Dear Jim,

10/14/78

I did not get very far into the spectro Brief for Appellees before it became apparent that an approach if no the approach in response is bad faith. Not only because of the age of this case and prior bad faith, which the court may or may not recall, but because of the deception and misrepresentation practised.

I think also that the argument you may have made in this and did make in 1997, prematurity and inappropriateness of Summary Judgement in FOIA cases, is pertinent.

Now that I've reached these judgements after rading two whole pages I'll go back and from the beginning, as I read, make some notes and suggestions. I'll try to remember to keep each on a separate page to make them easier for you to use if you decide to use any.

By the way, when I stopped off at a local office supply store this morning to get this new ribbon, based on my experience with the HSCA hearings and need for a larger type face from time to time I asked him about the Hermes Rocket t'writer. He had pictures of the new model. It is not at all like the old one, the one I've been wanting. The design is basically different.

While it looks small the literature does not give the size. Unless it is quite small it will not serve one of my uses for it. I can't justify the expense of a larger machine like this just to get the pica face. It also seems to me that with a machine that is both small and light I might take it along this November, when IlLL have parts of two days to waste at two colleges, and see if I can do any writing. Near Boston they want an 11 a.m. seminar and I'm not about to fly at night, if there is a plane, to make it. Or leave here in time for such an early flight, if there is one. So I'll be going up the evening before. I'll take a morning flight from Boston to Baltimore, which will give me part of a day in Baltimore. (Come to think of it, a Baltimore motel and bus the next day will be cheaper than cab// back to Frederick.)

My point in this is to ask you, if and when you walk past an office supply place down therem to see if you can get the dimensions of this new model of Hermes Rocket. All the literature available here says of this is that it weighs 10 pounds. The price ~~if~~ is $99.50.

10/5/78- Lil mqke extra copies of a 3659 memo in the record. I did not use them but I include the copies for you.

General comment

Having gone through all of this once I am even more convinced that we must be emphatic on bad faith and that it should, implicitly if you do not want to make it explicit, include counsel. They misrepresent and they are inaccurate when they know they are inaccurate. I think it is lying. I think it is mking false statements.

They are terrified on Kilty and this is why they are semantical, with the most careful attention to the identical expression with each repetition. Some should hit at him. His presence in the courtroom the first appeal is relevant on his own appraisal of his situation.

This is about asfar as I can go tonight.

I intend two additions tomorrow.

One is the withheld Gemberling synopsis page and what it means, especially with Frazier's testimony and their misrepresenting it to allege we cited no proof of any otherrecords or places not searched.

The curbstone stuff is pwoerful now.

The second is the Dallas inventory I got in 78-0322. The date alone establishes that they withheld it. Thd date not of the case but of the teletypes and airtels establishes that it was in FBIHQ while this was before the court and they withheld it.

Of course the bulkys are exceedingly relevant.

Having also gone over the pages I separated from the HQ files I've been able to spot and from the Dallas files (where most are "internal security" rather than assassination file in origin) I am much more positive of this. They hold relevant records a few of which I'll provide.

2. use of Kilty and his affidavits:

Skimming past this point seems to indicate that they use ONLY Kilty, which makes them and him much more vulnerable.

They use the first Kilty affidavit as a ~~quote~~ quote and cite the second only. Of course the second says he swore falsely where we questioned him. This in itself raises questions of any dependence on anything he swears to.

Later we found out that both of his affirmations with regard to Q15, a basic question and issue, were false from Gallagher's first-hand affirmation.

This leads to what I would state, that Kilty had no first-hand knowledge of the records in question. While He does claim first-hand knowledge of the search, that is inadequate if anyone with first-hand knowledge remained in the FBI-anywhere. And I'll come to the fact that we know of some not used. And why, with Gemberling.

Kilty's quoted affidavit is evasive and inconclusive, depending on a conditional formulation and on semantics:

> I have conducted a review of FBI files which would contain information that Mr. Weisberg has requested...

The use of the formulation "FBI files" is one we have learned is a deliberate misrepresentation. While it gives the impression of "all FBI files" it in fact is limited to first, those in FBI HQ and second, those in HQ that are in central files or perhaps in Kilty's case some that are in the lab.

We have learned that most records are in the filed office. (Howard in 1996)

We have learned that at least 25% of HQ records are not in Central Files (Cong. report you sent me clipping on, a House FOIA subcommittee).

We learned from Frazier that in this specific case all records were sent to Dallas. We obtained no single page from Dallas in this case. (Again under Gemberling)

We learned that Kilty had to know of an essential missing record and he did not so inform us. (missing curbstone spectro plate.) He told us at the Bresson-Frazier-Kilty conference that they had all the plates and I could have them for $50.00 each.)

We have not been given the results of any search for any records outside of the

labb that could relate to information obtained from that missing plate or to any effort to locate it elsewhere.

Meanwhile, and I'd get this in early, we located the "bulkys" of the JFK case in Dallas by our own means after Pratt cut us off, despite our use of what we learned from Frazier, which was better than my own knowledge, or the Howard generality.

This is included in my 78-0322. Compliance with that is supposed to have been completed long ago. You may want to cite exact dates I'm not taking time for. We asked about the bulkys and quite some time ago were told they were being processed. We asked again when we expected this ////// brief. We were told it was about to be shipped. It still has not been. The only purpose served by the delay, aside from stonewalling me, is once again to withhold from me still more proof that relevant records remain withheld. I have one and will include that in the Pemberling part below.

(What an exasperation this falw in a fine typewriter is!)

"Wiuld contain" is not nearly as positive a statement as compliance with FOIA should require. He says this is a context that does not even necessarily represent a personal search, as I originally took from the quote. "I have conducted a review of the FBI files," is what he says. This is less than saying "I searched." It therefore is not a first-person attesting to a search.

