Dear Jim, 5/31/82

I have just finished a hasty reading of Cole's brief in 82-1072. If I am going to get anything to you in time for you to use it within less than two weeks there simply isn't time for anything else because of the totality of misrepresentation, misquotation, dishonest formulations and even overt lying. In my not inconsiderable experience with government records, which includes my own government employment, an extensive familiarity with Congressional investigations and not fewer than a half million pages disclosed under FOIA, I recall nothing as designedly and deliberately dishonest as this.

In addition, there is the totally dishonest pretense that the case record and the undisputed evidence in it does not exist. This is so total that the only exceptions are deliberate misrepresentations, which I'll get to as I get into this memo.

What to do is the real problem, particularly because of the time pressures and the fact that I can't get down there to be with you and consult in person.

Offhand, two things occur to me. First, to move that it be expunged as made in bad faith. Perhaps this can be done before the two-week limitation as part of a request for a short period longer in which to provide specifics. You are aware of the real problem I now have in searching and providing copies. Or, perhaps you can locate enough of them to be illustrative within the time we have. I can't but I can refer to those I can't search for, at least to a large degree. And as part of this ask this court to hold a judicial inquiry on the basis of misrepresentations to it that are not and cannot be accidental. Maybe the court won't like this, but unless something like it is done, there is no possibility of the Act having any real meaning for an unpopular requester or where the information sought is embarrassing to the government.

The second is to ask the House Judiciary Committee on Constitutional Rights or the oversight committee (both subcommittees) to look into this and take testimony from those involved.

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There is a basic question in all FOIA litigation: was all pertinent information sought for and provided, except where claims to exemption are made and justified. This is not at any point addressed in the brief, except where there are lies already proven to be lies in the case record. (Perhaps not all before the appeals court, but all in the case record at district level.)

If not a misstatement, then there is at least confusion in the pretense on page 2 that my first request or litigation was filed February 19, 1975. There is no question about the misrepresentation of the case of 1975, which is represented as not even asking for NAA records. The citation is to my Complaint, which does include NAAs.

Note that here the brief refers to the request as "for the results of certain spectrographic analyses for the Warren Commission." (page 2)

Hereafter the word "resu;ts" is abandoned for purposes of deliberately deceiving the court. It is replaced by "reports," and obviously the two are not identical. There is further dishonesty in this, which I'll get to below.

The request is not for "certain" analyses but for all of them, as the FBI itself understood, also more below.

It is not for tests made for the Warren Commission and I've never said or even suggested this. Some of the tests were made before there was any Commission and others were made after it ceased to exist. The purpose of this misrepresentation is to lay the basis for still further misrepresentations that follow. It is basic to them.

With the only date given as that of my request 1975, the brief states at the top of page 3 that "Congress subsequently narrowd the scope of exemption 7." (And here it is admitted that I "expanded them (my earlier requests) to include the results of neutron activation analysis (sic) of Kennedy assassination evidence." (Unless I so indicate, I'm adding emphasis in all instances.)

Congress Acted in 1974, not after my 1975 request. Here again, "results," not "reports."

While it may be correct (bottom page 3) to represent that the government did

claim in 1975 to have provided all responsive information, it is beyond question now that the claim is and was false. To be able to misrepresent about this with regard to the NAA printouts, they lie, as I address below. And my affidavits in this regard are not disputed.

In this quote the brief also claims that the other "data asked for by Weisberg (then) did not exist." Not the printouts, but the spectrographic plates, which were provided later?

It is alleged at the top of page 5 that in 1977 I "indicated to the Court that no further depositions of FBI employees who had participated in the Bureau's investigations were planned." At best this is a tricky and deceptive formulation because there was never a time when I didn't plan to depose Kilty and myself at the least and I was exploring ways of getting Heilman deposed in Florida. We also wanted to depose employees who were not special agents, but we could not get an address for any one of them, such was the Department's resistance.

There are two misrepresentations that I think are lies on page 7. Referring to our then newest efforts to get the spectrographic plates, the brief states that "While this was not related to any discovery request and was not the spectrographic analyses described in the FOIA request, copies were provided." This untruth also is addressed in my uncontradicted affidavits, particularly the fact that the FBI itself interpreted the plates as within my request and offered them to me at $50 each, which I could not afford. This is all that I was offered that I declined, and that, too, is uncontradicted in my earlier affidavits. It is lied about later in the brief again and I'll get to that part later. I don't know how you could request the "results" of the spectrographic examinations without including the plates, which are the basis of them. Moreover, repeatedly throughout this case I made requests for them and referred to them often enough in the affidavits that Cole is supposedly familiar with.

