To Jim Lesar from Harold Weisberg re discovery materials 2/9/81
in C.A. 75-226

Aside from the need for haste in the litigation, when I finally received the previously-denied records I knew that very soon I'd be having to be flat on my back for several days. I therefore had to review that large volume of pages rapidly, skipping apparent duplicates, of which there were many. When a record appeared to be pertinent, I indicated the need for copies and when it was possible for my wife to make those copies, she did.

Because I am now at the point where I will not be able to work sitting up I must prepare this memorandum in haste. It therefore will not be possible for me to organize it for all information bearing on one point to be treated simultaneously. It also will not be possible for me to segregate what has pertinence in other litigation, particularly C.A. 75-1996.

Where what pertains to C.A. 75-1996 also addresses the fidelity of government representations to that Court I think it has pertinence in C.A. 75-226 insofar as it addresses whether or not unfaithful representations were made.

It will become clear that some representations made in C.A. 75-226 are strongly contradicted by the discovery records, particularly with regard to the curbstone spectrographic plate, alleged to have been destroyed in allegedly routine housekeeping and to obtain space.

There is no possibility of disputing the fact that any such disposition is strongly prohibited and the prohibition should be within the personal knowledge of all FBI SAs, especially those assigned to the Laboratory.

Aside from extensive duplication, much of the large volume is attributable to the inclusion of such things as employee suggestions, discussion of proposals and regulations and, to a lesser degree, recommendation for the destruction of old files, going back to World War I. In no single instance did anyone ever entertain the notion that there is such a thing as unauthorized destruction. Only one destruction is reported and it created quite a flap. There was the unauthorized dectruction of some Uniform Crime Report

(UCR) records. Where there was consideration of the destruction of records, it was, to the best of my recollection, of some field office records only.

Indications are that the records provided in response to Number 11 of the request were compiled on an earlier occasion and for other purposes, not for purposes of this litigation.

[redacted] While space consumed by old records does represent a cost and a problem, there is an incredible collection of old and entirely useless FBI records that were not destroyed and this is reflected in the records provided.

Pertinent to the allegation that the single thin spectrographic plate was destroyed is the fact that there are entire file cabinets of useless photographic negatives for which there is no current use. There also are file cabinets of negatives of pictures of Director Hoover that he would not permit to be used.

When it was desired to destroy records, permission for the destruction was requested. Among the kinds of records represented are "American Protective League , 1917-19," White Slave cases going back to 1922 and letters written by citizens to President Franklin Delano Roosevelt.

Throughout there is emphasis in the need to preserve records of historical importance, Regulations do prohibit the destruction of the kinds of records involved in my litigation.

There appears to be no file for the kind of Laboratory material involved in C.A. 75-226. As I have written you and Mr. Shea separately, while 80 is decribed as "Laboratory Research Matters" it in fact is a catch-all and often public relations file. New Orleans, for example, has an 80 file on Jim Garrison. The 95 file, called "Laboratory Cases," is restricted to non-FBI cases.

While this would make it appear that all laboratory records must be in Central Files, we learned in this case and in others where we took depositions that this is not the case and some of the rediscovery records reflect that fact.

What Is a Record?

We've had the FBI withhold a tape for more than three years on the claim it is not

a record and then, in another case, turn around and provide a tape because it is a record, so to assure that you are prepared if they should again switch and claim the spectrographic plate is not a record, here is the official definition in Federal Property Management Regulations, Part 101-11, "Recordz Management," Section 101-11.101.3, quoting Section 1 of 44 U.S.C. 366:

"all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency . . . in connection with the transaction of public business and preserved or appropriate for preservation." Disposition of Records, meaning non-destruction, same source, 11/102.5, Disposition of Records," Provision shall be made to insure that records of continuing value are preserved . . ."

Because a spectrographic plate is a piece of film I add from 11.305.2: "A file is basically a paper or folder of papers but the term is used to denote papers, photographs, photographic copies, maps, machine-readable information or other recorded information regardless of physical form or characteristics. . ."

("FEDERAL PROPERTY MANAGEMENT REGULATIONS" marked "1")

Under the regulations preservation of records is required, unless they are entirely valueless and of no historical or similar importance. If the FBI desires to destroy them, it must get the approval of the Archives, as its own memo of 6/22/79 (attached as 2) states. In the first parggraph the totality of the uselessness of what is to be destroyed is set forth. Conversely, this indicates the uses for which records must be preserved.

As of that date, according to the second paragraph, authorization for the destruction of investigative records had never been sought. (This means that as of the time of the alleged destruction of the curbstone spectrographic plate no FBI authorization for the destruction of any investigative record had ever been sought.)This paragraph also indicates traditional reasons for the non-destruction of FBI records.

