

Dear Jerry,

By the time Lil can get you to please come and get this and E-mail it to Briggs I will be in Baltimore, at Johns Hopkins, with my second consultation after lunch and certain to get home quite tired. Especially since this despicable business by Kraft had me up most of the night. I think it is urgent to get to Kansas reason not to believe the Kurtz hatchet job and will appreciate it much if you E-mail this to Briggs as soon as you can. If I did not believe this is urgent I'd not ask it of you. I will, of course, repay you any expenses. Katie cannot ~~send~~ send the exhibits or attachments with what connections she has.

Thanks,

II

If there is any observation you would like to add, please feel free and do not wait for me to see it. I believe that ~~speed~~ ^{speed} is now essential.

Mr. Michael Briggs, editor-in-chief
University Press of Kansas
2501 W. 15St.,
Lawrence, KS 66049-3905 FAX 785-864-4154

Harold Weisberg
7627 Old Recalver Rd.
Frederick, MD 21702

Dear Mr. Briggs,

On Saturday, the eighth, I received from Dale Wrone a copy of your letter to him of the third and copies of the Kurtz and the anonymous reviews of his book. He sought my advice on his response. I read what he sent me later that day and prepared a rough draft, which with me means a very rough draft, on Sunday, the ninth. It is more than twenty pages. On Monday, as I do on Wednesday and Friday, the first six hours of the day was taken by kidney dialysis. It weakens me and all I could do after that was write a ^{much} shorter comment on the anonymous review, which is of an entirely different nature. I have not yet had time to read and correct it and forward both to Wrone. I go into time restrictions on me because you seem to have a deadline only ten days away and aside from being enfeebled by my age, I am almost 87, I also have a much more feeble wife to care for as best I can—she is much more limited in her capabilities—and we live in the country. Today, at 7:45 a.m., I will be driven to the Johns Hopkins ^{Hospital} in Baltimore, where I am a hematology patient, for two consultations. The trip alone tires me excessively so I cannot expect to get more done after I return. But I feel the urgent need to write you at greater length than is usual because of the unusual position in which you are and of the deplorable situation in which Wrone is.

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Crime of the Century: The Kennedy Assassination from a Historian's Perspective. By Michael L. Kurtz. (Knoxville: University of Tennessee Press, 1982. xi + 291 pp. Maps, illustrations, notes, bibliography, and index. \$17.50.)

In *Crime of the Century* Michael L. Kurtz laments that "professional scholars" have neglected the assassination of President John F. Kennedy; he also disparages the works of Warren Commission critics for their "obvious bias" and lack of "the careful analysis of objective evidence that characterizes the scholar." Having set the stage for his own entry, Kurtz announces "an original interpretation based on carefully calculated scrutiny of the most reliable and convincing sources" and promises "much new evidence." He vows to avoid speculation because it "is not within the realm of the historian."

Kurtz concludes from his examination of the evidence that there clearly was a conspiracy to kill Kennedy and that the probes of the Warren Commission and the House Select Committee on Assassinations were seriously flawed. Although these conclusions cannot be faulted, there is virtually nothing of any consequence in this book that is new. With minor exceptions, its valid points derive from the very critics Kurtz deprecates. For example, Kurtz relies heavily on the work of Harold Weisberg and offers little information that Weisberg has not previously revealed.

This book lacks scholarship. The author makes blatant factual mistakes and important errors of omission: Mark Lane's *Rush to Judgment* (1966) is not the first book on the subject; the wounding of James Tague is totally ignored. There are falsehoods: the Warren Commission was not "[u]naware of the FBI's real attitude toward it"; to the contrary, its members stated in their secret sessions that the FBI "would like to have us fold up and quit," and they also asserted that the FBI had concluded that Oswald was the lone assassin without having "run out all kinds of leads." Kurtz relies on commission testimony by an FBI agent contradicted by FBI records and on the results of tests performed for the House committee on evidentiary items inexplicably different in size, shape, and weight from the original FBI specimens without evincing any awareness of the discrepancies. The book's footnotes retard rather than advance scholarship: they generally do not support the assertions made in the text, nor do they identify with requisite specificity the materials cited.

In his last chapter Kurtz forgoes his vow against speculation—already broken—and reconstructs the assassination. He hypothesizes that a shot that hit Kennedy in the back—he asserts at an upward angle—was fired from the second floor of the Texas School Book Depository Building. Here he whooshes across the line separating speculation from fantasy. His assertion that "the first two floors of the Depository were lower than the limousine at the time of the shots" requires a feat of levitation that is neither recorded on any film of the assassination nor testified to by any eyewitness.

Kurtz rightly calls attention to the need for professional historians to appraise the assassination of President Kennedy and the official investigations into the crime. Unfortunately, this book does not measure up to the demands of that gargantuan task.

