

Dear Jim, re oral arguments in spectro, 78-1107

HW 3/11/79

Before you left you asked me to go over the government's brief for possible questions based on it by the court and suggested responses. While this is important and I've begun to do it I think the most important thing of all is not to be or to think primarily this way, not to be defensive and not to think defensivly.

I find that I began to write you about the Governmen's brief 10/14/78 but went into too much and rambled quite a bit. I reread this last night. I'll reread the brief today and see if there is anything I omitted. I plan to take each item separately do you can retrieve by subject.

However, after rereading what I wrote then and thinking about the present situation and Howard's not giving thought to asking the appeals court to accept and consider what we have offered it, I am even more of the opinion that the Government has been able to make an exceptionally simple case appear to be complicated and that we can be confronted with an array of essentially unessential legal and factual questions based on the Government's extensive distortions, misrepresentations and successful avoidance of the basic issues.

In what I include and prepared to read to Howard today I make an effort to simplify in terms of the issue of acceptance by the appeals court of this new material.

Howard appears to have become so disciplined by his training and court experience that he has not asked himself do we want this court to consider this evidence and can it. I think it can and should. And that he should present this alternative. I do not think the court would have asked for it if it wanted it but think it can have wanted it without asking for it. I see nothing to lose by giving it the issue and the option, more so (intellectual judo again) because this is a hot-potato political case and the basis I suggest minimizes the political that the court is just not going not to be aware of.

You cannot be non-responsive but there is no need to limit your responsiveness to the purpose of any antagonistic questioning and it will not require much effort to end or begin each with an appropriate reference to these simple facts of the case.

For example, is they select an argument from the Government's Brief that is not founded on evidence, and there is none that is, you can illustrate. One that I came address last night is the claim that it would be burdensome to inform us what files were searched.

In the N.O. records I learned that there is a special FBI form for file searchings. All they had to do in response to this simple and basic inquiry that is directed to establishing the existence or no-existence of records and the nature of the search is provide a copy of that form or if more than one, those forms Kilty provided in his search.

But if it were what the Government claims is burdensome there is a good-faith and due-diligence requirement it has not met.

Moreover, we told them where to search, they refused and we have not come up with relevant information from those undearched files.

All you need do is have this approach in mind and not to be changed by lateral responses to antagonistic questions. You can use them by turning them around and I think can and will if you adopt this attitude. In which you need some practise.

I am also more convinced that I was correct in saying that they have given the court and us a convenient sacrificial goat in Kilty. You know his record in this case very well.

He can't be credited because he gave two contradictory affidavits both of which were contradicted by deposition testimony.

He has not even claimed to have searched all files that to his expert knowledge should have been searched. And why else the remand in No. 75-2021?

The Government's own selection of his affidavit is a selection of conjecture and the conditional, of his alleged search of files that "would" hold relevant information.

He did not describe these and refused to.

Only Lab?

(I believe we got nothing from Central Records from him.)

Congressional Liaison? (Church committee and we've found records hidden in this liaison unit, witness Long tickler.

Operational, like General Investigative?

(Congress has established that 25% of FBIHQ records are not in Central Records.)

Dallas I don't have to tell you.

Letting the court focus on Kilty in the political context of this case gives it an out and in a sense may require a bit more of the political in the argument, so the court will turn that way.

It also lets all the biggies off the hook.

This has always been true, which is why a worried Kilty was the only official person present at oral arguments in No. 75-2021.

This gets to the newest of the new evidence, what we were not able to include in my affidavit: that as an expert in the sciences he knew that all FBI records given to us lack the essential purposes of the tests, any reflection of whether there was both quantitative and qualitative similarity in the specimens compared, an essential in any real investigation and any real effort at solving the crime and/or determining whether there had been a conspiracy. (Remember there is now a changed climate of sorts, with the Congress itself saying there had been a conspiracy.)

The FBI stated these results in the reports on the Tippit stectro.

It stated the results with regard to the Walker bullet.

Only not with the assassination of a President - and Kilty is an expert.

It will be less easy for antagonist judges to by-pass this especially in the context of the absense of a good faith search, with due diligente and after the mandate to determine the existence or non-existence of the information sought.