

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

Rt. 12, Frederick, Md. 21701
3/30/78

Dear Mr. Shea,

Your letter of the 27th did get here today, with the enclosures. Thanks.

There seems to be a pattern with your mail. When you use the large legal-sized brown envelopes I receive what you send. As of today's mail I have not received the other letters except as Jim Lesar made copies and sent them to me.

Jim had told me that you wanted the testimony back and would make copies for me. Because I want to be able to read it on the bus on the 6th we made copies. I return the originals herewith. I appreciate the offer of making copies but it is now unnecessary.

Your letter adds to several beliefs I have about the Department and FOIA/PA. In communicating these beliefs, for whatever value they may have for you, I am inhibited by that thin line drawn between what I may say and cases in courts.

I have no doubt about your good intentions. But I also believe that to a very large degree they have been rendered irrelevant. I assume you have faced many frustrations over what has happened, perhaps not realizing why it happens despite your good intentions. It appears to me that the Department has erected a "tube Goldberg FOIA/PA machine. In the design there is no rudder for the time the machine is afloat. And to assure that the absence of a rudder is not all that makes the machine inoperative, there is no captain. Perhaps you should be the captain but it has been arranged not only that you are not -- you cannot be.

I am reminded of an experience from my youth, relevant because it also dealt with the destruction of records as you address what you regard as the FBI's innocent destructions. Chrysler Corporation had destroyed records called for by the subpoenas of the Senate committee for which I worked. Chrysler's general counsel, Lester Colbert, rose in the hearing room unbidden and called out the name of each present Chrysler official. He asked each if he had destroyed the records. Each replied in the negative. When this impressive show was over although Colbert had not been sworn as a witness and was not then testifying he was asked a simple question: had he destroyed these records. Well, he had. And he went on to become Chrysler's president -- and to preside over many corporate disasters.

When I prove the existence of record not provided I receive neither the records nor proof of destruction. I believe I have asked for proof of destruction without response. When I specify files that were not searched those files are not then searched. When I specify where there should be duplicate copies I am not provided with duplicate copies or with a statement of an unsuccessful search for them. I could go on and on this way. I'll provide you with several simple illustrations which need not concern you over the present status of C.A.75-1996, although to a degree one figures in it.

Your footnote 2 introduces one and that great victory. (New No. 77-1107, I think, before the appeals court.) What follows is far from all in the coming harvest of the fruits of that victory.

There was the question of an adequate search. There had been several false affidavits filed, accepted and not apologized for when I proved their falsity. In fact, there are three contradictory sworn versions, which upset nobody except Jim and me. On remand I was directed to establish the existence or non-existence of the records sought. I was directed to take first-person testimony, and I had to pay the bills for the witnesses and the court reporter before I was cut off by the acceptance of further false official representations. But before I was cut off I did establish the existence of files not searched. Moreover, this FBI testimony established that these were the real main files because they are

"OO" or office of origin files. (What was certified as full compliance in C.A.75-1996 was also without any search of the Memphis Field Office or OO files.) AUSA Michael Ryan and SA Emil Moschella of the FBI Office of Legal Counsel were present at that deposition and heard this testimony. They thereafter did not cause a search to be made of the Dallas Field Office files.

If they had they would have discovered records that had not been provided on discovery and are relevant. These records are included among the first 40,001 pages of the FBI's JFK releases, those I have not yet been provided, as well as among those I was provided under CA 77-2185. Of these I illustrate with the case of the wounded curbstone.

What I seek is the results of the scientific testing in the JFK investigation. There was a "missed" shot. About it the official FBI line was laid down in its supposedly definitive five-volume report ordered by the President prior to the appointment of the Warren Commission. There is in all five volumes no mention of that wounded curbstone or that missed shot or of the man (who has become my friend - I heard from him only last night) who was wounded by that shot.

If this shocks you about the FBI's definitive investigation of the assassination of a President and with it the overturning of an entire system of society there is more.

The FBI accounted for that most terrible of crimes without mention of one of the President's known wounds, the one in the front of the neck. It also relates to the testing the results of which I seek for more than a decade.

