

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG
Route 8
Frederick, Maryland

Plaintiff

2569-70

v.

Civil Action No. _____

U.S. GENERAL SERVICES ADMINISTRATION:
F between 18th and 19th Sts. NW
and
U.S. NATIONAL ARCHIVES AND RECORDS
SERVICE
Pennsylvania Ave. at 8th St. NW
Washington, D. C.

Defendants
.....

C O M P L A I N T

(Pursuant to Public Law 89-487; 5 U.S.C. 552)

1. Plaintiff brings this action under Public Law 89-487; 5 U.S.C. 552.

2. Plaintiff is a professional writer, living and working in Frederick County, near the city of Frederick, in the State of Maryland. Plaintiff has published a number of books dealing with political assassinations and currently is devoting his full time and efforts to researching and writing additional books on this same subject.

3. The Defendants are the General Services Administration of the United States Government and its subsidiary, the National Archives and Records Service.

4. The Defendant National Archives is the repository for the official evidence relating to the assassination of President Kennedy. In this capacity, the National Archives is charged with the duty of making said evidence available, without favoritism or prejudice, but in accordance with the applicable laws, regulations and practices.

5. Mr. Burke Marshall, executor of the estate of President John F. Kennedy, entrusted some of this evidence to the care of the

National Archives under the terms of a Letter Agreement dated October 29, 1966, and signed by both Mr. Marshall and Lawson B. Knott, Jr., Administrator of General Services. (Exhibit A)

6. The clothing worn by President Kennedy on the day of the assassination was among the evidence transferred to the custody of the General Services Administration under the terms of the October 29 Letter Agreement.

7. Said Letter Agreement classified the clothing of President Kennedy as Appendix A material and provided that such clothing could be made available to certain classes of persons, among them:

(b) Any serious scholar or investigator of matters relating to the death of the late President, for purposes relevant to his study thereof.

8. Prior to August 6, 1967, Plaintiff verbally requested that he be allowed to examine the President's clothing. On and subsequent to that date, Plaintiff has requested in writing that he be granted access to said clothing.

9. In hopes of avoiding both a dispute over access to this evidence and unnecessary court litigation as well, Plaintiff proposed as an alternative that photographs of the President's clothing be taken for him and at his expense.

10. Plaintiff's requests that he be allowed to examine the President's clothing or have it photographed for him were first ignored by the General Services Administration; later they were denied.

11. In denying Plaintiff's requests, the National Archives referred to restrictions in the Letter Agreement which were for "the stated purpose of preventing the undignified and sensational use of the materials presented to the Government ..." (Exhibit B) This is the sole justification which has been advanced by the Defendant National Archives as grounds for the suppression of these materials.

12. Plaintiff submits that his requests are capable of being granted in such manner as to preclude the possibility of any undignified or sensational use of the materials.

13. In this regard, Plaintiff points out that his original request was that he be allowed to examine the President's clothing, under the proper supervision of the officials at the National Archives. Such an examination would not be susceptible to "undignified or

sensational use (such as for public display)", since it is not capable of reproduction, much less reproduction for public display. Moreover, officials at the Archives have permitted Plaintiff to personally examine the clothing of Lee Harvey Oswald, thus establishing a precedent which should apply to the President's clothing as well.

14. Secondly, Plaintiff has requested that, as an alternative, photographs of the President's clothing be taken, at his expense, and delivered to him by the National Archives staff.

15. Plaintiff points out that prior to this date only such photographs of the President's clothing as depict gore and are capable of undignified and sensational use have been widely disseminated. Indeed, it was pictures of this sort which were made available by the Warren Commission itself, and under such circumstances as insured their widespread undignified and sensational use.

16. Further, Plaintiff wishes to emphasize that in an effort to eradicate any suggestion of possible undignified or sensational use he has submitted a request for a photograph of a very small area of damage on the front of the President's shirt. A photograph of this small area, measuring less than an inch across, is in no wise susceptible to undignified or sensational use. On the contrary, such a photograph is of value only to persons able to evaluate it through scholarly examination.

17. The Letter Agreement designated the following as Appendix A materials:

Clothing and personal effects of the late President, identified by the following exhibit numbers relating to the President's Commission on the Assassination of President Kennedy: Commission Exhibit Nos. 393, 394, 395. FBI Exhibit Nos. C26, C27, C28, C30, C33, C34, C35, C36.