WASHINGTON, D.C.

JAMES H. LESAR

Testimony of Michael Kurtz

exemption to the Act -- I believe I'm correct in saying that -- that the Board should at least publicly implore the John F. Kennedy Library to allow its staff members to listen to all White House tapes made during the Kennedy Administration and especially conversations between John Kennedy and Robert Kennedy and any other individuals concerned with U.S.-Cuban relations during that period.

The same, by the way, could be true -- I'm not aware of the existence of such -- of any tapes from the Eisenhower presidency since these activities, of course, originated in 1960 under Eisenhower's Administration.

One record, one potential record comes from a rather surprising source, H.R. Haldeman. In his memoirs, "The Ends of Power," Haldeman actually refers to the Kennedy assassination as the underlying topic of the infamous smoking gun Watergate tape of June 23, 1972, in which Haldeman and Nixon discuss the payment of money to certain Cuban associates of E. Howard Hunt, which was the primary subject of that conversation, although not the specific reason that Nixon got himself into very deep trouble and resigned a few days later, money that originally came from some of Nixon's campaign contributors.

I recommend that the Board research Mr. Haldeman's papers, as well as those of the Nixon White House tapes to determine the source of Haldeman's rather surprising reference to the Kennedy assassination within the context of that smoking gun conversation.

As Mr. Tyler briefly mentioned the name of Guy Banister, certainly Guy Banister remains an enigmatic figure in this case for the relationship, if any, between Oswald and Banister during the spring and summer of 1963. As I have in my book and I'll repeat it here today, I myself saw Banister and Oswald together in New Orleans in the summer of 1963.

On the first occasion, Banister was debating President Kennedy's civil rights policies with a group of college students, including myself. Oswald was in the company of Banister. At the time -- this is the late spring of 1963 -- I was a senior at what at that time was the Louisiana State University in New Orleans, although today it's called the University of New Orleans.

Banister was not discussing anti-communism, for which he is most widely known, but rather racial integration, and Banister was certainly a rabid segregationist to say the least, virulently critical of President Kennedy's civil rights policies.

Now the possible racist connections of Lee Harvey Oswald to Guy Banister lead to another recommendation of the Board to peruse the FBI files on such topics as Leander H.J. Perez, Sr., the Citizens Council of Greater New Orleans and a title that, of course, only the FBI under J. Edgar Hoover could have developed, "Communist Infiltration of the NAACP." There is an actual FBI file with that title. References to Guy Banister may be found also in various papers from the DeLesseps Morrison Collection from Tulane University and from the New Orleans Public Library.

And speaking of Tulane University, I'd like also the Board to investigate whether any of the papers of Leon Hubert, who was a law professor at Tulane School of Law, are at the Tulane Library because Mr. Hubert was a junior counsel for the Warren Commission and that is a possible source of material. Congresswoman Boggs' testimony earlier made me think of that.

My time has expired. With no time limit, I could easily provide the Board with innumerable other potential sources of information concerning the availability of records pertaining to the assassination.

In conclusion, I would like to state for the record that the more than three decade long history of obfuscation and suppression of records about the assassination of President Kennedy needs to be ended as expeditiously as possible. In that light, I urge this Board to exercise its authority under the Act, to release all records pertaining to the assassination without exception, and to instruct the National Archives to make them available for immediate public inspection. Thank you.

CHAIRMAN TUNHEIM: Thank you, Dr. Kurtz. Appreciate your testimony today and your advice to us. And certainly additional advice that you have that you weren't able to pass along today, we'd certainly appreciate it in writing because we will follow up on your suggestions.

DR. KURTZ: Yes, for example, Mr. Samoluk of your staff has contacted me about reproducing the preliminary hearing transcripts of the Clay Shaw trial, which we have at our library at Southeastern Louisiana University. We're trying to figure out the logistics of doing that right now.

They don't lend themselves to Xeroxing, probably an optical scanner, but be assured that we will provide the Board with copies of all of those transcripts of those Clay Shaw preliminary hearings and a few other pieces of materials that our library has and I, myself, have in personal possession. We'll certainly share copies with the Board.

the agencies operated illegally. The problem is that in the quest for law and order, case after case after case after case has been thrown out because the law enforcement and intelligence communities acted illegally. So I do not think we attain any particular status of accomplishment in conquering organized crime, or any crime whatsoever for that matter, with illegal activities resulting in cases being thrown out of court.

I would suggest that the record speaks for itself. Frankly, I never thought the record of former Attorney General Ramsey Clark was that good. But, comparing his record with that achieved by succeeding Attorneys General, he looks like Tom Dewey in his prosecutorial heyday.

Mr. HRUSKA. That record is bad, but do we want to make it worse by adopting this amendment which threatens to tie the hands of the FBI and dry up their sources of information? I say, with that, the soup or the broth is spoiled, and I see no use in adding a few dosages of poison.

