Mark Zaid
47 South Lake Ave., #4
Albany, NY 12203

1/10/92

Dear Mark,

Your assumption is correct, all my records will become an archive, I've done and will do no censoring of them, and you are right to record your account of your non-connection with livingstone.

Gallen never mentioned this other researcherz being a friend of Carroll. Who is it?

I do not question your word on this but the last call from Livingstone does not really confirm it.

But since then Livingstone has been silent, so far as I know.

I'll be glad tp help you all I can, re Marcus Levin. There is some stuff you might not want to use, pictures he had taken that got out and were used to keep him running fof the assembly again, for example. I knew reporters to whom the FBI showed them and one of Clay Shaw's lawyer had and may still have them. I declined an invit to see them.

He is a literary thief, beginning with his first book.

Can't search my files for you but you are welcome to what I have if you get it yourself.

Hope you get a job soon, an interesting one.

Best,

Harold

MARK S. ZAID, ESQ.
47 South Lake Avenue, #4
Albany, New York 12203
(518) 426-1122

January 6, 1993

Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21702

Dear Mr. Weisberg:

The highest of hopes that the passing into the new year was full of enjoyment and with thoughts of good things to follow. I find myself temporarily unemployed but I believe I shall be able to resolve my unfortunate dilemma in good time. I am exploring opportunities within the NYS legislature and the Congress. In the meantime I have many articles to help write and I am working with Jim Lesar on a FOIA case, all of which keep me very busy.

Since I assume that all correspondence you receive becomes part of the official collection that will be turned over to your neighboring college, and even if not, I wish to set the record straight, in writing, about my association with Harry Livingstone and the recent problems he has been causing. I met Harry for the first time at the ASK'92 conference. He came over to where Jerry Rose and I were sitting and struck up a conversation with a group of us that were together discussing the case. I found him to be calm and level-headed and we entertained a delightful and promising conversation regarding the future of the investigation. Of course, this was quite different from what I had been led to expect. Jerry was surprised as well.

Needless to say we did not have to wait long until our original expectations surfaced. The next morning Harry was disseminating to all a letter he had handwritten about our discussion of the evening before, except the statements contained in this letter were nothing of the kind uttered by Jerry or I or anyone for that matter. Essentially, the statements criticized Mary, Larry, Gary and all of ASK and exclaimed that never again will we meet in Dallas but that the researchers will rally against these collaborators and pursue the case on our own. You can imagine the shock that Jerry and I felt when we noticed that our names had been placed on the letter as contacts for

people to seek out! Neither of us, of course, had anything to do with Harry's actions and we spent the rest of the weekend refuting Harry's allegations and explaining we were not part of his plan.

It was that note that has led people to tell you that I am involved with his "tissue of a disclosure organization". I can assure you that I have neither spoken with him nor sought to do so since our initial meeting of last October. I do not agree with any of the slanderous comments he has made against people I consider to be my friends (although even if they were not, I still would not agree) and continues to make and I never will. He is seriously causing damage to the research movement by acting in such a manner. There are no excuses for his actions and I hope that one day he realizes the extent of the damage he has caused to specific people and the community in general.

As for the recent episode where he telephoned you I have discovered how he came about to know of your concern for yourself and Mary. I realize that it appeared to be I that betrayed the confidences Peggy entrusted me with but, again, I assure you that I do not betray such confidences. However, Mary had discussed the fact that Harry was causing some problems for the two of you with another researcher, in what detail I do not know. This researcher is acquainted with Carrol, Graf and Gallen and spoke to Gallen, whom I believe is a friend of yours if I am not mistaken, and informed him of the terrible things Harry was doing.

Knowing that Gallen thinks highly of you this researcher suggested to Gallen that he inform Harry to cease and desist his derogatory and potentially threatening communications with you immediately. Gallen did so and then Harry called you. The rest you know. I hope what I have written clears up the matter. I seem to get blamed often for communication leaks I had nothing to do with and, as I am sure you understand, I do not particularly find that to be fair. But, as far as I am concerned the matter is now history.

