JL - re Shea letters of 9/27/78 in JFK and MLK cases HW 10/2/78

As you will know from the carbon you will have received by now I wrote Shea immediately after returning from the Thursday status call in 75-1996. My purpose was to inform him as rapidly if not as completely as possible because I see serious problems for both sides in what he wrote and because I believe he was misinformed. What I wrote him was based on what I recalled after the hasty and incomplete skimming of the letters when they were handed to us outside the courtroom. Now I'll go over them more carefully.

Before getting into this I want to raise several considerations. First there is the endless misinforming within the Government and extending with regularity to the court. I believe it is the responsibility of Government counsel to be accurately informed and not to misinform. A less polite way of putting it is to end the lying. There will be no end to this case unless we can bring this to an end. My disposition is to force the issue. The other consideration is to seek and obtain a date by which full compliance is assured, with sanctions if it is not done. The stalling and stonewalling is wasting both of us. I'm sorry if Shea has lost staff because it does mean problems but this case is now almost three years old, the problems that exist are almost all of deliberate FBI creation and I don't have enough time left for this dancing of ritualized minuets just because that is the way it has been done. There has to come a time when the FBI stops Cointelproing us all. I'd rather force the issue and lose than to continuing wasting so much of the time I have left. I do not think for a minute that I would lose. I also believe that the court of appeals would welcome the kind of case we would be handing it if I read several recent decisions, like Marks and Ray, correctly. The bad faith reeks in this case and it extends to Government counsel.

There is a limit to what I can attribute to overworked counsel being underinformed. I also attribute the shift in this case to women only as counsel as an effort to inhibit us. Lynne and Betsy lie all the time. It is not just accidental and it is not possibly from being under-informed with such gross misrepresentations as Betsy's about the stipulations on 9/28. She has to have read and understood them. I do not for a minute believe that Shea read and did not understand the stipulations and I do not believe he would misrepresent them. So I am satisfied that he was deliberately mislead by people he believed he could trust. If this is the way administrative review is going to work, it becomes another impediment to a satisfactory end of the case.

The FBI has also lied to Shea. I included a sample in what I wrote him, the informant file numbers always being withheld, another Beckwith perjury, because of an alleged but non-existing need to keep them secret. I'll be sending him more on this,

from the first page of yesterday's Post's Outlook section. As long as Shea is in a position in which he has to accept FBI false assurances the FBI is going to perpetuate non-compliance, its unhidden intent throughout this long case. (This is one reason I wanted you to seek protection for me from the Court on 9/14 and asked that sanctions be invoked. It wasted an enormous amount of time for me to have to go over that long Bookwith affidavit so falsely sworns, even with phoney records created for it.)

The judge and everyone else is going to want to duck the issue, as perhaps you also may prefer. I think the issue must be raised and pressed, regardless of the outcome. For me there is no result no better than my present situation. I am in orbit around a sinister star, unable to do any constructive work because of this and other situations like it.When there is such gross and deliberate lying as for example about the stipulations, there is no reason to believe the orbit will decay without a real blast. If we do not have meaningful assurances well in advance of the next status call, I want to set that blast off. The hell with everything else. I don't have enough time left.

There is, I believe, no greater service I can render the Act or honest people within the Government. But I'm also selfish about it - I want time to work. ....

Shea's letter to me: without checking I believe it does not address all the matters I have raised. Perhaps that is impossible for him.

First is the "Byers matter." Before I proceed with this I received a call yesterday from a midwest source who told me that the Post-Dispatch has a front-page story saying that the entire House assassins case hinges around this fabrication. ////// Fabrication at least with regard to the Ray family. The noxious gas of FBI media and committee manipulation has now bloated to where the Ray family and the George Wallace people conspired with Jimmy to do the dirty deed.