The pending amendment should be rejected.

Mr. KENNEDY. Mr. President, I do not recognize the amendment, as it has been described by the Senator from Nebraska, as the amendment we are now considering. I feel there has been a gross misinterpretation of the actual words of the amendment and its intention, as well as what it would actually achieve and accomplish. So I think it is important for the record to be extremely clear about this.

If we accept the amendment of the Senator from Michigan, we will not open up the community to rapists, muggers, and killers, as the Senator from Nebraska has almost suggested by his direct comments and statements on the amendment. What I am trying to do, as I understand the thrust of the amendment, is that it be specific about safeguarding the legitimate investigations that would be conducted by the Federal agencies and also the investigative files of the FBI.

As a matter of fact, looking back over the development of legislation under the 1966 act and looking at the Senate report language from that legislation, it was clearly the interpretation in the Senate's development of that legislation that the "investigative file" exemption would be extremely narrowly defined. It was so until recent times—really, until about the past few months. It is to remedy that different interpretation that the amendment of the Senator from Michigan which we are now considering was proposed.

I should like to ask the Senator from Michigan a couple of questions.

Does the Senator's amendment in effect override the court decisions in the court of appeals on the Welsberg against United States, Aspin against Department of Defense; Dillow against Bilucgar; and National Center against Welsberger?

As I understand it, the holdings in those particular cases are of the greatest concern to the Senator from Michigan. As I interpret it, the impact and effect of his amendment would be to override those particular decisions. Is that not correct?

Mr. HART. The Senator from Michigan is correct. That is its purpose. That was the purpose of Congress in 1966, we thought, when we enacted this. Until about 9 or 12 months ago, the courts consistently had approached it on a balancing basis, which is exactly what this amendment seeks to do.

Mr. President, while several Senators are in the Chamber, I should like to ask for the yeas and nays on my amendment. The yeas and nays were ordered.

Mr. KENNEDY. Furthermore, Mr. President, the Senate report language that refers to exemption 7 in the 1966 report on the Freedom of Information Act—and that seventh exemption is the target of the Senator from Michigan's amendment—reads as follows:

Exemption No. 7 deals with "Investigatory files compiled for law enforcement purposes." These are the files prepared by Government agencies to prosecute law violators. Their disclosure of such files, except to the extent they are available by law to a private party, could harm the Government's case in court.

It seems to me that the interpretation, the definition, in that report language is much more restrictive than the kind of amendment the Senator from Michigan at this time is attempting to achieve. Of course, that interpretation in the 1966 report was embraced by a unanimous Senate back then.

Mr. HART. I think the Senator from Massachusetts is correct. One could argue that the amendment we are now considering, if adopted, would leave the Freedom of Information Act less available to a concerned citizen that was the case with the 1966 language initially.

Again, however, the development in recent cases requires that we respond in some fashion, even though we may not achieve the same breadth of opportunity for the availability of documents that may arguably be said to apply under the original 1967 act.

Mr. KENNEDY. That would certainly be my understanding. Furthermore, it seems to me that the amendment itself has considerable sensitivity built in to protect against the invasion of privacy, and to protect the identities of informants, and most generally to protect the legitimate interests of a law enforcement agency to conduct an investigation into any one of these crimes which have been outlined in such wonderful verbiage here this afternoon—treason, espionage, or what have you.

So I just want to express that on these points the amendment is precise and clear and is an extremely positive and constructive development to meet legitimate law enforcement concerns. There are some of the reasons why I will support the amendment, and I urge my colleagues to do so.

The PRESIDING OFFICER (Mr. DOMINICK). The Senator from Nebraska has 6 minutes remaining.

Mr. HRUSKA. Mr. President, I should like to point out that the amendment proposed by the Senator from Michigan, preserves the right of people to a fair trial or impartial adjudication. It is careful to preserve the identity of an in-

former. It is careful to preserve the idea of protecting the investigative techniques and procedures, and so forth. But what about the names of those persons that are contained in the file who are not informers and who are not accused of crime and who will not be tried? What about the protection of those people whose names will be in there, together with information having to do with them? Will they be protected? It is a real question, and it would be of great interest to people who will be named by informers somewhere along the line of the investigation and whose name presumably would stay in the file.

Mr. President, by way of summary, I would like to say that it would distort the purposes of the FBI, imposing on them the added burden, in addition to investigating cases and getting evidence, of serving as a research source for every writer or curious person, or for those who may wish to find a basis for suit either against the Government or against someone else who might be mentioned in the file.

Second, it would impose upon the FBI the tremendous task of reviewing each page and each document contained in many of their investigatory files to make an independent judgment as to whether or not any part thereof should be released. Some of these files are very extensive, particularly in organized crime cases that are sometimes under consideration for a year, a year and a half, or 2 years.

