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

7/31/79

Dear Mr. Shea,

After your letter stamp dated yesterday came I read it, laid it aside for a while and read it again and then have waited several more hours before responding first because it represents outrageous misconduct and second because I wanted to be sure of my interpretation of it. The reason for this is that it contains unfactual and other kinds of less than faithful language. After reflection I have come to believe that what you do is quote what you've been told and those who informed you misinformed you. I have no reason to believe that this was other than deliberate.

However, as I believe you will have observed, I have become more and more concerned that your involvement in this case by the judge has not resulted in what she said she hoped would come from it.

I am also concerned that your letter, whatever explains its infidelities, is a self-serving and potentially misleading record, historically and if the Department presents it to the Court.

If I private person were to make the mispepresentations to a court that I have knowledge were made to this Court your Department would be taking action.

To avoid this possible misuse and to make another effort to end these self-servinng and misleading records I ask that you rewrite this letter and substitute the rewritten version for all existing copies or at least have a truthful letter with the copies of it.

To facilitate this and if it is not done to have on offsetting truthful account on file I address some of what I characterize above.

"I have now established that the Bureau has in fact, as you indicated, made a release of Somersett/Milteer records to Mr. Dan Christensen."

It is I who was forced to establish this exclusive release to a later requester, who happens to have consulted me about both the subject matter and his request. I did this establishing a year ago by displaying to the Court the two fat volumes of records he had received, in response to the falsely sworn affidavit of SA Horace Beckwith.

The Department's incredible response was to ask that this proof and the other relevant information I provided the Court be expunged from the record. It did not respond by what you could and I think should have arranged by a phone call, merely xeroxing copies of what had already been processed and what you do not refer to, the other records made available for the expectable misuse of the House assassins committee.

A year was dragged out by the FBI and the Department and now that the FBI's Cointelproing of the committee, the Court, the country and me is accomplished and frozen into type all of a sudden you "establish" this and I don't have the records yet.

So what you say you have just established in fact I established a year ago in open court with the FBI and Department counsel present. There has been no whimper of denial. Only more stonewalling and now the less than fair representation of this unseemly delay.

You do not say that these are all the relevant records and in fact they are not. A threat against Dr. King is included in a tape recording for which I made a separate request quite a few years ago. My appeal also years old and my many reminders of it have been and after your letter continue to be ignored.

While I returned to Mr. Christensen what I borrowed from him and cannot cite the full record it is my recollection that the FBI provided only those records he felt he could afford, not all it has and had.

There is no truth to "I have been advised that it was due to the fact that the request of Mr. Christensen was processed by an ayalyst unfamiliar with your broader request for access to Kennedy/ King assassination records that the Bureau inadvertently failed to make a simultaneous release of the material to you."

How "inadvertent" can it be when SA Beckwith and Department counsel were in the courtroom a year ago and were aware? Or when I then also provided an affidavit attesting to the falsities in SA Beckwith's and gave the Department a copy? Or when it moved to expunge?

"Inadvertent" when I informed the FBI even earlier? "Inadvertent" when this is in my consultancy memo for the Civil Division, copy to you, and in the earlier memo by the student to which the judge directed the Department to respond, leading to the falsely-sworn Beckwith affidavit?

And the delay from the time I informed you is also "inadvertent?" I think it would be appropriate, given the time that has passed, the time wasted for the Court, my counsel and me, for you to provide an account for the record with dates for all these and other "inadvertences" I could enumerate.

And after this what is being disclosed? Only that to which Mr. Christensen limited himself, not all relevant records in this newest definition of what is meant by maximum possible disclosure, the words of Department counsel, or a historical case determination by the Attorney General.

My initial request of years ago is not being complied with. If my first appeals to the FBI over the improper withholdings from within the MURKIN records provided are finally to be acted on, this is hardly "inadvertent" when we are talking about late 1976 or early 1977. Your letter is not explicit on this.

However, if you do have these records in mind that requires that I note other less than fully truthful language in "the analysts involved were not aware of the fact that Mr. Somersett was dead..."