This leavesm open for any fa'out interpretation what he means by "any information requested by Mr. Weisberg.2 With this wide-open evasion he then, without specificity uses the conditional, "would contain." We have been foreclosed from any effort at discovering what files were searched by or for him, what were not, and any means of establishing what we have since learned, where duplicates are filed. The duplicates, within our extensive experience since 226, hold information not on originals, and can be a means of locating what is missing from the files that hold originals. Here I'd cite our experience with the man missing attachments about which we learned in 1996 and my most recent experience, having to direct the appeals authority to where the FBI had avoided searching, the Congressional Liaison files. We then find what we were assured by Department counsel had been destroyed.

Destroyed: the lame excuse that the spectro plate not much thicker than paper was destroyed to make space in files, unreasonable on its face-

We now know what the FBI withheld from us in 1996, that they have firm regulations against anyt destruction of records in such cases.

We now also have proof that when there is destruction under regulations that permit some destructions, there is a record of the destruction. We have not been given any record of any destruction authorized with regard to that plate or any other records, materials, etc. Again I'll be discussing this under Gemberling.

The footnote emphasized that they "have not asserted that any documents sought bym appellant fall within the FOIA exemptions." You can hoist them on this and what follows, which is in direct contradiction to what they also learned from Frazier: "Thier (appelleess* position has bee that they have complied fully with the request to the 3xtent of existing documents and that other materials sought by appellant do not exist."

I will provide copies of what I've given you, the withheld Gemberling synopsis, and I remind you again of the still-withheld bulkys they have yet to acknowledge in this case. They do "exist" exactly where we told them they exist, in Dallas.

All of this is deliberate bad faith. It far exceeds what can be considered fair advocacy practise. It is outright falsehood. If they might have claimed not to know, we told them and they were present to hear the deposition testimony.

Their handling of Kilty on this page strongly suggests to me that they are concerned about bad-faith allegations and that the delays they requested, at least in part, were for them to make a policy determination on the question. This finds it aprallel in the almost hysterical defense of Beckwith, both following the Marks and Ray cases. Therefore, I think there should be at least enough to contest their representations, again in the sense of bad faith or a minimum, no evidence of good faith. I think their representations of the appeals decision is less than a good-faith interpretation.

They put this two ways, that the "opinion did not suggest in any way that the Government had been shown to have acted in other than good faith ", second way, nothing omitted," that the affidavits of Kilty were insufficient to show a proper check of the files."

The Kilty question was not limited to the showing of "a proper search of the files." We alleged false swearing, which is a question of good faith.

If "the affidavits of Kilty were " not "insufficient to show a proper check" there would not have been any point in the remand.

Their interpretation of the purpose of the reman is "to allow...and to make detailed findings as to the evidence adduced." Thi begs the question of permitting the taking of adequate and sufficient testimony. I suppose they address this below.

I do not recognize the factual basis for the footnote, 2. All of those agents are listed in the phone book. The question was of getting the right persons of those names. I believe all are listed in the directory of the association of former agents, where we would again have had the same problem, of correct identification. They merely stonewalled. I do not recall that we entered into any confidentiality arrangement or that one was asked, although this could have been the case.

In this connection you kigh want to note the total failure of the marshals to be able to serve any agents of Department officials subsequent to this. Or, the ducking of subpoenaes.

Their representation of the content of the depositions is unfactual, unfaithful and designed to be prejudicial. They allege that "Much of the despoition questioning by appelant's counsel dealt not with what tests had been performed and what documents were created, but with evaluations of the evidence and inquiries as to the correctness of the conculsions of the Warren Commission."

This is simply untruthful.

Their incredible claim remains that they did these basic tests and provided no results to the Commission, having prepared no results for either the FBI or for the Commission. When the FBI performed the Commission's investigatory function, the Commission having no investigators of its own, and when on the most basic evidence of all we received no conclusions, we had to undertake to determine what records should have existed in the absence of the production of these records.

One way of doing this is to address what is normal in such homicide investigations.

Another is to obtain the basis of the Commission's conclusions.

When we cannot go through FBI files putselves and are confronted with affidavits that directly contradict each other and still have no signle record of the nature of those that should exist, we had to try to establish a basis for such records of whatever form they may have been in to exist.

Any interpretation of other purpose is false. And such misinterpretation is deliberate, with the intent of prejudicing the court with the false pretende that we misused the depositoons for fishing.

The fact is that despite stonewalling and claims to the virtually totàà loss of memory we did establish that tests were ordered made and we received no single relevant record and we learned where the basic files are and were not able to get a single record from thme in this case. Dallas, again the bulk%s as part.

Moreover, in what they allege is wandering afield we learned that any conculsion that the testing of the curbstone, essential evidence in the case and essential in establishing or eliminating a conspiracy, disclosed that it was not wandering at

all and did establish that there is no basis for any official conclusion that the impact was by a bullet or part of a bullet, which is an essential conclusion of the Warren Report.

If this were not so, them "inquiries as to the correctness of the conclusions of the Warren Commission" are necessary to determine the existence of the records on which those ~~ø~~ conclusions were based. We could not, for example, begin with the preconception that the Commission concluded in opposition to the FBI reports or other records. Wheter the Commission erred or the FBI erred the fact remains that we have no reports of the FBI justifying the conclusions of the Commission regarding the curbstone and the testing of it by the FBI.

This applies in the identical sense to our inquiries regarding Q-15 and Q-3 as well as I think Q-8, the entire, unfored cartridge.

We did establish that Frazier took a specimen of lead core from Bullet CE 399 and did not do inform the Commission, in writing, verbally or in testimony. We have still received no record of the size or weight of this specimen or what happened to it then or since.

