Mr. Quin Shea, Director
Office of FOIA/PA Appeals
Department of Justice
Washington, D.C. 20530

7/10/79

Dear Mr. Shea,

Your letter stamp dated the 6th and relating to Dallas bulkies and information in the public domain, came today. Because I am concerned about some of the language you use I respond immediately.

"On occasion, such items as exhibits and real evidence are destroyed, or otherwise disposed of, when it is determined that there is no (further) need for them."

This cannot relate to the JFK assassination investigation because the Attorney General issued an order requiring [illegible] preservation, the E.O. of 10/31/66; because Director Hoover testified to the contrary to the Warren Commission and because of a number of contrary official policy statements subsequent to the above. In addition, any destruction is contrary to FBI regulations when there is pending litigation.

Until I received this letter from you I had absolutely no reason to believe that the FBI engaged in any unrecorded file shifting. You may recall that I have appealed a number of transfers of records outside of assassination files. You state that the bulkies "are routinely rearranged and transferred in files." If this means that they are physically moved, that is one thing. If it means that they are placed in different files, that is another if there is no record provided of this, particularly if the transfer is subsequent to the filing of an information request that includes the information involved.

What you seem to be saying about this is that the FBI is inconsistent, that is right and proper, and the requester is required to read its mind as well as its invisible records.

Until now I am certain that if there were any unexplained gaps in serialization they were few and I am sure I would have appealed any. Now all of a sudden it becomes the norm in historical cases and the norm that is [redacted] not [redacted] accounted for on the processing worksheets.

Your two attachments raise questions you do not address and would not appear to be indirectly explained in your letter.

You attach 100-10461-1B6 (no Serial number). In the course of shifting this the FBI gave the record no other identification. It remains allegedly part of 1B6. But I have been provided with no 1B6 at all, as the list I gave you indicates. What I was provided skips from 1B to 1B7 in Section identifications. Now we did some checking of this record after receiving your letter. We find that the record was added to the end of [redacted] 1B, without any change in its number. Within my experience with FBI records this is unique. Or my recollection fails me. Six [redacted] Sections also appear to have been wiped out.

While there are other and undated notations on the second FD-192 I do not dispute that the listed items were sent to the Lab on 3/17/64 and not returned to Dallas. I have no way of knowing. I do know that this is not universally true and that much if not most was returned to Dallas by the Lab. Meanwhile, what was provided to me jumps from 1B17 to 1B20, as the list I provided indicates, and I have no explanation that what you say about these two records applies to all.

In fact it can't from the illustration that follows. It can't when the exhibits relate to cases in court. I have records of the sending of specimens to the Lab for the kind of testing that is within my C.A. 75-226, earlier C.A. 2301-70. The Lab did not provide any such information, even indication of the existence of the records I refer to, in those cases in which it did provide a number of affidavits some of which disputed each other.

Your casual reference to the destruction of records on page one when this is supposedly prohibited with JFK records is followed at the top of page 2 by "To whatever extent 'missing' items still exist elsewhere in the Kennedy files..." This, of course, is my concern - the uncertainty of their existence when there is this radical departure of careful FBI practise of recording all such transfers and I recall no such recording of transfers being provided. The volume of what is represented by these Sections not accounted [redacted] considerable.

Such records as those of testing of basic evidence rather than of odds and ends of books and a sweater represent my concern. My concern is not relieved by the general nature of your letter. It does not state, for example, that all represented by the gaps on the list I provided were returned to various persons or were transferred to other files or Sections.

I do not believe that expecting supposedly consecutively numbered records to be accounted for when the E.O. states all records were to be "preserved intact" as I recall its language is asking the FBI to do research for me. In this connection I also remind you that this is not a run-of-the-mill case but one found to be historical and there is the language of the appeals court mandating the responsibility of establishing the existence or non-existence of information relating to the assassination investigation. I would hope you can agree that unexplained gaps in serial numbering does raise questions about the continued existence of such information.

You remind me of the problems from "Operation Onsalught." It is my belief that those agents had been returned to field posts prior to the processing of the records in question. I am certain of this with regard to some. I cannot state with regard to all. However, I don't know that violation of the Act is its own justification, which is what you appear to argue.

Here you refer to the processing of "the Warren Commission files." This is unclear to me. The release of FBI records in the files of the Commission to which I referred is the release prior to the Acy. My point was that what was not withheld prior to the Act was withhold after the Act was the law of the land. Identically that information. If you meant FBI records included in the Commission s files, then those FBI records were processed throughout the processing of FBIHQ records. (There can be no "Operation Onslaught" applicability to bulkies or field office records, if there can be any at all.) They were not processed all at one time. They were processed serially. I provided you with a single illustration you neither explain nor justify. I used one big hunk at one point, not all such illustrations. I have provided others.