Mr. HART. Mr. President, will the Senator yield?

The PRESIDING OFFICER. All time of the Senator has expired.

Mr. KENNEDY. I yield the Senator 5 minutes on the bill.

Mr. HART. Mr. President, I ask unanimous consent that a memorandum letter, reference to which has been made in the debate and which has been distributed to each Senator, be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

MEMORANDUM LETTER

A question has been raised as to whether my amendment might hinder the Federal Bureau of Investigation in the performance of its investigatory duties. The Bureau stresses the need for confidentiality in its investigations. I agree completely. All of us recognize the crucial law enforcement role of the Bureau's unparalleled investigatory capabilities.

However, my amendment would not hinder the Bureau's performance in any way. The Administrative Law Section of the American Bar Association language, which my amendment adopts verbatim, was carefully drawn to preserve every conceivable reason the Bureau might have for resisting disclosure of material in an investigatory file:

If informants' anonymity—whether paid informers or citizen volunteers—would be threatened, there would be no disclosure; If the Bureau's confidential techniques and procedures would be threatened, there would be no disclosure;

If disclosure is an unwarranted invasion of privacy, there would be no disclosure (contrary to the Bureau's letter, this is a determination courts make all the time); In-

Full text of Congressional Record of which this is part in top drawer of JFK appeals file cabinet.

Sorry, no legal-sized paper at hand. *Exhibit B*
I used this in another FOIA lawsuit.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

-v-

UNITED STATES DEPARTMENT OF JUSTICE,
et al.,

Defendants

Civil Action No. 75-226

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTIONS TO STRIKE, TO COMPEL ANSWERS
TO INTERROGATORIES, FOR PRODUCTION OF
DOCUMENTS, AND RESPONSE TO MOTION TO
POSTPONE CALENDAR CALL AND STAY ALL
FURTHER PROCEEDINGS

On February 19, 1975, plaintiff filed this suit under the Freedom of Information Act, as amended, 5 U.S.C. 552, seeking disclosure of the spectrographic analyses and other tests made by the F.B.I. for the Warren Commission in connection with the investigation into the assassination of President John F. Kennedy, as well as any tests made by the Atomic Energy Commission in connection with said investigation.

On March 14, 1975, plaintiff and his attorney met with representatives of the F.B.I. for the purpose of specifically identifying the scope of plaintiff's request. ^{*} Defendants attach

^{*} Plaintiff's attorney was advised by correspondence prior to filing of this action that the Atomic Energy Commission (now Energy Research and Development Administration) provided technical

been given and to thereby resolve the matter amicably.

Subsequent to the calendar call, counsel for defendants was served with plaintiff's motion to strike the Kilty affidavit on grounds, inter alia, of bad faith, and other discovery-related motions calculated to probe behind defendants' assertions of good faith compliance with plaintiff's Freedom of Information Act request. Plaintiff alleges in his motion to strike and attached affidavit that the Kilty affidavit is deliberately deceptive, not based upon personal knowledge, and should have been made by Special Agent Robert A. Frazier who plaintiff believes is still an active agent with the F.B.I. Laboratory. Defendants respectfully inform counsel and the Court, however, that Special Agent Robert A. Frazier retired from the F.B.I. on April 11, 1975 after thirty-three years, ten months and three days service, and that supervisory Special Agent Kilty is the most knowledgeable active service Special Agent to give this testimony on behalf of the F.B.I.

In the motion to strike (pp. 2-3), plaintiff also alleges the existence of certain documents which he claims have not been provided by the F.B.I. In a sense, plaintiff could make such claims ad infinitum since he is perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I. However, in a final attempt to comply in good faith with plaintiff's request, a still

Dear Dave,

1/7/00

As soon as I read Briggs' letter and its two enclosures I asked Jerry to come and make copies so he could write you separately and so that he could go over what I wrote and give me his suggestions and opinions. But I was so trouble^d when I went to bed after reading it that I had trouble sleeping. I have little time now because I leave for dialysis in an hour and a half. But doing what I will want you to consider will take time and will not meet the 20th deadline. How often they meet Briggs does not say but it is clear he wants to present your answer by then. So, I'll do what I have in mind in two ways, one that may be able to meet that deadline and one that will go into more and inform Kansas more as well as be another fragment in the records for history. I will write this, these things, to you separately so that you can ignore them, send them as they are to Briggs or select from them what you want to give him,

The real problem is that just about all academicians are subject-matter ignoramuses and that includes Briggs and his committee.

Also a real problem is Kurtz's dishonesties and as I recall his omission of a single accurate reference to what he says is inaccurate in mine, often as he says that. I will be asking you to ask ^{Briggs} ~~Kurtz~~ to ask Kurtz to specify where he says I am wrong and to provide what he believes is the correct version. I think that if Briggs is willing to disregard the deadline and ask Kurtz to do that all that Kurtz criticizes will crumble.

