Dear Mark,

1/14/85

The en banc petition I filed is a retyped rough draft. For the third year straight I have a bronchial infection, now in its third week, and my wife also is unwell, both of us not knowing a night's sleep. I was afraid that if I did not file it when I did I might not be able to file anything. Thus far none of the many complications of the past years. And while after getting four uninterrupted hours of sleep Saturday night I was optimistic, the nights since have ended that optimism. The junk in the chest that accumulated days came up nights. Thus, and because I must take the new medication at least an hour before eating I am up a bit eearlier and get to what I thought about earlier when I was coughing my head off.

When I was completing the draft of the petition and immediately after I filed it I received three batches of FBI materials that had been released to Mark Allen, whose request relates to what the FBI provided to the House Select Committee on Assassination. As I read that I had in mind my usual practise, writing him and Jim Lesar, who represents him, about what I regard as significant material in it. I made copies of those few records and then wrote. It is while I was doing that the last two days that I came to realize that these excerpts are ideally suited to two purposes, defending Earl Warren and making real points in the case for which I wrote the petition. If I were a Clarence Darrow, a real orator, I would not need a better basis for an eloquent lawyer's eloquence.

(Warren Olney)

The FBI says that it had an "adversary" relationship with the Warren Commission, whose investigative arm it was; that Hoover "blocked" the appointment of Warren's choice, as Warren's general counsel, the man who ran the commission and its so-called investigation and supervised its Report; that the FBI's assistant director in charge of the Investigative Division just sat around and waited for evidence to fall into his pocket; that after the Report was out the FBI prepared dossiers on its staff; and the most serious other stuff some of which I'll come to as more directly relevant in my suit. Records of the Church committee that are included reveal that FBI SAs told that committee that they were instructed not to investigate the assassination, merely to make it look like Oswald was the lone assassin, the FBI's immediate decision (amply reflected in other records I have and are in the case record) and what amounts to FBI admission of its deliberate dishonesty involving SA Hosty, whose search slip, you may recall, was and remained blank.

Remember that SA Phillips attested that they could find nothing under the "critics?" And I swore that he lied and how they could and would, even that I had provided some correct file identifications, name and number? One of the entries in what is apparently an FBI tickler - and I'd be surprised if in one of your cases they hadn't used their stock lie, used in my case in question, that the ticklers are routinely destroyed in a month or so - they still had them and one discloses that they prepared "sex dossiers" on the critics, the FBI's own word.

Another record, with specific reference to the Dallas agents who filed the report, twice says that Oswald had been "contacted" by the "MVD" and had discussed this with those agents! (While I am skeptical of this representation of what he said, what a scandal not to have reported this to the President, for whom its first (5 volume!) report was preprared, or to the Commission, or to the people!) It certainly was not disclosed to me in this litigation.

In summarizing the results of the Inspector General's ~~Division~~ investigation, supposedly disclosed to me, there is what I am certain I'd remember if it had been included, that SA Joe B. Pearce, Dallas, said that Oswald was an informer or source for SA Hosty. The existence of relevant and withheld records on Ruby as a PCI is also revealed. They were not provided and I knew they had to exist and so attested and appealed. Appeals, yes, an aside. Do you recall all that I alleged and that

I attested that Phillips lied about, that the FBI has recordings of the Dallas police broadcasts? Well, they finally got around to that appeal and have found what they refer to as the originals and I'm sure are not. I regard this, among other things as proof positive of both a refusal to search and of perjury.

The entire FBI knew, Dallas and FBIHQ, that Oswald had left a note for Hosty before the assassination that Hosty destroyed after the assassination. To a degree this was leaked in 1975, causing the IG's so-called investigation. In fact it is a rather heavy-handed coverup that could be heavyhanded because they expected perpetual secrecy. (In the end they told the committees to examine those records at FBIHQ while they disclosed copies to me.) Those who did not lie in the IG investigation - and one of these FBIHQ high-level records states explicitly that some did lie - described that note as a threat to bomb or blow up FBIHQ and the police headquarters. Yet the FBI's story about why it never told the police about Oswald's presence is that it had no reason to believe he was capable of any violence. Hosty, who received that threat, swore the official no-violence line to the Commission - and was personally praised for his testimony by Hoover, who had discilpined him once and did again as soon as the FBI saw proofs of the Commission's Report. One of the tickler's reports that this threatening note destruction after the assassination was "handled" at FBIHQ the very day Oswald was killed. And none of this ever reported by it to the President or Commission. And all relevant in this litigation.