Authorization for the destruction [redacted] sought was limited to field offices.

Even where records were considered to be valueless they were required to be kept.

When the FBI began to consider a destruction program, its General Investigative Division (and other divisions) considered that being able to conduct searches when they could draw upon records that had been preserved for 20 years would be adequate for the FBI's needs. This same Cooke to Gallagher memo of 8/30/76 also states another need for all records pertinent in all my cases to have been preserved:"Exceptions to the 20-year destruction policy would be of those violations wherein a heinous crime such as murder is carried in the case character."(Both parts marked in records as provided to me, not by me.)

However, there was "A 23 percent utilization rate" of data over 20 years old in searches, according to page 9 of a Memorandum for Mr. Jenkins on the destruction of files. (Marked 4) This is evaluated as not insignificant when there was consideration of destroying records 20 years old. All this destruction talk, of course, was limited to field office records, and the plan to destroy field office records was "based on the availability of data at FBIHQ," meaning that in some form the field office data to be destroyed was available at FBIHQ. Reasons for not destroying files are stated in this memo. These include their uniqueness and the fact that if destroyed the same information would not be retirevable from other sources. It states that no saving in space could compensate for the loss of pertinent information.

On page 3 (Attached as 5) it is stated that many FBI records require indefinite retention and that if they cannot be made available at the time generated they are of value when made available later. The Archives 1969 evaluation is quoted: " . . The archival value of these records will not decrease, nor will interest in them dissipate."

The FBI states it has never sought approval for the destruction of investigative records of substance at FBIHQ. Where there was approved destruction of Laboratory examinations only for "other than FBI cases" and then only when "positive identification was not made."

When destruction of field office records was being considered, only the destruction of some was considered and then not those "regarded as significant in terms of intensity of public interest," which certainly includes all my cases and requests. (Attached as 6)

Records pertaining to the consideration of destroying field office files also reflect

the existence of records not provided and not included in Central Records. The copy provided of the Federal Register of 9/30/77 is not clear. On 53381 it lists separate records holding what has been extracted from other records, biographical data and other such records. Special indices sometimes are created and some data is computerized.(Attached as 7)

There is an index and inventory to bulky exhibits, according to a page from a record pertaining to the administration of offices. (Attached as 8) This also states that if there is to be consideration of field office record destruction, approval is required, and the kind of records that can be considered for destruction is indicated. If and when there is destruction, however, records must be kept of what is destroyed.

Special forms are used to justify the request for permission to destroy. One of these is attached as 9, another, and a form frequently referred to (Standard Form 115), is attached as 10. A different version of Standard Form 115 was used by the FBI when it desired to be able to destroy "two file drawers of identical transmittal airtels from the Atlanta Field Office relating to" suits against the FBI filed by Rev. Bernard S. Lee and the Southern Christian Leadership Conference. (Attached as 11)

Where the Lab destroys records it also requests permission and justifies the request. One example of this is attached as 12. Note that this is restricted to File 95 materials, "Laboratory cases other than Bureau" An executed form of 20 years earlier reflects that the practise is not new and the requirement was a continuing requirement. (Attached as 13)

A chart (attached as 14) summarizes, says of record materials that they "may not be destroyed without authorization."

One description of the field office files that can be considered for destruction is indicated in # 15, closed cases that led to nothing or where "allegations were unsubstantiated or not within the investigative jurisdiction of this Bureau." These files lacked reference or evidentiary values.

That "historical files must be maintained indefinitely" is stated in the 11/19/76 Awe to Decker memo (attached as 16). There is repetition of the concern about "records that must be maintained for historical purposes" on page 2. There it is further stated that when the FBI no longer requires records they are transferred to the Archives. That the

FBI's "authority for file destruction is rather limited" and to what it is limited is stated on page 3 (Paragraph 2). In addition, destruction does not mean destroying all copies for microfilms are made and preserved.

All records involved in all my cases are historical records because the Attorney General has found those cases to be cases of exceptional historical importance.

There thus is no possibility that the curbstone spectrographic plate was "routinely" destroyed, the unsworn and incompetent representation made in C.A. 75-226.

Even when there is error in records and correction is [redacted] requested under the Privacy Act, the entire record is not destroyed. "Corrections and expunctions" of these errors, within the undestroyed record only, is permitted.