While this may well be the usual federal lawyers' dirty tricks and they may expect you to ignore it I think it should be siezed upon in an Axe~~l~~mad sense because it is a basic and gross misrepresentation the intent of which is to mislead the court. Including it serves no other purpose.

Because of the nature of the fact represented ~~falsely~~ falsely, especially relating to the curbstone, this can be powerful for us and bad-faith trouble for them.

4, paragraph 2 following

Here they establish for us that material facts are in dispute, which means that there could not properly be a Summary Judgement: At the 3/30/77 status call "counsel for appellant/ represented that the depositons showed there were documents that had not been provided to him. Counsel for appellees asserted that, to the contrary, the depositions showed that no such additional documents existed and sought time to file a motion for summary judgement. The trial court accepted appellees' suggestion...."

On 5 he quotes your Kilty subpoena. The nature of the items makes it clear that we were seeking to follow the mandate and were foreclosed. All address the nature and completeness of the search.

Their representations are not accurate in alleging duplication, particularly not with Kilty the only affidant and his false swearing was the only evidence. Even if simple error, which the second affidavit cannot be, this was ample basis for seeking to establish fact.

There rmeains the real question of seafches not made, as in Dallas and elsewhere in HQ.

Their own interpretayion is "beyond the scope of the remand." The items of the subpoena alone establish that we were seeking to establish the existence or non-existence of the records, the exact charge of the remand. (The footnote is of like character.) Again, material facts in dispute.

Whenon 6 he says that the court found that we planned no other depositions of those with knowledge we showed this was not the case, so if that is more than an error by the judge it is a material fact in dispute. The footnote 4 does not seem accurate to me. I kjow I was exploring with Howard whether he could take the Heilman deposition in Florida because I could not afford for us to go there or to bring Heilman up.

But the other depositions he credits to us are aimed at establishing the existence or not-existence of records sought. We were not limited to former SAs. I also recall that we were considering depising those who typed and filed records. What he avoids

here is, I think, in the record. Aside from not wanting to take any unnecessary depositions we could not afford any, leave alone unnecessary ones.

On the same general topic, p. 7, he omits what I regard as significant in pretending there was this great informality with evidence of the crime when a President was killed. In it there is avpidance of the fact that the Commission staff took steps with regard to NAA that required less informality - ask for and about them. And of course there is no possible explanation in this lingo of the supposed reuslts of the curbstone spectro.

The actuality in describing the testimony on notes is that the agents appear to have found all notes insignificant.

I leave the handling of Pratt in what follows to you but I do note that where they quote him at top of 8 he foreclosed us from determining whether in fact there were such records and they were not provided. I believe that the destriction of any evidence, which is contrary to strict FBI regulations and the disappearance of the curbstone spectro pate are quite relevant in determining the existence of records.

When we were confronted with witnesses whose pasts were in effect on trial and we already had contradictory testimony it appears to me that one of the needs we faced in trying to locate missing or withheld records is to determine whether or not they should have existed.

Itemizations of nine areas follow.

As a general statement before assessing the itemizations I wonder ~~WW~~ if we should not make a general allegation, that when there is an allegation that material facts remain in dsispute and when a plaintiff alleges he needs discovery to establish t his andprovides a reasonable basis for seeking discovery, the duty of the district court is to effectuate discovery and seek to provide means of eliminating any question of material fact.

In this case the judge abandoned impartiality and became a partisan. Instead of providing means of addressing existing questions with evidence he sought to become a subject xpert and to try the facts of the assassination itself as a means of saying

that instead of restricting himself to what was before him or permitting more to be before him he read some of the Warren Commission's 900-page report and some of its approximately 20,000,000 words of appended evdience and based on his partial reading the representations of the Report are right and there is no material fact in dispute relating to the existence or non-existence of records.

He abandoned the role of judicial impartiality. I'd say so.

The time, cost and trouble resulting were greater than for the taking of additional depositions.

OTHER FACTS AND ARGUMENTS

I am not sure that they belong at this point in any response but there are two new considefations I think we should include, even if they are not in the record, because we were foreclosed from having them in the recofd and we wanted to try.

One is that after we were given similar evasive and semantical affidavits in C.A. 75-1996 and after Motion for Summary Judgement was filed when we were not cut off we were able to establish a record of bad faith, of the existence of most records out of Washington and of special discrimination against me.

When we were not cut off we did obtain more records, some 50,000 pages.

The other is Guinn's tes imony before HSCA.

He testified that he was limited to lead-core samples and did not test copper material by NAAs

He testified that Q15 no longer exists- and we have three versions of the testing of Q15 while we do not have the results that Callagher described as not to his liking.

He testified that the various samples given to him for testing are not identical to those described in the evidence.

And in this connection, while we caugt be specific and make a charge, I believe that we can state that we have no records indicating what happened to Frazier's secret sample of lead core material he removed. We could not even get the weight of it but from the other evidence I obtained it can provide all the speciments Guinn had and more.

The further dependence on Kilty is grist you should grind finely.

They say that the court found good faith and candor when Kilty gave contradictory and erroneous answers and statements and his is the only affidavits the Government provided. He swore both ways on the Q15 specimens and Gallagcher says both are factualy incorrect.

He swore that there were NAAs on clothing and the now claim there were none.

(They omit that the second Kilty affidavit was in response to my allegation of false swearing and that he had sworn to the making of tests no results of which were provided. His "correction" can thus be regarded as self-serving and not depenable.

When the transitting of the tie know and the collarband by a bullet are essential to the official solution to the crime and when spectrographic examination disclosed no t aces of bullet the subsequent claim of those who had personal involvement, that there were no NAAs, simply can't be credited on their unsupported statements especially with the contradiction provided by Kilty. There is no possibility of obtaining results that was too small to require the making of tests that held any possibility of yielding results. The most obvious of the needs is that if the damage was not caused by a bullet the crime was unsolved and assassins are at large.