I expect to see Jerry after dialysis today. I'll ask him if he can Email what I do as I do it. That might make it possible, weak as I now am, to do it before the deadline expires.

But I also think that if you make the changes these people who know nothing about the assassination want made you will have an inaccurate book and Kansas will be published a seriously flawed book that will be too much like the abundant assassination junk.

In haste,

Harold

Dear Dave,

1/7/00

What Michale Briggs sent you came only a little before my early bedtime. I read it and went to bed troubled by it. Not by the Briggs letter. It reflects that he is honest, fair and helpful but he does not recognize the position in which he and others are when they ask for peer reviews on the assassination. I have been in this longer, more intensively and in frequent contact with others and despite what the reviewers say, I know of only four college professors who are legitimate experts on the assassination and despite his having published a book, Kurtz is not one of them. Two are historians and two are sociologists.

I will address this separately as soon as I can. But particularly with the deadline so close I would like you to please ask Briggs if he will ask Kurtz to be specific in his allegations of error on my part and to provide what he regards as the correct version. I think this is required by Kansas for its own protection in the event, and I assure you it is the actuality, that Kurtz is not correct in what he says. I believe it is also necessary in fairness to me.

As after a trouble night with less sleep than at 86 and not well I need, I remember ⁱⁿ what Kurtz did say in attributing mistakes to me, in not a single case did he make out any case at all. I will, of course, respond, but without the specifics I seek and will be specific in addressing. Kansas is in the position of ^{taking} Kurtz' word of mine and it knows nothing about me and if it really knew Kurtz ^{it} would not have asked a peer review of him.

In the taking my word part I state that in all the years since the first Whitewash was published in 1965, with all the severe criticisms in it of the Commission and of its staff, I have yet to receive a single call or letter from any of the staff or the Members in which it is alleged that what I wrote about him in what grew into 10 books was in any way unfair or inaccurate. In fact, one of the Members, Senator Richard Russell, encouraged my work until his death. I can provide the opinion of the staff member he had read it and offer his opinion of Whitewash and the next three books I wrote. *High praise.*

Despite the fact that I was suing the Department of Justice and its FBI the Department's appeals officer, who described himself as a history buff, asked me to file my appeals from withholdings under FOIA in detail and with documentation. They take up three jammed file drawers. Or, he asked me, not the FBI, to make that particular record for history.

I was confronted in all those many FOIA lawsuits by FBI lying that was often perjury. In fact, FOIA was amended by the Congress in part over just that and it was Senator Edward Kennedy who made that part of the legislative

history. In the first lawsuit filed under the amended Act I attributed perjury to the FBI. I did not do it the safe way, through lawyers' pleadings, which are immune. I put myself under oath and made myself subject to perjury if I lied. Eyeball to eyeball, the FBI and the Department blinked. Their defense, which was an admission, was not a defense, but that judge accepted their irrelevancy. They filed a response in which they said I could make such allegations ad infinitum because I knew more about the assassination and surrounding events than anyone working for the FBI.

I may have, in the past, sent you this pleading or the first pages of it and that page of the Congressional Record. I will repeat that when I can but I cannot send you three jammed file drawers. I enclose what is now possible this early morning when what I can mail must be in my box when I leave for dialysis before 6 a.m.

These are credentials Kurtz, professor that he is and often boasts of, does not have.

What his credential on this subject are the review in the Journal of American History makes clear. I enclose that.

Kurtz has personalized this so I think it is no unfair to ~~xxx~~ report a bit about Kurtz. I'll enclose the page of the transcript if I have time. He asked to be heard by the Assassination Records Review Board when it heard people in New Orleans for the purposes of being told when the board could find withheld assassination records. Kurtz then told the board that he had seen Oswald and a strange former FBI agent who had a private detective agency, Guy Banister, together. Now Banister is one of the more outlandish assassination fictions. But Kurtz did not tell that to the FBI after Oswald was charged with being the assassin. I know this because I did what Kurtz did not do, I filed a long series of FOIA lawsuits to bring to light what I could of what was suppressed. In the end that came to about a third of a million pages, official data on which I draw and Kurtz does not. He never asked me for a single page of them although it is well known in the field that I give free access to all those records and to our copier.

The choices seem to be that Kurtz did not see Oswald and Banister together or he lacked the patriotism to tell the FBI that he had.

In haste,

Harold

Crime of the Century: The Kennedy Assassination from a Historian's Perspective. By Michael L. Kurtz. (Knoxville: University of Tennessee Press, 1982. xi + 291 pp. Maps, illustrations, notes, bibliography, and index. \$17.50.)