"Items that may be routinely destroyed" are listed by Bear to McMichael, 11/10/75 (Attached as 18). Note that nothing included in my litigation is in the list and that specifically no spectrographic plates or other Lab records are included. Only some kinds of negatives are included. With regard to ticklers, the list INV is not of what the FBI claims is routinely destroyed. Not all ticklers are routinely destroyed. In fact, before some ticklers can be destroyed, authority must be sought and granted. (See attached as 19) Those records, Watergate and historical, were maintained outside of Central Records.

That old and outdated negatives pertaining to the identification of automobiles could not be destroyed without authorization is reflected in # 20.

As of long after the claim that the missing curbstone spectrographic plate was "routinely" destroyed these records reflect but one unauthorized FBIHQ destruction and it was of some Uniform Crime Reporting Records. (UCR) A special page was provided to reflect this. (See # 20)

These are among the many FBI records that, contrary to the FBI's representation in my cases, are not in Central Records. (See # 22, Paragraph (2)). Even records transferred to tapes cannot be destroyed without authorization. (See # 23) Regardless of the cost of those tapes and of storing them there were required to be preserved.

The same constraints apply to FBI records that reached the White House. (See #24) Watergate records also are of this character and are included in other records not copied.

At several points in this memo, which recommends what be done with those records, there is the reminder "... governed by any existing regulations regarding document retention," as it appears on the first page. And these are duplicates of those outside FBI possession.

Of the FBI's many special indices I have copied one page only because it includes a physical surveillance index which is other than the kind the FBI refers to in my cases. Where it restricts itself in my cases to reference to "the subject of surveillance," not the language of any item of any request, this index is rather of those "who have come under surevillance." Many come under surveillance when others are the subject of the surveillance. Remember the Mohammed Ali case?

This means that contrary to its representations, the FBI indexes all who come under surveillance, whether or not the subject of it, and can determine whether or not it has records by consultation with this index.

From my hasty examination of these discovery records it is readily apparent that the absence of the curbstone spectrographic plate is not explained by the unsworn representation of routine destruction of that one plate only. It also is apparent that the FBI and its counsel knew better and other than this representation to the Court. The involvement of the Legal Counsel Division in these many records leaves no reasonable doubt that it knew better and other than it participated in stating to the Court. In addition, during the taking of depositions in C.A. 75-226 I asked you to raise the question of unauthorized destruction of historical records, so counsel and witnesses were well aware of this.

The only reasonable explanation of the withholding of the curbstone spectrographic plate and other records is that they disclose proof that the curbstone had been patched and that the spectrographic analysis proved that what was examined is other than bullet material. (Remember than on deposition retired SA Robert Frazier blurted out that "it could have been a(n automobile) wheel weight.")

Recently I sent you a memo on the FBI's conjectures about the missing specimens that now retired SA John F. Gallagher submitted to neutron activation analysis (NAA). He conjectured for the FBI that he destroyed those specimens because they were radioactive.

He did not refer the FBI to any record he left and if he made any record at all it has not been provided, despite all the great show made of all those entirely uncollated records dumped on us at the last minute before the FBI represented to Judge Pratt that I am an ingrate for not appreciating all that it had given me. (Most outside the request.) From these discovery records it is apparent that an experienced SA like Gallagher knew very well that evidence is not to be destroyed. He also should have known that no unauthorized destruction is permitted in any event.

Why, then, would he either conjecture that he did wrong and destroyed evidence or not be truthful?

One possible explanation is that the specimens that later were tested again are not from the alleged sources.

The later testing was by Dr. Vincent P. Guinn, for the House assassins committee. Guinn stated that the specimens he was given did not coincide with the official descriptions of them. The committee was indifferent to this for if it was not indifferent its own preconceptions would have been endangered.

What has happened to the metal cut from Commission Exhibit (CE) 399 is not accounted for in any record I've been provided. More of the copper alloy and much more of the core material was cut from the base than was necessary for spectrographic analysis. It was removed by Frazier. He managed not to testify to the Warren Commission about his removal of a specimen from the base. In turn, this permitted him to convince the Commission that what was missing from the base accounts for the various minute fragments of metal in the bodies of the victims.

I could never get the present weight of this bullet and the Archives refused to provide it. I now have the weight as measured by the committee. Between the time the bullet got to the FBI Lab and was weighed by Frazier and the time the House committee weighed it, including all the metal Frazier cut off, only less than a grain is missing. Naturally the FBI didn't want me to know how much was cut off because as is apparent from my visual examination of CE 399 and from the pictures of it taken for me, more than a grain was cut off. This less than a grain, by the way, also includes a visible fragment

that somehow came loose at the Archives, for that was not included in the remnants of bullet tested by [redacted] the committee.

