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Dear Ms. Balough,

Commemorating FOIA and encouraging use of it are fine ideas but the special issue fell far short of what it could and should have been, as reporting, as commentary and in informing those who would use the Act. The omissions in its Hall of Fame are significant. Some do not belong there, not really. And although there are references to the really significant 1974 amendments, with credit given where it has nothing at all to do with those amendments, the issue contains nothing at all about those amendments. Can it be because of their political importances, a consideration I did not detect in this issue? Does SPJ duck on this?

(Please excuse my typing. I'm 83 and in impaired health. It cannot be any better.)

What so many people who lacked influence, connections or the support of existing organizations did to give FOIA viability is not indicated in any way.

In the beginning, when it was so important, it was not as you say, that "The news media led the way...." It did not even report the efforts of those who did lead the way.

I think you may in the future find some of the actual history useful.

To give you an idea of how it really was after Johnson delivered his Fourth of July speech on enactment- what else could he do? and then he and his administration did all they could to frustrate the Act and its intent, I asked the Washington ACLU to represent me in my efforts to use the Act to obtain withheld information relating to the assassination of President Kennedy and its investigations. That crime and that investigation are not the fun-and-games the major media makes of writing about it. That is the most deeply subversive of crimes. Mine is not theoretical writing about it, <sup>It is</sup> really reporting in books.

After several trips to The National Archives with me, after I gave him to see the kind of existing information that was withheld, instead of getting a lawyer to help me obtain the withheld information <sup>the ACLU won</sup> we got me a lawyer to defend me when ~~as~~ he expected the FBI would come after me!

In the end a young friend who had not yet taken the District of Columbia bar examination did represent me in at least a dozen FOIA lawsuits. Some were precedential, including on copyright, and one is given credit in the legislative history for the 1974 amending of the Act's investigatory files exempted. Yet he,

James H. "cesar, is not mentioned in your issue.

Of all the many in the Congress to whom we are indebted for those amendments that gave the Act viability the senator most responsible was the late Phil <sup>H</sup>art of Michigan. He is not mentioned in this special issue but he does belong in the "hall of FOIA fame" for that and for much of his political activity in support of the Act.

In that early request I could not get ACLU help on I sought the nonsecret results of the FBI's testing of alleged assassination evidence. (The FBI prevailed on overt mendacity.) The Senator who saw to it that the legislative history would be clear was the sole surviving Kennedy brother, Edward.

No reporting of the amending mentioned that or that it was one determined man, Andy Jackson's phrase, who by his persistence became the majority when the Act was amended.

The Act did provide for the waiver of fees under some conditions. I was the first to use that provision. I had by then been engaged in an unsupported pro bono endeavor for almost 15 years when I had no regular income and worked by adding to my debt. Jack Landau of the Reporters Committee for Freedom of Information and his committee publicly opposed the granting of that fee waiver to me!

Your Hall of fame quite properly includes Sheryl L. Walter for her role in getting fees waived - years later. But it makes no reference to the first to whom credit and thanks are due, Jim Lesser.

And contrary to the position of Landau and the Reporters Committee, the judge who granted that fee waiver stated that the records then to be disclosed would not be coming to light if it had not been for my earlier litigation that was cited in the legislative history of the 1974 amending of the Act. (Neither he nor Senator Kennedy credited ASME and its counsel, Richard M. Schmitt, Jr. for that 1974 amending, *as you do.*)

Before my health problems compelled me to discontinue lawsuits under FOIA I obtained more than a third of a million pages of once-withheld records and, in the spirit of FOIA, have always given free and unsupervised access to them to all writing in the field. They have also been decided to a college that will make them permanently available.

There is more for which I do not take your time or mine but I do want to call your attention to what can lead to considerable frustration if those who read it act on it. Under "How to file FOIA request" on page 48 you say that, "If an agency does not meet the time deadline [of ten working days], you may consider the request denied and appeal of due..."