While I have not seen what is withheld in these records there can be no doubt that what is within the public domain remains withheld. Example is the well-publicized names of the alleged conspirators, including the several dead ones. Even their wives have gone public. I take Shea's letter to mean that the FBI withheld this knowledge from him. My point is that with regard to much of the content there is no privacy to protect. I also believe it is no longer purely an internal matter when the FBI has misused FOIA and brought about this newest of its many disinformation operations with regard to the King assassintion. The posture into which it has entrapped Shea is that it can arrange for angled, exclusive misuse of information that was subject to withholding at the time the records were created and then continue to withhold the same information it has propagandized the entire country with in its endless efforts to defend its record in the King investigation. There was saturation news coverage, including the

most extensive on local TV, yet the same information is still withheld. There is no privacy and it has not been a purely internal matter since the beginning of this FBI Cointelproing of the committee and the nation - and me.

Moreover, the "Byers matter" is not the only such instance. The FBI has given the committee what it has withheld from me for more than a decade, without any restriction on use of misuse (which the FBI relishes) by the committee.

With regard to the committee and others, I think Shea begs the question on the second part of page 2. It is not as simple as he makes it, the rights of senior requesters as compared with others. With me it is the withholding after release to others of what I asked for years earlier, not just days earlier, even years after I have been in court on it. This is true in both cases. It amounts to an official sanctioning of misuse of FOIA for official propaganda and all of this to circumvent the language and intent of FOIA.

In the "Byers matter" the FBI did not provide the withheld records when they were allegedly first discovered. It did not provide the related records. It rejected my request, forcing an appeal and it then did not comply in full. By these and other means it was able to manipulate a Congressional committee and deny me any use of the records that could in any way deter the official propaganda arranged by the simple expedient of violating the Act and my rights under it. Yesterday's St. Louis story reflects the success of the entire Cointelpro operation for which FOIA is misused.

(A similar end was accomplished by the withholding from me of the British reports under phoney claims. This enabled the Bist fabrication on coast-to-coast TV and denied me evidence proving the Bist allegations to be known lies before they were aired.)

Regardless of what he intends to say in actuality what Shea says here is that everyone else has rights I alone do not have. Anyone and everyone can ask for records long denied me and then all others receive them on an exclusive basis and I do not even get them after public use by others. Where Shea comes to grips with this at all it is for the pretty picture of the future, without regard to the past and the records still withheld from me.

I do not see the rose tints when he anticipates "human error" because "the nature of the material being processed is not apparent to a non-expert." There is no doubt that my requests for any information relating to both crimes is inclusive. It requires something more than mere "human error," even what for the FBI I have come to know is "human error," for trained SAs not to be able to recognize that the information they are reading relates to either of the cases.

Those he names as having provided the assurances, based on which he gives me less than full assurance, are the very ones who have deliberately denied me records they have provided to others and who have sworn falsely - with impunity - to withhold. Shea may have no reason not to believe the most professional of withholders and liars or he may have no alternatives but I cannot accept any such assurances without some evidence of good faith. One such demonstration would be the immediate ending of any and all more recent FOIA requests on which they are working to make full response to my earlier ones. To a large degree this would mean no more than providing copies of what has already been processed for later requesters and other requesters.

I see no promise to rectify past abuses by the same people and their associates. While it may be tenuous in the absence of any reference to this I have no alternative to believing that the FBI is going to do nothing about this and has been upheld on appeal. I have made this identical appeal often in letters not cited and much earlier than in the letters cited.

Moreover, I see no reference to this with regard to records within C.A.75-1996, not even to the sample you used two weeks earlier at that calendar call. This tells me even more than that there is going to be the same withholding regardless of what Shea is told by the withholders. It tells me that all involved, specifically the same Bockwith and the same Government counsel, are withholding from Shea to influence what he can know and the basis he can have for action or decision. It thus is entirely immaterial if he is honest and diligent and works hard, even overtime.