No doubt they did not know because I personally told them! More than once.

As to the excising of reference to his informant activities, that also was public knowledge, as I also informed the analysts. Somersett himself made it public knowledge. Only yesterday I found FBI records including copies of this, so any good-faith search of FBIHQ records alone should have disclosed it. However, if the analysts were not aware of records other than those before them and if the FBI was careful to cover itself in what it included in and kept out of the MURKIN records to which, arbitrarily, capriciously and over my objections it limited itself, this can't explain away any failure to make a good-faith check and search once I provided the information - more than two years ago!

You make no reference to Milteer, the author of the threats and whose name also remains improperly excised this long after I informed the FBI that it was within the public domain and that he also was dead.

This is part of the record of this single case in which almost all my interest is on behalf of the public and in eliminating the confusion the FBI builds into what becomes the available historical record.

The original withholdings violated the Act as interpretated by the AG and the standards for historical cases, aside from being what was within the public domain.

Obviously, it was to be able to Cointelpro everyone else that the FBI refused to accept the index I offered it so it could avoid this kind of improper processing.

Page 2 of the attachment refers to the tape I have not yet received. This at least establishes that as of that date, more than a year ago, the FBI knew of the tape I had requested long before then.

There also is reference to these men as "indexed to these files." That also would seem to assure incomplete disclosure, FBIHQ indices not including all relevant field office records.

There may be an innocent explanation, given the FBI's Orwellian uses and misuses of langauge, but I call to your attention the language "contained in Somersett's main informant file (66-16458)." This number designates "administrative matter," not informants. From what the FBI discloses to the public it would seem that any Somersett "main informant file" should begin the 137 or 170 or of the earlier period, 134.

The reference to records relevant to the assassination of the President again is limited to exclude the major repositories, the field offices, which remain unsearched. (If the cover-the- Bureau mania did not permeate the FBIHQ files none of what I outline would have come to pass because the information would not have been kept out of that file.)

This and what it represents and more like it of the past raise what I regard as substantial questions about the entire official machinery and attitudes toward FOIA, more so with cases in court for so long and after what the judge has said and expected in C.A. 75-1996.

Is appeal no more than a means of effectuating non-compliance? Is long delay, even if followed by any compliance at all, other than non-compliance? Is it right and proper for appeals authority to compose letters that are designed to and if uncorrected succeed in covering up FBI violations of the Act, or, if presented to the Court, can mislead the Court?

While your letter states honestly that I am responsible for whatever compliance will be forthcoming (and I appreciate this) why should the requester have to do this?

If the FBI's withholdings were accidental, as they were not, once the FBI was provided with correct information and knew its withholdings were improper why was it than necessary to involve the under-staffed and over-worked appeals authority to do no more than provide copies of records already processed for another? If this also not an FBI means of negating all compliance on appeal by creating long delays in appeals - and of enormously inflating all costs?

What is the function of Department counsel in Department and FBI FOIA cases? Is Department counsel any less an officer of the court or without the I believe traditional responsibilities of counsel?

What you now report in this self-serving letter was known to Department counsel a year ago. Did Department counsel have no responsibility under the Act to effectuate compliance by the FBI promptly, particularly because the records were already processed and required no more than xeroxing? Or did Department counsel, once you were involved by the Court, have no responsibility about informing you?

Are those whose responsibilities include enforcing the laws not themselves to live within the laws? If they do not, whatever their response, can they be trusted to enforce laws or to prosecute those they believe have violated other laws?

In any large bureaucracy it is always easy for anyone to pretend that responsibility lies elsewhere but if in fact each does not meet his responsibility fully can any bureaucracy keep within the laws?

This is not the first recent occasion I've had to draw attention to self-serving letters that can be misused to mislead the Court and it is not the only recent case. It would, I believe, be much better and could do much toward approaching a correct end to this and other cases if straightfoward letters are used rather than those that are not faithful to fact, are misleading and are susceptible of misuses, whether in files for the future or for presentation to a court.

I hope you will give this some thought and substitute a letter that is in accord with the actualities.

Sincerely,

Harold Weisberg