The claims with regard to Q15, the windshield scrapings, are meretricious and deliberately deceptive. If as thay allege and as Gallagher said "hte tests had yielded no significant results," it is no answer at all to state "and therefore he had lef his worksheets virtually blank."

First, I am pretty sure we received no Gallagher worksheet on this test.

Second, there remains the need for the calculations of the cpmputer to exist and we have nothing of this nature. Where they also say that the results of the NAAs on the paraffin casts "yielded no significant results" they in fact account for by far the greatest number of pages I received. We have no such pages on Q15. Not one. And no Gallagher Q15 worksheet. All we have is what the FBI withheld, the record of the making of the test. We obtained this from ERDA in with the paraffin tests results.

Which is still another bad-faith questions and admission of resords still withheld.

If it is true, as it is not true, that "The Department of Justice's answers to interrogatories relying on virtually blank worksheets for such tests which it provided to appealant, had asserted that neither material had been subjected to NAA," then t is is an admission that they have and withheld relevant records for the reasons stated above- we did not get them from the Department. Again bad faith.

We got no "virtually blank worksheet" on Q3, either.

Tjis and the footnote 7 make Guinn's testimony vital. They claim that Q15 existed. NAAs do not destroy the substance tested. Q15 no longer exists - and while this case is before the courts.

I think this relates also to the consequences of Pratt's departure from the traditional impartial role of a judge and his foreclosing os us on discovery.

I think also that not letting us or any court know that the specimen no longer exists is at least worhty of some emphatic comment after we have four different versions of the test history, the fourth unsworn by counsel.

I guess you have to say that Pratt was i n er or and I think you should say he was a partisan.

On the unfired bullet we have been given no copy of any directive to preserve it for posterity(p. 11) and the directive was impermanent because Guinn tes ified that "posterity" no longer has this need and he did test it.

The claim that copper testing is not worthwhile is a ver y material fac very much in dispute. We filed proofs that a Department of Justice study by the same Guinn established that the testing of the copper jacket material is the most definitive.

The fact is that Gallagher did test copper jacket material by NAAs. His records show it and he was asked and responded on this on deposition.

There is factual error here (11) in that Gallgher did not testify that he did not remove other samples from 399. he didn't have to. Frazier testified to the taking of copper jack and lead care specimens.

Here they misrepresent. Gallagher testified that he did not take any samples

from the entire unfired round or cartridge, not that he didn't take any sample from 399, which is what the brief says. What this means is not merely that the brief misrepresents to the court, whcih it does. It means that allagher's deposition testimony is so totally without credibility that even the Government's lawyers were deceived by it. The one specimen that wasmtotally without any connection with the crime and thus with the need of postefity is the unfired round.

The historic specimen is 399. Even Guinn said after his testimony ~~testified~~ that he couldn't understand why itsform was mutilated unnecessarily by the FBI in taking the copper sample.

Footnote 8: this statement of the deposition testimony is directly contradicted by what we put in evidence, Frazier's testimony to the Warrn Commission not about deformity, the use made here but of mutilation. of even microscopic scratches. They are evaluating the despition testimony as is not justified, which is a seaprate point. The questionmof damage to 399 is not at all irrelevant in determining what tests were made or should have been made. If there was any question about the possibility of the condition of 399 relating to tests that should have been made there is no basis for representing irrelevancy. Frazier did not withdraw his testimony before the Warren Commission on mutilation and they do not mention mutliation. They mention deformity only. This means what was visible, their word, on 399, a slight flattening. The question of damage to the hullet relates to the total absence of any microscopic markings on it, essential if it sttuck hard objects like bones. Thus also need for tests and I think we can say motive for withholding.

Curbstone- I'll also address separately

It simply is not true that in any assassination accounting there is an allegation that the curbstonewas "struck" by "other debris." Why they make this false representation I don't know except to misuse what we adduced from Frzier that there was no proof that a bullet struck the curbstone or any part of a bullet. This, of course, required more inquiry. I think this misrepresentation is serious, is in bad faith and can8t be excused any more than the misrepresentation about #posterity".

The representation"that the spectrographic plate reflecting...the curbstone had bbeen discarddd in one of the ~~periodic~~ laboratory's periodic housecleanings" is without any support and is in violation of FBI regulations both general and specific.

No space is saved by eliminatjng no more than about an eighth of an inch in any file or package. Moreover, none of the other plates were destroyed.

There is motive inthe disappearnnce of this one because ot er evidence is that the curbstone was actually patched after the crime and before the removal for testing.

The entire 7, on the shirt front, is a fact in the most ~~mxx~~ intensive dispute. Whatever the court decided on its own expertise, if any, remains in contradiction to my affidavit and in fact Frazier did not testify to making any tests himself. He testified that after his visual examination, which is what he testified to before the Commission, he directed Stombaugh to make such a test.

If this were not true the facts are in dispute and the court could not resolve the dispute except by ignoring the requirements of summary judgement.

~~Bxxxix~~ "There is no other indication" of any testing does not mean that more is needed. There is no other affidavit, only Kilty's.

Why hold that Frazier was mistaken and not that Kilty was when Kilty swore he was?

The court enagaged in invention. Frazier is a ballistics expert, not a hair and fibres expert. He would have assigned the hair and fibres ~~exps~~ examination to an expert in that field, which is what Stombaugh's specialty is. There is no basis for the court making this conclusion and it does not eliminate the fact that there is a dispute.

Overlapping is not the same as coinciding, which is the requirement of the solution to the crime and the need of precise scientific testing. (p. 12)

The footnote is misdirected. It confirms that such examinations ~~were~~ were not by Frazier and were by Stombaugh.

8 and 9 are handled together, that if Frazier's "formal report", mislabelled as limited to comparing windshield scrapings.

