5/8/71

Dear Jim,

Your spectro mailing did come yesterday. I got it on my way to Baltimore for the conference with the US Atty in the judge's chambers. By and large that went very well. The judge, politely, told them they had to stop stalling and insisted, also politely, that with my offer to make everything available, the assistant had to take time from his other work to come out here and get what he wants, both in documents and explanation, that this case must proceed, that I had been denied my rights as long as he'd tolerate, and that he was setting the case for fall trial, by which time, if there is to be an out-of-court settlement, it must be accomplished. The assistant (ransom Davis, the most junior of the junior) if to be here all day Wednesday the19th.

I was so tired alst night I fell asleep reading after supper, so the following comments may be inadequate. There may be things I didn't catch.

You do not identify Wrone. However, if this deals with Esquivel, I'll not touch any part of it now, in any way. When I can get in and out of NO fairly fast, perhaps I will. I suggest you make your own reading on total silence on that score. There are things here you may or not fully comprehend, but the presence of boys among us may get them and the men killed, and that is not conducive to getting the work done.

On the spectro: What you sent me is one part. I don't know what is in the rest. By and large it is very good, and some of the phrasing is much to my own taste. There are a few points that I make for your future knowledge, it now being academic (consistently, I've never been consulted until too late). Under A, scientific tests, I think the part of the Baltimore decision (Wellford? Wellborn.) that you missed and I called to your attention should have been included.

B. It is not just "some" of the asked-for analyses but all of them that are in the WC published record, and not just in testimony (how much does Smith know?). Hoover also wrote a letter which, while addressed to the crubstone, also addresses the rest. It is in WW.

You do not (p.8) understand what I think the FBI is now calling its JFK assassination file. What none of you understood in the Boggs memo is that Hoover has always laid his own second line. What he gave and interpreted is inconcistent with the WC conclusions. In this light reread his testimony that I have at the end of WWII and called to Bud's attention, that they would never lose their interest in the subject. That is the only file they have on this, aside from what they did for the WC, and it can't be for law-enforcement for the murder predated the law. While you get to this later, you might have had it here also. Which mreminds me, you have not addressed the new Mitchell out, first advanced in 718-70, that the exemption is not mandatory, that he can waive it. Here you could have had some fun and answered him as well.

Bottom 10, again where was Bob, and how did you miss this in my memos: Gallagher did the analyses, all of them. And the thing I showed Bud so long ago, in Nichols, they sued Jevons, who claimed competence.His affidavit is perjurious, therefore they could not again use him. Best evidence on what the spectro shows can come from Gallagher only, and he is available. Interpretatations are a different matter, but they can't come from a Williams.

11, middle. What Curry prints was also printed by the WC. Bottom. After tests, there should be two qualifications, first at the order of the President and under conditions Hoover himself swore were not for law-enforcement and then for the WC, which had no

such purposes. So these tests were not made for the alleged purposes by the FBI but they could not have been, there being not even the legal justification for spending a cent or a minute this way, as Hoover himself makes clear, and under oath. In the lasy line, it is not the "unlikely" event (which I know can have been intended as a literary device, but a total and complete impossibility, which is stronger and not a devoce. There is no possibility at all that the spectros could in any way involve any informant. I am sorry you did not use what I gave Bud immediately when I saw the Williams affidavit. I think it possible that handled toughly the appeals court, with the right judges, might have dealt with him, it and the attorney's responsble,for this is an enormous deceit and a considerable and knowing imposition on the courts (remember Hart on Kleindienst on the peace marchers?)

Page 12, under IV. This is too understated. It is not only that the government fails to state its law-enforcement purposes but they were non-existent, there having been no federal jursidiction with one possible exception, and that is ruled out by the facts: for the Secret Service. This was not then a federal crime and again Hoover's sworn testimony shou,d have been used. In the light of the current attitude toward Hoover, I think it a serious tactical error not to have bludgeoned them with polite referenfes, never ending, to his own sworn testimony which is 100% opposed to this representation.

Last full paragrpah, again JEH's testimony. There was no such purpose, and the ex pist facto allegation of it could have hurt them. The original work, for the President, was not for this purpose. It was, explicitly, to report to the President what had happenened. When within a week there was the WC, it was to assist the WC. And the last part is explicitly outside the purview or capability of either, only partly gone into elsewhere.