In *Crime of the Century* Michael L. Kurtz laments that "professional scholars" have neglected the assassination of President John F. Kennedy, he also disparages the works of Warren Commission critics for their "obvious bias" and lack of "the careful analysis of objective evidence that characterizes the scholar." Having set the stage for his own entry, Kurtz announces "an original interpretation based on carefully calculated scrutiny of the most reliable and convincing sources" and promises "much new evidence." He vows to avoid speculation because it "is not within the realm of the historian."

Kurtz concludes from his examination of the evidence that there clearly was a conspiracy to kill Kennedy and that the probes of the Warren Commission and the House Select Committee on Assassinations were seriously flawed. Although these conclusions cannot be faulted, there is virtually nothing of any consequence in this book that is new. With minor exceptions, its valid points derive from the very critics Kurtz deprecates. For example, Kurtz relies heavily on the work of Harold Weisberg and offers little information that Weisberg has not previously revealed.

This book lacks scholarship. The author makes blatant factual mistakes and important errors of omission: Mark Lane's *Rush to Judgment* (1966) is not the first book on the subject; the wounding of James Tague is totally ignored. There are falsehoods: the Warren Commission was not "[u]naware of the FBI's real attitude toward it"; to the contrary, its members stated in their secret sessions that the FBI "would like to have us fold up and quit," and they also asserted that the FBI had concluded that Oswald was the lone assassin without having "run out all kinds of leads." Kurtz relies on commission testimony by an FBI agent contradicted by FBI records and on the results of tests performed for the House committee on evidentiary items inexplicably different in size, shape, and weight from the original FBI specimens without evincing any awareness of the discrepancies. The book's footnotes retard rather than advance scholarship: they generally do not support the assertions made in the text, nor do they identify with requisite specificity the materials cited. In his last chapter Kurtz forgoes his vow against speculation—already broken—and reconstructs the assassination. He hypothesizes that a shot that hit Kennedy in the back—he asserts at an upward angle—was fired from the second floor of the Texas School Book Depository Building. Here he whooshes across the line separating speculation from fantasy. His assertion that "the first two floors of the Depository were lower than the limousine at the time of the shots" requires a feat of levitation that is neither recorded on any film of the assassination nor testified to by any eyewitness.

Kurtz rightly calls attention to the need for professional historians to appraise the assassination of President Kennedy and the official investigations into the crime. Unfortunately, this book does not measure up to the demands of that gargantuan task.

WASHINGTON, D. C.

JAMES H. LESAR

Journal of American History

the agencies operated illegally. The problem is that in the quest for law and order, case after case after case after case has been thrown out because the law enforcement and intelligence communities acted illegally. So I do not think we attain any particular status of accomplishment in conquering organized crime, or any crime whatsoever for that matter, with illegal activities resulting in cases being thrown out of court.

I would suggest that the record speaks for itself. Frankly, I never thought the record of former Attorney General Ramsey Clark was that good. But, comparing his record with that achieved by succeeding Attorneys General, he looks like Tom Dewey in his prosecutorial heyday.

Mr. IRUSKA. That record is bad, but do we want to make it worse by adopting this amendment which threatens to tie the hands of the FBI and dry up their sources of information? I say, with that, the soup or the broth is spoiled, and I see no use in adding a few dosages of poison.

The pending amendment should be rejected.

Mr. KENNEDY. Mr. President, I do not recognize the amendment, as it has been described by the Senator from Nebraska, as the amendment we are now considering. I feel there has been a gross misinterpretation of the actual words of the amendment and its intention, as well as what it would actually achieve and accomplish. So I think it is important for the record to be extremely clear about this.

If we accept the amendment of the Senator from Michigan, we will not open up the community to rapists, muggers, and killers, as the Senator from Nebraska has almost suggested by his direct comments and statements on the amendment. What I am trying to do, as I understand the thrust of the amendment, is that it be specific about safeguarding the legitimate investigations that would be conducted by the Federal agencies and also the investigative files of the FBI.

As a matter of fact, looking back over the development of legislation under the 1966 act and looking at the Senate report language from that legislation, it was clearly the interpretation in the Senate's development of that legislation that the "investigatory file" exemption would be extremely narrowly defined. It was so until recent times—really, until about the past few months. It is to remedy that different interpretation that the amendment of the Senator from Michigan which we are now considering was proposed.

I should like to ask the Senator from Michigan a couple of questions.

Does the Senator's amendment in effect override the court decisions in the court of appeals on the Weisberg against United States, Aspin against Department of Defense; Dilow against Brinegar; and National Center against Weinberger?

As I understand it, the holdings in those particular cases are of the greatest concern to the Senator from Michigan. As I interpret it, the impact and effect of his amendment would be to override those particular decisions. Is that not correct?