If there is no report on the laborabory's"entire investigation" how could the

Commission had had its requisite expert evidence on all the ballistaics-related evidence?

It is not possible that Frazier was testifying to a single comparison of all the ,any comparisons and describingathe disappeared windshield specimen examination as "the entire examination." "Entire" does not describe a single comparison and it is not what Frazier asked or responded to. The entire examination relates to all the comparisons, an evidentiary minimum.

"Entire" cannot be dated 11/23/63 because most of the testing had not been done by then.

They conclude that destruction is normal housecleaning. In fact there were special instructions in historical cases, not to destroy, and there are standing instructions which prevent the destruction of errors. Instead correctuons are to be made and filed with the errors. Moreover, permission is required for any destructions not provided for in regulations. Where the regulations permit destruction they also require that a record be made and they preclude the destruction of what is not duplicated. There is no evidence of any destruction. It is the lawyers testifying again. I believe that this also is in dispute. But it was after the close of 226 that we got the proofs having to do with non-destruction, again getting at the significance of foreclosing further depositions, especially of Tilty on this.

After t is they argue that there are no other records anywhere and fail to cite the Frazier testimony tha the basic repository of case files are in the office of origin.

The 11/23/63 report

Frazier"s final or complete report

How can it be that an incomplete report of only the immediately available evidence and its testing was required but no such report was required after much more evidence was subjected to the same and added tests?

Especially when there was A Presidential Commission composed on non-experts in this field of testing only?

One difference, of course, is that with Oswald the only suspect, the only accused, when he was killed there would be no prosecution and no cross-examination of any evidence.

Argument

Of course the court did hold there are no facts in dispute. The question is could the court have done this under the summary judgement standards and under FOIA? The concluding pages of Wright in Ray and Schaap are good on this.

The court erroed, The facts do not support the court on fact alone.

There are no more than "mere assertions?" The government produced no evidence to support Kilty. In some cases the "mere assertions" are thos of the judge.

The identical evasive language of reference to the Kilty affidavit is repeated word for word, w ich flags its significance. That he "reviewed" rather than searched personally and that the records someche else searched "would contain the documents."

The footnote on page 12 is ridiculous in claiming it would be "unnecessarily burdensome" to specify in an affidavit which files were searched. If they were "Central Files" then all he had to say was Central Files and give the numbers, if more than one. If Lab, ditto. There is no burden here and if there were 100 he has to have a record of what files were searched and there is no burden. The real problem is that they know we'll specify what they have not searched, as we will anyway below.

The sole purpose of this posture is to try to prevent our proving an inadequate search and another misleading affidavit proof.

When they argue we misread the Kilty affidavit as not saying"all" files they say it means all files. Is that also burdensome, to meet the requirement that there be a good faith search ofall relevant files? Again they insert the conditional "would." They noever omit it, which means they have to keep it in to protect Kilty and thus to protect themselves. The bracketing here flags intent to mislead, whether or not you can allege it.

Page 17, footnote 13: I don,t lnow what language you used but our allegation that records exist in the case file is not based on assumption. It is that we have precedent now tha they withheld from us then and that in the record we have this testimony by Frazier. To say that we merely "assume" is to misrepresent the record, which is necessary because they have already misrepresented it with regard to ffazier, the case files and the Office of Origin importance as a filing place.

On 18 in arguing that there is no bad faith he does say "of course" they made "several erroneous statements." With this admission and with these including the only affidavits they have provided, how can they be accepted?

Footnote #14 on 18, I'd not ignored unless I had to. It is another incitation to prejudice and it is false. We went into questions of FBI integrity in their non-compliance with my earlier requests as bearing on their intent. We went into evidence of the crime only as bearing on the existence or non-existence of records sought and withheld when they permitted no choice.

We have recently been told that false swearing by an FBI agent is "immaterial" and that providing unoriginal and different records than those at issue is "upstanding". From this it is only natural that Shilty's false affidavits are not for an expert "bad faith."

There is another catch word to hide the same lie represented by "would contain" which again means that the lawyers know what they are doing. On 19, 6 lines up:

"... there is no showing of any <u>significant</u> (emph added) documents which had not been produced fot appellant's in response to his request."

The Act does not require that documents be "significant" and if it did I did not delegate my judgement of what I regard as "signifcant" to them.

This amounts to a confession that they know of documents not provided, only they chose to evaluate them as not "significant."

Agian that Frazier testimony, the Dallas office files.

= The last part of the footnote on this page, carried over from 18, is false: "Their(meaning those we deposed) evidence supported appellees' assertion that they have no additional documents responsive to appellant's request." Frazier and your use of it makes this false. But I'll be including more.

20- I can't be as specific as I would like to be but I think it will be necessary to make a broad attack on the language used and the misrepresentations made. I've addressed Gallagher and these undefined worksheets that we did not get and the

absence of any Q15 results even though Gallagher said he got them and they were to him inconclusive. We got none of this.

I do not recall any "tacit" acknowledgement such as he alleges we made.

On the printouts there is no possibility that those relating to Q15 "mightgsic) not have been kept because of ~~the~~ the small amount of information ~~they~~ on them was duplicative of information preserved in other forms." We got no information and that was not "duplicative" on Q15. They even withheld the order for the test at Oak Ridge to protect Ailty's second false swearing. We got it from ERDA by accident.

The fact is that they preserved the also inconclusive pafaffin testing, which actually is most of what we were given in the last minute in the first case.

We know the records existed. They have not produced any evidence of their destruction. And we did catch them in deliberate withholding of the Q15 test order or whatever that slip is called.

This combined with the "new" and withheld evidence of the total disappearance of the specimen can be enough to shake the appeals court up, I think.

