Dear Jim, re spectro appeals decision 4/28/83

I have done what I said I'd do, annotate a copy of the decision. I'll xerox the original when I mail it to you later this afternoon and I'll be able to discuss some of the annotations with you when you phone. I'll find some of it hard to read, too. What I will do later is dictate a longer memo on these annotations, for history and in the event they grant the petition.

There is a major problem in your not having told me before last evening (if you knew) that they had granted more time, because I need time I now do not have and because, unless I'm wrong, you asked for less additional time than I'd asked you to request.

The major problem is that this, as I told you earlier, is a political decision. The appeals court has done what Pratt did, defend the FBI. Having determined to do that, it ignored, bent, erred and misinterpreted because nothing else was possible.

I think that the major thing you can hope for is clearing our names and that your 10 pages should focus on this, I think overtly.

I think you should go back to the initial remand, where I interpreted the concluding language to direct me to establish the existence or non-existence of the information sought because it serves the nation's interest, quote it, and then state that as of the time of that decision I had already published all I can ever publish on this aspect of the case and was doing only what I understood the court to be telling me ~~today~~ to do. Don't worry about whether they'll now say they meant something else. I gave it a fair interpretation and if they later changed, it remained a ~~fier~~ fair and I think the only interpretation of it.

I think you should go father than I have in the brief notes I started while I was reading, enclosed, and state forthrightly that while the court has the right to ignore whatever it may want to ignore, it ought not then pretend that there is no other or contradictory evidence when there is and that the result should not be to defame the selfless pursuit of the earlier mandate, to serve the nation's interest.

(I published the last I can publish on this aspect the end of September 1975, which was prior to the first remand.)

Follow this by stating frankly that if there should be an en banc review and that if that resulted in another remand, it would be beyond my capabilities to go farthur unassisted because of what the court has ignored, my age, impaired health and financial limitations. State, because it is pertinent to some of their prejudicial comments, that at the outset of the litigation I had no regular income and that during the litigation it never exceeded $300 a month, and that the financial drain I have already suffered exceeds what can be tolerated by one with my serious health problems. However, you should also state that the nation still had the interest the court perceived in 1976? and that I still feel, the obligation to serve this interest because this is the most subversive of crimes and it is important for the nation to know not only the truth about it but also how the federal agencies functioned then and thereafter.

In this connection, consider using their own words (57-8) and say that in addition to FOIA considerations there are others. The court said "we fail to see what purpose would be served by ordering the FBI to conduct a test to generate information Weisberg has already received" when I did not receive the information referred to, the results of a test to determine whether or not the damage to the short collar was caused by a bullet. The Frazier report does NOT include this and it is this he said he asked be determined. If as all the ignored evidence shows that could not have been caused by a bullet, then there is the horror - that perhaps the court desires not to face - that the entire official solution to "the crime of the century" is no solution at all and the crime is not solved.

This is perhaps a bit daring, but if you do not take this line, forget it. You simply must be aggressive or you are certain to fail and engage in another futility.

After this go to some of the factual error, some of which you may have to put

together, some not, some I'll address in the little time I have now.

The several statements that the AEC did not have any records. In fact it provided more pages in 1975 before the first appeal than the FBI has to this date, and this includes information that the FBI still has not provided. The major record production by the FBI is misinterpreted where they talk about 7,000 pages. In fact, as I recall, and one of my affidavits is specific, they then gave us about 10 pages pertinent to records. All the rest pertained to regulations controlling preservation and discovery of records, a matter entirely ignored in this decision. Those discovery records enabled me to prove that any destruction such as is conjectured was strictly prohibited by law and regulation, so the FBI knew its conjecture, that the spectro plate was discarded to save a fraction of an inch of space, just was not truthful.

The court shifts its interpretation of the request and the amending of it to suit the preconceptions that resulted in this monstrosity. While it is true that I requested final reports only, please says that it is absolutely incredible that in the basic tests of the basic evidence in a crime of this nature and magnitude the FBI never prepared any such reports. Why else did they make the tests? But when they claimed to have none, as as their internal records on discovery reflect, they decided to comply by offering me all their raw material, and this was later confirmed by the DJ, I accepted that offer and thereafter I did not in any way "expand" my requests by asking for it. It is their substitute, not mine. The case record is clear on these matters, whatever may be before the appeals court.

Much of the decision is based on this and on what later they quote to show they knew better than to say, the FBI's false representation of what I waived and did and didn't do at district level in 1975. They claimed that I had waived on NAA and later says I didn't raise relevant questions until late, but they actually quote my June 1975 affidavit in which I stated that I had accepted the FBI's substitute and stated that I wanted all the raw material. So that is not any enlargement of any kind.

