Mr. Hedrick Smith
New York Times
1000 Connecticut Ave., NW
Washington, D.C. 20036

4/16/83

Dear Mr. Smith,

Your much-appreciated letter of the 13th tells me why Mo Waldron spoke of you as he did.

My still "undiminished tenacity" will not be the deciding factor in whether I do anything about the appeals court decision, which has been handed down. I have it but have not yet read it pending my lawyer's decision because it has been an enormous drain on him. We can ask for an en banch review, but that petition, under ordinary circumstances, has poor prospects. In this case, given the political situation within the court created by what I'm sure Jim Lesar is accurate in describing and a prejudiced decision that also is unfactual and unfair,, the prospects are even worse. The one thing we could hope to accomplish is making a record that might in the future be of interest to others. I've told Lesar I'll agree in advance to whatever he decides. If he will file the petition, and his own work load precludes that for the immediate future, I'll read and annotate the decision for him then. Reading it once will be more than enough for me.

Because it was procured on official dishonesty and because that has tainted each and every one of my FOIA cases, recently I have been documenting this under oath. While the last thing I expect is a judge to find an FBI agent is a perjurer, I have made that case out in other and current litigation.

Based on my not inconsiderable experience, I believe the greatest obstacle to use of the Act has been official mendacity. I also believe it is the basis for the current assaults on the Act.

The case record in the scientific testing case is so voluminous I do not believe that any paper will pay any reporter for the time his own independent review would require - if any paper wanted to do a story. It would not take nearly so much time in the current cases.And none of the calendar calls in any of these recent cases was ever covered. There are at least 75 at which no reporter was ever present.

While there was a legal question on which the court could have ruled against me in my request that theFBI be ordered to duplicate tests the results of which it did not find and claimed had been destroyed, it opted an inaccurate representation of fact. This enabled it to clobber me more.

So we have this situation: The FBI investigated the assassination of a President (which I regard as also the most subversive of crimes), in its investigation it withheld essential information from the Presidential Commission and when that information, uncontestedly as a matter of sworn evidence, refutes the FBI's solution, it consigns the results of entirely non-secret testing of the most basic evidence to the memory hole - after FOIA request was made for it and in violation of law and regulations - and has the approval of the courts, which hold, according to an AP story in today's mail, that it ends my long investigation.

Frankly, I never expected anything like this. But it won't stop me in other areas, even though I've neverhad a judge who wasn't, for all practical purposes in the FBI's pockets. (At district court level. Some of the earlier appeals decisions, with different panels, issued good and sometimes precedent decisions.)

There can be a really majof story for a paper willing to make what I would not expect to be great effort. And that might now help the prospects of the Act.

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The Commission's solution has three shots fired by Oswald, a feat nobody was ever able to duplicate in the time permitted. One struck in the back of the neck in its solution, exiting in the front and nicking the ~~xxxxxxxx~~ tie after it went through the collar. A second shot missed entirely and wounded a bystander slightly.. The FBI's original five-volume report eliminated both of these by making no mention of the wound in the front of the neck or the missed shot or even the wounding of Jim Tague. When this became untenable it shifted to three shots, the first and ~~xxxxx~~ second hitting Kennedy and Connally, respectively, and the third in the head and fatal. It stuck to this after the Commission reported the missed shot, of which the FBI did know from the first minutes.

When I had Kleindienst reeling from a summary judgement I won in a different case I requested copies of the FBI's own pictures of the short collar, which it managed not to give the Commission as a separate picture. He actually sent me an FBI original and seveal more of other pix of the shirt I requested. The FBI's original picture of the collar showed that it created a phony for the Commission, which used it, to make it appear that the shot had gone trough the center of the knot of the tie. It took the knot apartto do this, although it is the knot that held the actual evidence. And nothing went through the knot anyway. There was a slight nick in the upper left corner as worn, caused by a scalpel and not a shot. This actually is the Warren Commission's testimony from the only doctor who saw it and the nurses who did it. Everybody, including all critics and the Commission, ignored this. I got confirmation and added detail from that doctor when I interviewed him. The two slits, not bullet-holes in the collar, do not come close to coinciding, as ~~xxx~~ obviously is necessary if caused a a shot when it was buttoned. They also do not coincide with the nick in the tie. Neither of them.

This is standard emergency-room procedure, as the medical people told the Commission and later me. Baden confirmed to me that the knot was retied for his examination for HSCA, as it is in the phony picture. But it was not tied when as my own lawyer I compelled the Archives to take pictures of it for me. (HSCA= House Select Committee on Assassination.)