Moving on. All is going well with the new legislation. Clinton will be making the nominations by January 27. He was given sixteen names to initially consider for the Review Board. I have enclosed my most recent memorandum on the topic for you to review. As are your files, my memos are available to all, so do not get upset with me for some of the names on my list. I will always keep in mind your principles over compromise advice.

With that in mind, as I briefly mentioned to you last time I am writing a detailed article on Mark Lane. It will cover everything. His ties to Liberty Lobby, Jonestown, his many false statetments, the misinterpretations he

spreads in Plausible Denial about the Hunt v. Liberty Lobby case and much more. Everyone I speak with appears to want me to write this article and offers to contribute whatever they can. I will contact the organizations you previously suggested but if you wish to offer some personal comments I would be very interested in reading them. Most likely this is a subject we should speak about in detail over the phone. What do you think? I am going to try to have a mainstream magazine, such as Esquire, publish the piece. I believe you will fully enjoy reading the final copy. If you can suggest anyone I should speak with that could provide me with some useful insight into Lane, I would appreciate it very much.

As always, my continuing and best wishes and warmest of regards to you and Lil. I look forward to hearing from you soon.

Sincerely,

Mark S. Zaid

enclosures

MEMORANDUM

To: John Judge, John Newman, Bill Kelly, John Craig, Mike Sheppard, Michael Burns, Art Pineda, Dick Russell, Bob Groden, Al Novis, Charles Sanders, Esq., Jerry Rose, Gaeton Fonzi, Jim Lesar, Esq., Gary Shaw, Paul Hoch, Gus Russo, Walt Brown, Richard Scheck, Esq., George Michael Evica, Roger Feinman, Esq., Cyril Wecht, Jim Marrs, Gordon Winslow, Bill Adams, Mary Ferrell *et al.*

From: Mark S. Zaid, Esq.

Subject: "JFK Records Collection Act of 1992"--Authority of Review Board

Date: December 28, 1992

Purpose

This memo will serve to describe the potential powers and authority of the Review Board. The scope of the Board's power to launch what could essentially be a new governmental investigation has not been addressed nor extensively limited in any fashion. Literal interpretation of certain provisions of the law grant the necessary authority to answer many of our questions. However, whether these provisions will be interpreted in this particular manner is unknown. Therefore, it is imperative that we address this opportunity in a professional and expedited fashion and insure that those concerned are aware of what is at stake.

Update on Nominees

First, however, let me update you on some recent developments. By December 11, 1992, the White House was in possession of the recommended nominees to the Review Board as solicited under the legislation from the four professional organizations. The American Bar Association set forth six names, the American Historical Association and the Society of American Archivists each named three and the Organization of American Historians submitted four. Furthermore, Anne Diffendal, the Executive Director of the Society of American Archivists, informed me that the SAA was essentially notified through correspondence that President Bush would not choose the final nominees. That letter thus confirms the rumors that it will be, in fact, President Clinton who shall be required to choose the five nominees.

As the inauguration is scheduled for January 20, 1993, the President will have approximately one week to submit five of the sixteen names to the Senate Committee on Governmental Affairs. It was the opinion of Ambassador Gammon, the Executive Director of the American Historical Association, that Anthony Lake, Clinton's nominee for the position of National Security Advisor, is involved with the decision making process of whose name shall be officially nominated. In my opinion, we should refrain from contacting the sixteen nominees on an individual basis or perhaps at all until the final five are chosen (my reason, therefore, for not disclosing the names heretofore in this memorandum). I state this for several reasons, among them the following.