Missing in this catalogue is FBI Exhibit No. 60, which could not be more relevant, as Paragraphs 18 - 34 of the attached addendum show, especially Paragraphs 29 - 34.

Under the terms of the Letter Agreement which pertain to Appendix A materials, the Administrator of the National Archives "shall have full authority to deny requests for access, or to impose conditions he deems appropriate on access, in order to prevent undignified or sensational reproduction of the Appendix A materials".

(Exhibit A)

19. By the same token, the Letter Agreement has vested the Administrator with authority to make available to the Plaintiff the materials he seeks. The discretionary authority of the Administrator to grant access to the clothing and to permit photographs of it has recently been reaffirmed by Burke Marshall in his letters to the Plaintiff dated April 30 and May 25, 1970: (Exhibit C).

20. Under the provisions of the Freedom of Information Act, Defendant National Archives has the burden of justifying its refusal to accede to Plaintiff's requests.

21. Thus far Defendant National Archives has failed to adduce any reasons for the suppression of this evidence which hold up under analysis.

22. Plaintiff has sought relief at all appropriate levels and has consistently been denied his requests by the responsible agency officials, where they have not ignored his requests and failed to respond to them.

23. Plaintiff alleges that the Letter Agreement between Burke Marshall and the National Archives constitutes a fraud upon the public and should be declared an illegal or void contract upon the following grounds:

1) That the Letter Agreement is contrary to sound public policy.

2) That as a contract the Letter Agreement is void for vagueness.

3) That the Letter Agreement is a legal nullity because its terms were broken in advance by the Warren Commission's publication of gory photographs of the President's clothing as well as having been waived later on by the executor of the Kennedy estate, Mr. Burke Marshall.

4) That some of the materials transferred under the terms of the Letter Agreement, specifically, the autopsy X-rays and photographs, were stolen property and could not be the subject of a valid contract.

24. Plaintiff alleges in the alternative that, should the Letter Agreement be held to be a valid contract, Plaintiff meets all legitimate requirements set forth by said Letter Agreement and has

wrongfully been denied his requests by the Defendant National Archives, in violation of the Freedom of Information Act.

25. Wherefore Plaintiff asks the court to grant relief in the following form:

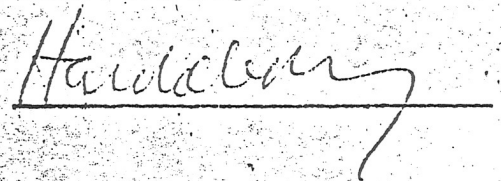
A. By ordering Defendant National Archives to allow Plaintiff to examine the President's clothing under proper supervision.

B. By ordering Defendant National Archives to allow Plaintiff to make photographs of said clothing at his expense.

C. By declaring the Letter Agreement between Mr. Burke Marshall and the Defendant National Archives null and void, and by restraining the Defendant from any further use of said Letter Agreement as a pretext for denying Plaintiff access to the previously described materials.

26. The above paragraphs lay the legal basis for Plaintiff's action against the Defendant. However, there is much background to the complaint, and in order to assist the court's understanding of this material and its significance as regards the national interest, Plaintiff has prepared a memorandum of fact and law which he hereby submits as a separate Addendum.

Harold Weisberg pro se



Dated: _____

A D D E N D U M

I. THE IMPORTANCE OF THE CLOTHING AS EVIDENCE.

A. What the Evidence Must Show to Support the Official Theory.

1. The Warren Commission alleged that one virtually pristine bullet, Commission Exhibit 399, inflicted all seven non-fatal wounds suffered by President Kennedy and Governor Connally. In its virtuoso performance, this bullet smashed bones in three parts of the Governor's body - after having passed through the body of the President - and emerged, as if by miraculous conception, almost wholly intact and virtually unmutilated and undeformed, (Exhibit D)

2. Without this stellar performance by Superbullet, the crime could not have been committed as officially alleged; for if one bullet did not cause all seven wounds, then there had to be a second assassin.

3. As a corollary, it is also true that, if the crime was committed as officially alleged, there would have to be a bullet hole in that portion of the President's shirt which corresponds to the lower right rear of the neck, two bullet holes in the overlap of the front neckband of the shirt, and a bullet hole through the knot of the tie, all caused by the bullet depicted in CE 399. (Exhibit D)

4. It is on this account that the shirt and the tie are among the most basic evidence relating to the assassination. Ultimately, they by themselves may provide proof as to whether the assassination was committed by one man alone, or by a conspiracy of two or more, a fact which may account for their suppression.