The same people he is now trusting are those who have ignored my appeal of denial of two years ago, have provided the information to others and have continued to withhold it from me - even after we produce proof of this in court. The case is Somersett-Willeter and the other sequester is my friend Dan Christensen. Yet Bockwith's last affidavit, 8/11/78, withholds the same information and prates about the urgent need to do it, long after they gave it to Dan. (Bresson did the same thing with my C.A. 75-226, giving Emory Brown, who specified he was not using FOIA, what was denied to me even in court and even after we showed this in court. Not only this - they filed an automatic appeal for Brown and it was acted on promptly, despite claims to backlogs.) How can there be any trust with this kind of record? Shea can trust these people. I do not and in the absence of demonstration of belated good faith will not. I'd rather put the questions unequivocally before the court. Should I lose in court I'll be better off.

Do not lose sight of the fact that however good his intentions Shea has not even promised me at some future time what I requested long ago and still is denied me even after processing for others. Under these circumstances I must ask for it immediately. If it is not provided promptly, give it to the judge(s).

At the top of page 3, with regard to the House committee, he misses two points. Of course I have not claimed and do not believe that a committee of the Congress is not entitled to information, regardless of any under-the-table deals, which have been made. Rather do I claim that there is no right to delay or withhold to give a pre-determined committee or any other what is properly not exempt and is within my requests. (Any example not cited earlier is the continued withholding of the Patterson and Geppert informant material after it went into the public domain and many months after it was given to the committee for its own improprieties, which included transgression into the Ray defense.) If the FBI did not file under MURKIN, that is totally irrelevnt except for the FBI and Civil Division Cointelproing of Shea and his staff. This information is within several items of my actual requests.

I dispute totally his representation that ends this paragraph. I take it that he is saying that even if I asked for information 10 years ago and then belated they process the same material for the Congress, it can still be denied to me after it is given to the Congress without any claim to any exemption.

Separate from this he says no more than that after the material passes into the public domain they are required to do no more than "consider" this - with or without any claim to exemption not mentioned. Without any reference to any claim to exemption here I take it he is holding that they are not required to give me what they do not claim is exempt and has been given to others. I am quite prepared to contest any right to withhold what is within the public domain if there is prior claim to exemption even if the prior claim is justified.

Shea may have had something else in mind. I think we should determine this as soon as we can because I will want to contest this vigorously at the next status call. It amounts to an Orwellian machine for nullifying the Act through Cointelproing Congress. Beckwith perceived this clearly with the "Byers matter." And it worked. It also happened with the Morris Davis and related withholdings I appealed about two years ago for the first of several times. (No response of any kind.)

I know of no exemption that permits the Department to withhold because "we gave it to the Congress even if you asked for it 10 years earlier and it is not exempt."

That Shea was misled about the actual requests is clearly reflected in the second paragraph on page 3. He may be correct in describing my request for information relating to the alleged "accident" of alleged "misfiling" and any subsequent inquiry into this. The rest is not a new request, even in the reference to Byers. I believe that with this matter so long before the Court and with all the undenied dishonesties in the processing of the records any records of any inquiry are pertinent and should be provided to both counsel and the Court immediately. Am I not correct in recalling that the Government has moved for summary judgement? I know I am correct in reminding you that it has sworn to compliance.

When Shea says he is doing no more than referring this to the very people who have withheld and withheld after they were provided with the records from St. Louis and even refused to provide them when I asked for them, I can only hope, given the fact that they still have not complied with my 1968 requests, that I am here to know when they act on this referral.

He is correct in interpreting my "new" request for records relating to an inquiry to mean "the Byers material" but he is not correct in limiting to what mentions Byers name alone or the field office or FBI HQ alone. I believe there should have been an inquiry in both places and that the inquiry should include why this information was withheld from me when it is clearly within my request, if not in the FBI's unilateral and unagreedto revision of it.

At this late date I would hope there is an alternative to suit, which is how he concludes. But daily I come to believe that there is no real alternative because the Department permits none.

