5/23/75

Mr. Tom Susman, Counsel
Administrative Practises Subcommittee
Senate Office Bldg.
Washington, D.C.

Dear Tom,

Bad vibes in the new suit for the spectrographic and neutron-activation analyses and for the new law.

Pratt is a more subtle judge than Sirica but the reading on his intentions and those of the Justice Department are pretty clear. They are trying to nullify the law again and in basically the same way. I immediately began what this time will be a tough fight because there will be no anti-Kennedy, finky-liberal Fensterwald to mess it up. Lesar is in basic if not complete agreement.

I was ill and not able to be at the first calendar hearing. Because of the trickery already pulled on us and the lies and evasiveness we submitted interrogatories. After some discussion Pratt said they could be answered in the affidavit the government offered to give us. I was at the second hearing, this past Wednesday.

What in one form or another has been a standard device that has as its purposes more than just stalling me was pulled again. You may remember the account of how in the first suit the Williams affidavit was withheld until it was too late for us to respond to it in court and that Lesar later learned that it had been prepared for months. with an unexcuted and thus undated copy held back to give us. (In Whitewash IV.)

This time there was another affidavit, by another agent who again lacked first-hand knowledge. While it was executed May 13 - they dared not pull the identical trick after we exposed the first one - it was again withheld from us. I mean this to be taken as deliberately withheld. Not accidental. I anticipated it and asked Lesar to ask for it so I could respond. To my knowledge he made two calls to the office of the U.S.Attorney the end of last week to ask for it and at least one this Monday. There was no response to any. Ryan handed us a copy two minutes after court was scheduled to begin, one minute before the judge entered. We thus were foreclosed from addressing it again. Had we not been there would have been a real attack on it, from intent to content to incompetence. There will yet be. There is no doubt in my mind that it reprents another executive-branch effort to nullify ths law by a method of perjury in which the penalties of perjury are avoided with the simple device of having the wrong person execute the wrong affidavit.

Pratt accepted this. He went farthur and said he had no reason to question the government's good faith. And were this not enough he added that he felt that under the law he could regard "substantial compliance" as full compliance. And were all this not already too much, he said that if the government was withholding, then why did we not conduct ourselves as gentlemen and just tell them what they were withholding, that he was ure they would then deliver it.

He went out of his way for irrelevant comments, like he knew we were anxious to take the case to trial and that I am a "conspiracy theorist." The facts are contrary. I would much prefer compliance without trial as anyone knowing my circumstances and Jim's would know. Moreover, we both have other work to which we cannot get and going to trial without need would merely make getting this other work done that much more impossible. And on the second point I am virtually alone in being an anti-"conspiracy theorist to the point where recently I have felt it necessary to go public on this. However, I did not anticipate that the government would or dared comply with my request, so I have expected that we would have to go to trial. But this is not my desire.

I regard both cracks as reflection of prejudice, whether or not he intended disclosing prejudice to us.

One of the net results of this combination in which the judge was more the government's counsel than Ryan was is duplication of what happened in the first case, the judge putting the burden of proof on us rather than the government.

We told him that the papers already given us contain absolute proof that others are bing withheld. he has an affidavit before him in which an agent attests that he has gone through a completely unidentified file/ and have given us all I've asked for (but even this worded evasively and not positively), the government does not make even pro forma denial, we cite from the papers provided two proofs of the three clearly-reported withholdings and in the face of this the judge says that he is sure the government will give this to us. He is unconcern ed that he has been lied to under oath by what is relevant, compliance.

As best a non-lawyer can have an opinion on what constitutes perjury, I think in this case, despite the unhidden efforts to accomplish those purposes while avoiding the crime, it was committed. This agent, John W. Kilty, first swears that he has "personal knowledge" of my request and of what I requested. While he lies and evades in his description of what I asked for, he does include "Laboratory examination data which may be available regarding testing done on a curbstone near the crime scene." (Note the peculiar language, especially "which may be available" when there has to be available all this work absent its destruction.) And if his concluding language is also evasive and indefinite, I believe it crosses the line:"The FBI files to the best of my knowledge do not include any information requested by Mr. Weisberg other than the information made available to him."

It is on precisely this that the papers provided refer to <u>two</u> tests with which we were <u>not</u> provided.

"Substantial compliance" in the law as we recall it refers <u>only</u> to the right to recover costs.