B. The President's Clothing Was Never Properly Examined Before The Warren Commission.

5. The President's clothing was placed in evidence before the Warren Commission. Whether or not the Warren Commission realized the evidentiary importance of the clothing, and it is somewhat difficult to believe they did not, the Commission failed to have the relevant experts examine the clothing. No experts in forensic medicine were called by the Commission, though they were readily available, nor were the appropriate experts from the FBI and Secret Service summoned to examine this evidence.

6. Instead, the Commission drew upon the opinions of ordinary doctors whose skills were in laboratory work. Additionally, the

Commission called in one FBI ballistics expert, but his testimony in this area was both incompetent and equivocal.

7. In short, the conclusions reached by the Warren Commission are not justified by the testimony it heard.

C. Other Relevant Evidence Also Suppressed.

8. Unfortunately, suspicion of the Warren Commission's conclusions and even the possibility of their validity is further heightened by the suppression of other basic evidence.

9. Most notorious, of course, is the illegal suppression of what is - or perhaps was - the best available evidence, the X-rays and photographs taken as part of the autopsy done on President Kennedy.

10. In addition to this crude and blatant cover-up, the spectrographic analysis of the metallic traces on threads of the President's clothing was also suppressed; it still remains suppressed, although a suit has been filed to get it released.

11. The only testimony before the Warren Commission about spectrographic analysis was taken from a witness who specified his incompetence and designated his own testimony hearsay.

12. The spectrographer who performed the tests on the President's clothing was called before the Warren Commission, but he was never asked a single question about this spectrographic analysis.

13. The significance of spectrographic analysis lies in the fact that it permits an unequivocal statement as to whether the traces remaining on the President's shirt do or do not exactly coincide with the metallic content of the bullet known as OE 399.

14. The importance of this suppression of the spectrographic analysis assumes even greater proportions when it is understood that the testimony given before the Warren Commission indicates there were no metallic traces in either of the two holes in the neckband of the President's shirt or on the nick made on the extreme lefthand side of the knot.

15. Since this magic bullet, OE 399, left metallic traces on everything else it allegedly struck, as, for example, the back of the President's shirt, it is logical to infer that the damage to the neckband and tie was not caused by OE 399 or any other bullet.

16. This inference is strengthened by the fact that, while

this bullet is alleged - in the "official" version - to have gone through the President's tie knot, observation establishes that this was accomplished without a hole being made in it, since there is only a slight nick on the extreme lefthand side of the tie.

17. The suppression of the autopsy X-rays and photographs, taken in conjunction with the suppression of the spectrographic analysis and the refusal to let Plaintiff examine the President's clothing - these things suggest an obvious explanation: The basic evidence of the assassination is suppressed for the simple reason that it contradicts the official version of how that assassination was carried out.

II. PHOTOGRAPHS OF THE CLOTHING AS EVIDENCE.

A. Types of Photographs.

18. The photographs of the President's clothing which are contained in the Warren Commission's residual files are of a type known as reproduction copies. All photographs of the clothing delivered to the Commission by the FBI were of this type.

19. These reproduction copies are made from negatives which are designed for pictures used in offset printing, rather than as photographic pictures.

20. Such offset photos contain myriads of small dots called a "screen". These dots are invisible to the naked eye, but they are essential to the photoengraving process by which reproduction by printing is accomplished.

21. Unfortunately, upon enlargement the dots dominate and hide the content of the offset pictures, even when a simple magnifying lens is used.

B. Types of Photographs Available to Public and Scholars.

22. There is no restriction upon the availability of or use of reproduction photos; although they show nothing but gore and cannot be properly enlarged, such photos were emphasized in the Warren Report and its supplementary volumes and were released by the Government in order that they might be widely disseminated, as they were.

23. Defendant National Archives informed Plaintiff that it had made its own photographs of the clothing, in order that the shirt could be studied by those doing research into the assassination.

24. It is obvious that the reproduction photos taken by the FBI and delivered to the National Archives by the Warren Commission were useless; had they been in any way adequate for study and research, then it would not have been necessary for the Defendant to take its own pictures for use in such research.