The next canard is that "Pursuant to Weisberg's request, these plates were

subsequently interpreted for him." If the plates had been "interpreted" for me, I'd have results of spectrographic examination. But they were not interpreted for me. Or, this is a lie. Copies of the plates were provided without the identifying folders in which they are stored, and thus there was, for many if not most of them, no means of identifying what was tested or when or by whom. What the FBI did has nothing at all to do with "interpreting" the plates. It did no more than provide some of the existing and originally withheld identifications.

In the long paragraph that begins line 6, page 8, there is vagueness and fuziness and a complete lack of any specification to allege that on April 6, 1981 I requested items that had never previosuly been requested, and a request that certain excised documents not before the court be released in their entirety."

I did not expand my request so there is no possibility that I asked for any items pursuant to it "that had never been previously requested. And I do not know why the "motion to Compel" referred to has to be "based on any previous discovery request," which the brief alleges.

I do not perceive any reason consistent with honesty for the brief not to specify what it alleges that I requested in 1981 for the first time. And instead of any specification, even any indication of what the brief has in mind, in the same paragraph it turns immediately to the Kilty deposition. It even does that prejudicially, pretending that I delayed it "over a year after this Court's remand." I did not delay. They had been failing to provide discovery information, which finally required an Order of the district court. The month after the Motion to Compel we did depose Kilty. (The brief also omits the fact known to Cole that I almost died and was in the hospital for three weeks after emergency surgery. We deposed Kilty less than five weeks after the emergency surgery, less than two weeks after I was out of the hospital.)

The brief is prejudicial about the 40-mile business pertaining to depositions. I cannot drive to Washington, as they know, and I haven't in more than five years. I can no longer use the bus. Now that Rae is back in Vermont, I can't even use a rental car.

Now on the actual distance, I am less than 40 miles from the District line. Under normal driving conditions, I am not much more than an hour from the federal courthouse. I may be less than 40 miles from Kilty's home, I don't know. So it was not in any sense any real hardship or any real stretching of the distance for Kilty to get here.

On page 9, consistent with the pretense that there is nothing at all in the case record other than what the brief quotes or misquotes, it is pretended that in the entire case there was nothing remaining but "discovery matters." I filed long and detailed affidavits that are not challenged under oath by anyone, and they are in the case record.

I don't recall if we finally decided to drop deposing me at that late date but maybe we did because of their and the judge's vigorous opposition to having me deposed, but I do recall that fairness lay in offering them a chance to cross examine me, as they could not do with an affidavit. They indicated opposition to deposing me and I think it was rather than litigate that that we dropped it. I do know that the other reference to this being "made and dropped previously" is not in accord with the facts. We did try to depose me, they and the judge opposed it, and the judge told me I could file affidavits instead. It was not any voluntary dropping on my part.

The false pretense that there is no issue other than discovery is repeated under "Argument" on page 10. The real issue is search and compliance, of which discovery is only part. When they opposed deposing me and I had to go to the appeals court to get to depose Kilty, no other such efforts were practical or possible for me.

Still having referred only to discovery, there is the enormous non sequitur and untruth (bottom of page 10, emphasis in original): "thus, it is clear that, unlike in earlier remands, no further information is sought by plaintiff with which to augment his case before the trial court." This is untrue in that my affidavits detail the withheld information I sought, to the degree that I could prove it existed in the face of such persistent stonewalling and misrepresentation.

On page 11 the brief alleges that "At the outset, it is imperative that a basic truth be stated: in the course of seven years of litigation in this case, no additional

document (sic) responsive to plaintiff's request has been discovered." "Discovered" is a tricky formulation because they discovered" and withheld what they had, knew I wanted and later provided some of it after the last remand. One real "basic truth" is that they had and withheld pertinent information, which is proven by what they later did provide, and another is that they have and have not provided pertinent information the existence of which I proved after the remand, without any contradictory affidavit or testimony of any kind. (There are lawyers' lies, to which I get below, in the order of their appearance.)

