

DAN HARDWAY LAW OFFICE

DAN L. HARDWAY, J.D.

ADMITTED IN WV & NC

November 3, 2017
Sent via U.S. Mail and email

Senator Joe Manchin
US Senate
306 Hart Senate Office Building
Washington D.C. 20510

RE: The Coming Election and
the JFK Records Collection Act

Dear Senator Manchin,

Please allow me first to introduce myself a bit. While I am your constituent, I do not believe we have ever met. I was born and raised in Webster County, West Virginia, and still reside on the farm my grandfather purchased in the 1940's outside of Cowen. I am a graduate of WVU – 1976 – and while there got to know some of the members of your family. I had the privilege of running your first cousin Tim Manchin's campaign for a seat on the WVU student government Board in the mid-70's. I am a 1980 graduate of Cornell Law School and a former law clerk for Justice Tom McHugh of the West Virginia Supreme Court. I took a year and a half leave of absence from law school to work as a researcher for the U.S. House of Representatives Select Committee on Assassinations in 1977-1978. My primary area of responsibility in the Committee's work was to investigate the Central Intelligence Agency and Lee Harvey Oswald in Mexico City. Most of the work I produced for the Committee remains classified. I am presently registered to vote in Webster County with an Independent affiliation.

I am aware that the Republicans in this state are trying to mount a serious challenge to you in the upcoming election and I am presently considering whether to become involved in the campaign and, if I do, who I am going to support. In that regard, and in view of your position on the Senate Select Committee on Intelligence, your position on an issue that is very important to me will influence whether I decide to actively support you in the upcoming election. That issue is the release – or I should say, the failure to release – the records currently held in the JFK Records Collection by the National Archives and Records Administration. While the records, and access to them, is of great interest to me, the real issues raised by the failure to release them are much more fundamental than just access to the assassination records. It is these fundamental issues that I want to explain and upon which I wish to hear your opinion.

On October 26, 1992, the U.S. Congress passed S. 3006, with only one amendment and very little, if any, opposition. The Senate bill introduced by Senator John Glenn of Ohio was signed the same day by the President George H.W. Bush and became Public Law 102-526 which is codified at 44 U.S.C. § 2107 note (“JFK Records Act”). Among other things the JFK Records Act

PO Box 625
Cowen, WV 26206
(304) 449-4722
fax: (304) 405-2141
dan@hardwaylaw.com

provided for the collection, preservation and eventual release of *all* records related to the 1963 assassination of President John F. Kennedy with minimal exceptions. Among its other provision, the JFK Records Act, at § 5(g)(2)(D), mandates in clear and unambiguous language “[e]ach assassination record *shall* be publicly disclosed in full, and available in the Collection *no later than* the date that is 25 years after the date of enactment of this Act.” The Act allows an exemption to this explicit mandatory requirement only if the President “*certifies*” that the release of each withheld document “is made necessary by an *identifiable harm* to” either 1) military defense; 2) intelligence operations; 3) law enforcement; or 4) the conduct of foreign relations *and* “*the identifiable harm is of such gravity that it outweighs the public interest in disclosure.*” [Emphasis added.]

I note that this is a law duly enacted and adopted by the democratic processes of this country in 1992 – a country where we supposedly pride ourselves on being a nation of laws, a nation where the law applies to each and to all regardless of status or position. On October 26, 2017, as I am sure you are aware, President Donald Trump, at the request of the Central Intelligence Agency and other intelligence community members, disregarded the clear provisions of the law and postponed release of ninety percent of the remaining withheld documents in the JFK Records Collection for an additional six months. In doing this, the President made no findings, issued no orders and *certified nothing*, merely issuing a statement through the press office saying that all documents will be released “with redactions only in the rarest of circumstances” by April 26, 2018.

The President’s action was not only without authority in law, it was also taken in patent violation of the clear, unambiguous and mandatory terms of a law that your institution passed. In this situation, I would be tempted to file a suit against the President if it were not for the facts that: 1) the Courts have already held that the JFK Records Act does not provide a basis for any private cause of action for U.S. citizens, *Assassination Archives and Research Center v. Dep’t. of Justice*, 43 F.3d 1542, 1544 (D.C. Cir. 1995); 2) Federal Court litigation is too expensive to allow access to a normal citizen trying to hold his government accountable; and 3) it would take more than six months to get a case through to a decision in Federal Court so the action would represent no type of check or correction to the problem.

The real problem that this presents is that it is showing to the nation that the intelligence agencies of our nation are not subject to the laws of the nation. They are effectively above the law. At their request, or pressure, the President of the United States will violate the clear mandates of enacted legislation. And, to date, the reaction of our elected representatives in Congress seems to reinforce the fact that no one is willing to stand up to such blatant disregard of the clear provisions of the duly enacted laws of the nation. I understand that it is the executive branch that is charged with the enforcement of the laws your branch enacts and, in this case, it is the executive branch that is violating the law so there can be little realistic expectation of enforcement from them. But this is the heart of the problem and why it is incumbent upon the Congress to act. At a minimum there should be oversight hearings. At a minimum the Congress should not be seen to willingly acquiesce in executive contempt for the Legislative branch of government and the law of the land.

Senator Manchin Letter
November 3, 2017
Page 3

This action on the part of the intelligence community, the National Archives, and the Executive is only the latest in a long string of actions that disregard the provisions of the JFK Records Act that also subvert and cover up the information related to the assassination of our 35th president. Those other actions are beyond the present scope of this letter, but are things about which I would be glad to speak with you if you have any interest, so I will not go into them here.

To my knowledge there has been no coverage or explanation of why the intelligence community has requested this delay of the President. It was made in secret. What reason have they given for the delay? What kind of pressure have they brought to bear? How can they force a president to so blatantly disregard the law? If they can do this in regard to disclosure of fifty year old records, in what else can they exercise a like secret influence that corrupts the laws of the nation? What affect does the existence and use of such secret power have on our democracy? If these things – not just the documents but the method of influence – remain always secret, then how can a citizenry be sufficiently informed so as to exercise their franchise to any real purpose? How can we have faith in our democracy, let alone our government, if this kind of practice is allowed to continue unchallenged? These are the questions that I would like to have answered. But, to make it easier for you, I note you are in a unique position in regard to these issues due to your membership on the Senate Select Committee on Intelligence. Are you at least going to call and press for public hearings on any of these issues? Or are you going to join the vast majority of our representatives and once again cower before the intelligence agencies? Will you stand up for your constituents' right to participate in their government on an informed basis? Will you stand for holding our government to a standard of open honesty before its citizens and against allowing the real affairs of state to be conducted in secret and in disregard of the laws enacted by the peoples' representatives?

I anxiously await your answer.

Very truly yours,

Dan L. Hardway