25. Defendant National Archives permits examination of the photographs it took of the President's clothing and has shown them to Plaintiff; however, the Archives refuses to follow its customary practice of making copies for sale to persons doing research.

26. The reason given by the Archives for refusing to make available its clear and usable photographs is the pretext given in the Letter Agreement: to prevent their undignified and sensational use. But the reason is spurious. Those photos which were released for widespread public distribution portrayed nothing but gore and have no evidentiary value. Those withheld, including Plaintiff's request for a photo of a very small area of damage, were of evidentiary value but not susceptible of sensational or undignified use.

C. The Photographs as Evidence.

27. The FBI is the major crime detection agency in the world's most technologically advanced nation. Consequently, the only photographs which the FBI delivered to the Warren Commission were reproduction copies made for use in offset printing; that is, the type of photographs with the lowest evidentiary value.

28. It should be pointed out here that reproduction photos are made from photographs capable of enlargement without distortion; thus, it must be remarked that the FBI went to some extra trouble in order to provide the Commission with reproduction copies, for it already had the kind of photograph suitable for enlargement.

29. One of the photos the FBI presented to the Warren Commission was a composite described as FBI Exhibit 60. The point at which Bullet 399 is said to have entered the President's shirt is enlarged and added as one of the inserts in FBI Exhibit 60. Plaintiff emphasizes that this FBI Exhibit 60 is not itemized in the appendix to the Letter Agreement, as quoted in Paragraph 17 of this Complaint.

30. Strangely, the damage to the shirt depicted in this enlargement does not coincide with that discernible in the picture of the entire back of the shirt, both the shape of the hole and its relationship to the vertical stripes in the pattern of the shirt being different.

31. The Department of Justice has given Plaintiff prints of such pictures which are of the kind which permit enlargement without distortion. These photographs make it possible to provide an "innocent" explanation of the discrepancy pointed out in paragraph 30 above an explanation which could not be brought forth were Plaintiff restricted to the reproduction-type photographs the FBI provided to the Warren Commission.

32. For whatever reason, the fabled FBI, agency with a multitude of experts, possessor of arcane skills, developer and refiner of recondite sciences - said FBI reversed the vertical direction of the enlargement when making its composite picture for FBI Exhibit 60.

33. Plaintiff feels constrained to point out that he has no innocent explanation as to why the FBI furnished the Warren Commission with useless reproduction-type photos, or, for that matter, why the FBI considered it necessary to predigest evidence for the Commission by compiling a composite photo.

34. Whatever the FBI's motive may have been, the error was not detected by the Commission. Although this does not necessarily reflect on the competency of the Commission's staff, it does point up the special way in which the public interest requires an unofficial examination of all the evidence. For regardless of the competency of the Commission staff, or its integrity, Plaintiff has here uncovered an instance of an official agency providing the Commission with manufactured evidence, and at that, evidence which is essential to an understanding of the nature of the assassination, and who may have perpetrated it, and how.

III. CIRCUMSTANCES SURROUNDING THE LETTER AGREEMENT AND AN EXECUTIVE ORDER.

A. Circumstance I: Time.

35. The Letter Agreement transferring the President's clothing to the Archives was dated October 29, 1966. That date is significant. It is somewhat more than two years after the Warren Report was filed.

36. By this date the Warren Report had come under severe criticism. Plaintiff had published the first book on this subject, Whitewash: The Report on the Warren Report. By October 1966, Whitewash and three other books were receiving widespread international attention.

and one of those books became a "best seller".

37. Thus, by the Fall of 1966 the Government which prepared the official account of the assassination was in distress. Under direct attack, the official version rapidly lost credibility; indeed, a Lou Harris poll revealed that two-thirds of the American public no longer believed it.

38. By the most accidental of coincidences, the Acting Attorney General of the United States picked this very moment to issue an Executive Order, stating:

.... I have determined that the national interest requires the entire body of evidence considered by the President's Commission on the Assassination of President Kennedy and now in the possession of the United States to be preserved intact. (Exhibit E)

39. Both the Letter Agreement and the Executive Order were accompanied by enormous public relations fanfare, and an accommodating press, not to say a handmaiden, heralded both events as meaning that no evidence was suppressed and that all the evidence confirmed the official story of the crime.

