UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. DEPARTMENT OF JUSTICE and ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, Defendants.	CIVIL ACTION NO. 75-226

AFFIDAVIT

My name is Harold Weisberg. I am the plaintiff in this instant cause. I reside at 7627 Old Receiver Road, Frederick, Maryland.

I. BACKGROUND AND INTRODUCTION

1. This is the oldest of all Freedom of Information Act lawsuits. It stems from a request first made on May 23, 1966, under the Administrative Practices Act whose "freedom of information" provisions were violated so completely that Congress enacted the amendment which became known as the Freedom of Information Act (FOIA), to become effective on our national day, the Fourth of July 1967.

2. The information sought pertains to the FBI's testing relating to the shooting in the assassination of President John F. Kennedy in Dallas, Texas, on November 22, 1963. These tests are known as spectrographic analysis and neutron activation analysis (NAA). The latter were performed at the Oak Ridge National Laboratory of the Atomic Energy Commission (AEC) at Oak Ridge, Tennessee.

3. In the official account of the assassination, three shots only were fired, by Lee Harvey Oswald, using a surplus 6.5 mm. Mannlicher-Carcano rifle that was known as Mussolini's contribution to humanitarian warfare, it was that undependable. Oswald is said to have been in the easternmost of the bank of

windows on the sixth floor of the Texas School Book Depository Building (TSBD). In the account of the Presidential Commission known as the Warren Commission, the first shot inflicted a total of seven nonfatal injuries on the President and Texas Governor John B. Connally; the second shot missed and either a fragment of it or a spray of concrete caused by its impact on a curbstone inflicted a minor injury on a bystander, James (Jim) Tague; and the third shot is the fatal shot. In the version of the FBI and the Secret Service, the first shot wounded the President, the second wounded Connally and the third killed the President.

4. Both accounts failed to satisfy most of the American people. I wrote the first book disputing the Warren Commission. I have published a total of six books on the assassination and its official investigations. After conducting extensive investigations in 1977 and 1978, the House Select Committee on Assassinations (HSCA) concluded that there had been a conspiracy to kill the President and that not fewer than four shots were fired.

5. I am a recognized subject expert. In this instant cause the defendants have stated that I know more about the assassination and its investigation than anyone in the FBI.

6. In the Court of Appeals' second remand in this litigation, the first after the case was refiled as the first case anywhere under the Act as amended in 1974, that court stated that the information I seek is important not only to me but to the nation and that I should establish the existence or nonexistence of the information sought.

7. In the first remand, prior to the amending of the Act, it was strongly suggested that I should address untruthfulness by officialdom. With the en banc reversal that followed, I was then precluded from doing that.

8. When I set Wigmore's engine to running, the word of the Court of Appeals, despite the limitations, handicaps and obstructions and despite open antagonism by the FBI retired special agents (SAs) who were compelled to testify, I was able to establish that previously unreported testing was performed and that no records of it had been provided. (Two of these agents actually demanded as a precondition of their testimony pertaining to the subject matter of the remand that they be paid special witness fees over and above those prescribed and

already paid.)

9. This Court was led to imagine that this undisputed testimony was not true. Somehow the Court was directed to and misconstrued evidence not in the case record. The Court saw what is not there, the results of the testing pertaining to which no records have been supplied, then or since, contrary to the newest of the endless misrepresentations.

10. The defendants now confirm that such a test was performed and have produced a record they claim reports its results. The claim is untrue and that record does not report the results of that testing.

11. In lengthy and detailed affidavits that remain undisputed I also alleged that other tests were performed; that pertinent records had not been provided; that proper searches had not been made and attested to; and I attested to a large amount of information pertaining to the assassination and its investigation, much of it not in accord with the official accounts and addressing the need for records to exist.

12. As the result of the most recent remand, I received some discovery information and on June 16, 1981, finally was able to depose FBI Laboratory Special Agent John W. Kilty, who conducted what searches were made and who refused to conduct the searches not made.

13. I have alleged untruthfulness, but in all instances I have proven it. My first representation of it in this instant cause was confirmed under oath by that affiant himself, Kilty. His false swearing was to what is material, the testing of materials pertaining to an impact on the windshield of the Presidential limousine (Q15) and the existence or nonexistence of the records sought. Kilty on deposition swore to a third version, as is cited below.

14. It is singularly joyless for a first-generation American who is ill and worn weary at 68 and who believes that, despite its flaws and failings, ours is the freest system of self-government yet devised by man, to expose official untruths, particularly in litigation under the Act that supposedly enables the people to know what government does. It is depressing to be required to prove official untruth to a court of law.

15. Courts do not welcome such allegations. After I first proved

false swearing in this instant cause, the Court warned my counsel and me that we would catch more flies with honey than with vinegar and that outside the courtroom we might be sued. We shed immunity and there was silence, as from years of experience with official untruthfulness we knew there would be. Official prevaricators dare not make their prevarications the central issue in any proceedings.