21- footnote 17 is false in stating that they showed us NAA printout tapes. Insofar as that 1975 meeting is concerned they actually later said that I had no interest in NAAs, and remember they refused to permit taping that conference even if they alone kept the tape. The fact is that as of this day we have never seen such a tape. We have uncollated individual page xeroxes of some from ERDA. I don't think we ever got any from FBI and I know they never showed us any or alleged earlier that I had waived. My waiver would have been a total defense.Their offer to me and to others, like Emory Brown, is of something like 57 pages, no more. (I don't recall the basis for the 1000 page reference but it can't be because we knew during the case.)

Who would believe that I amended the first suit to include NAAs and then said I idn't want them? This is what they now claim, not under oath.

In page 23 he confuses between our producing Warren Commission that is subject to examination under the adversary process and the judge going out of the record and misinterpreting the Warren Commission testimony, which does jot dx what the Judge said.

We had no adversarial opportunity prior to the order in which the factual misinterpretation is made.

24-even if Gallagher is "speculating" there is a question of material fact. There is false representation that is not in the record in the representation that Gallagher "would not have been the one to write such a report." This is an internal report, not one to the Commission. The one who did the work had to be the one who made the records relating to that work.

When they say we made no mention of this until appeal, am I wrong in believing that we could not because we were foreclosed by the granting of the motion?

Totally ignored in appellees' brief is the deposition testimony of former SA Robert Frazier, who testified that there are indeed other records to be searched, those of the office of origin. This was ignored because it is contrary to all the pretenses of appellees' brief. It is a standard Department and FBI false pretense in FOIA cases that all records are found in FBIHQ files, where they are indexed in "Central Files." Congressional investigation has established that ~~many~~ about 25% of Headquarters records are not retrievable by the index to Central Files. By cross examination of FBI witnesses in C.A.75-1996 plaintiff learned in September 1976 that most FBI records are located in the various field offices. The thrust of this testimony and that of SA Frazier is that the Office of Origin is the main place to search for records because it is the major file repository on any given case.

Although it and not fewer that 58 other inventories like it were withheld from plaintiff in C.A. 75-1996 in which all field office inventories like it should have been provided from FBIHQ files, plaintiff obtained a partial inventory of the Dallas Field Office files relating to the assassination of President Kennedy. Just two of these main files - and there are aothers - consist of more than 19,300 individually numbered records some of which have more than one document. These total 30 1/2 linear feet of file space.

These two files alone hold 799 exhibits of 4 1/2 liner feet in the files. In addition there is a separate storing of "bulky" exhibits of 15 cubic feet.

The index to JFK assassination records is not in Washington, even if it was consulted in Headquarters. It is in Dallas. The Dallas inventory obtained by plaintiff only this year describes this index as follows: "A special John F. Kennedy assassination file indices (sic) consisting of approximately 40 linear feet of 3x5 index cards. These index cards are maintained separate from the general indices. Also established was a special communications index of the early months of the JFK assassination investigation". This alone is of "two and a half ~~feet~~ linear feet of 5" by 8" index cards which are also maintained separate from the general indices." (DL89-43-9958)

There is no such thing as an FBI agent who does not know that the Office of Origin is the major repository of case records, which accounts for the continued nervousness over the Kilty affidavits which contradict each other and are the only claimed evidence of compliance with the information request.

Knowing that the Office of Origin is the major repository of case records is, in fact, basic and essential knowledge for every FBI agent. These agents have to know where the records are and where to direct copies of the records they geberate. This has to be within SA Kilty's personal knowledge. Despite this he avoided it in the search of which the brief states no more than that he "reviewed" the records turned up by an entirely unspecified and undescribed search. (This is only one of the reasons it was essential to take his testimony.)

Subsequent to the time of the Kilty affidavits while plaintiff was pursuing the public role he seeks to serve rather than following his own writing interests plaintiff had extensive experience with these FBI filing arrangements. Plaintiff has learned that the field offices are the memory hole for FBI HQ. Sequestered in field offices are such "family jewels" as the tapes and transcripts of illegal surveillances of which Headquarters does not even have a record.

In a parallel case in which he seeks records relating to the assassination of Dr. King. (C.A.75-1996) plaintiff obtained FBI Laboratory records from the files of the Office of Origin, Memphis, that held information withheld from FBIHQ records provided in what had been alleged to be full compliance.

This accounts for the misrepresentations of appellees' Brief and in particular its misrepresentation of the cited Frazier testimony relating to where to search for case records, the Office of Origin.

This also accounts for the vigorous and successful effort to foreclose discovery before it could establish the deliberateness of the withholdings in this case and the deliberateness of the deliberateness of the misrepresentations about the searching and "compliance." In plainer English, it was essential to foreclose this discovery to prevent the obtaining of other evidence of bad faith.

1978
Plaintiff's/examination of the Dallas records he has managed to obtain, a small fraction of them, didcloses another FBI means of hiding relevant evidence in the Office of Origin, a method requiring the Office of Origin for their retrieval.

There are a number of fat volumes of inventories of assassination evidence not in the Dallas assassination file but buried at the back of its 13 linear feet of "Oswald" file, an "internal security" file. These appear to hold records relevant in this instant cause.

FBI awareness of these records was renewed every six months when quite the opposite of the pretenses of the brief, of an alleged informality and of the disposing of thin records to obtain space there were regular checkings of these records to assure their preservation intact.

This, too, was avoided by limiting any search to FBIHQ as it establishing of it aborting while the case was before the district court was frustrated by the cutting off of dicovery before plaintiff could complete it.

Plaintiff continues to obtain long-withheld records that are relevant to the existence or non-existence of recofds sought in this case. Although his requests by the recent time of the/Headquarters releases of assassination records were then up to 10 years old all these records were withheld from plaintiff while this case was in district court. Delivery of other relevant records is currently being delayed past the time of briefing on appeal. The records plaintiff has obtained recently relate to the existence or non-existence of the records sought, to the inadequacy and bad faith of the search and to a possible new motive for withholding. They also confirm the investigation plaintiff was required to undeetake when relevant records were withheld from him.

