2/2/76

Dear Ken Brief,

If this letter reaches you without a copy of Post Mortem it will mean that in an effort to get a copy to you faster I'm having the lawyer in this case send you one with copies of the briefs of bothm sides before the federal court of appeals in D.C. He is not home. I tried as soon as we said good-bye. I will encapsulte in this. But I will also send you copies of the briefs in a few days if I can't tonight.

In its earlier form, C.A.2301-70, this suit was used to rewrite FOIA. The legislative history, which I can supply, shows it is the first of four the Senate (Edward Kennedy making the point) held amending of the law. It is the first suit filed under the amended law.

It came before a federal judge who is pro-government and against the law. He spelled out immediately how he intended rewriting the law. This forced us to be quite affirmative. When if I was wrong it meant a perjury rap for me I alleged and proved perjury against the government. The judge's response was to threat en my lawyer, Jim Lesar, and me in court. We can provide transcripts.

In all cases I proved perjury - meaning deliberateness and about the material, not just false swearing. The FBI's response (in facsimile in Post Mortem) was to say I could make such charges ad infinitim because I know more about the JFK assassination than anyone in the FBI. There is no other answer to this minute to the charges.

With this incomplete explanation, the questions in which you expressed interest.

I sued for the spectroscopic and neutron activation analyses of all the objects said to have been struck by bullets in the JFK assassination. I said I did not seek the raw material, the final results, the purposes ofsuch tests in homicides. That such final results exist does not rest on the presumption they do because they were required as the end purpose of the tests. Their existence was sworn to by the agent who actually handled this end of the investigation and was the Warren Commission witness. He said he was their custodian. He is the agent I said resigned the day after Clarence Kelley had to sign a false letter to us on what testing was done, April 10 and 11, 1975. He is younger than I.

In a March 14 conference the FBI arranged with us and refused to tape so there could be a record - I asked in writing in advance - Frazier said there were no such final reports. To this day, however, there has been no affidavit to this effect, the clear esquirement of the law, which puts the burden of proof on the government. At that conference they offered as a substitute all their raw material. In the previous suit they swore that if they gave me this raw material - which I had <u>not</u> asked for, the FBI would fall into ruins. They were careless, I was careful, and I was able to prove that they did do tests they swore they did not. My proof was buried in what they gave me and they did not spot their carelessness. It is reproduced in facsimile in Post Mortem.

Here I'm taking a liberty to speed you up. I'm including Whitewash IV. I really think you will, at some point, want other content, like the transcripts. But the original affidavit is in it in facsimile, with a history of these suits. I think you and others on major papers ought to get interested in what is happening to this law. If you do not want it don't pay me. Post Mortem is $10.75, Whitewash IV $6.25.

The relevant portions of the FBI affidavits in the current suit, C.A. 75-226 in federal court, 75-2021 in appeals, are reproduced in facsimile. One agent swore both ways after I caught him swearing falsely and <u>opposite</u> what Kelley's letter (also in facsimile) says. The FBI had made this material on the question of compliance and netting

the affirmative burden of proof the law imposes on the government.

The purpose of the tests was to establish whether or not the three bullets allegedly fired by Oswald struck both victims (from whom fragments were recovered), their clothing, a curbstone, the windshield. The tests can be definitive and in case this could have been without question. However, as few realize, from the first moment, with new evidence in Post Mortem, the government knew ~~from their first tests~~ the story was false. So, they can't comply with my request and and can't comply with the law. The proof is in this long book written over almost a decade, one I had to print without editing and was able to get to the printer just before hospitalization for phlebitis.

I would suggest that the reporter to whom you give this begin with the fourth part, done hastily but entirely accurate. I think he'll get enough out of it to begin with and it deals with this case, among other things. Sometimes, perhaps, I'll be able to explain to you the reasons for what is generally unacceptable in my writing.

The single sentence I read you is the last in an explanatory footnote in the government's delayed court of appeals brief. I phoned as soon as I reached it. That footnote begins, "Obviously, if Weisberg could show that further tests were conducted, the government would be obliged to explain why no results were in its files..." I did prove this, in court and under oath, with government records. The sentence I read is: "In this case, this court must decide whether the search was reasonable, not whether the FBI properly investigated President Kennedy's assassination." (My emphasis.)