Please keep in mind that I'm not arguing a case - I'm addressing how your FOIA/PA machine works, does not work and perhaps cannot work.

One of the tests is known as spectrographic analysis. This involves the creation of a thin photographic plate not much thicker or larger than ordinary camera film.

On discovery we learn that the photographic plate of the curbstone spectrographic analysis was destroyed. It and it alone of all those many plates. The explanation is that it was probably to save file space!

There are no stated results of this test. The presume bullet had a dozen identifiable components. The test detected two only, lead and antimony. These are core components. So if we assume that magically the bullet shed its copper-alloy jacket we are left to wonder what happened to the other six core components. We are supposed to believe that this in itself did not require some kind of FBI record.

Of the many relevant records I produced there were before and after pictures, if I may so describe them, and the curbstone itself. Four FBI agents, three of whom retired only after that case was filed, were deposed. Each was asked to examine the "before" photograph and the curbstone and as skilled men to provide descriptions which do bear on the existence or non-existence of the records sought and the tests made. The three who had retired demanded prior payment as "expert" witnesses, not content with the pro payment of the required witness fees. Not one would testify to the obvious truth - that the point struck by the missed shot today is the smoothest and darkest part of that curbstone. Not one would testify that the contemporaneous picture shows physical damage to that concrete. In this they were supported by government counsel.

This forced me to make a trip to Dallas. As a result I was able to file an affidavit by the wounded James T. Tague. There is more that is Byzantine about this. None of the proofs I produced led to any kind of added search or the production of a single added page of any kind of record.

I learned how the FBI was forced to seek that curbstone and to find it after it pretended not to be able to find it. In learning this I also learned that the FBI had not returned what I call a "before" picture to the news photographer who took the picture. I also obtain prints of two such pictures the FBI did not obtain from him. And that after

reading "leaked" accounts of the official solution of the crime this photographer, when he bumped into the U.S. Attorney for Dallas at a social affair asked him how the FBI was overlooking this missed shot and his picture of the damage it caused.

When this was relayed to the Warren Commission outside the FBI it was sent back to the curbing. It located the proper point and had it dug up and flown to Washington. The FBI provided the Commission with a report emphasizing that there is no "mark" on the curbstone - but ignoring the fact that there had been a mark. The contemporaneous news accounts use the words scar and chip, maybe also hole. It is in the court record now.

The retrieving agent is the now retired Lyndal L. Shaneyfelt. On deposition he sought to digress and divert with a false and unprincipled assault upon me and my personal integrity. He actually testified, gratuitously, that the FBI had considered suing me over my writing. The way he put it is that he had. I now have some of those records and that they did actually consider suing me, using him to file that spurious suit, is true. Those records also show that they wanted to "stop" me and my writing.

I did not interrupt the deposition to respond and cause further interruption. After Shaneyfelt left I told government counsel I would waive the statute if he would sue. Later he sent me a bill for added fees as an expert witness. In my letter refusing to pay them I included a written waiver of the running of the statute of limitations. I have heard nothing further from him or on this.

The evidence I produced is that the FBI knew from the outset about this missed shot and did nothing about it; that it knew the identity of the wounded man and avoided him until he forced himself upon it after another of those leaked stories; and that the curbstone's wound had been healed with a visible patch. This led to not one more piece of paper.

I also proved the existence of other relevant records that had not been provided on discovery. Also Byzantine. How did Warren Commission counsel know that Tague had returned in May 1964 prior to a visit with his parents to take movies of where he was slightly wounded? (By then the mark has disappeared.) Commission counsel even believed he was showing Tague a frame from his movies, as I found in the typescript of the deposition, obtained from the National Archives. And then, mysteriously, Tague's film was stolen.

There is no record of the Tague film in the Archives nor has the FBI provided any report indicating any awareness of it.