First, we do not wish to "taint" a potential nominee from being chosen by Clinton. It may occur that due to a researcher discussing certain aspects with a nominee the Presidential Committee might determine the particular nominee lacks impartiality . I doubt that this shall occur but I raise it as a possibility. Such a conversation may give the White House the excuse they need to determine that a nominee could not exercise the "independent and objective judgment necessary" to fulfill their role. § 7(b)(5)(A) It might happen that that particular nominee would have been helpful to our cause. Remember, the President will not need to explain the motives that shaped his final decision. However, once nominated the potential member will have the opportunity to demonstrate, publicly, their objectivity or lack thereof. That is the period when we can influence the decision. (NOTE: The President is not mandated to choose the five

nominees from the list of sixteen, but is only required to consider those suggested. §7(b)(4)(B))

Second, the approach should be done professionally and in an organized fashion. That is the purpose of forming such organizations as COA or AARC. At this time we should all be compiling a list of documents and objectives for the Board to consider (See my memorandum of November 22, 1992) . This list will then be professionally printed and distributed to the five nominees for review. At that time a representative(s) should approach each nominee to clarify any concerns or questions. If a researcher approaches one of the nominees and attempts, even in the best of interests, to press or fervently assert what is and is not important, in their minds, they will only cause damage to the the community in general. Certain researchers have in the past staked claims on various witnesses or hounded them to such an extent that they are alienated and no longer wish to speak to anyone concerned with researching the case. Let's not handle the Review Board in this manner, particularly in a time where the general atmosphere is towards full disclosure of all materials.

The decision is of course up to you as an individual. It would not be difficult for any of you to discover the names of the nominees and then contact them. But keep in mind that groups such as the NRA, the ADL or any of a hundred successful lobbying organizations are as such because they are organized towards common goals. As an individual you possess the power to thwart our goals; as a group we have the power to achieve them.

Purpose of Legislation

The law states its purpose as twofold: (1) "to provide for the creation of the President John F. Kennedy Assassination Records Collection at the National Archives and Records Administration; and (2) to require the expeditious public transmission to the Archivist and public disclosure of such records." § 2 (b). No matter what we wish its purpose to be there exists none other than the above quotation. Any suggestions, critiques, or even lawsuits that seek to encourage a particular purpose or function of the Board will need to rely on the language stated within the legislation and its legislative history.

Section 2 (b)(1) should have already taken place no later than December 27, 1992. Section 2 (b)(2) is to be an ongoing process throughout the next ten months depending upon the level of cooperation received with each of the governmental agencies that are in possession of "assassination records".

Furthermore, the legislative history indicates the underlying principles that guided the enactment of the Act as being "independence, public confidence, efficiency and cost effectiveness, speed of records disclosure, and enforceability." REPORT OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS, 102D CONG., 2D SESS., THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 17 (Comm. Print 1992)(hereinafter *Senate Print*).

The objectives and purposes of the Act were addressed during the development of the legislation. For further information I refer your attention to the House Subcommittee on Legislation and National Security's hearings of April 28, 1992, and May 15, 1992, as well as the Senate Committee on Governmental Affairs' hearing of May 12, 1992.

Power of Review Board

Theoretically, the Review Board may never be called upon to carry out its duties. At this very moment every government agency is reviewing and organizing their files to ascertain whether they are in possession of "assassination records" and, if so, whether

they should be released. If the agency chooses to release the record, it will be turned over to the National Archives and within 30 days it shall be available for public review. Of course, realistically, many of the agencies will choose to either withhold a document in its entirety or at least partially. That decision is then referred to the Review Board for a determination. What then is within the power of the Review Board?

In order to maximize the potential of the Board's powers it will be necessary to strictly construe our intentions in the guise of "assassination records". That is the key to everything we wish to accomplish. When the House Assassinations Committee was created on September 17, 1976, it was directed "to conduct a full and complete investigation and study of the circumstances surrounding the assassination and death of President John F. Kennedy" and "to determine whether there was full disclosure and sharing of information and evidence among agencies and departments of the U.S. Government during the course of all prior investigations into those deaths." *Senate Report* at 59. In essence, the HSCA reviewed all prior investigations and was instructed to conduct its own. Staff investigators traveled to depose witnesses, search out leads and then to report back to the subcommittee. Members of the Subcommittee also participated in open and closed hearings on various topics.