Page 13, middle, what is missing again is in Hoover's testimony, that the FBI did not even have jurisdiction and Hoover is quite specific that when they invoked the authority the President may have, it is outside law enforcement.

14: again, what is needed is the explicit truth: Presidential Commissions do not and cannot have law-enforcement purposes. So, the non-law-enforcement purposes persisted from the very first, from within the first 24 hours. And what is not addressed and you may have to face if DJ ever thinks of this, is that the FBI may be empowered to assist in local criminal law enforcement. I think it would have been better to beat them to it, to point out that they do not even allege this intent or purpose.

My point here is to prepare you for the future, not criticize. I strongly encourage you to go over all the very considerable work I to this point have wasted on Bud's requests, and read and carefully note what I did do. If you have any questions, ask them now. Do not keep on postponing this until it is too late. If there is any doubt about anything I then did, which was always rushed, let us resolve it before you are in court, not with regrets, as has happened every time to now, even in Memphis. We must at some point learn from our own errors. And if at any point before trial you want me to go over this or any of the other papers with more care, ask me in plenty of time. I'm reordering my own priorities.

You realize I am writing you at home and not sending this to that booby-hatch where you work. I meant what I said in the letter I wrote you and to which I do not expect response. I do expect action, as with the immediate combing of thise files for the return of everything that came from me, no matter how indirectly. You realize that when I raised hell about this a year ago and you all gave your words and Bud the orders, it eas not done. The current insanity is too much. It must be done immediately, and I could not care less what has to be given up for it. Aside from your own legal work, the rest amoints to nothing anyway. By the way, I have read Hal's memo and I will discuss it with you whenever you want, but not in your offices. I will stay away from there to the degree possible. And I do want my set of the CD s as soon as possible. I want to work with them and I've been

wanting to in odds and ends of time. There has been no real urgency, and there is not at this minute, but I am going to return to writing as soon as I can and on the subjects covered in them I will, of course, require knowledge ofwhat is it them. While I will welcome copies any any conclusions and interpretations others may make of them, I also want you to know I will not again give the CTIA any of my one. With you, personally, that is an entirely different matter. I will maintain a separate numerical file and a separate set of notes with that. You will always have access, but on a personal basis only. We will be luckt to survive the amalgam of egos, stupidities, immoralities and straight insanities of which the reaction to your efforts on the oggs memo ought be all you need. Here I strongly recomment that you send a copy of that thing to two people, asking confiden tial comment and not telling them what I have said of it. They may or may not see it either factually or politically as I did and they may not go into the fineness of detail in tearing it up, but I think that if it is at all possible to reach Bud and Bob, this could help. These are Paul Hock and Sylvia.

I strongly encourage you to see to it that I have every scrap from and on Ray. There is much I've had to withhold from all of you because the nuts are in control. This is an extremely hazardous situation, and I think it wisest to interpret the latest development in these terms, not in those of his past, regardless of which may be the case. Where there id any chance that your associates may share with theirs, where there is the slighest prospect of their misuse or sending Smith off on other futilities for which he is entirely unprepared. I simply will not give anything I get from him, again the exception, to you, on a personal and confidential basis only. I am aware of the position you are in. I told you of it a year before you came to understand it. I do not want to make it worse, but I can't permit these zanies to ruin everything and perhaps get people killed. I will no longer permit the imposition of their irrationalities, egos, ignorances or predeter-minations. I will help in every way I can, but this time under my own conditions. I have had too much of this going to wierdos and too much of it getting out at all, aside from my complete lack of trust in Bud's or Bob's judgement. I want you to know that I have carried far forward some of the things I've indicated to you in outline only. I now can all over again break the whole thing wide open. Aside from the fact that this is my work and legally my property, and I will never again permit Bud (excuse the bluntness) to steal it, I want to be able to continue. I jow have what can adcomplish something, and I will not jeopardize it. I am sharing it with others I trust, unknown to you, so there is security, and I will discuss it with you in detail, with the understanding you will discuss it with nobody. More, if the legal eagles ever really need it, they will have it immediately. I have again done what Bud tried and failed, and please do not needle him with this or even indicate it to him. It may or may not provide new missing links, but I will pursue that in my own way and time. But believe me, Ray is in great jeopardy as soon as there is possibility of a tiral even more. Officials have acquitted him, it is that much. And I've put that hat on Hoover. Because I do not believe for a minute that the FBI wa responsible for the crime, you can see that there are many interests to be served by hurting us or Ray, not just narrow ones. Too many to trust sick minds with the proofs.

