

226 appeal  
Dear Paul,

2/10/78

If you detect a sense of exasperation in what follows I am exasperated but it has nothing to do with you.

I've just read the AIB bulletin , #2, 1. By and large it is good, for them in particular. But it also is bad, in a way typical of them.

There just is no way that anyone seeking the records they refer to can get those records except from or through them. You know where that took me.

They are creating futilities for concerned people. It becomes a new kind of minor coverup for the FBI because even a reporter who read their publication has no way of obtaining the record they refer to.

This is scholarship? Public service? And with their long record of ripping me off and their bullshit pretenses of other character, when they report on reports that are clearly within what I told them is relevant to current FOIA litigation they are too busy to scribble a few lines on a piece of paper, no more than the numbers of the files?

I presume you have some records from them that relate to this issue because they quote those records and it is easier to use copies than notes. If you have either the records or the citations we are working on the reply brief in one and will be working on the reply brief in the other very soon. There is not a lot of time.

All that relates to Ford can be relevant in the appeal in the transcript case. Jim would like to use some of what he saw reported. I've marked this on my copy, as I read the issue, beginning at the top of page 2. Meaning on Ford.

Not directly involved is paragraph 3, col. 1, p. 4, the undisclosed pictures of the car during the shooting, it says.

On p. 7 there are a number of references to the autopsy, the pictures and X-rays of it (and of avoiding them), on ballistics, etc, Col 1, para 4, the Hogan memo; Rankin's memo at the beginning of the next paragraph and the FBI response; last part of this paragraph, Rankin wanting to refute rather than investigate; Hoover on how wild this is in a news story, the end of that graf.

Just past middle last graf this col, question of Dallas cops setting murder of LEO up. (not directly related but of possible use.)

Col. 2 penult. graf beginning about middle, FBI lab on Walker bullet.

If you can help please do it through me. I'll duplicate copies for Jim to use (requires four where he uses) and annotate for him.

We have been wanting to find time to file in court for the worksheets. As of this afternoon Jim was hoping to be able to get this gone before this letter can reach you. When we each have no help there are no certainties. The AIB people don't know what they are talking about on the worksheets. If and when I get them copies will be available but I'm not sure that Jim will be able to do the copying. Probably Jim will have to get it done commercially in DC.

You have an idea of what can help. If you see anything please send it along. I think we have a chance of prevailing, I know we have a chance of making a record.

Thanks and best wishes,

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architect of the Johnson Administration cover-up, the appointment of Olney was blocked. But another document reveals how the Chief Justice's move was thwarted from the inside. Gerald Ford, then a Congressman and member of the Commission, invited FBI Assistant Director DeLoach to his office on December 12, 1963. Ford was "disturbed" about the Olney ploy, and mentioned that Allen Dulles, former CIA Director and also a Commission member, had protested to Warren at the first Commission meeting. "On the occasion of their second meeting," DeLoach writes, "Ford and Hale Boggs joined with Dulles. Hale Boggs told Warren flatly that Olney would not be acceptable and that he (Boggs) would not work on the Commission with Olney. Warren put up a stiff argument but a compromise was made when the name of Lee Rankin was mentioned. Warren stated he knew Rankin and could work with him."

Ford became a frequent informant for DeLoach, who used this channel to keep the Bureau informed of the Commission's activities. Some documents indicate that the Bureau actually made active use of Ford in getting across the FBI's point of view to other commission members. One internal memo from the FBI's Intelligence Division states that "the Commission has been very much impressed" by an article in the *New Republic* about the assassination. The article was called "Seeds of Doubt" and was published in December 1963. According to other documents, FBI officials gathered information about the left-wing ties of the authors, Staughton Lynd and Jack Minnis. Here, Hoover himself notes, "I think DeLoach should brief Ford re the *New Republic* article and its authors."