If suit is filed without appeal of the denial the judge can throw that suit out forthwith on the ground that all administrative remedies have not been exhausted.

Gordon Winslow's failure to get compliance from the CIA after 17 years is not the record. There may be those older than mine but I'm still awaiting compliance with requests I made of it in 1970 <sup>and earlier.</sup> Winslow's request relates to the late Rolando, not Ronaldo Masferrer. He was not known as El Tigre over his anti-Castro activities after he got to this country. He earned that nickname when he was part of the Batista regime Castro overthrew.

I enclose a copy of the page of the Congressional Record with Senator Kennedy's remarks, the Washington Post story quoting the judge on what the Post had not reported, my responsibility for the amending of the Act's investigatory files exemption in 1974, and a part of an FBI filing in my CA 75-226 in which it through its counsel, the Department of Justice, told that court that I knew more about the JFK assassination and its investigations than anyone employed by the FBI.

That <sup>of</sup> suits, by the way, is the one over which that exemption was amended that I refiled as the first suit under the amended act. The FBI prevailed in the earlier suit over what I referred to as mendacity. In the second suit it resorted to perjury that I charged. The defense says I could make and prove that charge "ad infinitum," as in fact I did, but instead of doing something about the perjury that judge actually, literally, threatened ~~for~~ Lesar and me!

In the early days, when those with wealth and influence did not use the Act, giving it viability was not a pink tea. It required some risks, much effort and faith but there was no real help anywhere.

I'm sorry to tell you that the records of some of those you include in the Hall of Fame are not what you represent them to be although what you report is the general understanding. Not Landua alone and not him alone at the Reporters Committee. While I have no reason for this I guess it is because they did not like independent journalists doing what they should have been doing and were not.

Sincerely,

*Harold Weisberg*  
Harold Weisberg

the agencies operated illegally. The problem is that in the quest for law and order, case after 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 in-

former. 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 presumably 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 investigatory 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 disclosures;

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.

# Critic to Get Free FBI Set Of JFK Files

By George Lardner Jr.

Washington Post Staff Writer

U.S. District Court Judge Gerhard Gesell refused yesterday to delay the FBI's impending release of thousands of additional documents bearing on the assassination of President Kennedy, but agreed that author-critic Harold Weisberg should get a free set "with all reasonable dispatch."

The FBI plans to make public on Wednesday some 40,000 pages of headquarters documents on the 1963 assassination at a cost of 10 cents a page for those who want their own copies. The bureau released an initial 40,000 pages last month on a similar basis.

An outspoken critic of the Warren Commission and author of six books on the JFK murder, Weisberg noted that he has had freedom-of-information requests for such documents pending for years and that he had asked for a waiver of fees in mid-November. He filed for a federal court injunction in late December, arguing that he was entitled to a free set at least by the time the final batch was made public.

Charging that such voluminous FBI releases amounted to "media events" that effectively camouflage unjustifiable deletions and paper over "a very careful job of sifting and concealing," Weisberg said the Justice Department and the FBI had completely ignored his request for a waiver of the fees, which he said he could not afford.

Announcing his decision from the bench after an hour-long hearing, Gesell was sharply critical of the government's delay in responding to Weisberg's request for more than 50 days. The Justice Department offered him a reduced rate of 6 cents a page last week, but Gesell said "it is apparent no consideration whatever" was given to Weisberg's claims of poor health and indigency.

"The equities are very substantially and overwhelmingly in plaintiff's favor," Gesell said. He said that the records would not be coming to light now were it not for earlier freedom-of-information litigation by Weisberg. This led to a congressional change in the law, opening the door to FBI investigatory records.

The judge, however, declined to hold up the Wednesday release, on grounds that the disclosure of the documents was the "pre-eminent consideration." Weisberg's lawyer, James H. Lesar, said later that he understood the FBI would mail Weisberg copies of the forthcoming 40,000 pages the same day.