My schedule: I may be in DC the early part of the week. I go to Wilmington 5/13. I expect to return 5/14. I may have people here. If I do, they are trustworthy. I have a oncference here with the US Atty Balt. 4/19. And because of the very considerable emotional drain of the unfortunate combination of the CTIA insanities and the abdications of the publishers, I must again find time for medical consultations. They combined have had an effect on me...I expect the Times to do something about the Kaplan review. I have been in correspondence with Barkham, Gertz and their publishers. I have more pictures in my possession. And if there is any way you can accomplish it, shut Sprague's kith, 100%. Some of these pictures relate to that.

Ehether or not long communications from me have any value to you, do not expect any more of them. I simply can't and won't take the time. The history of the enormous amount of time I've completely wasted in them in the past, only to have them ignored and serious mustakes that cannot be excused the undeviating consequence is not the only reason I am going to find time, somehow, to return to constructive work of my own. I can't spend all this time that I have trying to help those incapable of being helped. But there are some thing that, while I'm at it, I want you to know.

On what I regard as a total unconscionable theft in that boggs things, copy to those who live on such things, if it is used, I will do the book I've mentioned to you in the past, "The Mardi Gras Silutions to the Political Assassinations". And I will gut all the nuts and selfpseekers, on both sides. I will do it not from vindictiveness, for the part on Mark is done and nobody has seen it. I will do it somply for our own survival. Preliminary inquiry on this trip to New York is encouraging. And if Sprague does any more of what he has, what he has published and what he has recently threatened, I may on that basis alone be tempted. For it will mean that he is entirely out of control. You may be too young to remember, but Putzi Hanfstaengel, one of Hitler's closest, was one of the most personable and pleasant and friendly of men. But he was a powerful Nazi, and none of this prevented the harm he did.

I was not able to reach the man who can decide on the book I plan to do next if this is all kept quiet, so I do not have the answer for which I'd hoped. I may decide to go ahead with it ajyway, on prospects alone. If Zprague, for whatever reasons that satisfies him, ruins any part ofit, he will not live long enough to forget what I'll do to him. Please believe me, I've had it, and this is the end of my taking it. I will not be dominated by nuts, paranoids, self-seekers, underinformed egos or any more pleasant descriptions you may prefer to assign to him and his associated strange ones.

As soon as you can please let me know when the search of your files and the return of my materials, from whatever source, including Garrison, will be completed, and when I can expect a letter alone the lines I asked and a year ago was agreed to to be sent to all who have had access to any of the files. I did speak to a alwyer when I was in New Yorkmand I will be proceeding against Meredith and Dell. If Flammonde knows what is good for him, and I'll not speak to him, he'd best tell Meredith the truth, for I have an open-and-shut breach of contract case against them to begin with and their verbal acknowledgement of it and their horror at what Flammonde had done on tape. At some point, remembering the recent about Vidkick Christian, Bud had better decide that the opposite of what I tell him about people ought not be his opinion, and that he ought know something about them in any event before he elects them as friends and associates. He knew all about Flammonde before he got him to join the committee. I asked Bud several years ago to handle this case against Meredith. How he can fly into the face of all reality I just can't begin to understand.

Sincerely,

old: DRAFT

plan To add This
few things To This
right and perhaps Take
some, but not much
either, except To
correct some sloppiness. Jim

I. THE "INVESTIGATIVE FILES" EXEMPTION OF THE FREEDOM OF INFORMATION ACT CANNOT BE EXPANDED TO INCLUDE ALL FILES OR ALL MATERIALS IN A FILE COMPILED FOR OR DURING AN AGENCY INVESTIGATION, WHETHER FOR LAW ENFORCEMENT PURPOSES OR NOT, AND THE COURTS HAVE SO HELP.