If this reflect what administrative review means - even the limitation to a single one of my letters - then gird your loins.

Shea's letter to you:

Where it is possible to comment on the first two pages I have already done so.

At the top of page 3 he states correctly that my "position seems to be one of logical relevance to the assassination, without any necessary regard ~~for~~ to the file or office in which" relevance may be. However, this ignores my actual request and it is put in terms of the FBI's effort to limit my request to that of which I was not aware at the time of the requests, its MURKIN designation. His formulation also does not take into consideration what I did not know and could not know at the time I made the requests, where the files are located. My request thus encompassed all relevant records wherever located and however internally described. In describing the ~~request as~~ correspondence as "subject-matter oriented" he also is correct. The reason is because my request is by subject matter and not a MURKIN request in any way.

I agree that his posing of the parameters question is correct but that the question really does not exist except in that the existing parameters and the definition of them by the judge, who may well have forgotten having done this early on, appears to have been both withheld from and misrepresented to him, as clearly the provisions and limitations of the stipulations have been.

I'll cite a couple of examples. I requested certain information relating to some of those who have written in the field. It is entirely irrelevant where theese records are located or how they are designated as long as the information is reasonably identifiable and exists. Betsy actually argued that because these records are not in MURKIN files they are not within the request. She knows better but without his own

time-consuming inquiry, including a full reading of all the transcripts and going back to the original requests I don't see how Shea can know this and I can see how he may have to depend on others who do not inform him fully or even truthfully.

Not only will the relevant Hute records, to take a specific illustration, be in MURKIN - most as we now know can't be expected to be in Washington. Most likely they'll be in Birmingham. With McMillan, another specific, the records may not all be in Boston because part of the year he lives in Frogmore, S.C. I am not required to tell the FBI where to search add I know of no provision of the Act that permits it to limit its search to the wrong files and the wrong places when it knows very well what to search and where it is.

Another illustration of what cannot possibly be included in any MURKIN-designated file is my request for the indexes. That made in FBIHQ to some of the Sections is not the only index nor the most complete one. First there was the false pretense that I had not asked for indexes, a shabby and deliberate misrepresentation by which this one index was withheld for so long most of its value to me was denied as a practical matter. Then it was expurgated beyond any reason and in overt violation of the words of the judge and the policy statement of the Attorney General, reducing its value at the time I went over it even more. Meanwhile there is no mention of any Memphis index. We know from the Dallas case that a large index can be expected to be located in Memphis. We also know from the Dallas records that Memphis was required to provide FBIHQ with an inventory of all its King records by teletype of 1/6/77. Yet the withholding is so total that these records were withheld by both FBIHQ and Memphis file processors and they remain withheld months after I provided the proof of their existence. When I provided the FBI with this lead in the form of the Chicago response I was lied to and told there were no such records from any other office. This must have been close to two years ago. I am certain I sent Shea copies of this proof. I know there has been complete silence on this from Civil in court or in any other way. And, of course, this relates to much that is within specific Items of the request, not only indexes that I list as an example.

When I provide this proof, glaring proof of the most deliberate bad faith, and then there is no response of any kind and there is instead the equally deliberate misrepresentation of the actualities of the request to the administrative review authority I believe it is a futility to do other than litigate as rapidly as possible. There just is no possibility of any misunderstanding on these ~~points~~ points. It might have a good effect on other cases and it certainly should make MURKIN a curse word to all Department lawyers.

Unless this is cleared up to my satisfaction long in advance of the coming status

call I think the thing to do is to note depositions. I think we should depose all those involved in reading, interpreting and processing the request and in "informing" Shea and his staff.

We should settle this MURKIN gherkin once and for all and perhaps a bit more with it.

At the rate they are stonewalling and with their apparent determination to do this a saving of time and money appear certain to me.

There is no way I can agree to any "limitation ... to the records already processed by the Bureau..." My interest in them is in compliance with regard to them. But this is not any waiver of my actual requests and I am not about to offer or make any such waiver.