Mr. HART. The Senator from Michigan is correct. That is its purpose. That was the purpose of Congress in 1966, we thought, when we enacted this. Until about 9 or 12 months ago, the courts consistently had approached it on a balancing basis, which is exactly what this amendment seeks to do.

Mr. President, while several Senators are in the Chamber, I should like to ask for the yeas and nays on my amendment.

The yeas and nays were ordered.
Mr. KENNEDY. Furthermore, Mr. President, the Senate report language that refers to exemption 7 in the 1966 report on the Freedom of Information Act—and that seventh exemption is the target of the Senator from Michigan's amendment—reads as follows:

Exemption No. 7 deals with "Investigatory files compiled for law enforcement purposes." These are the files prepared by Government agencies to prosecute law violators. Their disclosure of such files, except to the extent they are available by law to a private party, could harm the Government's case in court.

It seems to me that the interpretation, the definition, in that report language is much more restrictive than the kind of amendment the Senator from Michigan at this time is attempting to achieve. Of course, that interpretation in the 1966 report was embraced by a unanimous Senate back then.

Mr. HART. I think the Senator from Massachusetts is correct. One could argue that the amendment we are now considering, if adopted, would leave the Freedom of Information Act less available to a concerned citizen that was the case with the 1966 language initially.

Again, however, the development in recent cases requires that we respond in some fashion, even though we may not achieve the same breadth of opportunity for the availability of documents that may arguably be said to apply under the original 1967 act.

Mr. KENNEDY. That would certainly be my understanding. Furthermore, it seems to me that the amendment itself has considerable sensitivity built in to protect against the invasion of privacy, and to protect the identities of informants, and most generally to protect the legitimate interests of a law enforcement agency to conduct an investigation into any one of these crimes which have been outlined in such wonderful verbiage here this afternoon—treason, espionage, or what have you.

So I just want to express that on these points the amendment is precise and clear and is an extremely positive and constructive development to meet legitimate law enforcement concerns. These are some of the reasons why I will support the amendment, and I urge my colleagues to do so.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from Nebraska has 6 minutes remaining.

Mr. IRUSKA. Mr. President, I should like to point out that the amendment proposed by the Senator from Michigan, preserves the right of people to a fair trial or impartial adjudication. It is careful to preserve the identity of an in-

former. It is careful to preserve the idea of protecting the investigative techniques and procedures, and so forth. But what about the names of those persons that are contained in the file who are not informers and who are not accused of crime and who will not be tried? What about the protection of those people whose names will be in there, together with information having to do with them? Will they be protected? It is a real question, and it would be of great interest to people who will be named by informers somewhere along the line of the investigation and whose name presumably would stay in the file.

Mr. President, by way of summary, I would like to say that it would distort the purposes of the FBI, imposing on them the added burden, in addition to investigating cases and getting evidence, of serving as a research source for every writer or curious person, or for those who may wish to find a basis for suit either against the Government or against someone else who might be mentioned in the file.

Second, it would impose upon the FBI the tremendous task of reviewing each page and each document contained in many of their investigatory files to make an independent judgment as to whether or not any part thereof should be released. Some of these files are very extensive, particularly in organized crime cases that are sometimes under consideration for a year, a year and a half, or 2 years.

Mr. HART. Mr. President, will the Senator yield?

The PRESIDING OFFICER. All time of the Senator has expired.

Mr. KENNEDY. I yield the Senator 6 minutes on the bill.

Mr. HART. Mr. President, I ask unanimous consent that a memorandum letter, reference to which has been made in the debate and which has been distributed to each Senator, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MEMORANDUM LETTER

A question has been raised as to whether my amendment might hinder the Federal Bureau of Investigation in the performance of its investigatory duties. The Bureau stresses the need for confidentiality in its investigations. I agree completely. All of us recognize the crucial law enforcement role of the Bureau's unparalleled investigating capabilities.

However, my amendment would not hinder the Bureau's performance in any way. The Administrative Law Section of the American Bar Association language, which my amendment adopts verbatim, was carefully drawn to preserve every conceivable reason the Bureau might have for resisting disclosure of material in an investigatory file:

If informants' anonymity—whether paid informers or citizen volunteers—would be threatened, there would be no disclosure; If the Bureau's confidential techniques and procedures would be threatened, there would be no disclosure;

If disclosure is an unwarranted invasion of privacy, there would be no disclosure (contrary to the Bureau's letter, this is a determination courts make all the time; in-

Full text of Congressional Record of which this is part in top drawer of JFK appeals file cabinet.