Soon after the Freedom of Information Act was enacted, a noted authority on Administrative Law made a "Preliminary Analysis" of it. In discussing the "investigative files" exemption, he stated:

> "The chief problem of interpreting this exemption will stem from the fact that investigations are often for multiple purposes, for purposes that change as the investigations proceed, and for purposes that are never clarified."

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> "The Act is faulty in its use of the unsatisfactory term "files." Much of the contents of investigatory files compiled for purposes that may include law enforcement should not be exempt from required disclosure." Kenneth Culp Davis, "The Information Act: A Preliminary Analysis," University of Chicago Law Review, 34:761, Summer, '67. (Emphasis added)

The Government, at least in the instant case, has taken the opposite position. The Government begins its argument by asserting flatly that: "It is not open to context that the spectrographic analyses sought are part of the file compiled

by the FBI on the investigation into the assassination of President Kennedy." (Government brief at p.3) That is, of course, not the same as saying that the spectrographic analyses are part of an investigatory file as that term is used by exemption (7) of the Freedom of Information Act. However, from other passages, it does appear that the Government claims exemption (7) immunity for all FBI files. Thus, the Government brief states that "FBI files were mentioned in the legislative history as the classic example of material which exemption 7 protects from disclosure" and then quotes one of the bill's supporters as saying:

> "[t]he FBI would be protected under exemption No. 7 prohibiting disclosure of "investigatory files'" and the bill "prevents the disclosure of ?***** 'sensitive' Government information such as FBI files****."
> (Government brief at p.4)

As quoted, this statement is certainly open to the interpretation that if the material in the FBI files is not "sensitive" it is subject to disclosure. That interpretation is buttressed somewhat when the ellipsis in the quote is filled in. The speaker is then heard to say:

> ".... The bill also prevents the disclosure of other types of "sensitive" Government information such as FBI files, income tax auditors' manual, records of labor-management mediation negotiations and information a private citizen voluntarily supplies. [Vol. 112, Part 10, Cong. Rec. 13y59 (1966)].

It is worth noting that the "other types of 'sensitive' Government information" (emphasis added) listed refer to specific kinds of records and information and do not indicate a blanket protection of any and all files kept by an agency.

Nor does any of the other legislative history indicate that the Congress intended that the FBI or any other agency should be able to label all its files "investigatory" and thus prevent their disclosure. In fact, the Senate Report on Exemption No. 7 says:

> Exemption No. 7 deals with "investigatory files complied 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. (Sen. Rep. No. 813, 89th Cong., 1st Sess. p.9)

This note on Exemption 7 makes it clear that the legislative intent was to extend protection to only certain types of investigatory files: Those which were prepared by Government agencies "to prosecute law violators" and whose premature dis-

closure "could harm the Government's case in court." Thus, explicitly the "investigatory files exemption" was not intended to cover "investigatory files for law enforcement purposes" if those files were available by law to a private party, as under the Jenks Act or Rule 16 of the Federal Rules of Criminal Procedure, and there are strong indications from the legislative history alone that the exemption cannot be invoked, or at least not justified, if the disclosure would not present a specific, expandable threat to the law enforcement operations of the FBI.

As will be discussed in more detail below, the courts have already laid down several criteria which help to determine wheteh or not the "investigatory files" exemption is being properly invoked in the instant case.

Before passing on to a consideration of the court holdings. however, Weisberg would like to note some egregious inconsistencies between what the Government practices and what it preaches with regard to the disclosure of investigatory files. In the recent past the Government, by which we mean here the Department of Justice, has taken the position that the affidavits and evidence introduced into the court records in London in connection with the extradition of James Earl Ray were not accessible to Ray; and the Department of Justice denied them to Weisberg when he sought them under the

Freedom of Information Act on the grounds that they were "part of investigative files compiled for law enforcement purposes." (See letter of Nov. 13, 1969 from Deputy Attorney General Richard Kleindienst which is part of the record in Civil Action 718-70, U.S. District Court for the District of Columbia).

While the Justice Department has on the one hand maintained that public court records can qualify for the investigatory files exemption, it has on the other hand authorized the dissemination of great quantities of the FBI's files on the investigation into President Kennedy's assassination. However, much of the material disclosed should never have been released as it defamed innocent parties, invaded personal privacy by recounting allegations that certain named persons were homosexuals, alcoholics, or suspicious characters, and released the personal medical and psychiatric records of many persons, including some 40 pages which consisted of the medical records of Marina Oswald's pregnancy at Parkland Hospital.