The mandate for the Review Board is different and this difference must be understood in order to achieve our goals. The mandate of the Board is to review recommendations of government agencies where such an agency refuses to disclose an "assassination record" and then issue a final determination for release or postponement (Of course, the President then has the ability to override the Board's decision). However, "[t]o ensure a comprehensive search and disclosure of assassination records, particularly to enable the public to obtain information and records beyond the scope of previous official inquiries, the Review Board has the authority to produce additional information and records which it believes are related to the assassination. It has the authority to subpoena private persons and to enforce the subpoenas through the courts." *Senate Report* at 19. Again, the key is "records". For example, the Board can not subpoena a member of Alpha 66 in order to discover whether the organization was involved with the assassination, but, it might be within its power to subpoena a member of Alpha 66 if it is believed that said testimony will lead to the discovery of "assassination records".

In order for you to fully understand the analysis of the Board's powers let me indicate two things: (1) what exactly is meant by an "assassination record" and (2) what are the stipulated powers of the Board.

According to Section Three of the Act:

> "Assassination record" means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into possession of--
>
> (A) the Commission to Investigate the Assassination of President John F. Kennedy (the "Warren Commission);
>
> (B) The Commission on Central Intelligence Agency Activities Within the United States (the "Rockefeller Commission");
>
> (C) the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee");
>
> (D) the Select Committee on Intelligence (the "Pike Committee") of the House of Representatives;
>
> (E) the Select Committee on Assassinations (the "House Assassinations Committee") of the House of Representatives;
>
> (F) the Library of Congress;
>
> (G) the National Archives and Records Administration;

(H) any Presidential library;
(I) any Executive agency;
(J) any independent agency;
(K) any other office of the Federal Government; and
(L) any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President Kennedy,

but does not include the autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, copies and reproductions made from such records.

For your information, a "record" includes a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

As for the powers of the Board Section 7 (j) sets forth its authority:

(1) The Review Board shall have the authority to act in a manner prescribed under this Act including authority to--
(A) direct Government offices to create identification aids and organize assassination records;
(B) direct Government offices to transmit to the Archivist assassination records as required under this Act, including segregable portions of assassination records, and substitutes and summaries of assassination records that can be publicly disclosed to the fullest extent;
(C)(i) obtain access to assassination records that have been identified and organized by a Government office;
(ii) direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act; and
(iii) subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act;
(D) require any Government office to account in writing for the destruction of any records relating to the assassination of President John F. Kennedy;
(E) receive information from the public regarding the identification and public disclosure of assassination records; and
(F) hold hearings, administer oaths, and subpoena witnesses and documents.
(2) A subpoena issued under paragraph (1)(C)(iii) may be enforced by any appropriate Federal court acting pursuant to a lawful request of the Review Board.

A strict interpretation of the law might fall short of full disclosure. For instance, notwithstanding Section Ten which pertains, in part, to materials under seal of court, some documents utilized by Jim Garrison during the prosecution of Clay Shaw might not fall within the definition of "assassination record" unless they had been "made available for use by, obtained by, or otherwise came into the possession of" one of the investigations subsequent to the trial. Why? Because, quite clearly, the case of State v. Shaw was not undertaken by a State or local law enforcement office in connection with a Federal inquiry as required in a later part of the definition of "assassination

records". If anything, the case was prosecuted against the wishes of the Federal Government.

Notice that two phrases are often repeated in one form or another: (1) "has reason to believe is required to fulfill its functions and responsibilities under this Act" and (2) "relevant to its responsibilities under this Act". Recall the example I cited above with reference to Alpha 66. Suppose in 1993 a researcher purports, for the first time ever, that a document exists or was known to have existed that allegedly laid out the plans to assassinate President Kennedy. Said document was or was known to have been in the possession of Antonio Veciana, the leader of Alpha 66. This document would not fall within the definition of an "assassination record", never having been "created or made available for use by, obtained by or otherwise came into the possession of" the listed organizations. Could it then fall under the two phrases above pertaining to the responsibilities and function of the Board? The Board, however, is mandated to deal strictly with "assassination records". How then can this potential problem be averted?