And I think this affidavit gets to the purposes of sanctions against those who withhold, whether or not it is perjury.

Although we can't afford it Jim immediately ordered both transcripts. As soon as the judge left the courtroom I addressed some pointed remarks to Ryan. I told him that after all this time I've more than had it and that I'm not going to tell/him all I know so that of all that is withheld he can see to it that only what I know is given to me; that I'm not sitting still for incompetent affidavits that are perjury or accomplish those purposes; and that in this case I'm not letting him avoid the possibilities of a subornation charge because he is supplying perjurious material and that I am telling him it is and that if there is what I will demand, a proper affidavit based on first-person knowledge on both what we were discussing and the overall I will immediately ask for a perjury charge because if what we have been told is sworn to it will be perjurious. I did not tell him what, I think I'm not required to, and if necessary I will seek a judicial determination.

I did ask for a first-person affidavit saying that I have been given 100% of what my Complaint calls for. He promised it but will not deliver it. He can't. When he demurred on the first-person bit I told him the name of the agent who was the Warren Commission's expert and who did testify there to these tests results and that not only was this agent still an employee but at the conference he was the only one who knew the answers and that the agent who executed the affidavit had to ask him the answers to questions.

The whole thing outraged me. The more I thought of it the more apparent it became that there can be no innocence and that there is a clear intent to nullify the law again with the same suit. I decided to take this on head on and Jim agrees. We will move to strike the affidavit and we will attach to that my affidavit in

which I address this "good faith" of the government as reflected in all five of my FOIA suits and in the eventual delivery without litigation of what was withheld for years with spurious excuses. It makes quite an indictment. The first thing I did after getting home that evening was to dash off about 4-5,000 words of this, with citations to which I can undoubtedly add. I did not have time to read and correct it before giving it to Jim, who will revise and modify it, put it in better form and eliminate what lawyers might consider irrelevant.

I want this filed as fast as we can possibly do it, certainly prior to the issuance of the Rockefeller Commission Report. (If you can get one for me as soon as it is out I'd appreciate it and I think there are parts that will require prompt and careful examination by one with extensive factual knowledge.) I want then to make as fast as possible an issue of discovery rights and if we are denied on this to appeal immediately. Jim agrees.

My affidavit will contain documented proof of what I am confident is perjury in more than one of the earlier cases and of deliberate lying in all. It will also contain repeated examples of what I think it is generous to describe as no more than trickery. If this judge is going to try to rewrite the law to put the burden of proof on the applicant and to substitute his or any other judge's opinion of the government's "good faith" for the law's requirement that the government meet the burden of proof, I'm going to dump a case of "good faith" on him that would give most people acute indigestion.

Were there either this "good faith" or reason to believe it could exist there would have been no law. The law is predicated on the certainty that there will be other than good faith. Otherwise there is no need for the law and certainly not for the amending of it.

However, confident as I am in my knowledge of the fact, I am under no illusions about who has the power and what judges can do. So, I think those who have genuine interest in this law ought to develop a serious interest in what is happening in what may again be a test or the test case. I also believe there can be no better test case for giving the law viability than this one if we can avoid the corruption and dishonesty that has tainted all the cases to date. This is a case where, if there is a willingness in the Congress, there can be punishment and it can be punishment for criminal acts to violate the law.

One of the reasons for the length of the affidavit is to make the fact and its meaning comprehensible to others than those directly involved in the case.

Unless Jim says otherwise I will in this case depart from my practise of the past, which has been to say nothing outside of court. As soon as I have this affidavit filed I will use it in public, in a press conference if I can arrange one or by giving copies to the press. Whether or not they will use it I can't say. Recent experiences are not encouraging along this line. I also think that the content of this affidavit is properly the concern of several subcommittees of both Houses. I would like to provide copies to them and if they desire, to testify and offer proof.

I do think that if Jim and I continue to have to stand and fight alone on this there is some hazard. I'm not concerned about that from laying my head on the block because my fact is absolutely solid. I am concerned about what can happen if we stand along with all the government has as stake in this case. It is not just the law it does not like. This case can blow the whole assassination "solution" apart beyond repair. I think it is by far the best way to do this, the safest, one that puts it all in proper context, and that other considerations of which I plan to write you when I can indicate the importance of making the effort at the earliest possible moment. The whole thing is mushrooming on both saide and may again get out of control and again be needlessly very hurtful to many.

Sincerely,