What emerges from this is an indisputable inference that the Government applies a kind of Procrustean torture to the exemptions from disclosure which are part of the Freedom of Information Act. Where court records and scientific tests like spectrographic analyses are sought, the Government stretches

exemption 7 to the point that even these are claimed as "investigatory files," where defamatory, libelous, and privileged persohal records are concerned, the Government lays off all exemptions in a manner which suggests that it intends to lay their bloody stumps to rest on a bed built for Lilliputians, for this way the Government is in the unique position of being able to maim both the public and the private interest simultaneously.

Thy hypocrisy in the Government's position will become more evident as we elaborate below on the areas where courts have held that various types of "investigatory files" cannot be accorded exemption (7) protection.

A. SCIENTIFIC TESTS, SUCH AS SPECTROGRAPHIC ANALYSIS, WHICH JEOPARDIZE NO INFORMANTS AND REVEAL NO SUSPECTS, ARE NOT PROPERLY WITHHELD UNDER THE "INVESTIGATORY FILES" EXEMPTION.

In Bristol-Myers v. F.T.C., 424 F.2d 935 (1970), this court had occasion to construe exemption (5) which protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." In construing this exemption the Court held that:

> "Purely factual reports and scientific studies cannot be cloaked in secrecy by an exemption designed to protect only "those internal working papers in which opinions are expressed and policies formulated and recommended." (424 F.2d 935 at 939)

Ifthis is true for inter-and intra-agency memorandums, it ought to be equally true for investigatory files. The legislative history shows that the primary purpose of the exemption is to prevent any premature disclosure which might harm the Government's case in court.(1)

However, in the present case, there is no chance of premature disclosure which would jeopardize the Government's case in court, for the Government has not claimed that it has any prospect of a case against anyone other than Lee Harvey Oswald, who is now dead. In addition, scientific tests such as these spectros are routinely made available to defendants under Rule 16 of the Federal Rules of Criminal Procedure and the Jenks Act, and they have already been used publicly in testimony before the Warren Commission.

Finally, such scientific tests jeopardize no informants and reveal the identify of no suspects. There is, therefore, no possible legal justification for their continued suppression.

B. TESTIMONY GIVEN BEFORE THE WARREN COMMISSION IN REGARD TO THE SPECTROGRAPHIC ANALYSES SOUGHT BY WEISBERG MADE THEM PART OF THE PUBLIC RECORD AND THEIR COMPLETE DISCLOSURE IS THEREFORE REQUIRED UNDER THE AUTHORITY OF AMERICAN MAIL LINE, LTC. V. GULICK.

POST IN JOH LTR

Testimony was given before the Warren Commission in regard to some of the spectrographic analyses made in connection

with the investigation into President Kennedy's assassination. In addition, some of the spectrographic analyses made by the FBI in conjunction with that investigation were given to Dallas Police Chief Jesse Curry, who then published them in his book, JFK ASSASSINATION FILE.

In American Mail Line, Ltd. v. Gulick, 411 F.2d 696 (1969) steamship operators brought an action under the Freedom of Information Act to compel the Maritime Subsidy Board to disclose in toto a 31-page memorandum which the Subsidy Board had relied upon in issuing an order requiring steamship operators to refund several million dollars in subsidy payments. The Maritime Subsidy Board had clipped the last 5 pages of this 31-page memorandum and "recorded it as its own findings and determination in the matter. ....."

The Maritime Subsidy Board refused disclosure and claimed that the material sought was exempt under 5 U.S.C. 552 (b)(5) as an "intra-agency memorandum." This court rejected that contention, saying:

> "We do not feel that [the Maritime Subsidy Board] should be required to "operate in a fish bowl," but by the same token we do not feel that [the steamship operators] should be required to operate in a dark room. If the Maritime Subsidy Board did not want to expose its memorandum to public scrutiny it should not have stated publicly in its April 11 ruling that its action was based

> upon that memorandum, giving no other reasons or basis for its action. When it chose this course of action.... the memorandum lost its intra-agency status and became a public record, one which must be disclosed to appellants."

