Ms. Jane E. Kirtley, editor
News Media and the Law
800 18 St., NW #300
Washington, D.C. 20006

9/23/85

Dear Ms. Kirtley,

If the Reporters Committee had set out to front for errant government and be as unfair to me and inaccurate as it could hope to get away with it could not have succeeded better than in your current defamation. Moreover, where you might have been usefully informative and given some meaning to what you published, by some effort at interpretation of this precedent - which is enormously more important to you and yours than it is to me - you abdicated entirely. If this precedent stands then all of you who seek government information will be put to very great cost when the government has sufficient motive for withholding.

From the selection of a great amount of information and more, from what is omitted, I think it is not unfair to believe that your reporter spoke to the government's lawyers. I was not spoken to. This belief is advanced by the fact that of all the reasons I gave for refusing to comply with a fraudulent and perjurious effort by the government, you refer to one only and you misrepresent that. There are legitimate and recognized reasons for refusing to comply with discovery and not a single one of that I gave was even disputed. It therefore is apparent that your reporter's source is not the case record. The only alternative is deliberate dishonesty, deliberate misrepresentation and deliberate defamation. You have defamed me.

I do not use the words "fraud" and "perjury" loosely. Your reporter's knowledge of the case record is so entirely nonexistent that you make no mention of the fact that I have made these charges formally, myself subject to penalties if I am not truthful, and they lack even a pro forma denial. The reason is obvious, as again the case record leaves without question: my proof is the FBI's own records. In my reporting days, long ago, this would have been news, if not to the major media, then certainly to any committee of reporters who are not subject to desk diktats.

As you should know, FOIA requires agencies to begin with a search for the requested information. In this litigation, the FBI has yet to make that search. In a moment of abberational honesty it even swore that it had not made any search in the FBI's Dallas field office when it had claimed complete compliance and in New Orleans it provided handcopied search slips prepared and dated a year before I filed my request and not prepared in response to an identical request. There is much more on this but this ought be enough for those of you who have any knowledge of FOIA at all.

The government requested and got time it claimed to need to process the records and it stretched that into four years. Under a 10-day law. During that time, and by the request of the Department of Justice, I filed a long series of documented appeals. I am a recognized subject expert and the amount of this information that I provided to the Department in two cases actually fills two file cabinets to the point where I cannot get any additional records in them. One of my reasons for refusing to provide the requested "discovery" is that I have already provided all the information of which I am aware and another is that it is physically and financially impossible for me to rexerox that enormous amount of paper. Another, obvious from this, is that the government didn't need the information I had already provided and had totally ignored it. Thus, as I without dispute alleged, it was playing dirty tricks on me.

You refer to the appeal, yet again you cannot have read the case record there. To be able to establish still another precedent, that lawyers are responsible for the acts of their clients when the clients refuse to take their advice - you sure erred here - it alleged but never really spelled out miscounduct to my lawyer, Jim Lesar, sort of conspiring with me to be so bad he might even be disbarred. It then told

the appeals court that the district court had "closely observed this throughout the five years of the litigation," quote approximate. You say that Lesar told me not to respond to the interrogatories. This is the exact opposite of the truth. He tried his best to get me to make a gesture at pro forma compliance but that, for a number of reasons, including opposing precedent that can be so hurtful to you, your counsel and others, I refused to do. Now, how closely could that government rubber-stamp of a judge John Lewis Smith have "closely observed" my conspiring before him with my ~~hired~~ lawyer?

He never saw me with him a single time in all that litigation. I wasn't there!

The appeals court is no ~~less~~ more concerned with official mendacity to restrict freedom of information than the major media or your committee. Even when it was informed that it was physically impossible for Judge Smith to have observed me because for reasons of health it was physically impossible for me to be there, and that even if I had been, there was not even a calendar call before the judge for the first four years which the government used to stall the case, it was totally silent. Not even a whisper of complaint against a government lawyer who would fabricate so gross, deliberate and prejudicial a lie.

Following acute thrombophlebitis in both legs and thighs, which ruined the veins in both legs and thighs, I had successful arterial surgery but that was followed by two serious post-surgical emergencies which required additional emergency surgery both times and as a result I am left seriously handicapped, with severe limitations on my mobility and even my ability to use a single flight of stairs. (All the records in question are in my basement, more than 40 file cabinets I'd have had to search to comply with the "discovery" that at best was excessive. The government did not need to know "each and every" reason or document showing it had and withheld relevant records. If it had a single proof on any point that would have been more than adequate if there had been, as there wasn't, any need for it.) I can't get to Washington. I can't drive my car for more than 20 minutes at a time, can't use the poor Greyhound service, and can't even get someone to drive me there because I can walk only about a city block at a time and can't stand still for more than a minute. And the government knew all of this when it made up that enormous lie to prevail at the appeals level, as it did. Moreover, the case record reflects that I was not with my lawyer for a single one of the status calls.

Burdensomeness is another recognized reason for refusing to comply with a discovery order. On the face, any demand for "each and every" reason and document is excessive and burdensome. And it is not disputed that retrieval of the alleged discovery demanded, no matter how the quantity is reduced from what was really demanded - and I'd have had to swear to - with my physical and medical limitations would been burdensome, beyond my ~~capacity~~ capabilities.