While it now is true that those who conducted the tests have retired (bottom of page 11), this was not true at the time I filed the requests or even at the time the FBI sought the conference of which they refused to make and keep any record. However, this also begs the question, there are others who had personal knowledge who had not retired but we could not persevere in the face of their opposition to making them available. They refused to identify them or enable us to serve them. However, file custodians can make a good-faith search and this was not done and remains undone, despite the contrary representations of the brief.

Cole quotes Kilty's false statement that he searched all the records because he knew "the itrms that were subjected to examination," even though I provided, after the latest remand, proof that other evidence was sent to Washington for such testing and pages of the actual notes that he, personally, withheld that I obtained outside of this litigation. My affidavits on these matters are not disputed by any testimony of any kind.

Stiil trying to deceive and misrepresent about the nature of Kilty's alleged search (on page 12), the brief claims that "Agent Kilty searched again for for anything responsive to Weisberg's request for a period of ten days." This is not true. The intent is made clear when the brief slips up and admits on page 26, that "He spent parts of ten days in his search." Parts of a day can be as little as 10 minutes or less a day. What he came up with did not require even this small investment of time, when he did not come up with what I did

establishes beyond question, that he did not intend a real search and did intend to continue to withhold.

Kilty's deposition testimony is quoted regularly with dishonest intent. For example, on page 12, (for all the world as though it is not contradicted in the same deposition and admitted to be untrue when he was cross-questioned), the claim is that where he searched were the "only places that these kinds of documents would be stored." The word stored was intended to deceive, because documents exist in duplicate copies. While they may be "stored" in central files, copies were sent to Dallas, which he admitted, and the brief ignores, and to the various divisions at FBIHQ.

With regard to the curbstone plate, (begins on page 13), the brief once again misrepresents, alleging that all the evidence is "revealed by depositions and comments then before the court," "then" being 1977. Even if the brief intends to include my affidavits, (which it never mentions), within "documents," then it still does not state the truth because of all that was withheld that I later obtained and provided, and because the FBI's own documents, which I also provided, disclosed the existence of withheld information. In order to further the intent of misrepresentation, at the same point the brief states that "The (spectrographic) plate, while not a 'report' responsive to Weisberg's FOIA request, has nonetheless figured prominently in this lawsuit." Here is the purpose for misrepresenting my request to have it include only whatever the FBI chooses to refer to by a "report." The plate is a record, it records the results of the examination, and it thus clearly is within the request. Moreover, the FBI itself so construed the request, as is reflected by the fact that it demanded ($50 each of me) for reproducing them when it offered them before this case was filed and after I made the request.

This is a matter lied about throughout the brief, also as it pertains to NAAd, so I repeat what is in my affidavits and thus within Cole's knowledge and what is not disputed, under oath, after any of those affidavits was filed, the only thing I was offered and declined is these plates. I was not offered any NAA printouts to decline and

that is not only ridiculous on the face of it, the FBI knows better, Also, once I learned that Emery Brown was provided with copies I repeatedly asked for them. Moreover, the appeals are full of such appeals and in 1978, after the fee waiver was granted, the FBI's supervisor admitted to Quinlan Shea,Jr, then appeals director, that I had declined them only because of the cost, which was prohibitive. (How making any small photographic copy can cost $50 is neither clear nor explained.)

It occurs at several points hereafter in the brief, but I want to emphasize that we disproved this Brosson false pretense, that I had amended the old suit to include NAAs only to decline any NAA information and thereafter included it in this litigation. I was never offered and never declined the NAA information. Moreover, the defendants' own records in this case disproves it. Most of the records provided, before the first trip to the appeals court, are of NAA wrinouts. And they were hand-delivered by defendants' then counsel.

Based on these and other misrepresentations and untruths, all already recorded in the case record and known to Cole, he launches into another series of them, including those that follow immediately.

It is pretended on page 14 that there might be some kind of question about whether or not there was a ballistics impact on this curbstone. Aside from the fact that the FBI wants it to be ignored, there is no basis for this pretense. All of the evidence is that the impact was observed and reported immediately, beginning with the Dallas police, including a number of FBI reports. These are ignored and misrepresented later in the brief, including the Warren report itself. The formulations of the brief are knowingly untrue and misrepresentative.