16. I am not a lawyer. I have only a layman's understanding of the law. I understand that perjury is false swearing to what is material and is a felony. It also is my understanding that anyone who has knowledge of crime and does not report it is himself guilty of a crime. I believe that I have the obligation of informing the Court of official untruthfulness.

17. With regard to this, I note that despite the volume of information I have presented in long and thoroughly illuminated affidavits to enable the Court to make independent and wise determination and despite the vigor of my criticism, the defendants, for all their power and facilities, have not refuted me. They cannot if they are held to truthfulness.

18. I do have unique subject-matter knowledge. Much of my work and study are not duplicated. While I have been critical of them, I also have defended official agencies, particularly the FBI, from unjust criticism by others who are concerned with the political assassinations of the 1960s.

19. If the information sought in this instant cause does not support the FBI's account of the crime, then that information is of even greater importance than if it does support the FBI. If the information does not conform to the FBI's interpretation of it, then its importance cannot be exaggerated. If any official agency failed to meet its responsibilities fully when faced with that terrible crime and its potential consequences, the nation could have been endangered and the people are entitled to know it and to attempt to see to it that the nation never again faces any such danger.

20. If there were such failings, and it now is beyond reasonable doubt that there were from the unrefuted work of the critics and several Congressional investigations, and if officialdom still seeks to keep the truth from the people, then the danger to the nation is clear and present. In a modest and understated

criticism published in the Washington Post of July 7, 1981, another expert, the Notre Dame professor of law who had been chief counsel and staff director of the HSCA, stated that the FBI remains "unwilling to admit that it failed to conduct an adequate investigation of the President's murder."

21. Especially but not exclusively in this context, if officials swear untruthfully to the courts and the courts are not made aware of it, then their independence is endangered and those swearing untruthfully, no matter what their motive, subvert the courts and the system of justice.

22. Regretfully, I again have the obligation of informing the Court that officials have sworn falsely and in this affidavit I do that. I do it based on the deposition testimony and the large volume of records I obtained and examined after the last time the record was closed in this case. I obtained those records outside of this case, through other litigation.

23. After the remand I did notify the defendants and defense counsel that I intended to prove that the FBI conducted tests which are within my requests in this case and withheld and still withholds all pertinent records.

24. At no time has any representative of the defendants or any of their counsel asked me for any particulars. I filed appeals with the Department of Justice (the department) based on some of these records and after long periods of time, up to about three years, those appeals remain ignored when, under the Act and department regulations, promptness is required.

25. Attached below are some of the proofs of the performing of these tests by the FBI. These records are in the very files Kilty swore he searched and in which he swears they do not exist.

26. Kilty was provided with an ample opportunity to correct his earlier sworn untruths when finally I was able to depose him. He then was asked if there is any pertinent information he had not provided. Once again he swore untruthfully that there is not.

27. My affidavit of June 29, 1981, states that there are pertinent records still not provided. I have had no inquiry about them from Kilty, his counsel or anyone representing any government agency.

28. In that affidavit I express a preference for being deposed even

though I am not of means. My only regular income is Social Security, about $280 a month. In that affidavit I also state that, because of the nature of the information I intend to present, I believe I should be subject to cross-examination. An affidavit cannot be cross-examined. The FBI's record with me is long on imprecations, slurs, slanders and fabrications, but it is notoriously short on attempted rebuttals of what I have sworn to. Department counsel still have no kidney for cross-examining me, in itself an endorsement of the accuracy of my representations to the courts.

29. These and other considerations impel me to inform the Court as fully and as completely as I can about the questions at issue and, as a subject expert, to attest to the probable motive for the continuing official efforts to mislead and deceive the courts.

30. In seeking to perfect the legal record in this oldest of all FOIA cases, the case the Congress cited in amending the investigatory files exemption - and thus the case that is responsible for the public exposure of so many misdeeds and illegalities by the FBI and other federal agencies - a by-product is the perfecting of the historical record of a crime that is the most subversive of crimes in a representative society and of the official investigations of that crime.

31. My ability to search my own files is impaired by the three arterial operations performed since last Labor Day. The second and third operations were emergencies. Shortly after this instant cause was filed, I learned that I had suffered venous thrombosis in both legs and thighs, with permanent damage. These medical problems and their consequences, combined with increasing age, severely limit what I can do. I cannot stand or walk for long. My use of stairs is limited. All the records I have received through FOIA efforts are kept intact as I received them so that when they are transferred to a permanent university archive, which has been arranged without any quid pro quo, scholars and history will find them as I received them. The only space in my home for these records is the basement. Sometimes I am not able to use them.