Rather than attempting to try the Warren Report or the fact of the crime before district court plaintiff was forced to undertake to establish the existence of withheld records by showing that there was need for them to exist and that this was an essential need. The FBI did not attest to not doing its job. When all other avenues were closed to him plaintiff had no other alternative. The suggestions of P appellees' brief to the contrary are an effort to prejudice the court.

Once again in an "internal security" rather than an assassination investigation file plaintiff found proof of the alteration of the curbstone prior to its removal for examination by the FBI, exactly as established by plaintiff's personal investigation and affidavits. The record to be quited is from Headquarters file 105-82555 where it is Serial 4584.

Retired SA Robert P. Gemberling was the case supervisor in Dallas. He did not retire while this case was before district court. He was available for a Department affidavit. None was provided even after plaintiff asked for a search of the Dallas files. SA Gemberling's synopsis of a much larger report of August 5, 1964, was written at the time ~~after~~ the curbstone was located and removed to the FBI Lab. He does not refer to any alleged "smear." He refers to a visible mark. He states that while it once existed by the time of the removal of the curbstone "No evidence of mark or nick on curb now visible. Photographs taken of where marl once appeared, ~~together with other photographs reflecting angles~~"

This confirms plaintiff's proof that there was a Byzantine alteration of the point of impact of the "missed" bullet fired during the ~~examination~~ assassination. It also confirms that when the FBI subjected the curbstone to spectrographic examination the FBI knew it was engaging engaging in a charade - really a hoax. This also explains the disappearance of that single spectrographic plate only.

Plaintiff did not obtain until 1978 proof from FBI files confirming plaintiff's proof of the providing of the Dillard photograph by the United States Attorney in Dallas. This confirms plaintiff's investigation after he was foreclosed in which plaintiff established that Dallas New Morning News photographer Dillard was really responsible for the belated official interest in the curbstone, as Dillard had stated. The June 9, 1964 letter from the U.S.Attorney does forward the Dillard photograph Dillard said had not been returned to him. The letter also quotes Dillard as stating that he had examined the curbing immediately after the ~~examination~~ assassination and had seen where it had been struck. (FBIHQ 62-109060-3659)

Also in 1978 and from the same file plaintiff obtained a copy of the original of the Commission's directive to the FBI inspired by this letter from the U.S.Attorney. The Commission sent the FBI the lettee and the Dillard photograph and as stated:

"We would like an analysis made of this mark on the curb to determine whether there are any lead deposits there or any other evidence upon which a conclusion can be reached as to whether or not the mark was caused by the striking of a bullet."

On response the FBI gave the necessary instruction to Dallas. FBIHQ did not pretend there was no mark or nick shown in the photograph. In the memorandum drafted by SA Shaneyfelt, who was evasive and engaged in other offensive conduct on deposition, this FBI photographic expert described the still-witheld original Dillard photograph as "photograph of a nick in the curb taken by Tom Dillard...on 11/22/63," which is the day of the assassination.

Only after SA Shaneyfelt found that the physical damage had been repaired did he charge his own description of the curbstone to a mere "smear."

This explains why Shaneyfelt and the other deposed agents refused to describe the appearance of the place where the physical damage once had been and claimed extra fees as "expert witnesses".

(There are other references to this physical damage but no reference to any "smear" in the directive Shaneyfelt himself drafted.)

These and other records plaintiff did not obtain until recently indicate other Headquaretrs files that should have been searched because the records themsleves hold routings of copies of records relevant to the information request. Those here cited lone are of A.H. Belmont, L.W.Conrad, the Director, Al Rosen (Mr. Malley, who was assigned to Dallas as FBI Insoector), Mr. Sullivan (Mr. Lenihan), Supervisor Rogge, Mr. Griffith (Mr. Shaneyfelt), Mr. Jevons, Mr. Tolson, Mr. Mohr, Mr. De Loach, Mr. Handley, Mr. Raupach,

Another of the internal memoranda only recetly obtain by plaintiff is one from I.W.Conrad to A.H.Belmont of December 4, 1963. It pretends falsely, in accord with the official explanation of the crime, that "it has not been possible to make a determination as to whether the Walker slug had been fired from the assassination rifle."

The reasons alleged are "the distorted nature of the bullet and the fact that we had no known specimens taken of sometime near April ~~19~~xx~~xx~~xx 1963." This is the time Oswald allegeadly fired at former Genreal Edwin Walker. From the Dallas police records Oswald would have had to be a magician, to have fired a .30 caliber bullet from a much smaller caliber rifle, 7.65 mm. (62-109060-~~2~~/~~3~~/~~3~~/ 1132)

"Determination" was possible by means of the tests the results of which are the subject of this information request. SA Gallaghar himslf is the author of another from FBIHQ files
of the internal memoranda obtained by plaintiff/only recently. (62-109060-2845. In the memo from R.H.Jevons to I.W.Conrad of March 27, 1964, SA Gallagher presented the "determination: "SA Heiberger advised that the lead alloy of the bullet recovered from the attempted shooting of General Walker was different from the lead alloy of a large bullet fragment recovered from the car in which President Kennedy was shot."

In the further search for ammunition specimens and the tracing of the manufacture of the ammunition Oswald is said to have ~~fixxx~~ used. A Not Recorded memorandum from (105-82555)
FBIHQ's "internal security" Oswald file rather than the assassination file also is from R.H. Jevons to I.W. Conrad. On December 2, 1963, which is two days before he told Mr. Conrad a "determination" about the Walker bullet was not possible, Mr. Jevons reported to him about the manufacture of this ammunition "under Government contract DA- 23-196-ORD-27" that "The interesting thing about this order is that it is for ammunition which does not fit and cannot be fired in any of the USMC weapons." For marines weapons it will not fit and in which it cannot be used "four million rounds" is quite a few rounds of ammunition.