The FBI has problems admitting the truth now because its supposedly definitive five-volume report on the assassination, made at the request of the President, makes no mention of this "missed" shot or even of its wounding of a bystander. For the FBI not to make these false pretenses now is for it to admit that it did not do the job assigned to it directly by the President himself.

On page 14 the brief quotes the 1975 Kilty affidavit, It is already proven to be untrue

The brief gives its date as both June 23 and June 25. In it Kilty states what is proven by the case record to be false, that a single "laboratory worksheet, which was previously furnished to the plaintiff and from which he quotes, is the notes and results of this test."

The dishonesty is all the more serious because I provided some of what Kilty withheld from this record, precisely those notes that Kilty first lied about and the brief also lies about. No softer language can be justified when I actually provided some of the withheld pages and proof that there was more than one worksheet. [redacted]

There is more than one set of worksheets (contrasting with the worksheet to which Kilty refers) for there is more than one version of the one to which he refers - and he did not provide the complete set to which he does refer, but refers to as a single page. Moreover, I found what he withheld in the very files he claims to have searched, with his alleged diligence hippodromed by the brief. What he withheld from the set he did refer to in the singular is attached to my long affidavit. It just happens to record the examiner's belief that what the speetrographic analysis shows may well not have been deposited by a bullet or fragment of bullet.

It thus is clear that Kilty was knowingly untruthful in attesting that 1) "the Laboratory work sheet which was previously furnished plaintiff and from which he quotes is the notes and results of this test" and 2)"A thorough search has uncobered no other material concerning the spectrographic testing of the metal smear on the curbing." Quotation of this as truthful by the brief cannot be innocent because I attached proof of the falsity of both parts of this quotation to my long affidavit, in the form of copies of FBI records withheld from me in this instant cause and by Kilty personally. These pages are in the files Kilty swore he searched thoroughly."

The brief's quotation of Kilty on how the plate could have been destroyed is silly, if not worse: "Well, this (testing) was done at a completely different time and by a different examiner..." There is no real difference in time because all of the

tests were performed over an extended period of time. There also was no single examiner responsible for all the ~~xxxxxx~~ otners. The FBI had three examiners on each test, its witnesses have testified. (Page 15)

Neither here nor elsewhere is there any reference to the proof I obtained on discovery, that the destruction of this plate was prohibited by FBI regulations. There is no affidavit disputing mine on this, or for that matter, anything else.

Beginning of page 16 the brief tries to explain away Kilty's lying about NAAs. It claims what it in fact proves to be false in pretending that Kilty's June 23, 1975 affidavit was not falsely sworn. Of Q3 and Q15 it states "no actual neutron activation analysis was every performed on these samples." This is knowingly untrue and the case ~~xxxxxxx~~ record holds the proof of its untruth. Cole knows it to be untrue because he had Kilty deliver one proof of its untruth, the long-withheld printouts. If the FBI did not like the results of the tests, that is immaterial to the fact that the tests were performed, to Kilty's knowledge were performed, and the only reason for changing his initial affidavit, which attests to the perfromance of the tests, was to cover the FBI's withholding of all records pertaining to their results.

The brief's reference to "virtually blank worksheetsW is immaterial. They in any event are not blank and my early sworn contradiction of Kilty's false swearing has attached to it the FBI's record of subjecting the specimens to NAA testing. From that time aon, all of defendant's representations are knowingly false from the case record along.

However, in addition, I later obtained FBI internal records in which Kilty reflects having located thousands of pages pertinent to the request. He did not provide them. I also attached this reford to an earlier affidavit.

In an effort to make Kilty's false swearing appearn not to be false swearing the brief establishes the total undependability og Gallagher as an affiant to the records made and preserved. It quotes Gallager as stating that "the data on the worksheets would have been duplicative of computer printouts," but the printouts, of

column after column of figures, are anything but "virtually blank." It also quotes Gallagher's conjecture that because they were, allegedly, worthless, the printouts "might not have been kept." The brief itself exposes the knowing falsity of this conjecture because it also claims that I was offered these printouts and declined them in early 1975, long before Gallagher testied on deposition, where he was represented by both Department and FBI counsel.

This appears on the next page, quoting Kilty as saying "that he had earlier shown these to Mr. Weisberg,and that 'my recollection is that Mr. Weisberg did not want those items."