There is more but this ought be enough to indicate how inaccurate, how unfair and how inexcuseable, particularly from a reporters' committee, your article is on my refusal to comply with an unjustified order.

You engage in what amounts to official propaganda in your representation of what the FBI told the court were its reasons for demanding discovery. It swore, on the one hand, that it had complied and that my discovery would prove it, which it knew was perjury and impossible, and on the other hand, that it needed my subject matter expertise to be able to locate any relevant records not provided. Without refutation, I swore, myself subject to the penalties of perjury, that the FBI in this swore falsely.

Meanwhile, when the government moved against Lesar it created a conflict of interest so he could no longer represent me and I now represent myself because I have no other possibilities.

While this case was before the appeals court the same FBI started disgorging, by the order of another court, records relating to the investigation of the JFK assassination to another person who happens to be a friend of mine since his undergraduate days and in those records is an abundance of FBI records that leave it entirely without dispute that the FBI swore falsely, knowingly falsely, to Judge Smith. I have presented my own motion, with a selection of those FBI records as attachment, and I have formally charged fraud, perjury and misrepresentation. The government did not even dispute these charges and, indeed, it not only cannot, it dare not, for it dares not do anything that will attract any attention to the irrefutable proof of its own felonies.

(Reference to this younger friend reminds me that in claiming burdensomeness I reminded the court that in addition to being seriously ill and handicapped I am 72 years old. Another element was meeting the costs from my income, $356 Social Security.)

I have filed the same charges with the Department's official whitewasher, its (ugh!) Office of Professional Responsibility and with the United States Attorney for the District of Columbia. DiGenova is, in fact, signatory to the perjurious records filed to perpetrate a fraud and I asked him to recuse himself. Neither of these exemplars of what is best in government service has responded, and they've had plenty of time. They don't have to with the kind of press and press attitudes they live with. Ask yourself if you reporters do not license them to pull anything they want to when the kinds of entirely undisputed facts I report herein have yet to be regarded as news by any of you. Your committee included, because I personally sent it the first papers I filed and I've sent about a dozen and a half copies of all I filed.

The government's discovery fraud does not even have the origin you attribute to it. Judge Smith asked counsel to try to compromise the case. My lawyer phoned me and I repeated an earlier offer, to dismiss the case myself subject to the rights of others to seek information not processed for me. I also offered to waive any Vaughn indexing, and you ought know it is required, costly and greatly time consuming for the government, but the FBI agents and the Department lawyer rejected this offer out of hand, without consultation with anyone above. I am involved in litigation since my serious illnesses only because the government refuses to protect the rights of others to seek information not processed for me in this and in the Martin Luther King assassination cases. I've been trying to end the litigation. They won't permit it without blanket right to perpetual exemption for undisclosed records in these historical cases. When Judge Smith was surprised that it would reject so generous an offer of settlement the FBI came back with its discovery ploy.

You refer to me as an historian and I guess my two decades of work do make me that. However, I am a writer. The FBI's own records, in the case record, show that it decided to "stop" - its word - me and my writing in 1967 and up to J. Edgar Hoover the filing of a spurious libel suit against me by an FBI Special Agent to tie me up in court was approved. He chickened out. It has been doing this in a different way since the 1974 amending of the Act, which the legislative history of the amending attributes to my perseverance when faced with earlier FBI mendacity. (When a private citizen made the system work, that also wasn't newsworthy so you'll have to go to the Congressional Record to confirm this but I can give you another judge's paraphrase of it.) As the case record, always unrefuted, also shows, there followed a long series of FBI defamations of me, some misrepresentations and some outright, fabricated lies, and they were given wide distribution, up to and including the White House, attorneys general and the lawyers opposing me in court. An example is telling Lyndon Johnson that my wife and I annually celebrated the Russian revolution with an outing for 35 strangers at our home. It was not at the time of the Russian revolution, it was at a farm we then had, and it was a religious gathering

after the Jewish high holidays, which are now. However, from the tone and content of your article, I have no reason to believe that if your reporter had looked at the case record you'd have had any interest in the FBI deciding to "stop" a writer and his writing.

Unlike almost all the others working in my field I am not a conspiracy theorist, pursue no whodunits but, like historians do, I have made a definitive study of the functioning - and malfunctioning - of our major institutions in those times of great stress and thereafter. It is obvious that all our institutions failed, and I hope you will agree that the assassination of a President is as subversive a crime as is possible in our society. As a former reporter I regret very much that the press in particular has failed. It failed when complete and accurate reporting at the times of the crimes was essential to our society, it failed when it was uncritical of the untenable official investigations, it failed when it permitted itself to be corrupted by prejudicial leaking, and it has failed ever since in its steadfast refusal to treat what I have forced out of oblivion as the news that by any traditional standards it is. And what I've brought to light in this litigation alone is truly shocking. And, incidentally, it is all available to anyone here and will be in the future at the already begun university archive. I regret very much that by this kind of so-called reporting your committee has seen fit to perpetuate its and the failings of the press in general and, as in the past, has turned it into additional defamation.

I apologize for my typing. I may not sit with my feet down and I have to keep them elevated while I type sort of side-saddle.

With regrets,

Harold Weisberg
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P.S. It also is inaccurate to report that I alleged that under any and all circumstances discovery is inappropriate in all FOIA cases. I said that it is inappropriate in this litigation.