Dear Jim,

II I'll make the notes you requested on the Government's appeal response in haste, as I read iffor the first time. As I think you realize, I do not expect to be at my sharpest or most detached on so doing. I do it in the hope this will not be the last in a series of futilities, or of the waste of much time.

It may be without significance, but I note the absence of all U.S.Attorneyan DC except Falancry and of the appearance of new names.

ISSUES PRESENTED:

What I have already given you from Hoover's testimony is total refutation of 1. To it might be added the documents on the charges and responsibilities of the Commission and its own interpretation from the Report. There was never any law-enforcement purpose possible except for the period before LHO's death, when it might be claimed there was an adjunct law-enforcement function, to help the Pallas police. I think it should be pointed out that to make any contrary claim is also to claim

- a) that Oswald was not alone and there was a communicacy;
- b) that Oswald was not the assessing
- c) that the efficial position of the Department of Justice is that the case is unsolved and the Warren Seport egregious error.
- 2. I think comes up later in detail, from the table of contents.

Statement of the case:

The first paragraph is inaccurate. Wealar seek the spectrography on other things, like clothing, curbatone, windshield and its trim, and it is only "allegedly" connect with the assassination. I think we should add to their definition "and also not given to the Warren Commission", for it is past time for defending it when it is possible, regardless of their complicity in it.

Statute Involved:

The inset paragraph 1. Is, of course, rubbish, and if it is not handled later, I note that everything, including the part of the statute that authorized seeking relief in federal courts, places the burden of proof of the government. Therefore, this condition must here be met. It has not in the past, and I do not believe we have made sufficient point of it, although my recall may be inaccurate. The allegation is not sufficient, is not the requirement of the law.

The first following sentence begins with a lie:"It is not open to question that the spectrographic analyses asught are part of the file compiled by the FEI..." It is a lie in its incompleteness. It was not compiled only "by the FEI". It was compiled forothers, esp. the Commission, to which it was not given. The FEI had and had no other business on this except as noted above, the legal (money is being spent) certainty of the error of the Commission. The rest of the paraggraph is a contrivance. The President neither has nor can ordain or invent law-enforcement purposes, and "cover's testimony I called to bad's attention (I think 5E98 ff) is as explicit on this as it can be. I think therefore that if it is at all possible, we should demand best evidence, Moover's. Precisely because the crime was under the laws of the State of Texas and nowhere else did the FEI not have law-enforcement responsibilities, and they have supplied us with the definitive answer should they elect to claim they were ecoparating in the fact that they did not give the spectros to anyone in Dallas, providing instead an incompetent and meaningless paraghrase, what the Commission and Corry published, and no more. In fact, I do not believe

(from recollection, which can be wrong) that they supplied evens a paraphrase of the later work, as the curbstone. If there is any definition of "law enforcement purposes" as said here "within the meaning of the Public Information Act", I am unaware of it. Nor am I aware of any logal decision warranting this interpretation. Even the spuripus argument about the President, which they picked up from us, falls apart with the appintment of the Commission and at the very least entitles us to what was done beginning that day. Mouning curbatone, car, etc.

Johnson did bot give the FEI the represented charge (Hoover addresses this) and the publicly-available information is all in refutation of this, as in the wax news stories. The first thing Johnson did is centrary, to ask the FMI to report on all the details, not who did the killing, which was never officially considered to be other than Oswald, and especially with his death that became moot. Nor does the President have this power, had

he attempted to exercise it, as even Hooger says.

The next paragrpah argues against and disputes this. The FBI could not at one and the same time be acting for only the President and only the Dallas police. I have already addressed that the fact that it did not here act for the BPD because it did not give them either the spectro or any meaningful representation of its then results. I was not then complete, not completed until after the FBI was acting as the investigative arm of the Commission and here I note American Mail and Wellford). This paragraph again says what I think we must now emphasize as much as possible: that the Department and the FRI insists the Commission was wrong: "to apprehend the assassin or assassins". Oswald had been apprehended before the FRI meezod.

At no point has the government proven that if all the rest of what it alleges is true, that it did its work for law-enforcement purposes, this included the spectres. The burden of proof is on them and they have not met it. They have to show how this narrow request I have made is part of that law-enforcement investigation, the spectros only, and they do not even begin to. But under the Wellford (Wellborn?) decision, the part you missed and I showed you, even if this were the case it is not within the exemption because it is a simple scientific test, and that is not exempt. You'll find

this marked on the copy I gave back to you, the end of that decision.

Without checking the quotes in the last paragraph, two points: they do not say all FHI files, and they do not change the specific language of the law. The law says only what 7b says, no more. This is specious and besides, Mitchell and Kleindienst have already ruled to the contrary, in both the Ray and pictures cases.

II. The assible att Availability, etc

(B)

The argyment that without the examption a defendant sould not have access is spurious I think on two counts that come to mind immediately: one is the Jencks Act itself and the other is in the AG+s mess. You have just phoned, I want to finish this for you, and I therefore do not now take time to get the Ali's memo on this. I may be wrong. Hoch thinks so. However, I think on this point there is the waiver of use (Amer. Mail). Hence the controlling elgal interpretation is contrary to their cliam, I now see they go into this. First I ask is "litigants" sumonymous with "defendants"? Congress did not say defendants. The quote is incomplete. I think there is relevance in the omission of the language of exemption 5. In any event, this language does not meet the "seems" test of the Aff's memo (it is not a definitive interpretation), for there is nothing in what I want that in any way can be defined as metting this language, the same as the fiction in the Williams affidavit. It is not an FEI report, of a witness interview or anything else like that, and it cannot be definatory, not of anyone. And there is no doubt this would have been available to Oswald.

