JFK appeals

To Quin Shea from Harold Weisberg, JFK and King Assassination Appeals 3/4/79
Referrals

Referral has become a means of de facto denial and of prolonged, in some case of permanent withholding. In this I am appealling all referrals in both case and illustrate with recent examples and from recollection that can be confirmed, including in affidavits filed in courts without even pro forma denial.

Yesterday I reviewed records that were processed five months ago. Some of the worksheets are not dated. Others establish the age. There were many referrals but in no case to any agency with a claimed backlog and in a number of instances the referral was to DOJ or INS. Most of the rest were to the Secret Service. Since then I have not received those records or any word about their processing or any claim to a need for more time under the Act.

While I cant be certain and did not in all instances compare the worksheet description with the other information that could disclose in some cases if the record were a record provided by the agency to which referral was made I am certain that in many if not most or even all instances these were not original documents that were referred and that in fact original documents remain withheld and not accounted for on the worksheets.

Some of this referred and withheld information is within the public domain, again perhaps most if not all. This is especially true of what was referred relating to Marina Oswald, files on whom are included in what I have just reviewed. The actuality appears to be that you are now withholding what the Warren Commission published in 1964. What makes this more deliberate is the fact that the FBI has a Warren Commission index and provided copies to every field office, of which it demanded review and comment. I have some of these records from two field offices only.

I have no recollection of having received a single page of information referred to any other agency from among the thousands of records made available in the general JFK releases of late 1977 and early 1978, as you recall provided to me under court order. If I recall correctly those referrals were even earlier. I know they were, of course, earlier. I think I recall some of July 1977, which is to say of going on two years ago.

These are only some of the reasons I am in this appeal stating that referral has become a machine for non-compliance and of withholding what cannot otherwise be withheld under claim to exemption. If there were claim to exemption I could appeal an improper claim to exemption. You would then review the claim.

Harassment of a persistent, aging, unpopular and impoverished requester is also clear intended. Experience with the FBI on this, especially along with the CIA, is especially persuasive that this is the intent.

There is an existing FBI record you can obtain that will give you a partial chrono-

of this whipsawing in C.A.75-1996. I use this to illustrate for a number of reasons. One is that the case is still in court. Another is that, as you know, I believe Department counsel seriously misled that Court. Still another is the very large and wasted cost of ligigation it caused because it left me no alternative, especially after the AG's historical case determination.

These FBI referrals to the CIA began in that case in 1976. I am by no means certain that all have been acted on yet. I am certain there remains extensive withholding and that there was no action by either agency until they decided to move for summary judgement, which required them to act.

(On this I remind you that the Department's, include your affidavit in support of that regular device for stalling in this case, the promise of a coming motion for partial summary judgement, is long overdue. Is it not six months or more, as represented in many useless calendar calls?)

When I received no records referred to the CIA in the King case I started asking the FBI about this. Its ultimate position was that once it refers a record it has complied. I asked it to write and ask the CIA when it could expect to hear from the CIA with regard to these referrals. It refused. In the end I had to file against the CIA, after making a duplicating request that was NOT COMPLIED WITH. Among the devices then use for further withholding was not to provide records until the last moment in court and then to make the most outlandish "national security" claims. Under this the public domain was withheld. The names of newspapers and of hotels were withhled on the spurious ground that not withholding them would endanger the nation by letting it be known that there was a CIA station there, a matter only too well known. And just a week ago a student using my records who was aware of this told me that she had found exactly this information disclosed by the CIA itself in records provided three years ago.

If there were any cost accounting of what refusal to aven ask the CIA to act on King case referrals were made I am certain the Congress, if not the Department, would be impressed.

And what has been released by other means remains withheld in that case, which of course includes the King case and the Department.

Take the Secret Service, which to the best of my knowledge has no FOIA backlog.

It can be informative to you and perhaps in time to the Congress.

I made a request in 1971, after the Secret Service violated an earlier amicable agreement with me to avoid litigation, that as of today remains without any compliance. Another person sued and obtained those records withheld from me. (Other than these records also remain withheld by the Secret Service.) In the year or more since by court action the Secret Service was compelled to provide records I had requested earlier to this other litigant, Michael Levy, it has not provided me [redacted] with a single page of even that part of my request it was forced to provide to him. (My request included other information.)

My counsel will be more than willing, I am certain, to provide you with ample records of what is literally a conspiracy between the Department, the Secret Service and GSA to withhold from me records the Secret Service told the Department could not be withheld under any exemption.

Only when I was about to file suit, years later, did I receive any of them. By then this withholding had been misused for indecent propaganda purpose, the net result of which is that the Government held the Kennedy family responsible for withholding information relating to the assaassination of the President, an indecent falsehood. And many more assassination mythologies were launched. The obvious political purposes served by this and similar violations of the Act is to cause confusion and to direct attention away from the records and performance of the agencies in their investigations of that crime.

After three or more years the Secret Service has not complied with my Privact Act request. Even then its record is no worse than the Departments and is better than that of the CIA, where I made the request first under FOIA in January 1971.

These agencies cannot fault my work. They do not like my work. My work exposes them, their failings and shortcomings. To deter my work they combine to deny me information and expend an enormous amount of public moneys in litigation to keep me tied up in those cases and thus prevent further writing they will not like and will not be able to fault.

Compliance with the Act requires due diligence and good faith.

There is no exemption for referrals.

The newest dodge is to take an FBI record and pretend it is that of another agency and to refer it to an agency the FBI knows will not act and thus to withhold.

This extends to the Department, many components of which have no backlog.

I re-emphasize, this extends to withholding what is within the public domain by such acts and tricks.

You can establish the truth or inaccuracy of this and under this appeal I am asking exactly this be included. There are withheld records.