Weisberg asserts that this court ought to apply the same principle to the investigatory files exemption in this case. The use of the spectrographic analyses before the Warren Commission requires that they now be made completely public. To do otherwise would put the American public under the tyranny of the FBI technocrats. The Senate report on the Freedom of Information Act characterized the purpose of the Act as follows:

> "Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without information as the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both." (Sen. Rep. No. 813 at 2-3, cited in American Mail Line, Ltd. v. Gulick, supra, at 699)

Nothing could possibly be more relevant to such a purpose than the right of the American people to inform themselves as to how a President was assassinated or to what extent Government agencies have covered up the truth about that event.

III. AFFIDAVIT OF FBI AGENT MARION WILLIAMS WAS NOT MADE ON PERSONAL KNOWLEDGE, SET FORTH SOME FACTS SUCH AS WOULD NOT BE ADMISSIBLE IN EVIDENCE AND DID NOT SHOW AFFIRMATIVELY THAT THE AFFIANT WAS COMPETENT TO TESTIFY TO MATTERS STATED THEREIN.

The afidavit executed by FBI Agent Marion E. Williams is defective in virtually every statement it makes. Basically, it attempts to use the prestige of an FBI agent to establish that the spectrographic analyses sought by Weisberg "were conducted for law enforcement purposes as part of the FBI investigation into the assassination." Such a statement, however, asserts a legal conclusion. FBI Agent Williams is not competent dto testify as to legal conclusions, nor is it proper for any affidavit to state legal conclusions. This alone should have been grounds for the court to have stricken the affidavit from the record.

Furthermore, the affidavit does not show affirmatively that Agent Williams is competent to testify in regard to factual matters connected with spectrographic analysis. The affidavit does not state that Agent Williams is a spectrographer or is attached to the spectrographic unit of the Physics and Chemistry Section of the FBI laboratory, nor if so, how long he has been there. For ought we know, this agent's sole field of expertise may be in the science of distinguishing one type of tire tread from another. But Agent John Gallagher, who testified before the Warren Commission, stated that he had been assigned to the Spectrographic Unit for the greater part of 18 years. (Vol. XV, 0. 746).

WHO DID SPECTROS

There is nothing in the affidavit or in the Warren Commission Hearings volumes which suggests that Agent Williams has personal knowledge of the spectrographic analyses. Indeed many of the statements in his affidavit would tend to indicate the opposite. Paragraph 4 of his affidavit flatly states that:

> "The investigative file referred to in paragraph "3" above was compiled solely for the official use of U.S. Government personnel. This file is not disclosed by the Federal Bureau of Investigation to persons other than U.S. Government employees on a "need-to-know" basis."

Notwithstanding such claims, some of the spectrographic analyses made in connection with the FBI investigation into President Kennedy's murder are reproduced in a book by former Dallas Chief of Police Jesse Curry, entitled JFK Assassination File.

Paragraph 5 is an incredible agglomeration of wild speculations and baseless allegations. Weisberg does not seek the "raw data" as FBI Agent Williams states, but rather the reports which statethe results of the spectrographic analyses. In any event, how can the release of scientific tests like these spectrographic analyses possibly expose confidential informants? How could it possibly disclose the names of any witnesses or suspects? Agent Williams seems not to have grasped the fact that Weisberg seeks only the reports of scientific tests conducted by the FBI. In the unlikely event that these reports jeopardized informants,

witnesses or suspects, their names could be easily deleted.

In short, the release of any spectrographic analyses which have not already been released can not produce any such phantasmagoric results; it can, however, determine whether all the bullets fired at President Kennedy were from a single rifle, and therein, perhaps, is where the Government's real fear lies.

IV. GOVERNMENT HAS NOT SUBSTANTIATED ITS CLAIM THAT THE FBI INVESTIGATION INTO THE ASSASSINATION OF PRESIDENT KENNEDY WAS CONDUCTED FOR A LAW ENFORCEMENT PURPOSE.

HAD NO LAW AUTHORITY IN ANY EVENT-NOT FBJ CRIME

The Government asserts that in its investigation into the assassination of President Kennedy, the FBI "clearly was acting for 'law enforcement purposes' within the meaning of the Public Information Act."