On the decisions cited, where they used them earlier I have you a memo saying it was clear these were misused and probably said the opposite. you were to have checked this.

this. In 2468-70 I never found a single faithful or full citation of a single decision, law, regulation or interpretation of any kind. There is no reason to assume it here and now.

The citation of the House Report is redundant and irrelevant and goes into what is not at issue. What it depends upon, in any event, is what is lacking, the bushen of proof required even before invocation of the exemption, that this is such a file. In general it is not, and specifically it is not, being no more than a non-priveleged scientific test. Ingeneral Houser will be hung up on this, for he dare not let his dishonesties in such matters be exposed. I thank at some pojt what I had in the draft and I think was omitted should be used: that if this file in any way supported the official methology, it is to the government's interest, no danger to indviduals, innocent or not; sources; secret processes, etc/, being in any way involved.

The first line on 7 again raises the question of the absnee of proof required by the law that the spectro is such a file, even if investigatory files were to be imame in this instance. It is not such. The labguage twoard the end of the footnote, beginning with "which might unfairly reveal raw date about individuals", met hods of investigation, etc., as I antifippted above, ought be hit hard as a repeated and deliberate deception of the court, and without gloves, but real hard. It should be raidiculed too. It could not be more irrelevant, and knowingly so. You might want to get a few pages from a staurdard text to show it is not in any sense a secret process.

It is incredible to me that you would now ask me about the Williams affidavit after the the very long analysis of it I gave Bud immediately and, unfortunately, was then ignored.

Let me make a few suggestions, some of which may be new. The law requires best evidence. Any FBI man is not. Reover is on interpretation, or perhaps some recognized deputy. Here it has to been spectrographer, and Gallageher, the one who did the work, is available to them and avoided. They had to avoid Jevons because his affidavit in the Nichols case, on which I also gave Bud a memo, is perjurious. But he, at least, claimed knowledge of the test. Frazier, for examply, swore than any FBI agent, even an expert on ballistics, is an incompetent witness and that he was incompetent. I referred to this in the draft. There is no knowledge Williams can have that can disclose or make him competent to interpret "for what purpose the file was compiled. That is definitely done by Hodver and the empowering and limitation on the powers of the Commission and its own expection of the limitations thereon. However, there is here a confusion that cannot be accidented, between the entire FRI file, which is neither in question nor what is sought, and the spectrographic analyses, which are not as defined and not thus exempt, were the rest of the file to be.

"Common sense" is not a provision of either civil or criminal law. There are many crimes committed, and common sense says they are crimes. But that does not vest the FBI or the federal government jurisdiction. In fact, the law precludes the spending of any federal money (a point I think I'd emphasize, money) on them. Murder is one. The enactment of the new law on Presidential murder takes care of this, for it shows there was no jurisdiction, exactly what "power swore.

Aside from what I have already given you on Williams, I think the burden of proof provision here needs uset in the absnce of proof of Williams' competence, the assumption is that he is not a competent witness. They have all sprts of specialists. He is not identified as of any kind. Suppose his expertise is in forgeries, or tire-tracks. How does that qualify him for this? And why have they avoided the most competent on the method of the spectry, the man who did it, who is available; or on interpretations, the Attorney General or his surrogate; or Hoover? The answer should be made explicit and in the form of a charges because it would involve them in the commission of either a

Circul, playing to a gross and difficult. Sucception of and misrepresentation to the courts. Especially in the context of this exceptional day do I believe me should make this charge, explicitly and in as much detail as possible. I did in the 2569-70 responses, now filed almost 2½ months ago. Why else do you think there is this considerable delay in setting the case? Why do you think Werdig suddenly disappeared from all subsequent papers?

Here again official doubt that Oswald was either the assessin or that the assessinatuon was other than a conspiracy. I think all of these should be addressed at a single place and strongly, each case being quoted verbatim and in full, not only for its effect on the judges, but also for the press, which just might see it this way.

Should you feel that what I so long ago did on this Williams affidavit is inadequate, after you read it, apparently for the first time, let me know and I'll go over it again when I return from NY. But this now can't be until after 5/7, when I have a meeting in the judge's chambers in Beltimore. I am, as I would hope you can understand without my developing the argument, dismayed that I took the time to do all that work only to have it ignored when it should have been used, in the Sitch hearing, and at this late date, after filing of our appeal, apparently unknown to you.

This is one of the so many things like this, in volume grater than a large book, that will not again happen. I may continue to do more such things for you(all), but only when you come up for them and go over them in my presence. I'll not again waste a minute in such futilities. And I do resent all of it, as you would if you were aware of the extent of the writing for which I have completed the research. Or of the suits I could have filled in this time. Or the simple pleasures of life for which I could use a few moments from time to time.

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