The FBI has records of all referrals. I therefore ask that you obtain from it all its records of all referrals in both JFK and King cases along with the record of subsequent compliance and any records of any efforts it has made to obtain compliance or action on those referrals. (You will find an incomplete tabulation in C.A.75-1996 has been made.)

I also ask that each of these referred records be reviewed on appeal to determine whether or not they can now be released to me, whether any exemption was ever applicable, whether any claimed are claimed legitimately, whether they had to be referred, whether any were not records of the agency to which referral was made, and particularly where you have responsibility, with any Department component, that each and every referral be acted on immediately under this appeal, in both King and JFK cases.

(State also is included in the records I reviewed yesterday. It has provided no records.)

There are several other appeals that will be included with this one. I have had some copies made for illustration. I believe some of these copies will illustrate this appeal. They will be enclosed.

With regard to these Departmental components I also ask that you ask each if the information it withholds is within the public domain or if it has made any effort to determine whether it is withholding what is within the public domain. You are well aware that I have offered to provide this information and to cite sources for such determination.

Within the Department King assassination information released by the FBI because it was within the public domain remains withheld by CRD, which even made (b)(5) claim when no prosecution was under consideration -if indeed even possible. My appeal is years old and has not been acted upon. Two relevant illustrations are the Byron Watson matter and the investigation by the deceived and misled Atlanta police after many loud noises by Mark Lane and Dick Gregory. The Atlanta police made the initial disclosures of copies of its report that remain withheld by the Department. My copy is incomplete because the reporter who provided it had mislaid a few pages. But this is typical of much of the withholdings by the FBI and by those components which have not acted on referrals and have withheld informations within my requests.

I believe this matter of referrals, etc. in the King case is more important now because it was not included in your testimony of January 12 of this year. You also made no reference to any other component. Department counsel asked no such question and as you know, my counsel was foreclosed.

I do not want to appear to be sailing under false colors. This is an appeal and a serious appeal. Referrals have become a means of negating the Act and denying my rights under it if not also under PA (which I ask you to determine). But it is also accusatory, and I am not in any sense disguisng that.

If the place of justice is indeed a hallowed place (which no doubt accounts for the barring of that particular portal for so many years), justice requires lawful behavior. Although the Department's position is schizoid, having the responsibility of enforcing all laws and the record of violating this one, the Department has failed to take what steps it could to minimize this. One such step would be to give real authority to its appeals office. Another would be adequate staffing for the appeals office.

It is my belief that because the Department has done neither does not entitle it to perpetuate non-compliance, which I interpret as illegal acts.

The Department has sworn often enough to all courts that it processes FOIA requests in order of receipt. Within my extensive experience this is false swearing and deliberate false swearing.

As you know I am nearing my 66th year and am in imperfect health. As you also know my basic JFK assassination requests go back more than a decade. Those relating to the assassination of Dr. King are a decade old. My appeals in both cases are not less than three

years old, with subsequent amplifications. This situation also applies to and is true of my PA request. My counsel, who I cannot pay, is severely limited and there is a limit to what is within the physical capability of one person. (This, I emphasize, makes non-compliance by "referral" an effective device for noncompliance.)

The most recent acts of your office in any of my cases, a matter of which I have written you and appealed separately, are to give a current 1979 sequential number to an old appeal of a 1968 request and to do the same with regard to my PA request of 1975, which was appealed after denial not long thereafter. While I do not make accusations in this and do not allege that this is a means by which you intend further stonewalling I do state a fact. If the cause is too much work for your staff or understaffing or inexperienced help or any other innocent cause the fact remains that you have put at the very bottom of your considerable backlog a 1968 and a 1975 request and appeals three or more years old.

When I consider this along with what I have observed in the records I read most recently and remember the Departments's, including the FBI's long record of stonewalling and non-compliance and do not lose sight of my age and health, both of which are well known to the Department and the FBI, I am forced to ask for scrupulous observance of my rights under the Act as the Department itself represents all rights are observed by it.

Unless you have older requests and older appeals on which you are acting I ask that all others be delayed until you have acted on all of mine under both Acts.

To now I have been, I think, patient even if this patience was required by deliberate wrongful acts and the Department's failure to make compliance a physical possibility by not providing adequate staffing. (My belief is that this was deliberate, as a means of effecting non-compliance and as a means of creating a bad and costly situation about which it could complain to the Congress, seeking relief, which would mean sanctioning non-compliance.) I am too old and can't expect compliance the way things are going. This matter of referrals is only one of the more recent proofs. The assigning of 1979 sequential numbers to these old requests and appeals is another.

From my own experiences I do not want the information requests and appeals of others to be delayed. But the Department has created the present situation, not I. If you know of another who is older or whose health is more impaired I will not ask for priority attention over such a requester. Absent this, I believe the Acts and the Department's own stated policy requires that all other FOIA processing and appeals be delayed by messenger and that all of mine receive the priority attention I request, meaning the assigning of all staff to these matters so that they may be acted on IMMEDIATELY AND completely at this late date.

Harold Weisberg

P.S. I remind you and the Department of the Department's testimony and promises to the Senate subcommittee with regard to these identical requests, I believe in 1977. The testimony now turns out not to have been truthful, otherwise I would not now be required to file an appeal of this nature.

I believe this reminder is particularly appropriate at a time when the Department is providing testimony to the House and making representations to the House. My familiarity with the testimony to the House is limited to what little has been published. However, that little indicates a retreading of the tire worn out before the Senate.

The prosecutor never prosecutes himself. However, I regard as a serious matter the fact that those who testified as they did before the Senate are the identical ones who presided over [redacted] and continue to preside over the continuing non-compliances.