At best this is in dispute because I attested otherwise, as is in the case record. More, however, when this was alleged in one of the first FBI affidavits filed in this instant cause, Bression's of I think 1975, I immediately filed an affidavit denying this. From that time on, at the very least, the defendants knew that I did want the NAA information , which is specified in my request in any event, and they continued to withhold it. When they finally provided some of it, they still withheld what remained withheld until we deposed Kilty last year. And that despite the fact that I found in what they did deliver proof that they had performed the other tests and I attached those proofs to affidavits that were filed and are in the case record. Nothing can explain away the withholding of these printouts and similar records proof of the existence of which are in the case record.

The intent to be dishonest about this is underscored by the brief's own footnote (page 18), which repeats the fabrication that I declined the printouts and cites its own 1978 brief as proof. The fact is that long before the 1978 brief was filed I had attested that 1) I had requested these printouts; 2) I had never declined them; 3 that they had not been offered to me as NAA printouts; and 4) that I still wanted them. The truth is that long before the time of the 1978 brief, in 1975, the defendants did provide most of the printouts but withheld those I did not obtain until after the last remand and then not until we deposed Kilty.

The intent to be dishonest continues under "The Stombaugh Report." (Pages 19ff)

The brief invents ebidence, as in claiming that "The sole basis for suspecting the existence of such a report was the comment (sic) of former Special Agent Frazier in his deposition." This is untrue. Frazier was asked because there was ample basis to believe that such a study and such a report had to have been made and to exist. As proof of this I provided the FBI's own photographs of the slits in the front of the President's shirt collar. (The effort of the brief to pretend that the slits are not even in the collar, whichs also is knowingly false, follows below.) Moreover, it is beyond belief that the FBI would pretened that when its own photograph, albeit one I did not get from the Wareen Commission's files but from the FBI, under FOIA, shows clearly that the two slits do not coincide, there is no basis for the belief that it performed tests to make a positive determination.

Frazier's testimony is not as uncertain as the brief pretends. He was certain that he did ask for the test to be made. he was certain that he asked a Lab hair-and-fibres expert and he was fairly certain that of those experts, he asked Stombaugh. That it would have been Stombaugh is reflected by the fact that he was the hair-and-fibres expert who presented the FBI's testimony to the Warren Commission.

It is not a "comment" by Frazier but unequivocal testimony t at is amply supported by common sense and the photographic evidence in the case record.

There is no evidence that this test was not made, The defendants now admit that it was, There is no evidence that Frazier himself performed the tests (which would be contrary to FBI practise because he was limited to firearms and toolmark examinations, although he did give second-hand testimony for others). The proper person and the proper expert to have made the tests was Stombaugh.

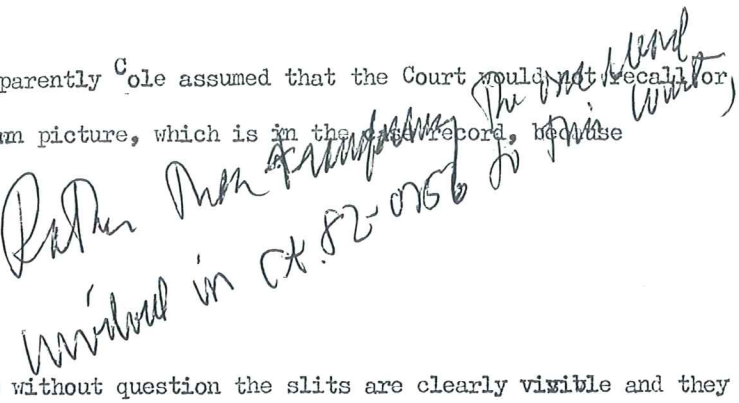
T he use of "overlap" instead of "coincide" may not be intended, but the real purpose of the test was not to determine whether any portions of the two slits did "overlap" but to determine whether, as is required if they wefe caused by a bullet, they "cpincide." In other respects also this is not a matter about which the unfaithful approach and attitude of the brief is appropriate. This is crucial evidence

pertaining to the assassination of a President, the most subversive of crimes, and the FBI's invetigation of that terrible crime. The results of the Stombaugh testing remain withheld, as my long affidavit shows. (Thebbrief, with consistency, pretends that that evidence also does not exist.) They were not provided to the Presidential Commission by the FBI, which also managed to give that Commission only unclear pictures of this damage, although its own files held the quite clear picture I have placed in the case evidence.When Frazier have his second-hand testimony to the Commission he made no reference to Stombaugh's having made this tests. Stombaugh also did not testify to it, although he did test ify. And now the brief takes the Frazier report written prior to the Stombaugh examination and pretends again that it embodies the results of that examination. (Page 21) What this Frazier report does is no more than state that to a degree the two slits overlap. It does not state that they do or do not coincide, the purpose of the Stombaugh examination. It does not address whether or not both slits were or could have been caused by any projectile, bullet or other, another purpose of the Stombaugh examination.