(Lil is copying so I do not have the decision before me.)

In their defense of Kilty and their belittling my allegations about existing and withheld examiners notes, I actually got them from the identifal FBIHQ files Kilty swore he searched, where they ghote his exaggerations , about "cart after cart" of records. so this diredtly addresses his truthfulness and the kind of search he made.

This fits with their belittling of the curbstone business. The actuality is not some conjecture of any kind, it is that although there are nine elements to the bullet core, the only information they gave me refers to two only being detected in the test that is fine to parts per million. The other seven are never mentioned, and what those withheld pages I got from the file Kilty searched without providing them actually say is that rather than being caused by a bullet, that "smear" could have been caused by an auto wheelweight.

I think these kinds of things are important because other members of the court and their clerks will see them.

On why I did so little at several times. Earlier it was because we were awaiting their remands, and later it was because I just wasn't able to because of circulatory problems and the three surgeries. This is in the case record and ought not be omitted to make me look bad or negligent.

Dallas records, after they admit that the Lab records did not have pertinent spectro pages I found in FBIHQ general assassination files: in C.A. 78-0322/0420, miscited as 420 only in this decision, the FBI when forced to check, learned that some 3,500 pages of FBIHQ records were missing from the main assassination files and they replaced them with Dallas copies. This also is in the case record. (When I refer to the case record, it is to the district court record because I don't know what was included on appeal.) That's a lot of pages. And on such a subject!

16. Frazier never testified to the Warren Commission that he made any hair

and fibres examinations of any kind or that he buttoned the shirt to see whether the slits in the collar ocincided. Maybe make a point on not even letting the Commission know there was any such evidentiary problem with the solution.

The previosuly referred to quote from my affidavit is in the note on 18, that at the 3/14/75 meeting I said I wanted to examine"all the spectrographic and neitron activation materials."

On my alleged tardiness, page 19. The court is wrong in saying that I knew of other "tests" as of 1970 because I knew of other reported information, like Aldredge's. I did not know of the tests until I got the records I attached as exhibits as a result of production in C.A. 78-0322. I could not allege that the FBI had made tests when I didn't know it. But when I did, I provided the proofs as soon as feasible. I don't know why there is this deliberate confusion between knowledge that information had been reported to the FBI and its making of tests it not only never disclosed but as the court admits, omitted from its own 1975 accounting of its testing.

The court is wrong on Aldredge because the FBI did report what he reported to it and it is from the Warren files, not those of the FBI, which I then didn't have, that I published what I knew of the Aldredge report.

about 32, what I alleged about the curbstone. This is not limited to Tague. I provided pictures and after the date used in the decision the USAttorney for Dallas raised the same question with the Commission and sent it such a picture. Do you want to ridicule the erosion of one tiny spot of concrete? The decision is in error in saying this was on a sidewalk. It wasn't. Not was it in the roadbed, where there could have been any wear or erosion. In was on the curve of the curbstone, where horizontal and vertical merge.

Purpose in replacing the curbstone plate: if it shows only the two ingredients that are the only ones mentioned in the scanty records disclosed, then the FBI knew that it was not caused by the core of a bullet.

The ref to 7,000 discovery pages is on 8, begins earlier.

10, the court refers to "voluntary" FBI disclosures to me. I can't remall any not as a result of litigation and subsequent appeals action. I've had to sue for everything, just about.

Remember, this panel knows better. You are addressing the rest of the court, perhaps only one or two, but it is important for them to know such things.

14. Gallagher not searching for records, n. 8= he didn't and couldn't because he was no longer an FBI employee, as the record shows.

There is more for which you'll not not have space. One thing you may want to include where you address the 3/75 conference. I asked the FBI to make and keep a record of what was discussed and it refused to. It filed an affidavit which I contradicted and it left the matter there because I swore to the truth. It just doesn't make sense to pretend that I amended the first (1970 case) request to include NAA only to then tell the FBI before any hearing in the second case that I did not want the NAA info, which their internal records reflect they knew very well I wanted - and their extent. (Got on discovery) after last remand. This can be referred to n.7 and pertinent text on 12 on inherent incredibility. Thereafter, as the case record reflects, I never agreed to any voluntary consultation of which there would not be a record.

There isn't time for more. I'll start getting ready to package. Lil has been reading and correcting while I work and I hope she saves you time and problems.

What follows will have a direct bearing on how much courage you now show. What follows is not necessarily limited to this petition. And I'm not predicting that history will repeat with the Congress. But it can have other and potentially major uses. I have some in mind that I'll discuss after you get out from under this and Smith. Please keep first in your mind that we are making a record for history and for ourselves, with whether or not the petition is granted secondary.

Good luck!