

to Mr. Harold Weisberg
Route 8
Fredrick, Md. 21701

COMMITTEE TO
INVESTIGATE ASSASSINATIONS

927 - 15th Street N. W., #409
WASHINGTON, D. C. 20005
Tel. (202) 347-3837

subject

date Mar. 2, 1973

message

Dear Harold:

Now that I have had time to digest and reflect upon the Court of Appeals' decision in re your suit for the spectrographic data, I should like to pass on my views. I do so because I sensed, in the discussion with you and Jim yesterday, a degree of euphoria which, though entirely understandable, could lead you or Jim into indiscretions which might jeopardize the future course of the suit, and thereby dissipate the unquestionably favorable posture that the case (and others like it) are now in. I congratulate you, but I also caution you.

First of all, a careful reading of the majority opinion shows unmistakably that its emphasis throughout is on the failure of the Justice Dept. to sustain its "burden of proof" in justifying the withholding of the records sought. Strictly speaking, it is not an affirmative argument for disclosure (despite its reference to the "public appetite for further information" on p.13), but rather a remonstrance against the Justice Dept. (and the District Court) for failure to
signed

reply

make a case consistent with the principles previously laid down by the Court of Appeals in other cases. The Court of Appeals, quite understandably, does not want to see its previous work undone, which an affirmation of Judge Sirica's order would surely bring about. The majority opinion makes little reference to the arguments made in the briefs, beyond those which have been made and emphasized in previous cases (absence of pending or prospective law enforcement action, failure of Govt. to show harm from disclosure). Such arguments as that the records were not compiled for law enforcement purposes, or that you are entitled to them because Oswald would have been entitled to them, are simply ignored or, as in the first paragraph of footnote 3, dismissed as irrelevant.
signed

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Secondly, I read the final paragraph on page 13, dealing with the manner in which the subsequent proceedings should be conducted, as a clear warning to be cautious and discreet. The District Court is carefully reminded of its authority ("informed discretion, good sense and fairness") to conduct the proceedings in such a way as "to preserve such secrecy as is warranted". In doing this, the District Court is told that there are other devices than mere in camera inspection, which could perhaps include such devices as excluding the public and the press from the Court room during argument, or ordering the parties not to make any public disclosures. (Exactly this was suggested in the Alderman case cited in footnote 9.) It seems to me that these suggestions by the Court of Appeals could bode ill for you if any attempt is made to exploit or publicize the case by making wild accusations, say, against the FBI.

Similarly, I think it would be a serious error to disregard the criticisms expressed by Judge Danaher, albeit they have no legal relevance. We really don't know how much his views may be shared by other judges (including Bazelon and ~~Richard~~ Kaufman, and certainly Sirica),

reply

and we should not underestimate the powers of the Courts to terminate cases for reasons other than their resolution on the merits. Worst of all, in my view, would be any expression of ridicule of the point of view expressed in the dissent, which I felt yesterday that you and Jim were too ready to do, in the natural first flush of enthusiasm.

In brief, I am making a plea for modesty and discretion. After all this time and all the effort that has gone into the case (and after all, it is not you and Jim alone who have invested such time and effort), it should not be too much to ask that a little more patience and maturity be exercised. Perhaps it is presumptuous of me to say these things, but rest assured I want to see you win, & I too date _____ signed Sincerely, *Bob Smith*

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