40. The alleged reason for the Executive Order and the Letter Agreement is the preservation of evidence. Had that been the real objective, one doubts that there would have been a lapse of more than three years after the assassination and more than two years after the issuance of the Warren Report before these actions were taken. Rather, they would have been done, at the very latest, prior to the ending of the Warren Commission, and not at a time when a government troubled by popular disbelief desired its myths to be buttressed by propaganda.

B. Circumstance II: Falsification.

41. If either of these acts had any relation to preservation, then it was to the preservation of a false and distorted picture of the assassination and of the availability of the important evidence in regard to it.

42. Thus, one of the provisions in the Letter Agreement "gave" the autopsy X-rays and photographs to the Archives. In this manner, the Government became the beneficiary of its own property and the bestower of stolen property gained a reputation for magnanimity. More important, this maneuver enabled the Government to pretend it could

receive back property stolen from it under restrictions which would give the Government a pretext for the suppression of basic evidence. Thus, even if the press did not bruit it about, the X-rays and photographs taken in the course of the autopsy - the best available evidence - received a burial ceremony.

43. Coinciding with the fanfare over the Letter Agreement was a statement attributed to the autopsy doctors, that they "confirmed" the authenticity of the autopsy pictures. Since these doctors had testified before the Warren Commission that they had never seen these pictures, either their testimony before the Commission was perjurious or the statement was false or falsely attributed to them. Similarly, another statement attributed to the doctors - that these pictures confirmed the accuracy of the autopsy - was also false.

C. Circumstance III: Discrimination.

44. On November 1, 1966, in the aftermath of the sensational publicity surrounding the Letter Agreement, Plaintiff requested a copy of said Letter Agreement. The National Archives refused Plaintiff's request. The reason given was that any use would constitute sensational or undignified use. If genuine, as it was not, this condition would never change.

45. Thereafter, one Fred Graham arranged an exclusive release of said Letter Agreement to him and his newspaper, the New York Times.

46. In this regard, Defendant National Archives violated its own regulations, which would require that Plaintiff have had equal access to said Letter Agreement as Mr. Graham, in order that he could have not less than an equal opportunity for first use. Instead, the National Archives did not properly notify Plaintiff or even mail him a copy of what had been withheld from him, so that no one could act until after an erroneous interpretation had been foisted off on the people and fastened upon history. (Exhibit F)

47. In this fashion, Defendant not only discriminated against Plaintiff but also abetted the sensational and undignified misuse of the Letter Agreement by making propaganda, which is entirely inappropriate in Government, especially on such a subject and by an agency of allegedly only scholarly interests and purposes.

48. The clear inference from this is that to Defendant National

Archives "sensational and undignified use", is only a cover for suppression, until such time that the documents sought can be assured sufficient pro-government coverage.

49. Plaintiff has challenged both Mr. Burke Marshall and the Defendant to show how any but the proscribed use could be made of the reproduction photos so widely disseminated. The challenge was not accepted. Conversely, Plaintiff has challenged Mr. Marshall and the Defendant to show how the photographs he seeks could conceivably be used for sensational and undignified purposes. Again, the challenge was declined.

IV. Summary.

50. The documents which Plaintiff seeks have been refused him on the grounds that the Defendants wished to prevent their "sensational and undignified use". The details which give this claim the lie have been outlined above.

51. There is, however, a shorter and less complicated test. It is simply this: Has not the continuing suppression only served to foment wild speculation, ugly rumor, suspicion and distrust of the Government?

52. The answer is obvious. One need cite only a single instance: the morbid rumor that President Kennedy is still alive, as a vegetable, in Parkland or Bethesda Hospitals.

53. The question before the Court is whether the Government and its agencies are to be allowed to suppress information about the assassination of President Kennedy. Essentially, the Court must decide whether it is going to allow free reign to every bureaucratic subterfuge in order that a lie may be protected.

54. The question is one of great importance, for the nation is in deep troubles. At issue is whether or not it can be cleansed by lies, have its problems solved through deception.

55. The fact is that the official record set forth above is exactly what Public Law 89-487; 5 U.S.C. 552 was conceived, designed and promulgated to prevent, suppression disguised with prettily phrased but false and deceptive language.

A ρ 17 hr by request
C ρ 41 Under 1 hr
D 6 Bank 1 hr 4/30 5/5/70
E H 399
F R Clark ex rd
Graham H 45-8