Mr. Jevons had an explanation that can account for withholding of relevant records sought in the information request: "This gives rise to the obvious speculation that it is a contract for ammunition placed by the CIA with Western under a USMC cover for concealment purposes."

The existence of records relevant in this matter and not attested to as searched in the only claim to a search, in the Kilty affidavits, is the July 19,1965 memo frok from I.W.Conrad to Inspector J.R. Malley. Thus subject was Lab records and Warren

Commission "Documents Originating in the Vureau." This was required by White House policy of making maximum disclosure of these records. The memostates that "the Laboratory has completed a review of the copies of various Laboratory reports and other documents prepared in the Laboratory"and "has carefully scrutinized the 202-page listing of documents submitted for review."

Because of excisions(appended to which there is no claim to exemption)it is not possible to provide more information, save that this record was stamped as "Exempt from GDS Category 1,2,3" by #2040 only this year, on 1/10/78.

There is no reference to any missing records or any missing spectrographic plates despite a complete review of Lab records and of the 202-page list of records submitted to the Commission. There is no reference to any destruction and to the contrary, there is an expressed understanding that the records are all to be considered for public availability. This was stated national policy.

Plaintiff cannot provide full information from the Dallas files because in C.A. 78-0322 he has received perhaps two or three percent of the records only. His appeal of this past summer has not been acted upon. He examination of the records provided had produced proof that the claim to destruction of the missing spectrographic plate has to be regarded as a convenient contrivance and is in opposition to Bureay policy and practise. This examination has produced further proof of the possession of the original evidence, as SA Frazier testified on deposition. It may have produced proof of the accidental finding of the "missed" bullet. Almost all of these records were in the Dallas Oswald "internal security" file, not in the assassination file. Handwritten notes added to some of these records disclose indexing that is pertinent to any search. This is not within the Kilty affidavit.

On June 10, 1964 Dallas SA Paul E. Wulff wrote an eight-page memo with 37 different categories of evidence. It was prepared in response to a Commission request for the tracing of the evidence itemized. Notes added are the indixing indication,"Tracing of Evidence,#"

and "See Wulff for original evidence." Page 1 includes some of the evidence the results of the testing of which is included in the information request. Page 6 refers to "the evidence invenoty list" the searching of which is not attested to By Kilty.

The next year, on August 1, 1969, Supervisor Gemberling wrote a memorandum on the need for preserving the evidence intact. He cited "Public Law 89-318 relating to items of evidence...to be designated for preservation by the U.S." ~~xxxxxxx~~ (Actually, the October 31, 1966 order of the Attorney General directed this the previous year.) "In view" of this, he stated, "all bulky exhibits and evidence in this case should be indefinitely retained."

Plaintiff has found no record of destruction and no authorization of any desctruction of any records or of any evidence, which the missing spectrographic plate is. To the contrary, there are regular records of the checking of the inventory. One Gemberling record states that as of January 31, 1973 this material "is still being retained in the Dallas Office...in the Bulky Exhibits. The inventory of Bulky Exhibits reflects such evidence." He also ~~xxxx~~ stated that "All such material should continue to be retained in the Dallas Office due to the magnitude and importance of this matter and because we still receive frequent inquiries from both the Bureau and from private citisens. ((Not, apparently, from SA Kilty or Department counsel.)

SA Gemblering concluded with a reference to "the semi-annual inventory of Bulky Exhibits."

Another "internal security" file record of the time of the Shaneyfelt retrieval of the cubbstone ~~xxx~~ quotes him as having expressed "certainty" that "he can identify the exact location of the chip marks in question." This means that prior to his discovery of the patching of the curbstone and from his own analysis of the contemporaneous photographs SA Shaneyfelt observed the proof of the mechanical damage to the curbstone.

Another "interbal security" record of June 5, 1964 - which coincides with Tom Dillard's efforts with the U.S. Attorney, who interested the Warren Commission -

is rhe memo to file of the ~~T~~ then Special Agent in Charge. He reported the copyrighting of a story quoted unnamed James T. Tague as having "said either the bullet or concrete chip grazed his face." He ~~xxxxxxxx~~ "sure it was a bullet" ~~hit~~ that "hit the curb in front of me and I felt a sting on my cheek." He saw the "mark" that was "obviously fresh on the curb."

~~Pixingxindixat~~ Indexing indication "Jim Tague" is added in hand but plaintiff has not been informed of the searching of this or any relevant file.

This and other similar Dallas records confirm that there was need for careful and complete tests to have been made. They estab;ish that plaintiff was seeking to establish this need for records to exist and their location rather than trying the case or the assassination Warren Report, as imputed in appellees' brief.

On February 15 15, 1069, according to an internal Dallas record, an employee of the St Texas State Highway Department phoned the Dallas Field Office and offered it a bullet he had found the previous year "while he was working in the vicinity of Commerce Street and Stemmons Freeway." ~~The~~ This is the general area of the impact of the "missed" bullet. He ~~described~~ said it appeared to have ~~ricoche~~ ricocheted off of something. "/This coincides with the contemporaneous accounts of Dallas police and sheriffs and of Jim Tague.

("...the 'front' of the bullet is the only damaged ~~part~~ portion." If so this means that ballistics as well as spectrographic and neutron activation tests were possible.)

Another internal Dallas record, of December 4,1963, shows that FBIHQ's Special Investigation Division was involved ~~x~~ in the handling of the ballistics-related evidence. This is true of other Divisions. The affidvit of/compliance alleged and searching does not include any search of any of the records of any other Divisions, as obviously was called for and as the existing records showed if they were consulted in the search.