5/15/71

Dear Jim,

I think we are all in debt to you and Don for arguing and arguing persuasively and successfully to file the Reply Brief. By and large it is an excellent job. The only comment I have now relate to court argument, not criticism. Some are intended for your consideration in other such paper. One is the sequence of arguments. I think that arguing first that scientific test and this scientific test in particular and any work done for the President or the Commission does not qualify for the exemption should have come earlier, possibly first, to avoid what a hasty reading can suggest, that there is tacit concession that it can be. In court, I think this should be the beginning, and that Hoover should be quoted more fully, for in the quote I gave Bud he is specificin saying much more than this, that the FBI had no jurisdiction at all.

On page 2, #2, and II, you should be prepared (and it would have been better to have included here) for the language of the guidelines, secret processes. This also involves no secret process.

As you realize, much of this is not new to me and is in the memos I prepared. That may be true of what I say here. But if I am repetitious, it is becauseII think we ought be better prepared to argue.

On p.4, at the end of the government's arguments quote, this is a correct statement, but a deliberately deceptive one, and the words left out are what is the key. It is "beyond question" that the secptro is part of the FBI's investigation. But that investigation was a) for the President and b) for the Commission neither, as you say elsewhere, having alw-enforcement purposes or authority. I think the emphasis on the deceptions by the government, especially in today's context, can be important.

6, pemult line, I think there should be a distinction prepared to face and argue, that of genuine or real law-enforcement purposes, not those contrived (Ray conspiracy indictment as an example) or invented, as in this case. I think we will be stronger if we appear not to claim that all FBI investigatory reports ought be available. It is in this part that I think the above misreading because of sequence might follow over-hasty reading.

But in this connection, you kight also want to bear in mind that the Department has identified informants(we will not do it in piblic for them although they applied no restrictions) so even their argument on informants is not consistent.

10, middle and 12, III: What Curry published was also published by the Commission. This is a paragrrase, and that in itself ought make American Mail more operative.

11 Why did you omit Wellford?

IV. and conclusion: another alternative is that the spectrographic analyses exculpate Oswald, and I would not be reluctant to include this third consideration in court. I believe this is the only reason they are withheld.

17. Hallagher was the spectrographer in this case, even if he was asked no questions about it. That is in Frazier's testimony.

18, top line, not "of" but on or add"in paraphrase". They , that is the court, may say that if Curry published it we ought be satisfied to quote him. Top of 19, I think it would have helped and you should be ready to point out in court that the spectros are done by FBI experts in FBIlabs, by them alone, there alone, period.

This is much too understated. This Williams affidavit is a deliberat fraud upon the court, by Williams, who has to know better, and by the lawyer, who had to know better. I think that in court this point above all must be made with vigor. It will take an exceptionally corrupt judge to sit still for this gross and deliberate misrepresentation of what a spectrographic analysis is. It must be in every agent's training. It is in the average scientific dictionary, perhps the unabridged. I think that properly used this alone ought be enough to swing a bad court, for this is a serious transgression.

21 On the Commission's examination of the FBI evidence, this meant two things: the evidence developed by the FBI after Presidential order and that eveloped as the major investigative arm of the Commission. For court I think this should be made clear, for a judge looking for an out could misinterpret this language as quoted. Here again I would sue that part of Hoover's testimony of which I gave Bud a photocopy, I think it is 5H98-9, where he explains with are that he had no authority to do anything at all until the President made up his limited authority to report to the President. Here the papers of that period might be helpful to have, for they make it clear, pre-Commission, that what Hoover told the Commission is precisely accurate. I think it is nice to have Hoover agguing against Hoover.

23. This quotation from the House Report reminds me that it goes into the disposition of government to misrepresent to withhold and suppress about three times in that "national interest" jazz, which could, in this context, be effective.

25. It is much more, as I somewhere explained, I think in the draft of the Complaint, than that the Commission used the spectros. They are basic to the conclusions of the Commission -any conclusion, and they are not in the Commission's files. Let the government argue that the Commission didn t want them!. Here again also the possibility I believe to be the certainty, that the spectros will establish Oswald's innocence. But I would argue that since they are not investigative reports for law enforcement, since the process is not secret, since they are required to be available under the law, even if none of this were true, why should the government be so anxious to suppress what would prove Oswald the lone assassin, if these spectros are actually consistent with the FBI's representation of them in paraphrase? And I think the point at the end of the first paragrpah should again come from Hoover's testimony, the Government CAN have no law enforcement purpose. No federal crime was involved.

Can there be a better expert on this than Hoover?