As the Warren Commission began to organize and staff itself, information such as that provided by Ford became more and more useful to Hoover and his aides. The difficulties experienced by the FBI in its dealings with the Warren Commission multiplied. Hoover continued to think that Warren himself was leaking stories to the press which were unfavorable to the FBI. One teletype from Dallas dated March 14, 1964, refers to a *Dallas Times-Herald* story containing information about the suspicious death of a Marine in the Far East in which Oswald was rumored to have been involved. The story quoted "one commission member who asked not to be identified," and Hoover scrawls below, "Sounds like Warren."

Many aspects of the cover-up are still obscure. For example, there is the affair of late January 1964, when Dallas and Texas state law enforcement officials conducting their own inquiries told the Warren Commission that Oswald was an FBI informant. This is the subject of many documents only just released and still being analyzed. But what has emerged most clearly so far is a new picture of the earlier stages of the cover-up—in November and December 1963, during the formation of the Warren Commission and the dissemination of the initial FBI "Summary Report."

The earliest evidence actually comes in a series of memos written by Hoover to his top aides, in most cases less than an hour apart, on the day of the assassination. The Director, in these memos, recounts his conversations with Secret Service Director James Rowley and Attorney General Robert Kennedy. To Rowley, Hoover must have disclosed some of his worst fears, for "Mr. Rowley stated he was also thinking of subversive elements—Mexico and Cuba. I then mentioned the Klan element." To the Attorney General he misleadingly reported that "we have a case on Oswald as he has been involved in the Fair Play for Cuba Committee." Oswald had, of course, defected to the Soviet Union after his discharge from the Marines in 1959 and the Bureau had interviewed him after his return to the U.S. By the end of the afternoon, Hoover was saying to Justice Department officials that Oswald was the "principal suspect" in the case and that "he may very likely be the man."

The person who was most active in mediating between the

### Background on FBI Release

On December 7, 1977, and again on January 18, 1978, the FBI released major portions of its file on the assassination of President Kennedy. The files released were being sought in several Freedom of Information law suits brought against the FBI by Warren Commission critics. The documents contained in these files number some 98,000 pages and are grouped by the FBI into four categories. One pertains to the assassination of President Kennedy, another to the FBI's investigation of Lee Harvey Oswald, a third to the shooting of Oswald by Jack Ruby, and the fourth to the FBI's relationship with the Warren Commission. The files are available to the public in the reading room of the FBI building during weekday business hours. The FBI charges 10¢ per page for copies of documents, bringing the cost of an entire set to nearly \$10,000 dollars.

The release of the documents was touted by the FBI as their last word on the Kennedy assassination. These files supposedly represent everything there is to be revealed. In fact, however, there still remain some 10,000 pages of classified information, including pre-assassination files on Lee Harvey Oswald from FBI field offices, as well as many documents pertaining to the mysterious Mexico trip allegedly taken by Oswald in September of 1963. Also missing is the report of Assistant FBI Director J.H. Gale, who was commissioned by J. Edgar Hoover to analyze "investigative deficiencies of the FBI in the Oswald case." The Schweiker-Hart Subcommittee, which did have access to these files, reports that Gale recommended disciplinary proceedings against several FBI officials. It would be of interest to independent investigators to determine what officials played what roles in relation to Oswald from the time of his defection on.

In addition, the FBI released no inventory sheets on these volumes, making review much more difficult. While most documents were serialized when filed, a substantial number were thrown into the files unrecorded. Without indexes, specific documents are nearly impossible to locate. Documents are filed in a rough chronological order, but with no distinction made as to subject matter, except for those broad classifications mentioned previously. Thus, in the Kennedy Assassination file, one will find a lab report on the paper bag found in the Book Depository between a memo from Hoover on how to deal with the Justice Department and a letter from a woman in Chicago who wants to turn in her son for the crime. The FBI contends that the inventory worksheets that would facilitate wading through the morass of documents contain highly confidential data, and thus will not be available for several more months.

Bureau and the White House, and later between both and the newly-formed Warren Commission, was Katzenbach. A long series of high-level internal memos describes how the Deputy Attorney General, in the days after the assassination, kept Hoover and his aides informed about a variety of delicate issues through his contacts with FBI Assistant Director Courtney Evans, who was close to Katzenbach's boss, Robert Kennedy.