Also relevant and lied about is my allegation that assassination records were hidden by filing and that Hosty assassination-related reports were hidden in his personnel file, which the FBI denied. I'd read this in one of the records, but not in these precise words, of course. I gave even the correct FBIHQ file number for duplicates to be located there. Well, it turns out that these records just disclosed to Allen have a letter to Director Kelley by Hosty himself. Hosty reports that he had had access to his personnel file, that such info is there, and that it had been significantly altered after he handed it in. He gave even the serial number, something like 157, which indicates that it was not the thinnest file. (When he was transferred to Kansas City the file went with him and I do not know whether copies were retained in Dallas, but it would be surprising if all references to the content of that kind of report disappeared from Dallas. And the record of transfer would certainly be retained. And the copies in the FBIHQ file were not transferred.

Now all of this and perhaps more I do not remember now (I've been away for my bloodtesting, had my walking therapy and am about to leave for another medical appointment), all that was lied about by Phillips in the foregoing, was, in fact, collected and in his very Division at the very time he was swearing to all those lies! That division handled the material provided to HSCA, which then was active.

What to do with this, and perhaps more I've not yet received? I presume that it qualifies as "new evidence" given the fact that the FBI did not provide it to Allen until about the first of the year and I got it about 10 days later. I presume also that normally this would be presented as "new evidence" to the district court. But I am hoping that there may be some proper, if not everyday, means of getting it before the appeals court. I have been somewhat aware of the vigor of some of what the traditionalists have been saying about the political activists. In fact, on Saturday, I presume because he wanted me to be aware of the mind-bent of the activists, I got from Jim a "Law Day" version of an en banc decision in a case involving the military and homosexuals. I therefore would like to believe that if any of them read it the traditionalists would welcome the kind of basic stuff in my petition and what it reflects about the activists. And that this kind of new information, confirming what I had attested to and that the FBI lied and ~~again~~ reflecting that discovery was not necessary and was for ulterior purposes, to

which, and again without refutation, I had attested. Which, in fact, the panel went out of its way to say is entirely improper and isn't sanctioned when the case record was unrefuted that it was what the panel said it wasn't. To try to simplify this, and not to downplay the importance of legal considerations, I think that this represents the most powerful kind of factual exposure of what the activists did. And thus might be welcomed by the traditionalist judges, or I think I can say fairly, real judges. (At least two of my panel came from the Department of Justice.)

Because of the continuing conflict I do not believe that Jim can counsel me on this, although he may have seen it for himself in what I sent him and Allen, with separate copies of the underlying records.

As you are aware, as soon as I read the decision and before I put anything else on paper I wrote detaching you from what I had in mind, even before I'd thought through what I would do. I also detached you in the petition as filed. And I am not now trying to entice you into any kind of involvement that could in any way compromise you or that you could conceive as possibly doing this. But at the same time I've heard nothing at all from you, so I am completely in the dark about what you think about anything, even the decision itself.

If you can't or do not want to have anything to do with this, perhaps you know a lawyer who at the least might have some interest in Warren's reputation and how this would relieve some of what the post-Commission disclosures have done to it. I have met only two of the Commission's counsel, one of the far-right, nut, two, but both are far away. (Belin, a real nut, and Liebeler, both of whom I've debated.) I once met and debated, and probably silenced forever on this subject, Howard Willens. I have heard that Shaffer and Stern are in practise in Washington but do not know if this is true. What I am suggesting is that the Commission's former counsel also have reputations involved, especially those who took depositions and drafted sections of the report. But I have no way of knowing what they think or would do or even where they are.

I would like to hear from you as soon as possible. I will not be home Thursday for at least the morning because I am a State witness in a local case and will go to the prosecutor's office directly from the lab after my blood-test. (FYI, right now there is some possibility of internal hemorrhaging because of the fact that the antibiotic potentiates or enhances or magnifies the effect of the anticoagulent.) But with any kind of luck I should be home by after lunch.

We have never discussed the assassination, its investigation or your views on either and I do not know what you know or believe and do not need to. But I do think it is apparent that what I report above is by any standard, pretty raunchy stuff, more so when the subject matter is that most subversive of crimes, the assassination of a President, and what the FBI did - and did not-do in its own investigations, in those it conducted for the Commission, and in its personal acts at all levels, from field clerks to the Director himself.

Best wishes,

Harold

Harold Weisberg