However, because the defendants, knowing better, claim that thisis the Stombaugh report, then they have no excuse for not providing the notes he made during his examination. note that are required to be kept and as a matter of practise also are kept. Those are Lab notes and supposedly are filed where Milty claims he searched.

If as is reasonably suspected, the FBI has the intent of withholding what is inconsistent with its preconception of the crime, of a lone-nut assassin, then that is not new, from the use the brief makes of Frazier's Warren Commission testimony. As used by the brief that testimony was deliberately deceptive and misleading, if not also false. The patronizing footnote at the bottom of page 22 states, "Both this Court and the plaintiff appear to have made the error that the holes were in the shirt collar. This is not supported by the evidence. The overlap was where the shirt buttoned up the front. As Frazier out it in his Warren Commission testimony, 'Actually, it is a hole through both the button line of the shirt and the buttonhole line which overlap down the front of the shirt when it is buttoned."

Apparently Cole assumed that the Court would not recall or not re-examine the FBI's own picture, which is in the [illegible] record, because



because without question the slits are clearly visible and they begin in the collar neckband. They also, visibly, do not coincide. They are not the same length, as the brief acknowledged indirectly on the preceeding page. And with the shirt collar buttoned, as it was when the President was assassinated, there are no slits through the outside of the collar.

The uncontradicted evidence in the case record is that the slits were not of ballistic origin but were caused by medical personnel when in the emergency situation, they cut the President's clothing off. [illegible] Because this is the uncontradicted fact, there is ample motive for the defendants to continue to withhold the pertinent information of the Stombaugh tests and reports). The defendants pretended from the first that this damage to the shirt was caused by a bullet, with Frazier the chief pretender before the Commission, and they now are unwilling to confirm that in their investigation of the most terrible of crimes they knew better and other than they pretended.

The brief, comsistent with this, in its footnotes, tries to lead the Court to believe that the slits are not even in the collar area but are "down the front of the shirt when it was buttoned."

There is much repetition under the heading, "C. Weisberg's Allegations On Appeal Are Frivolous,! where the misrepresentations, distortion and untruths addressed above are repeated. It claims that "There is not a scrap of substance to any of these claims." Beginning on page 23, quote from page 24.)

The first claim pertains to the withheld printouts. Nowhere does the brief explain whey these were not provided after any remand, whey they were not included

with the other printouts when they were provided, or how it can still claim, in the face of having provided printouts in 1975, that "Weisberg was shown them long ago and stated that he did not want them."

In act, as you know, because you were there, I was "shpwn" nothing. There were a couple of stack, one of records, none of which I was permitted to see - the FBI always refused this and did then when I asked - and one of the spectrographic plates.

There is no way that anyone can read the case record without knowing that from the outset I tried to obtain the withheld test results and time after time they were refused and claimed not to exist. And then there is the fact that in 1975 I disputed this Bresson fabrication under oath, after which the first of the printouts were provided. The providing of the printouts that were not withheld is ample proof the defendants' awareness of the fact that they are within the request and I did want them.

The second part pretends to deal with tests that were performed the results of which were not provided. All that the brief states or claims is invented. My affidavit, which could have been confronted with another affidavit by the FBI, which should have made searches and responded, is here misrepresented. Of course I did not get the results of those tests. In this case the FBI did not provide what I attach to my affidavit. I got it outside this case. But it is the FBI's own records of sending evidence to Washington HQ for the performing of tests the results of which clearly and undisputedly are within my request. The fact that the FBI suppressed all mention of them in this case does not by any means mean that that are not within it.