There were other Dallas Field Office and HQ records that also were not provided. By accident I found some in the second large release I obtained in C.A. 77-2155. In summary the FBI knew there had been a visible mark and that it had disappeared. From all I have been able to learn from the Archives this record was not provided to the Warren Commission. It was not provided on discovery. As I've told you the Dallas files also were not searched even after I established the need to search them. But the HQ files are explicit enough on this - and were withheld until C.A. 77-2155. I was lucky to blunder on it in those 60,000 pages while helping two reporters who were searching those files here and copying what they wanted. They, too, had missed this.

Back to innocent destruction of records. Do you believe that the destruction of this single one of those spectrographic plates was innocent? Or that the withholding of relevant records was accidental? Or the failure - I think refusal - to search the Dallas files is good faith or due diligence - also innocent? (I've had to file a separate suit for all the Dallas and New Orleans files.)

I digress with what may perhaps give you a reading on Jim and me. I was in Dallas at the time James Earl Ray escaped. Because I knew him well and had been his investigator ABC-TV's Good Morning America wanted me to fly to New York and appear on that show. I declined three times because I have no interest in personal publicity and because I wanted to complete what I went to Dallas to do. This also coincided with Mark Lane's

extensive TV and other appearances in which he blamed the King assassination on the FBI. Lane was even alleging that the man he described as the one who ran Hoover's office had been sent to Memphis to supervise the job! It was Jim's belief that on balance I should use the opportunity to reach a large audience with some truth rather than disinformation, so on his urging I went to New York and did in fact defend the FBI on that show. (I made no arrangement for a tape and have not used this but a reporter who heard I would appear did tape that. I have given the tape to Wisconsin if you doubt this representation of how I used that prime-time audience and show.)

I know of no way your FOIA/PA machine can cope with what I have outlined above. I know of no way your office can make a meaningful review on merit no matter how determined you may be unless you have a means of going outside official channels. I do mean not to limit this to the FBI. I have given you other illustrations, relating to other components. I know of no way I can reach any Department official to communicate such information to him, meaning an official who has the authority you do not have. I have made efforts. Jim has made efforts.

Your office appears to be unable to cope with what the FBI contrives with PA compliance and non-compliance. I mean nothing personal. I'm describing the machinery.

The FBI was totally non-responsive when under PA I gave it proof of the falsity of the few records I obtained. I never obtained the withheld records. My proofs coincide with the end of compliance, such as it was. These are viciously defamatory records. When I knew there would be the coming release I asked Jim to write the Department. He received no response and these records were released.

Then we learned of out-rate distribution of them by microfilm and microfiche. Jim wrote again as was informed this was not the case. In today's mail I have a second proof of the falsity of that response. I enclose a copy.

Again on PA, the second illustration I began by referring to. On several occasions I have given the FBI what I believe it should have. I recall an unutilized bullet a friend found in Dealey Plaza, clearly planted there. It was returned. I recall extensive records of the dangerous organization calling itself the Minutemen, also returned. These were returned. But no records relating to them have been provided under my PA requests. Then there are a picture and a sketch of the "assassin" in the King case. These have not yet been returned. After some strong protests and impatient suggestions from Lynne Zusman the FBI did provide a few other pages but not all that are relevant to this disinformational effort. Yet it is not possible to read what I have received without knowing where else to search. This includes field offices. I have specified them and received nothing since, after many months. Then there is the local residency. I have been in that office and I am pretty sure I saw file cabinets there. The records show that the pictures were returned to the local residency, as were the bullet and the "Minuteman" records. But I have not received a copy of a single page of records from the residency. This cannot be because the FBI does not know it has this local residency or because the records that were provided were not read prior to their being provided.

Now put these separate items together. Defamatory records have been released. I first learned of this from reporters who had obtained copies. They are in the reading room. My efforts to utilize PA were rebuffed by the FBI. Jim's effort to protect my reputation and the reputation of my work were ignored. And the records of my efforts to help the FBI over the years, going back to the 1930s, mysteriously do not exist. Motive is apparent.

You can make the effort you made with the Rosenberg case, which you enclosed. But I do not see how the FOIA/PA machinery and the bureaucracy permit you to do this in historic or even "project" cases.

Rube Goldberg also designed your machine for determinations in fee waivers. Now that you have decided in the King case I'll give you illustrations limited to what can be in

official records and in at least one case is there.