Before I propose an answer to that question, since the likelihood of such a document is virtually non-existent, consider a more realistic possibility as can be found within the case of Richard Case Nagell. Nagell purports to have proof of a conspiracy in the form of documentation and tape recordings, none of which anyone has ever seen. Do these items fall within the reaching power of the Board?

To answer both questions it is necessary to review the Senate findings pertaining to the Major Provisions of the Act where it is stated that "[t]he definition of 'assassination records' is a threshold consideration for the successful implementation of the Act." *Senate Report* at 21. It further states that

> [w]hile the records of past presidential commissions and congressional committees established to investigate the assassination of President Kennedy are included as assassination records under this Act, it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records. While such records are valuable, they reflect the view, theories, political constraints, and prejudices of past inquiries. Proper implementation of this Act and providing the American public with the opportunity to judge the surrounding history of the assassination for themselves, requires including not only, but going beyond, the records of the Warren and Rockefeller Commissions, and the Church and House Select Assassination Committees. *Id.*

In order to determine what exactly comprises an "assassination record" the Review Board is supposed to not only examine the records recommended for postponement by the various government agencies but request additional information from these agencies where appropriate. "Guidance, especially that developed in consultation with the public, scholars, and affected government offices, will prove valuable to ensure the fullest possible disclosure and create public confidence in a working definition that was developed in an independent and open manner." *Id.*

There is a great concern, particularly among the Executive branch agencies, that this power will be abused. Thus, "in exercising its authority the Review Board should act on a reasonable basis in requesting additional information or records." *Id.* at 31. Whether such a request is necessary can be explored through the use of public comments, hearings, the advisory committees or other means. *Id.* The concern of the Executive agencies was so great that they requested the Senate to restrict the Board's authority, but the Congress declined to do so stating that to "prematurely limit the scope of this authority" would "be inconsistent with the purposes of the Act". *Id.*

Still it was decided that the Board should attempt to determine the appropriate scope of such requests and searches as it conducts its work and becomes more knowledgeable and experienced about assassination records and the level of cooperation of each respective agency.

What then are the answers to the two "hypotheticals" above. In the Alpha 66 case a search might not be made. The Board is not mandated to attempt a fishing expedition for documents that might exist or have existed, particularly if the existence of such document was never known to a government agency and therefore, under a strict interpretation, the document fails to fall under the definition of an "assassination record". But depending upon the depth and substance of the analysis of our recommendations to the Board, we could avoid this problem. We can, according to the legislative history itself, assist with further defining the term "assassination record" and the appropriateness of the Board's research and searches for such "assassination records". This falls under § 7(n) which states "[t]he Review Board may issue interpretive regulations."

As for the Board undertaking an effort to secure Nagell's proof, there is a stronger argument that this falls within the authority of the Board already in existence. At various times over the years Nagell offered or brought to the attention of one of the several governmental investigations the availability of such information. The definition of "assassination records" states nothing about the information having to have actually been reviewed, only that it was "made available for use by". Therefore, any government agencies that possess information on Nagell must disclose (or cite a reason for non-disclosure) that information. Furthermore, Nagell himself can be compelled to testify about his knowledge on the events surrounding the assassination. The Board also has the power to grant immunity to such witnesses. § 7(k)

Additional Problems/Questions

As has been explained above there is no definitive answer at this time as to the extent of the Board's authority to search for records pertaining to the assassination. Much of their authority will be determined during an ongoing process, hopefully, in consideration of our recommendations. However, there are still additional questions that in no way can an answer even be offered at this time. These are, but not limited to, the following:

1) Where shall meetings of the Board take place?
2) Can testimony only be taken by the Board itself or can it occur before members of the staff?
3) Does the testimony or production of records have to occur in Washington, D.C. or where the Board decides to meet, if different?
4) Can staff members or the Executive Director travel to search for witnesses and documents?
5) Can staff members or the Executive Director take affidavits from witnesses if said individual wishes not to testify, regardless of the penalties?
6) What is the penalty if someone, whether under the orders of an agency or not, destroys an "assassination record"?
7) How often must the Review Board meet?
8) What are the duties of staff members?
9) Will advisory committees be established and, if so, when?