The time I spent on specifying details of non-compliance with the records already processed I spent merely because the judge required it of me after Lynne deceived her after dealing with us on this less than honestly or openly. The time does not reflect any measurement of what is important to me in terms of the information sought. In providing the information to Shea we waived nothing and I see no way it can be interpreted as either a waiver or as anything other than what we could do as rapidly as possible to meet the expressed wishes of the judge.

"...all processing specifically required by the Stipulation of August 5, 1977, has been completed..." Wrong. I have already specified the means by which the FBI and Civil undertook to violate and nullify their own Stipulations and I have specified how they were converted into a machine for withholding what they require to be produced. At the very least searched.

Page 4, last sentence, "... no logical purpose ...for which we would reprocess the records." I think compliance with the Act is such a purpose. Logical, too. I know of no exemption that permits withholding from Record A if there is no withholding from Record B of the same information. I addressed this in another way in my memo of 9/29/78 to Shea. I add that the admission of "an unduly restrictive application" of FOIA with regard to the indices applies with even more force to the records themselves and is actually an understatement for entirely unjustifiable withholding often of what long had been within the public domain. Some of these withholdings were also in violation of the Court's verbal Order, never appealed.

Page 5, "19. Reports to Attorney General." There is reference only to "our review" not locating the "twice-daily" reports. There is no reference to a search. As I recall SA Beckwith swore that these had been provided, so he also swore that they exist. I have repeatedly asked for searches outside of MURKIN and "central files." I believe this is required at both ends, FBI and DJ.

The same is true of the AG's order to investigate the case. There is reference to review of what was searched but no reference to any search where no search was made. Specifically, no search of any Director's or other such files or those of any Division.

With regard to referrals, finding what the FBI did to be "valid" means that incredibly long delays in doing anything is "valid" under a 10-day law and with a case in court in which assurances have been given to the judge and plaintiff.

The Long tickler response suffers the same flaw-no search outside records already searched. Earlier I asked for such searches. The response does not even state that his or his Division's records were searched. While as a generality the conjectures offered are reasonable, I do not believe that they can apply in this case because there is no time when further litigation was not in prospect or was not anticipated. In addition, the information we have on the Long tickler is not exactly as conjectured. The information does not lead to the belief that the tickler was either of an occasional copy and of nothing else or that it was of a nature that would lead to prompt destruction. Long also kept separate files by something more than 30 subjects. There is no reason to believe he cast himself in the role of substitute file clerk. My impression is that these records existed during OPR's inquiry, which followed my FOIA request. I am certain that as of OPR's time there is no reference to their destruction.

Casual examination of Enclosure 1 discloses no intention of searching the files required to be searched to comply with the requests. There is no reference to any file relevant to a majority of the Items. Where there is an exception, as Judge Preston Battle, HQ 9-48367 and mis. refs. at HQ were searched but there was no Office of Origin search. Among the more obvious deliberate oversights in searching there are the Items relating to writers and to surveillances. I believe this is proof of deliberate non-compliance, not of compliance.

Once again we are back at two different starting points in this case: the initial directive that my requests be ignored, law or no law; and then after we filed the complaint the letter signed by DAG Tyler in which DJ undertook to rewrite the request. It is ten years since the first abortion, three since the second. Since 11/75 I believe this matter has been carried full term and that live delivery is overdue. I'm glad you've agreed to note depositions as soon as you can, to start them immediately after the next status call and what I forgot to ask, that you make clear the initial limitation to those personally involved in the search and processing is not an indication this is all but rather is an effort to avoid what may be unnecessary. Because our experience in C.A.75-226 is that an agreement with counsel that is verbal is meaningless I'd specify that we preserve the right to discover further if it is necessary and intend to if it is necessary. If this case is going to go up on appeal I want a full and complete record, not what I've read about in the Marks and Ray decisions.