Frazier and all the other SAs, remember, in deposition, refused to testify to the condition of the curbstone as it was before them, demanding expert witness fees in addition. The reason is apparent from the most casual examination of the curbstone- the point of impact lacks any sign of the mechanical injury that is apparent in the pictures taken at the time of the assassination. This clearly means what they all knew, that the condition of the evidence was altered before it was dug up and taken to the Lab, from which, we are now told, that spectrographic plate (alone) is missing - destroyed "routinely."

Guinn testified that no residue remained for him to scrape off and submit to NAA. No residue? When Gallagher testified that a tiny piece, as small as a half millimeter, is adequate for the testing and the area is or was 3/4 of an inch by an inch? All of that had to be scraped to get a half of a millimeter?

There was no bullet metal to scrape off or the FBI removed all of it for no reason other than to destroy evidence that contradicted its preconceptions about the crime.

Quinn also testifed that all of specimen Q15, the windshield scrapings, no longer exist. This is the specimen pertaining to the testing of which SA John Kitty swore both ways and then was contradicted, under oath, by Gallagher, who testified to still a third version.

Gallagher found enough to submit to NAA, even if he did not like the results and in contradiction to all regulations did not keep the results of his testing because he didn't like the results. (He testified to this on deposition.) Between then and the time Guinn was asked to make the test, that also disappeared.

And, naturally, with all destruction of all evidence strictly prohibited, there is no record stating that this and the other specimens no longer exist and no record of any alleged [redacted] destruction.

We are to believe that the FBI carefully preserves countless cabinets full of junk yet knowing destruction of evidence is prohibited, destorys evidence of virtually postage-stamp weight only? Who can possibly believe them?

NAA is performed by measuring the decay rate of the radioactivity, slight radioactivity to which the specimens are subjected. The amount of radioactivity involved is negligible and the length of time it persists also appears to be negligible. If I understood Kilty's testimony on deposition correctly, the FBI Lab now does this testing. That appears to be adequate reason to believe that it is not messing around with significant radioactivity in the heart of the federal area of Washington.

Even if it were not prohibited, the allegation of radioactivity, meaning only significant radioactivity, can't be believed, any more than the also unsworn claim of routine destruction of the curbstone spectrographic plate can be believed.

In other respects I can state unequivocally that the FBI is also holding out what is within my requests and this litigation because it performed other tests it has not acknowledged performing in this litigation. No record of it has been provided to me in this case. I put it this way because I obtained the proof outside of this litigation. But I do have the proof - of other testing within the requests.

In addition, I have FBI records reflecting the fact that there should have been other tests.

One such indication is the offering to the FBI of what could have been the bullet that hit the curbstone. This did happen. [redacted] It was found by the foreman of a State Highway road crew.

After the record was closed in district court I did obtain a large number of pertinent records. But not in this litigation. When it is necessary to retrieve and reexamine them I will do so but I now am not in condition to do that large job more than once and I will not have any retyping facilities until after the middle of April.

If we are to believe the FBI, it removed pieces of evidence for testing and made no record of any of the wieghts and thus left itself in no position to attestto the weights of the items of evidence in its custody, an indispensible part of its case.

The records provided on discovery make it clear that no destruction of any evidence in any FBI investigation, particularly not in a murder case and in a case of major historical importance, is permitted.

When the FBI HQ had to account for unauthorized destruction it accounted for the UCR records only. That was after the representation in this case that it had destroyed the curbstone spectrographic plate. This makes it appear that in fact it did not destroy that plate.

Bearing on this is the lack of attestation to a real search, before or after the remand.

The FBI has an additional and serious problem in attesting to a search and to having provided me with all that turned up in that search: I now have proof of pertinent testing about which it has not disclosed anything at all in this litigation. If it now attests that it made a proper search I can prove its attestation false- and will. There are records of this testing in the Lab and elsewhere in the FBI.

However, I do not recall seeing any reference to this in the supposedly complete general releases of late 1977 and early 1978 and I've examined every one of those pages plus the bulkies that I obtained later. (They were not included in the general releases.)

Where I refer to Dr. Guinn on page 8, I should have stated that when the AEC offered to provide him to do the testing for the FBI it refused, although in the view of the AEC he was the outstanding expert in criminalistics uses of NAA.

Last week I provided you with an FBI record, from the discovery material, in which it reflects having to seek permission for the destruction of duplicates of JFK assassination records. I sent you a copy of what I sent Shea, my purpose in sending it to him being to show him that the FBI had deceived the Associate Attorney General with regard to its alleged non-disclosure of FBI SA names. In that record it disclosed the names of all the SAs who compiled those reports.