In closing, I reiterate what I have written in my previous memoranda and what I have stated to most of you personally; this will be the last official government investigation into the murder of President Kennedy. There will be no special prosecutor or independent counsel named to investigate the assassination. We have learned from the HSCA and the Iran-Contra hearings, as two examples, that Congressional

bureaucracies prevent a true and impartial search for the answer. There are too many secrets, many unrelated to the topic under investigation, that can not be disclosed, too many egos at stake, too many financial strains to resolve, too many political restraints, etc., etc., etc. and the list goes on *ad infinitum.*

The assassination of President Kennedy is, above all else, a case of murder pure and simple. We need to face the fact that few, if any, thirty year old murder cases are ever solved. Leads turn cold, witnesses die and evidence is lost. Consider the two cases of Dr. Samuel Mudd and Bruno Richard Hauptmann. Dr. Mudd was convicted for complicity in the assassination of President Lincoln and served nearly four years in prison until his release in 1869. There are many who felt he was wronged and family members, including his still surviving nephew, and friends, such as our own Dr. John Lattimer, have sought to obtain an official pardon for him. This has continued for over 120 years but even today the Army, which maintains jurisdiction in this matter, refuses to issue a pardon.

Hauptmann was convicted of the 1932 kidnapping and murder of Charles Lindbergh's son and was executed in 1935. Since then a vast amount of evidence has emerged indicating his innocence in the crime. The tactics and illegal, if not immoral, actions of the prosecution and the police department alone possibly merit a posthumous reversal of the conviction. There is hard evidence still in existence. There were witnesses who came forward in the years immediately following the execution speaking, shouting, of such intolerable unfairness delivered upon Richard Hauptmann. Will the State of New Jersey even consider reopening the case after only 60 years have gone by? No, they will not. Before the death of Kennedy, this was the crime of the century, before that it was the Lincoln murder. The pattern is the same. Each of these crimes eventually pass quietly into the annuls of history and the solution is then left to the historians, not the criminal justice system.

Even when a "definitive" answer, sometimes one that is even plausible, is set forth regarding the Kennedy case a minimum of ten respected critics/researchers/authors will seek to disprove the claim in favor of their own theory or that of another. Unless a local prosecutor comes forth, such as Garrison did on March 1, 1967, there will never be another indictment filed in connection with the murder of President Kennedy. Realistically, I doubt that any prosecutor would take the risk of doing so. The legal evidence that would be necessary to secure a conviction just does not exist. The fact that Robert Morrow or Richard Case Nagell or Chauncy Holt or Marita Lorenz or Charles Harrelson *et al* all assert they played a role in the conspiracy to assassinate President Kennedy is not enough to warrant a prosecution, no matter how true their statements may be. But that is not to say that their statements do not merit further investigation, scrutinization and indepth analysis. They do. And this is what "The President John F. Kennedy Assassination Records Collection Act of 1992" can do. Let's utilize it to the fullest extreme possible. We may never have another chance.

I welcome any questions or comments you may have. I do request you notify me as to whether or not you wish to continue receiving my memorandums pertaining to the Act. Given the expenses and time involved with drafting each and then mailing it to all those listed above and more seems senseless if you are not interested in the contents. Therefore, if I do not hear from you by **January 15, 1993**, I shall remove you from my mailing list.

Address	Phone	Fax
47 South Lake Avenue, #4 Albany, New York 12203	(518) 426-1122	(518) 427-8674