The documents provide a great many details about Katzenbach's role, especially in facilitating the writing of the FBI Summary Report of early December and its transmission to the Warren Commission, urging that the Justice Department simply approve the FBI report and release it to the public. Katzenbach's position in the compromise worked out by

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## Assassination Update

### The Secret Service "Releases" JFK Documents

The FBI is not the only agency to release its file on the JFK assassination. Recently, in response to a Freedom of Information request from UPI, the Secret Service declassified about 800 pages from its investigation. AIB has obtained a set of these documents, which turn out to be virtually identical to files released by the Secret Service over two years ago.

The initial UPI news story on the Secret Service release stated that the files concentrated on possible Cuban, Soviet, and Chinese involvement in the assassination, no evidence for which was ever found. The UPI account omitted any mention of the numerous documents dealing with Secret Service investigations of anti-Castro exiles in Florida prior to JFK's visit to Miami in November, 1963, as well as similar investigations in Chicago during the same month.

Very few of the documents contain new information relevant to the assassination. One document, however, discloses the names of a number of Treasury Department agents who assisted in the search of the Texas School Book Depository after the assassination. Another important revelation concerns the existence of a previously unknown set of photographs taken of the presidential limousine during the shooting. But the most significant aspect of the Secret Service release is that a number of highly relevant documents are still being withheld.

### Judge Sirica Rules on Withheld CIA Documents

In December 1977, Judge John Sirica ruled that the CIA must make available its withheld files on the JFK assassination for the judge's *in camera* inspection. Sirica will then decide whether these documents are improperly classified. Many of these files deal with the trip to Mexico City allegedly taken by Lee Harvey Oswald less than two months before the assassination.

Sirica's ruling comes as part of a suit brought by Washington attorney Bernard Fensterwald, whose original Freedom of Information request resulted in the release of hundreds of pages of the CIA's JFK file. Fensterwald thinks the documents still being withheld might tell us conclusively whether Oswald actually went to Mexico City. They may also reveal why the CIA's clandestine cameras outside the Soviet and Cuban embassies in Mexico City photographed a man who was obviously not Oswald but whom the CIA had apparently identified, before the assassination, as a "Lee Henry Oswald". As we go to press, the CIA is reaching a final decision on whether to appeal the decision by Judge Sirica.

### New Developments in the Malcolm X Case

On December 7, 1977, Thomas Hagan, a confessed assassin of black leader Malcolm X, filed an affidavit in New York State Supreme Court asserting the innocence of the two men convicted with him in their 1966 murder trial.

Hagan was one of at least five men participating in the shooting that took place in the Audubon Ballroom on February 21, 1965. He insisted during the trial that Norman 3X Butler and Thomas 15X Johnson were not his co-conspirators, but all three were nonetheless convicted and sentenced to life imprisonment. Hagan, however, has now named his actual accomplices, something he had previously refused to do. The names given were Brother Lee, Brother Ben, Willie X, and

Willbour, none of whom were further identified.

Hagan also stated that the plot to kill Malcolm was hatched within the Black Muslim movement from which Malcolm had split in 1964. At that time, the Black Muslims and Malcolm's Organization of Afro-American Unity were both targeted for surveillance by intelligence agencies and infiltrated by government agents. Gene Roberts, one of Malcolm's most trusted aides, was an agent for the Bureau of Special Services (BOSS) of the New York City Police Department. Roberts administered mouth-to-mouth resuscitation to the dying black leader after he was shot. Whether the police played any role in setting up Malcolm or instigating the conspiracy against him is yet to be seen.

Norman 3X Butler and Thomas 15X Johnson have thus far spent twelve years in prison for this crime they did not commit.