Here again the footnote reflects the intended dishonesty and the unduly and unjustifiably restrictive ex poste facto attitude of the FBI, even at this late date and I re-emphasize, without providing any testimony or other evidence in rebuttal before the district court. At the bottom of page 25 the breif states,"No credible evidence even exists to tie this sidewalk 'scar' to the Kennedy assassination." While this is false and based on nothing in the case record, the fact is, as the case record reflects without dispute, Aldredge saw this scar on TV the night of the

assassination, as the FBI's own records state. He was aghast that it was ignored by both the Warren Commission and the FBI, which led to his suspicions.

But the deliberate misrepresentation of the brief is a greater offense. The question is not whether this scar was tied to the assassination. The question is, is it part of the FBI's investigation of the assassination. There is and can be no question, as Cole knew in misrepresenting the question, because I attached the FBI's own records from its own assassination investigation file.

Whatever a reporter who holds different political views, as I also do, may think, or whatever the defendantsmay now pretend to thing, the fact is that the FBI sent two different samples from that scar, to the Lab, for testing. The fact is that the FBI itself confirmed Aldredge, someone did try to fill that scar in, and the FBI also sent that to the Lab for testing.

When the brief gets to criticising what we alleged about the known incompleteness of the searches, honesty is not perceivable in the quotation of Kilty's deposition. Cole restricts himself to the self-serving response he and Kilty worked out before he questioned Kilty and in it Kilty has an enormous non-sequetur, faithfully quoted in the brief to make ti appear to be responsive, "I did not look in Dallas. Not in my wildests, wildest imagination could I ever think that notes produced by an agent in the FBI laboratory would be in Dallas." Regardless of the truth or falsity of the evsaion, it is an evasion to pretend that what was in question was notes or only notes. Questioned about this when you had a chance, he readily admitted yhat all report were sent to Dallas and that he did not make any search in Dallas.

That such a search is necessary is not new. The FBI knows its own practise.

In this case, however, the FBI did not have to remember its own most basic rpactise. I made repeated requests for searches of both Dallas as the "office of Origin" hand of th various FBIHQ divisions, where countless FBI recordsreflect that records were removed from central records copies and kept in the divisions. In addition, as records in the case record reflect, extra copies also were sent to the Divisions. Therefore, a search of these divisions was necessary and was known to

be necessary yet remained unmade even after the last remand. And so far as Kilty's refusal to search the Dallas office files is concerned, a matter the brief attempts to dismiss with a preconceived non-sequetur, there can be no question but that a search of the Dall s files is required. It is in the Dallas files that I found the proofs of the submission of additional evidence oertaining to shooting the results of which remain withheld. The attachments to my affidavit inclide the Dallas evidence envelopes, FBI Form FD-340, with their accounting of when the evidence was ent to the Lab for testing and returned by the Lab after testing.

Ehile the brief's caption quotes our brief, alleging that the "FBI admittedly did not search all possible locations for responsive records," the brief does not quote our brief on what we alleged was to be searched. It cannot because the defendants cannot refute what we alleged.

Meanwhile, pertaining to the alleged destruction of the spectrographic plate abiut which Kilty conducted no further investigation, the brief is silent on the allegation of my affidavit, based in part on records obtained under discovery, that such destruction is and was prohibited. Moreover, as I also alleged, it is FBI practise to record the destruction and its aut orization and at the same point record where the information destroyed is duplicated and available. Even ~~XXX~~ the destruction of duplicates requires authorization.

The allegatuon that I had ample opportunity to depose ~~XXXXX~~ Retired SA Heiman is frivolous and made in bad faith. The defendants resisted ever effort I made to hold depositions. To be able to depose Kilty alone I had to go to the appeals court. As the defendants also know, my only regular income is modest Social Security checks. Were this not the fact, I am no able to go to Florifda to depose him. And if that were not the fact, there is a practical limit that is reqched even by wealthy litigants, which I am not, when powerful government resists withthe fierceness of the resistance I have ~~xxxxx~~ encountered in this ~~xxxx~~ case. But even if this were true, it does not address the obligation of the defendants to make a good-faith search and, if necessary consult and question those who had personal knowledge, particularly

because the destruction of any such evid nce is a seridus offense, if not authorized. If authorized, there should be records of the request and the granting of therequest, and none exist.