However clear this may be, the Government fails to cite any statute or other authority to substantiate it. Instead, the Government invents a law enforcement purpose: "A purpose of that investigation..... was to ascertain who had killed the President so that he or they could be apprehended and brought to justice."

NOT IN W.C. AUTH.

It may be noted in passing that Lee Harvey Oswald, the Government-proclaimed "lone assassin," had already been appre-

hended by the time that President Johnson had requested the FBI investigation. Whatever else the President may have intended the FBI to do, apprehension of the assassin was not among them. More importantly, however, the President of the United States could not in any case, completely on his own hook, create a law enforcement purpose where none existed. It takes a Congressional enactment to do that, and because of the President's assassination, one was eventually passed.

FBI Director Hoover in his testimony before the Warren Commission stated that President Johnson had requested that the FBI make a "special investigation" into the assassination. The very wording - "special investigation" - suggests that it was conceived from the very beginning as something apart from the FBI's normal "law enforcement" type of investigation.

FBI HKD NO JURISDICTION

Moreover, the FBI's investigation into the assassination was done for and as the agent of the Warren Commission. On November 29, President Johnson appointed the members of a Commission which was to "ascertain, evaluate, and report upon the facts relating to the assassination of the late President Kennedy and the subsequent violent death of the man charged with the assassination." The purposes for which the Commission was convened were express, specific and limited:

> "The purposes of the Commission are to examine the evidence developed by the Federal Bureau of Investigation and any additional evidence that may hereafter come to light or be uncovered by federal or state authorities; to make such further investigation as the Commission finds desirable; to evaluate all the facts and circumstances surrounding such assassination, including the subsequent violent death of the man charged with assassination, and to report to me its findings and conclusions. (Executive Order 11130, Nov. 29, 1963).

SAME AS PRE. W.C.

There is not a word in this Executive Order which indicates a law enforcement purpose. The order is to prepare a report to the President, not to apprehend or prosecute assassins.

Senate Joint Resolution No. 137 which was enacted one Dec. 13, 1963 was a resolution:

> "authorizing the Commission established to report upon the assassination of President John F. Kennedy to compel the attendance and testimony of witnesses and the production of evidence. (Public Law 88-202, 88th Cong., S.J. 137, Dec. 13, 1963).

S. J. 137 made it very clear that theCommission was not intended to apprehend assassins for law enforcement purposes. Section (e) of that Resolution stripped from witnesses brought before the Commission their 5th Amendment privilege against self-incrimination. Section (e) further stipulated:

> "... but no individual shall be prosecuted or subjected to a penalty or forfeiture (except demotion or removal from office) for or on account of any transaction, matter, or thing concerning which he is compelled after having claimed his privilege against self-incrimination, to testify

> or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

From this it may be justifiably inferred that the Warren Commission was established in order to establish the truth about the circumstances surrounding the assassination, rather than as an instrumentality for apprehending assassins.

The Govenrment has consistently maintained that no statutory authority is needed to establish a law enforcement purpose. In the court below the Government invoked "natural or human" law as sufficient to establish a law enforcement purpose. Before this court that claim has been dropped for the newly-invented fiction that the FBI was out to apprehend assassin.

Weisberg is not alone in his insistance that exemption cannot be claimed by an agency where it has no statutory basis for claiming enforcement powers. An article in Georgetown Law Journal has discussed the legislative background to the investigatory files exemption, saying:

> "When exemption (b)(7) was introduced into Congress, there was much criticism by the agencies that it was too narrow, and Congress was repeatedly urged to expand its scope." ["Freedom of Information: the statute and the regulations." Georgetown Law Journal, Vol. 56, 18 (1967) at p. 472]

A discussion of agency regulations regarding the application of Freedom of Information Act exemptions notes that: "a second class of material listed in many (b)(7) regulations is data compiled during investigations into areas not involving the violation of statutes." However, the article notes that a Justice Department proposal that would have permitted the exemption of such materials as "investigatory files" was rejected by Congress, and then concludes:

> "Since no change was made and since even the broadening language of the House Report still requires statutory enforcement, this category is an unauthorized extension of the exemption." (Emphasis added) [Ibid p. 47-XX]

An examination of the legislative history reveals, then, that the intent of Congress was that to expand the "investigatory files" which were not compiled for the purpose of enforcing some power given to an agency by statute.