### Links Between JFK Documents and the Rosenberg Case

With the June 1976 release of FBI documents relating to the Rosenberg "atom spy" case, it became obvious that Judge Irving Kaufman, who had presided over the trial, was not the impartial jurist he pretended to be. The 30,000-page first installment of the FBI documents revealed, according to Harvard law professor Vern Countryman, out of court contacts between Kaufman, the prosecutors, and the FBI; continuing interference in the case after it left Kaufman's jurisdiction; and attempts to stifle criticism of the case. These documents have since become known as the "Kaufman Papers." The recent release of a second batch of FBI documents relating to the Rosenberg case further shows the continuing saga of Judge Kaufman's (now Chief Judge of the Second Circuit Court of Appeals) improprieties.

Apparently, Judge Kaufman's relationship with the FBI extended beyond the Rosenberg case and into the John Kennedy assassination investigation, according to an FBI memo from Cartha DeLoach to John Mohr. The document was dated November 25, 1963, four days before the Warren Commission was appointed. At that time there were rumblings in both houses of Congress about starting an investigation into the assassination. The FBI disapproved of such action, feeling that it alone should do the investigating.

The document refers to a discussion Judge Kaufman had with Assistant Director Malone in New York. It says: "Judge Kaufman referred to Senator Dodd and said he understands that the Senator feels there is 'more than meets the eye' in the matter of Jack Ruby killing Oswald.

"The Judge said he understood that Dodd intends to have someone look into the whole matter. Judge Kaufman also said he understood that the President had sent for Dodd or Dodd was to see the President soon concerning this matter."

The memo concludes by noting, "... Judge Kaufman wanted the FBI to know of the above for whatever significance it might have."

For more information about the Rosenberg case and Judge Kaufman, contact the National Committee to Reopen the Rosenberg Case, Rm. 606, 260 W. 57th St., New York, N.Y. 10019.



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up" meeting. "The Director commended Carr for his activity in youth movements and spoke briefly concerning juvenile criminality and the fact that parents should be held responsible for the crimes of their offsprings," according to a December 6 DeLoach memo. "The Director gave as an example of a bad environment the case of Lee Harvey Oswald. Carr agreed."

The three-cornered stand-off between Warren Commission, the FBI and the Secret Service over the autopsy photos and X-rays is illuminated to some extent by the recently released documents.

A November 26th memo from General Investigative Division chief Alex Rosen to Hoover's no. 3 man Alan Belmont provides the earliest reference to the photos and X-rays taken at Bethesda the night of November 22nd. "The Secret Service has advised our Baltimore office that the photographs of the autopsy and X-rays of the President's body would be available to us through Secret Service Headquarters, Washington, D.C." Under the heading "Action Recommended," Rosen then wrote, "It is not recommended that we request these photographs and X-rays through the Secret Service Headquarters at this time as it does not appear we shall have a need for this material. In the event such a need develops in the future, this material will be readily available at Secret Service Headquarters."

Later, when Warren Commission counsel Rankin began to inquire about the autopsy report from Bethesda, which was then still unavailable, he was told by the FBI that "the family of the President had requested the report from the U.S. Naval Hospital at Bethesda be kept as confidential as possible and for this reason the Bureau did not obtain the medical report for inclusion in the investigative report prepared by the Bureau. He was also told that this report was in the possession of the Secret Service. Rankin stated that it would not be necessary to do anything on this and that in the event Secret Service did not supply the medical report with material to be furnished by Secret Service, the Commission would request the medical report from Secret Service." It does not appear that the request Rankin speaks of was ever made, if, as seems likely, the phrase "material to be furnished by Secret Service" refers to the photos and X-rays. A week later, Rankin, still without the autopsy report itself (let alone the photos and X-rays), was still seeking information which could refute the published story that doctors in Dallas who examined President Kennedy had described the throat wound as a wound of entry. Hoover then approves the obtaining of a copy of the "autopsy report" (the photos and X-rays are now not even referred to) by the Bureau and the Commission, but the Director expresses his misgivings in a handwritten comment: "If the Warren Commission is going to re-run down every wild newspaper story it will never finish."