The brief enters what under other circumstance, circumstances less grim and ~~XXXX~~ not raising the most substantial questions of official integrity, might be called a dream world in its combined infidelity to fact and misrepresentations. It pretends that there was no nick or scar, no physical damage to the curbstone, and it quotes without addressing what was referred to in our brief about the FBI's knowledge of the fact that the existing damage was patched and to the FBI's lnowledge was patched. The uncintradicted and undisputed evidence is that there was a physical damage that was visible and in the FBI's own pictures is visibone. It was observed and reported by the police and sheriffs. The numerous, more than two, FBI records obtained outside this case are unequivocal on this and because more than a fair sampling of them is in the case recor, any misrepresentation cannot be accidental.

What is quoted but not address on page 28 is the summary page of a large report from Dallas and ultimately to the Warren Commission. It states what was withheld from the Commission, that there had been a scar and, as of the day the FBI dug the curbstone upand took it to Washington for "testing," the scar was no longer visible.

The reason the brief does not address this and instead goes into a semantical song and danne is because there is no way of addressing it without the admissions the defendants are unwilling to make, that they knowingly perpetrated a cruel hoax on the Presidential Commission and the nation.

Instead of trying to make the quoted language mean other than the meaning I gave ito which is the only possible meaning and is supported by the before-and-after pictures also in the case record, the brief pontificates, "Such a claim is utter nonse." To this is appended a footnote which states that I alleged that the FBI delayed testing the curbstone whefeas, if the brief is to believed, this is not true. The reason it allegedly is not true is another non sequetur, that the Commission did not ask the FBI to make that investigation until the month before it

The turh is that the FBI was always in charge of the investigation an was solely in charge prior to the appointment of the Commission. After the Commission was appointed the FBI was its investigatory and laboratory arm. The plain and simple truth is that the FBI avoided the "missed" shot entirely, avoided all witnesses to it, made no mention of it at all in the five-volume report ordered by the President, and only when no alternative remained did it go look at the curbstone, after pretending that it could not be located. If the FBI had not ignored the crubstone, onviously the Warren Commission would not have had to request it to make that investigation nine months after the assassination.

When it tries to allege that Kilty does not lie (page 30) the brief entirely misrepresents out allegation into having him say only"that FBI files were not kept in the laboratory." The brief avoids diredt quotation because its purpose is to lie to protect the professional liar Kilty. This is not what we alleged and the authors and signatories ought know that. Incredibly, even after admitting that the two NAA printouts do exist and were provided, the brief, in trying to pretend that kilty did not lie under aoth, quote Kilty as having testified that "I added neutron activation analysis in the first affidavit which I shouldn't have. This is clarifying (sic) it." He was asked if "there was no basis for neutron activation analysis in the first affidavit?" and he replied, "It was a mistake." There is no question but that the specimen in question, the windshield scrapings, were submitted to NAA and there is no question but that kilty and Department counsel know and knew this. Else how could there be printout that, at long last, I did obtain?

In pretending that Kilty did not lie in C.A. 75-1996 when indubitably he did lie, andknowingly, the brief, beginning on page 32, makes additional misrepresentations. It makes one similar to that quoted above, representing what is not pertinent and not what Kilty sore to or we alleged he had, "that the FBI laboratory doesnot maintain its own files."(emphasis added) What Kilty testified in C.A. 75- 1996 is that the Lab does not hold any records at all after a few days. The question was, had he searched there and he was saying that there was nothing to search.

And, it happens, in question was the identical material, the spectrographic plates, which remain withheld in that 1975 lawsuit. Based on this deliberate misstatement and based on nothing in evidence, the brief alleges what is not true, that "This is not inconsistent with the general ~~proposition~~ proposition that all FBI files are kept in FBI Central Records." There is no such "proposition" and it is not true. It is an FBI FOIA fabrication. It happens that my affidavits go into this and in terms of, amon other things, a GAO study which indicated that only about 25% of FBI records are in Central Records. Or, rather, should be there. The fact is, as Central Records copies reflect over and over again, the Divisions remove and keep records whenever it suits them.

The official falsehood in this case is not limited to Kilty and others who did not testify truthfully. This brief abounds in untruths, misrepresentations, distortions and deliberate misconstructions of testimony and court records.

There just is no way in which a private litigant, even a welathy one, can have the Act hold any real meaning for him in the face of official willingness to be other than fully honest and responsive to a court of law.

There is no way the courts can enjoy their Constitutional freedom in the face of this, in the face of what I set forth above.