator from Michigan a couple of questions.

Does the Senator's amendment in effect override the court decisions in the court of appeals on the Weisberg against United States, Aspin against Department of Defense, Ditlow against Brinegar; and National Center against Weinberger?

As I understand it, the holdings in those particular cases are of the greatest concern to the Senator from Michigan. As I interpret it, the impact and effect of his amendment would be to override those particular decisions. Is that not correct?

Mr. HART. The Senator from Michigan is correct. That is its purpose. That was the purpose of Congress in 1966, we thought, when we enacted this. Until about 9 or 12 months ago, the courts consistently had approached it on a balancing basis, which is exactly what this amendment seeks to do.

Mr. President, while several Senators are in the Chamber, I should like to ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. KENNEDY. Furthermore, Mr. President, the Senate report language that refers to exemption 7 in the 1966 report on the Freedom of Information Act—and that seventh exemption is the target of the Senator from Michigan's amendment—reads as follows:

> Exemption No. 7 deals with "investigatory files compiled for law enforcement purposes." These are the files prepared by Government agencies to prosecute law violators. Their disclosure of such files, except to the extent they are available by law to a private party, could harm the Government's case in court.

It seems to me that the interpretation, the definition, in that report language is much more restrictive than the kind of amendment the Senator from Michigan at this time is attempting to achieve. Of course, that interpretation in the 1966 report was embraced by a unanimous Senate back then.

Mr. HART. I think the Senator from Massachusetts is correct. One could argue that the amendment we are now considering, if adopted, would leave the Freedom of Information Act less available to a concerned citizen that was the case with the 1966 language initially.

Again, however, the development in recent cases requires that we respond in some fashion, even though we may not achieve the same breadth of opportunity for the availability of documents that may arguably be said to apply under the original 1967 act.

Mr. KENNEDY. That would certainly be my understanding. Furthermore, it seems to me that the amendment itself has considerable sensitivity built in to protect against the invasion of privacy, and to protect the identities of informants, and most generally to protect the legitimate interests of a law enforcement agency to conduct an investigation into any one of these crimes which have been outlined in such wonderful verbiage here this afternoon—treason, espionage, or what have you.

So I just want to express that on these points the amendment is precise and clear and is an extremely positive and constructive development to meet legitimate law enforcement concerns. These are some of the reasons why I will support the amendment, and I urge my colleagues to do so.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from Nebraska has 6 minutes remaining.

Mr. HRUSKA. Mr. President, I should like to point out that the amendment proposed by the Senator from Michigan, preserves the right of people to a fair trial or impartial adjudication. It is careful to preserve the identity of an informer. It is careful to preserve the idea of protecting the investigative techniques and procedures, and so forth. But what about the names of those persons that are contained in the file who are not informers and who are not accused of crime and who will not be tried? What about the protection of those people whose names will be in there, together with information having to do with them? Will they be protected? It is a real question, and it would be of great interest to people who will be named by informers somewhere along the line of the investigation and whose name presumebly would stay in the file.

Mr. President, by way of summary, I would like to say that it would distort the purposes of the FBI, imposing on them the added burden, in addition to investigating cases and getting evidence, of serving as a research source for every writer or curious person, or for those who may wish to find a basis for suit either against the Government or against someone else who might be mentioned in the file.

Second, it would impose upon the FBI the tremendous task of reviewing each page and each document contained in many of their investigatory files to make an independent judgment as to whether or not any part thereof should be released. Some of these files are very extensive, particularly in organized crime cases that are sometimes under consideration for a year, a year and a half, or 2 years.

Mr. HART. Mr. President, will the Senator yield?

The PRESIDING OFFICER. All time of the Senator has expired.

Mr. KENNEDY. I yield the Senator 5 minutes on the bill.

Mr. HART. Mr. President, I ask unanimous consent that a memorandum letter, reference to which has been made in the debate and which has been distributed to each Senator, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MEMORANDUM LETTER

A question has been raised as to whether my amendment might hinder the Federal Bureau of Investigation in the performance of its investigatory duties. The Bureau stresses the need for confidentiality in its investigations. I agree completely. All of us recognize the crucial law enforcement role of the Bureau's unparalleled investigating capabilities.

However, my amendment would not hinder the Bureau's performance in any way. The Administrative Law Section of the American Bar Association language, which my amendment adopts verbatim, was carefully drawn to preserve every conceivable reason the Bureau might have for resisting disclosure of material in an investigative file:

If informants' anonymity—whether paid informers or citizen volunteers—would be threatened, there would be no disclosures;

If the Bureau's confidential techniques and procedures would be threatened, there would be no disclosure;

If disclosure is an unwarranted invasion of privacy, there would be no disclosure (contrary to the Bureau's letter, this is a determination courts make all the time; in-

Full text of Congressional Record of which this is part in top drawer of JFK appeals file cabinet.