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

-v-

UNITED STATES DEPARTMENT OF JUSTICE,
et al.,

Defendants

Civil Action No. 75-226

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTIONS TO STRIKE, TO COMPEL ANSWERS
TO INTERROGATORIES, FOR PRODUCTION OF
DOCUMENTS, AND RESPONSE TO MOTION TO
POSTPONE CALENDAR CALL AND STAY ALL
FURTHER PROCEEDINGS

On February 19, 1975, plaintiff filed this suit under the Freedom of Information Act, as amended, 5 U.S.C. 552, seeking disclosure of the spectrographic analyses and other tests made by the F.B.I. for the Warren Commission in connection with the investigation into the assassination of President John F. Kennedy, as well as any tests made by the Atomic Energy Commission in connection with said investigation.

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In the motion to strike (pp. 2-3), plaintiff also alleges the existence of certain documents which he claims have not been provided by the F.B.I. In a sense, plaintiff could make such claims ad infinitum since he is perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I. However, in a final attempt to comply in good faith with plaintiff's request, a still

Testimony of Michael Kurtz

exemption to the Act -- I believe I'm correct in saying that -- that the Board should at least publicly implore the John F. Kennedy Library to allow its staff members to listen to all White House tapes made during the Kennedy Administration and especially conversations between John Kennedy and Robert Kennedy and any other individuals concerned with U.S.-Cuban relations during that period.

The same, by the way, could be true -- I'm not aware of the existence of such -- of any tapes from the Eisenhower presidency since these activities, of course, originated in 1960 under Eisenhower's Administration.

One record, one potential record comes from a rather surprising source, H.R. Haldeman. In his memoirs, "The Ends of Power," Haldeman actually refers to the Kennedy assassination as the underlying topic of the infamous smoking gun Watergate tape of June 23, 1972, in which Haldeman and Nixon discuss the payment of money to certain Cuban associates of E. Howard Hunt, which was the primary subject of that conversation, although not the specific reason that Nixon got himself into very deep trouble and resigned a few days later, money that originally came from some of Nixon's campaign contributors.

I recommend that the Board research Mr. Haldeman's papers, as well as those of the Nixon White House tapes to determine the source of Haldeman's rather surprising reference to the Kennedy assassination within the context of that smoking gun conversation.

As Mr. Tyler briefly mentioned the name of Guy Banister, certainly Guy Banister remains an enigmatic figure in this case for the relationship, if any, between Oswald and Banister during the spring and summer of 1963. As I have in my book and I'll repeat it here today, I myself saw Banister and Oswald together in New Orleans in the summer of 1963.

On the first occasion, Banister was debating President Kennedy's civil rights policies with a group of college students, including myself. Oswald was in the company of Banister. At the time -- this is the late spring of 1963 -- I was a senior at what at that time was the Louisiana State University in New Orleans, although today it's called the University of New Orleans.

Banister was not discussing anti-communism, for which he is most widely known, but rather racial integration, and Banister was certainly a rabid segregationist to say the least, virulently critical of President Kennedy's civil rights policies.

Now the possible racist connections of Lee Harvey Oswald to Guy Banister lead to another recommendation of the Board to peruse the FBI files on such topics as Leander H.J. Perez, Sr., the Citizens Council of Greater New Orleans and a title that, of course, only the FBI under J. Edgar Hoover could have developed, "Communist Infiltration of the NAACP." There is an actual FBI file with that title. References to Guy Banister may be found also in various papers from the DeLesseps Morrison Collection from Tulane University and from the New Orleans Public Library.

And speaking of Tulane University, I'd like also the Board to investigate whether any of the papers of Leon Hubert, who was a law professor at Tulane School of Law, are at the Tulane Library because Mr. Hubert was a junior counsel for the Warren Commission and that is a possible source of material. Congresswoman Boggs' testimony earlier made me think of that.

My time has expired. With no time limit, I could easily provide the Board with innumerable other potential sources of information concerning the availability of records pertaining to the assassination.

In conclusion, I would like to state for the record that the more than three decade long history of obfuscation and suppression of records about the assassination of President Kennedy needs to be ended as expeditiously as possible. In that light, I urge this Board to exercise its authority under the Act, to release all records pertaining to the assassination without exception, and to instruct the National Archives to make them available for immediate public inspection. Thank you.

CHAIRMAN TUNHEIM: Thank you, Dr. Kurtz. Appreciate your testimony today and your advice to us. And certainly additional advice that you have that you weren't able to pass along today, we'd certainly appreciate it in writing because we will follow up on your suggestions.

DR. KURTZ: Yes, for example, Mr. Samoluk of your staff has contacted me about reproducing the preliminary hearing transcripts of the Clay Shaw trial, which we have at our library at Southeastern Louisiana University. We're trying to figure out the logistics of doing that right now.

They don't lend themselves to Xeroxing, probably an optical scanner, but be assured that we will provide the Board with copies of all of those transcripts of those Clay Shaw preliminary hearings and a few other pieces of materials that our library has and I, myself, have in personal possession. We'll certainly share copies with the Board.