If they did not make the tests, then they did not properly investigate the assassination, their own words. If they did, they are suppressing the evidence. Can you believe that if the evidence supported the "solution" it would be withheld?

Either way, I think there is a story. There is no alternative, only these two.

And they are using the prejudice against touching the JFK assassination as a means of rewriting the law. If they succeed it will mean the government can deliver any irrelevancy and claim "substantial compliance" of in this formulation above, that a non-productive "search" by the wrong person is "reasonable."

The government's brief is an atrocity if you know the facts. But I have finally forced them into their own simplification that, I hope you will agree, by-passes all the hang-ups as I see it or the complexities as others might: they did not really investigate or they are withhold what disproves the "solution."

As I understand it, oral arguments may be in about two weeks. Lesar is preparing for oral arguments in the Ray appeal in Cincinnati, to be tomorrow. I presume he was at a law library when I phoned him. I have a medical appointment in Washington Wednesday and a calendar call in another FOIA suit Thursday. I'll then be home from Thursday afternoon until late afternoon Monday, when I have another medical appointment. I'll be home Monday night. Until the hearing on 75-2021 I have no other plans for being away. Please feel free to call me or have a reporter do it. If there are questions.

After I gave Les the initial proofs of the stories you have run and showed him what I'm working on and the kinds of proofs I have, I suggested that he propose to you use of the serialization rights to Post Mortem. Or anything else. He counselled waiting until these stories were done. Now I'm sorry. Someone else could have been working on this. You will find the new in the sense of until now suppressed medical evidence alone more than mere substantial doubt about the "solution." And that the Warren Commission deliberately avoided it while the executive agencies did not volunteer it. Skimming the facsimiles after checking the index on "Burkley" will give you enough. Or reading Part 2.

It is also new journalistically in that the book has received no attention and this content has not been reported. While for me, by mail when I'm ill and handicapped, the sales are encouraging, I've sold relatively few books and they are not yet in commercial distribution.

Parts of Whitewash IV were used. The Wx Post (which did not carry your story) went for Dulles on perjury as the ultimate in patriotism. Much, including Ford's record on this, has never been mentioned outside the book. Sox did the wires. In the other transcript, in Post Mortem (475-88), my recollection is unclear. But I have the copy and much remains unused.

If Les did not tell you, while for my own reasons I'm saying nothing about it I'm doing another and completely new book on the King assassination - not Ray. I told him that when I have the draft completed I'd like to offer you the serialization rights and if you can be interested, for him to edit and thus more or less have the serialization in mind or done. I have more than enough now and I expect still more. I think unprecedented stuff from countless files, including the basement of the former District Attorney. (No black bag jobs - all legit.)

My limitations, financial and health, will make it less rapid than I'd like but I don't t ink it will be too long. I have to do everything myself. I have no help except a wonderful young lawyer and the fine job Les did.

With attention I have enough now to have a good chance of forcing a new look, an investigation for a purpose other than pinning a rap on a patsy.

I'm sorry if I've taken too much of your time with this hasty letter I began as soon as we finished talking. But while I was at it I thought I'd best cue you in on more on the chance you can again see that we can have coinciding interest. I do think that with the guts Newsday has shown the journalistic possibilities are real, perhaps unique.

Please excuse any uncorrected typos or unclarities. I have a student coming tomorrow to do some typing. - have to edit it so she can.

Best regards,

Harold Weisberg

After finishing reading the government's brief.

I told you an FBI agent who did this work retired the day after Kelley's false letter is dated. It turns out there were two, both only in their 50s and both retired the same day!

One was in charge of the overall work and testified, Frazier. The other executed the affidavit in the first case, Williams. The one who did the actualy testing retired almost as soon as I took the first steps.

From page 10:

"...there remain no agents with the FBI with personal knowledge of the tests which were performed on the Kennedy assassination evidence. Agent Gallagher retired on January 3, 1975. Agents Frazier and Williams retired on April 11, 1975. All were in their late 50s and has served over 30 years in the Bureau."

Without a background the reading of this brief will not disclose the extent of falsification that cannot be accidental.

That anyone would persist in running risks of this kind means to me that the alternative is much worse.

The whole case would come apart in court, as I have taken it apart with formerly suppressed evidence, in books.

On King: when I first gave Les what I did I told him I'd like to quote and credit what he did with it. May I have your permission, please?

Thanks,