Contemporaneous pictures and a number of witness show that there was a bullet-hole in the curbstone hit by the missed shot. It was contemporaneously referred to in the Dallas papers and then by the Commissionand the FBI itself as a scar, etc. The FBI ignored it, along with the missed shot, until the Commission was forced to ask it to make an examination. First it pretended not to be able to find that spot. When a photographic expert from the Lab was sent down, he got the contemporaneous pix, found it immediately, an lo! where there had been quite visible mechanical damage to the curbstone, it was smoother, darker in color yet flush with all the surrounding surfaces. An FBI summary I obtained in other litigation states specifically that once there was this damage but it no longer existed the day the Lab agent had the section of curbing dug up for the Lab to test.

Actually, the curbstone was patched by May 1964, when Jim Tague went back to take movies of it to show his parents. And then his movies disappeared. And with no Commission of FBI record reporting that he had taken movies, he was asked about his pictures.

All of this and much more is in and is uncontested in the case record.

And of all the many pieces of film exposed by the FBI in making spectrographic analysis, only this one, of the curbstone specimen, is missing. That did not come out until after a remand, when the FBI presented it as an unsworn conjecture.

Also withheld from the Commission and from me in this litigation are pages of a Lab report stating that this test had results that show the smear into which the FBI converted the scar could have been caused by an automobile wheelweight. In fact, of all the elements in a bullet, the spectrographic examination disclosed only

lead and antimony, a very common mixture. The "smear" could have been caused by paint, typemetal and many other common substances, but not by a bullet for the lead core of a bullet, the FBI's conjecture to the Commission, presented as fact by the Commission.

Anyone can examine the curbstone at the Archives and see the difference in color and texture for himself. I believe that a concrete expert might be able to offer an expert opinion. And there still are tests that can be made, even though, as it turned out in HSCA testimony, the FBI scrapped ever trace from this patch, where it appeared only on the surface, according to the thrust of that expert testimony. (The same expert also testified that none of the specimens he was given for testing equal their official descriptions.)

Getting to see the collar and tie are a different matter. The DJ drew up an agreement that Burke Marshall signed as representative of the executors of JFK's estate. It provided that the clothing never be displayed, without authorization. I doubt if, given his record in this matter, Marshall would approve that, but I don't know. I think that if anyone had a chance to speak to Teddy, he might, especially if he spoke to his former associate Tom Susman, who I understand is in private practise. He had been counsel for the FOIA subcommittee when Teddy was its chairman.

When I showed this picture of the collar to Robert Frazier on deposition in this litigation, he refused to give an opinion on whether of not the slits coincided or whether for a bullet to have caused them they had to. But he did twice testify that he directed an examination be made by a hair and fibers expert to make that determination. None of this is in any official record, the expert who did this was never questioned in this litigation by the FBI, and the appeals court was content to leave the record this way and to clobber me over it.

My evidence pertaining to the curbstone, the collar and the tie is entirely uncontested by the FBI in this litigation. The evidence is that what the FBI tested on the curbstone was to its knowledge a residue caused by any ballistics impact of any kind, yet it presented testimony to the Commission treating what it tested as unquestioned original evidence of the original impact. It also is that the damage to the collar and tie could not have been and in fact was not caused by any projectile of any kind but by a scalpel in the hands of nurses who were following normal procedures under the direction of the only doctor then present.

Either is enough to end, once and for all, all the official solutions to this terrible crime which had such terrible other consequences. And the FBI's integrity.

Bearing on what the FBI would and would not do in its investigation and what it foreclosed itself from doing is the enclosed copy of a Dallas record of the day of the crime. I just attached it as an exhibit in a current case, for the Dallas and New Orleans field office records. The case is in its fifth year and the original searches have not yet been made. This record was never published. It shows that when on the day of the crime a nearby police official advised including an extremist of the right among possible suspects, the report was annotated to read, "Not necessary to cover as true subject located." This determination to exclude all but Oswald as assassins or conspirators was made before Oswald was ch rged. Yet that NSRP outfit was by then reported to have uttered three other threats against JFK.

If you or anyone else would like to look at any case records, Jim Lesar, who is with Bud Fensterwald (276-0404) can supply them down here, or I can here. I'll inform Jim with a carbon. He also had copies of the pictures I refer to.

If you think this might interest Mr. Jones, please feel free to send him a copy.

Again, thanks for the nice things you said. Best wishes, Harold Weisberg