Some of the most interesting press accounts of the newly released documents have come under the by-line of Jerry O'Leary of the *Washington Star*. One such article is based on a November 27, 1963 memo written by FBI official C.L. McGowan, which concerns the FBI's overall investigation in the case of Ruby's shooting Oswald. The memo was based on an early headquarters review of the Dallas Ruby investigation, and gives a list of 26 points to be followed, including interrogation of Dallas Police Chief Jesse Curry, Captain Will Fritz (who had not yet been interviewed), and many other police officials. After pointing out that the case was considered a "possible civil rights violation" against Oswald, McGowan continued, "one of the prime considerations is whether Oswald was set up by the Police Department bearing in mind that Oswald would be regarded by the police as a 'cop killer'. The investigation cannot be conducted on the assumption that Oswald's death was just the result of a breakdown in security procedures."

The obvious significance of this memo was captured in the headline of the O'Leary story: "FBI Probed Dallas Police in Oswald Slaying." What is being suggested by at least one FBI official here is that the theory that organized crime figures ordered Ruby to silence Oswald (a theory which is now more fashionable than ever) is essentially incorrect. Rather, according to this view originating from within the FBI, because Oswald had (supposedly) killed Officer Tippit, the slain cop's comrades avenged his death by enlisting Ruby (a local fixer with hundreds of contacts in the police department) as a fixer. The theory unfortunately does not explain what motivated Ruby to take the assignment. Perhaps more importantly, the memo ignores the possibility of an alternative motive for the police to hire Ruby for the job: suppose they had knowledge that some of their own men were involved in the assassination and that Oswald knew that.

The FBI files do not contain any evidence to substantiate this theory. The Bureau did, however, seem to take McGowan's views on the Ruby case seriously. Orders from Hoover to Dallas on November 30th, for example, request "any indication that any person conspired with Ruby or that any police officer or other person having color of law conspired with Ruby or willfully permitted the shooting . . .". But the connections between Ruby and the Dallas police remain largely unexplored. One teletype, dated November 30th, begins "Re possible association between Jesse Curry, Chief of Police, Dallas, Texas, and Ruby." The remainder of the two-page document has been withheld.

Much can be learned from Hoover's handwritten comments on the memos written by his aides, the newspaper articles they clipped, the laboratory reports they commissioned, and the teletypes that went back and forth between headquarters and the various field offices. Frequently, these comments express criticisms by the Director of the way in which the investigation was being handled, in a way which sometimes suggests an attempt to get himself on record as advocating a more complete disclosure of information to the Warren Commission, but which consistently reflects a concern over the potential embarrassment of the Bureau.

In September 1964, when the Warren Report was released, Hoover's top aides reviewed it and wrote their comments. Alan Belmont noted that "in discussing the shooting of Dallas police officer J.D. Tippit, the Commission states that certain witnesses to this shooting were interviewed by the FBI 'two months after the shooting'. It is noted the shooting of the Dallas police officer by Oswald was completely a local matter within the jurisdiction of the Dallas Police Department and the Bureau did not attempt to conduct any investigation concerning this shooting." At this point Hoover writes: "Another instance of our unduly restrictive policy"—a phrase which he repeats verbatim when commenting on the FBI Laboratory's tentative identification of the assassination rifle as the "probable" weapon which had fired the bullet recovered from Gen. Edwin Walker's wall in April, 1963. In another part of the same memo, Belmont returns to the Tippit shooting, writing that, while FBI experts couldn't definitely link any of the bullets recovered from Tippit to Oswald's revolver, an outside firearms expert hired by the Warren Commission had managed to do so at least in the case of one of the four bullets. Beneath this Hoover scribbles, "Another 'dodge' by us."

Sometimes Hoover's judiciousness is astounding, as in the case of his response to a request from the Warren Commission in February 1964 to furnish a recording of every public appearance of Mark Lane and Marguerite Oswald. In a February 26th Intelligence Division memo, the Commission request is described as "extremely broad and if literally interpreted could pose a serious investigative burden on us

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