You state that this was at "a time when it was not anticipated that worksheets were going to be released." If this is what the FBI informed you it is not accurate on several counts.

First of all the year before this processing the FBI was releasing worksheets to me. One of the reasons there may be present problems can be from the FBI's reaction to my specifications of improprieties reflected in them and my pinpointing of the processors whose work was not in accord with the Act. Thereafter the FBI withheld this information always released to me and made spurious claims to cover it, like claims to privacy.

In addition, the Act requires that all withholdings be justified. Without the exemption being claimed on the record the only means of noting any exemption claimed is on the worksheets. Where more than one claim is made within a single record this, of course, is confusing and does not conform to the Act, which is why I have appealed it.

Your explanation does not account for the withholding of the public domain and it remains withheld. It does not account for the mind-set that planned to withhold the public domain and in some instances was changed. So while I do not know what Mr. Mitchell check, I have also provided you with specific illustrations of the withholding of the public domain in these and in other records. It is so much the FBI's way of life that just this morning I saw where it withheld under various claims, including to 7d,

what it had disclosed two years earlier. I mean the identical record, the identical Serial from one and the same file.

"that these worksheets can be quite confusing" cannot be attributed to either "Project Onslaught" or the anticipation that they were not going to be released. There had to be some accounting for the withholdings and no other one has been provided. Moreover, as you would know if Department counsel did not keep secrets from you, I have provided entirely different worksheets in the cases in court, covering supposedly the same records provided to another requester. They are not consistent in the records listed or the exemptions claimed, as I recall it. I suggest it would be helpful as well as economical if the appeals and litigation units could establish diplomatic relations and the appeals office could have knowledge of uncontested evidence presented in courts.

One of your sentences is subject to later out-of-context quotation so I address it in the sense I think you intend: "He (Mr. Mitchell) found no evidence that any public domain information had actually been withheld." I presume this refers to the illustrations I provided, where the FBI had actually withheld what was disclosed in Warren Commission records disclosures of more than a decade ago and then some of this was caught and corrected. I provided copies of worksheets indicating this so I was aware of it.

You do not state that there is "no evidence that any public domain information had actually been withheld." A number of my captioned appeals include this caption and I am not aware of any disputing of my representations in those appeals.

You also state, "Several of your recent letters to me have raised this same question with regard to possible classification of records put into the public domain by the Warren Commission." Of course I am pleased that two years after the initial claim to classification the Review Committee is being asked to review at some future time. However, this does not reflect all that I have appealed relating to claims to classification. It also does not reflect all I have appealed with regard to classification of the public domain or the illustrations I have provided over a considerable length of time. A convenient illustration off the top of the head is the Mexico matters.

All of this raises a serious question I have raised before: how is the Review Committee going to know what is within the public domain? How is it going to go about ascertaining fact about what is within the public domain?

I have repeatedly offered my services on this together with a suggested means of not disclosing what might be properly classified but I have had no response.

The requirement is that there have been proper classification. A number of my appeals are from ex poste facto classification, of records that were not classified as of the time of my request and after several FOIA reviews of them being classified so they would be withheld from me when my requests were processed. Does this situation require review by the Department's Review Committee?

I am sorely troubled by this and what it represents. I have requests for JFK assassination records going back more than a decade without compliance. Recently I sent you proof that some still denied to me are being provided to another. I have heard nothing from you or the FBI. The records to which you refer were processed two years ago. My appeals go back not so very much less time as they relate to those records and much farthur as they relate to other records and requests.

Restricting myself to classification, I did request a review under the new E.O. promptly. I also requested that the records being processed be processed in accord with the provisions of the new E.O. I have had no response. I believe the records of the general releases were processed when the provisions of the new E.O. were known and were not disclosed until after the new E.O. was effective. And now you write that your Mr. Schroeder "will look into the matter when and as classified Kennedy

materials are being reviewed for consideration by the Department's Review Committee."

Am I correct in believing that at this late date there is still a two-step further delay where I have added emphasis, first a delay within your office and then a further delay before the matter gets to the Review Committee plus any still additional daley after it received the matter? And this relating to improper classification in an historical case only - having nothing to do with the many other appeals going back more than a decade?

If I misinterpret your letter please correct me. If I do not and you can think of any reason I should be other than sorely troubled I sure would like to know it.

Sincerely,

Harold Weisberg