When Attorney General Levi announced the OFR "re-investigation" coincided with my going to the FBI with Jim to pick up prints of the remnant of fatal bullet. I then offered all I had and all I knew through SA Tom Wiseman. Jim did this by letter. He was rebuffed. And on this it may interest you to know that each of the "re-investigations," those by CRD and OFR not being all of them, coincide in time with my FOIA and other efforts. (I did the investigation for the successful habeas corpus petition and for the evidentiary hearing.) I believe this is as opposite as anything can be to the allegation of "profit" in your affidavit. I also believe that this was not before you in your consideration. That machine again.

Moreover, because of the Department's substitution of its preference for my requests I have been put to a great amount of work and some cost to establish a separate file of copies of those records that do come close to my actual requests. If I had not done this I would not have a pristine file to give to Wisconsin, as I do have and will give, once I have time to put what I have on paper. (There may yet be a side benefit to the Department because I do have this separate file and will put what I know on paper.)

I appreciate your expressions about my health. Having taken this time I'll take a little more to inform you.

While I have serious limitations and the potentials are ~~quite~~ quite serious I am not a physical or a mental or an emotional cripple. Maybe I should not do it but I work to as late as 11 p.m., as I did last night, and when I sleep as late as I did this morning, to 5:45, that is late for me. I have undertaken a very large job whose focus I believe is unknown to you. I am not pursuing whodunits.

When Jim informed the court in C.A. 75-1996 we knew of serious and permanent damage to the veins in both legs and thighs. That got me on the return trip of the blood. Not connected with, I am sure, my extra exertions to go to New York for that "Good Morning America" defense of the FBI but coinciding with it, diagnosed after it, there is an arterial impairment. This gets me going. The extent is not known because there is some hazard to the tests not made and they thus are not made until surgery is indicated.

After I returned from Dallas last June I lost 35 pounds and a great amount of physical strength and capability. I hope I am rebuilding some of this and I do think I am. So that I may some of the medical restrictions have been eased. I am supposed to avoid falling or bruising myself or cutting myself. I am on a heavy dose of anti-coagulant. But as a hyacinth-lover can appreciate, I am happy that with care I am now permitted to attempt simple work on our five acres. I am still learning what I can and cannot do without a reaction and how much of each. Yesterday mornings cutting of wild roses and wild cherry and sassafras sapplings from plantings I could not touch last summer was a bit too much. It knocked me out for a while, I presume from an oxygen insufficiency. But yesterday afternoon's collecting and dispersal of rocks did not. I can't figure this. In a short while I will see if I can put the winter's collection of wood ashes where there is moss (downhill) and it that is not too much if I can handle a cart of well-rotted manure (uphill) for my wife's flowerbeds.

If I stand for as little as 15 minutes I get close to passing out. I have to keep my legs up when I'm not moving. I also have to get up and walk around some every 20 minutes or so. While there are interruptions in concentration and there is impairment of the flow of blood to the brain, I do keep going, at one thing or another.

Because it is unwise for me to drive to Washington if I am to be there for a five-~~minute~~ minute at 10 a.m. I am away from home for 11 hours from the time I get up to the time I can return by bus.

So, while I am limited I am also able to function. Because of the potentials, these from the venous and arterial problems presenting separate hazards, I have also had to reorder my priorities.

One sacrifice is that because of the extent of the work I have undertaken I do not take time to stop and outline what I will do. Everything is off the top of the head.

On the other hand, if I believe a constructive purpose is to be served, I take the time that seems to be required. Even if I would prefer to spend that time getting closer to the writing I want to do. This is in part because I believe the most important single thing I can do with the knowledge I have is to make records available.

The time I have taken for this letter reflects what I am trying to explain. You have convinced me of your good intentions. I believe the availability of records is important. Therefore I have taken time to inform you, including of problems you face in your part in making records available.

If you desire it I will take more of this kind of time.

On your interest in the period of about World War II, I hope to find time for promised oral histories. I spent much of three days last week in some related to the subject matter of my work.

All things are possible. The impossible takes a little longer.

truly,

Harold Weisberg