Mr. Tom Susman, Counsel
Administrative Practices Subcommittee
New Senate Office Bldg.
Washington, D.C.

2/8/76

Dear Tom,

Jim and I were both too busy when I asked him to send you our brief and that of the government in the appeals court, 75-2021. This is the first case under the amended law, the updatedspectro case that went to the Supreme Court, the first of the four Senator Kennedy cited in the debate on the amending.

Whether you have read these or not, and whether on reading you can detect the totality of the dishonesty of the government's brief, I write to explain this and what I think lies behind it.

The deliberateness of the deception and misrepresentation is, I think, by far the greatest we have yet seen. Some of it is apparent, like their first argument being we did not seek to exercise discovery where on virtually every other page they mention that we did (the judge ordered answers to our interrogatories only in affidavit form). Without knowledge of the record most will not be.

My belief is that this is a case on which the Justice Department and the FBI will run all risks considered necessary because if it ever comes to where what I seek has to be released it will be apparent that there was no JFK investigation - by anyone, including the Commission. If you read their footnote on page 9 you will find tacit admission of this, with the claim it is irrelevant in this case. It will also become apparent that the suppressed scientific evidence proves the opposite of the official account of the crime. I have already more than proved this in a number of other basic areas of evidence but the major media will not touch it.

Because this is a subject on which there exists prejudice as great as I say above, because this is the court that ruled against me en banc in the first case, with Bazelon only voting otherwise and because of the potential of the consequences, the government has elected to run all the risks to rewrite the law in court again.

A number of other things coincide with this. Archives has switched its ground from "identifiable" records where there is no question that I have identified what I ask for to "reasonably described records" for those one cannot see. (O'Neill's 1/30/76 answer to an appeal going back very far. CIA, which has much to fear, had until 1/16 to respond to my appeals in several cases of withholding and the records on me. Foolishly they provided me with the documents that show what files were withheld from the general counsel so he could write us falsely. By volume I have maybe 10 times what they have given me or acknowledged having. I can probably pinpoint six files in which they have records on me they have not supplied. I have samples from three of four.And when we got to an eyeball situation in C.A.75-1996, after certifying compliance, DJ shifted and in a letter Jim got yesterday admitted having enough more it will take a week of a lawyer's search. This is suppressed King assassination evidence. There we have a different judge and I think they want that case, which includes similar scientific evidence, not to come to hearing before the appeal is heard.

In 75-2021, C.A. 75-226 in the court below, we have forced the early retirement of all the FBI agents whse testimony would be ruinous to the government. One retired as soon as we took the preliminary steps in this case. He is the one who did the actual testing. The day after Clarence Kelley had to sign a false letter to us on this two others retired simultaneously. They are the agent who was in overall charge and to whom what I seek was delivered, who swore to the Commission that he kept it and it was part of the Bureau's permanent files, and the agent used as an affiant in the first suit.

This was before the first calendar call, before Pratt laid out how he was going to rewrite the law so that non-compliance would be full compliance because he would hold it to be "substantial compliance."

In the appeal the government has decided to try the case on me and charges of perjury I made and proved. I have asked Jim to take this on directly and to confront the appeals court with the question of unresponded to proofs of perjury. He will file a reply brief as soon as he can.

The record on the substantive matters is as close to perfect as one could expect under the law and with an honest judge. It shows the existence of the records I asked for, testified to under oath before the Commission. The government has not supplied an affidavit denying this. Instead it told us verbally the records do not exist and offered as a substitute what it said would cause the FBI to fall into ruins in the first case. It then gave us proof that it was not even then complying, proof that testing was done that it swore was and was not - both and both by the same agent - and we have this proof in the record because they were careless. Through further carelessness when I proved perjury for the second time and I think to make Pratt's position seem easier, EHDA then dumped on me about 400 pages so the government could argue I am greedy and unreasonable. These were pages I specified I did not want. This carelessness and I think desparation gave me proof of other tests the FBI did not acknowledge making and had by omission denied making. At least one had to have been included in the final reports that I actually asked for, those not yet supplied, where the government has yet to meet the initial burden of an affidavit saying they do not exist.

By proof I mean actual records of the performance of the tests and in one case the actual results, the statistics not the analysis or final report.

I found other values in what I had not asked for only because I could not pay for it. They just dumped it on Jim after the end of a working day by the Assistant U.S.Attorney taking it to his home. No search charge, no copying charge, no charge for expensive pictures. Well, as I could make sense out of this stuff after going over it as carefully as a non-scientist can, it proves Oswald could not have fired a rifle. Because the nuts and self-seekers don't know I have this and because it requires an expert opinion for which I cannot pay, I offered it to the National Enquirer when no major paper would get interested, with the understanding that they not use a government connected scientist. So, they engaged one. His report is about four months late now. His excuse, when I nudged them and they nudged him, is that his teaching is keeping him this busy. So you can better understand this, then ASC had eight comparisons made, eight men firing or four with two tests each, I've forgotten which and performed the same tests as were made on paraffin casts made of Oswald's cheek and hands. If they mean anything at all it is that Oswald did not fire a rifle. The traces deposited on the cheek in firing exist in greater quantity on the part of the cast not of his cheek. And the differences between what was detected on his cheek and those of all the comparisons is enormous. If the Enquirer gets a scientific evaluation confirming this it will not get much responsible attention but it will establish fact and it will provide me with enough to reprint a book now almost out of print.

Separately from the suit, in which the government has not yet supplied the records I've asked for, I have established that the FBI had penetrated the militant groups of young blacks that caused the violence that forced King to return to Memphis, when he was killed. The FBI agent already identified - and there were others - was at leading provocateur, one encouraging the pointless, senseless violence. The Church committee's mucking up on this gave me the leads the proper analysis of which lead to the proof. Once I had proof and an identification I turned this and some witnesses over to a Newsday reporter who got admissions from the FBI, of ~~them~~ more than one agent in the Invaders, and from Justice that it was part of Cointelpros. In the suit, which has not yet had a calendar call, I have already obtained absolutely definitive evidence.

Best, Harold Weisberg