32. When the initial schemes for evading and not complying and for stating what is not true as well as even refusing to make those searches the FBI

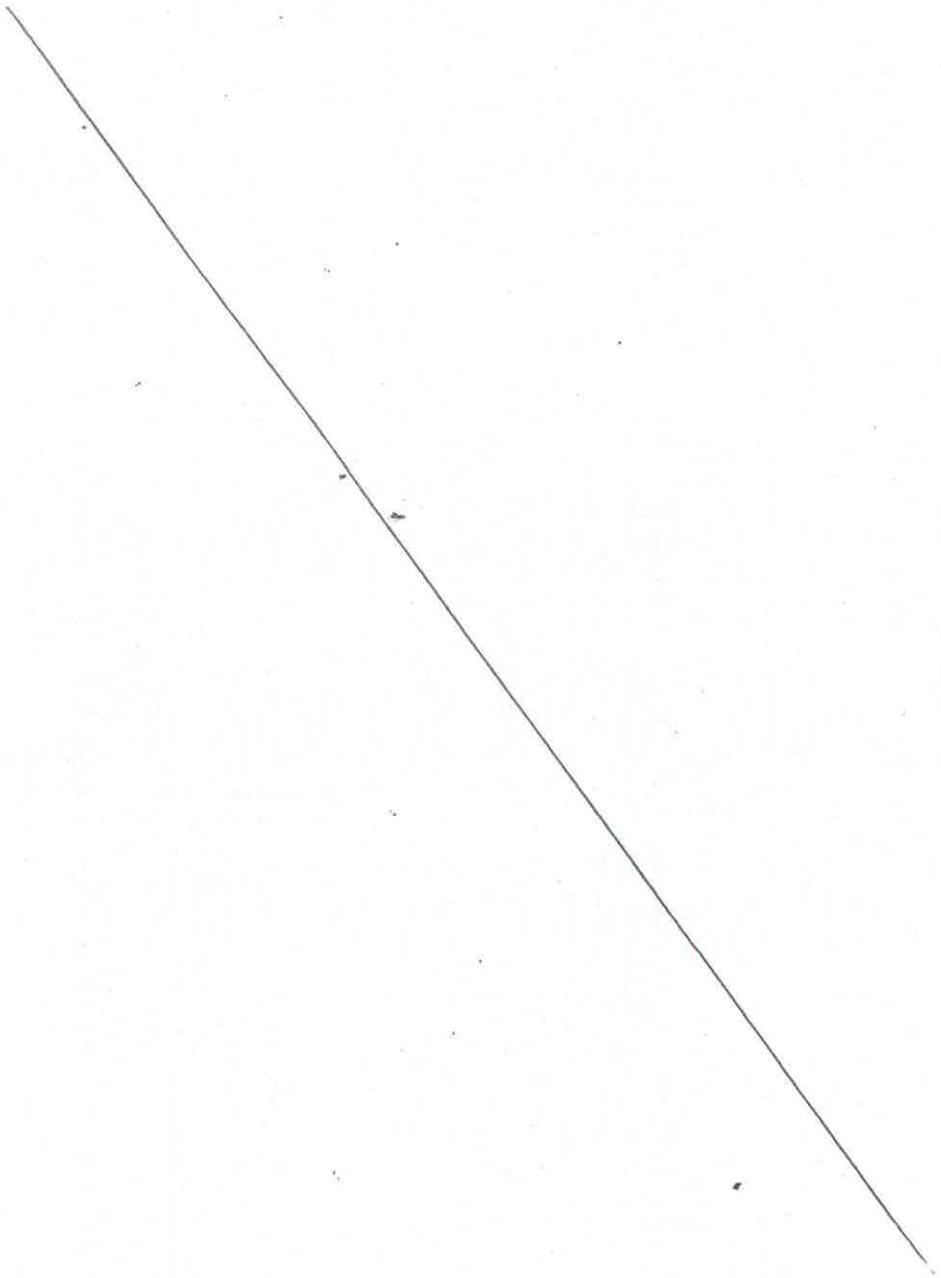
knew very well were required for compliance, it was not known that there would be the large releases of almost 100,000 pages of JFK assassination records that began the end of 1977. I obtained much more than was released voluntarily by the FBI, which really means released in anticipation of and in an effort to frustrate litigation that would yield more than the FBI wanted to disclose. I obtained many more FBIHQ records than were included in the general releases of December 1977 and January 1978 and I obtained what is represented as all of the records of the Dallas office, which is the "Office of Origin" (OO), or the largest repository of case records, and of New Orleans, which is vitually a second Office of Origin in this case. These records are among those which enable me to state without qualification or fear of contradiction that the FBI knew there were other pertinent records and that they were and remain withheld, in violation of the FBI's affirmations and of the remand of the appeals court.

33. In making the general disclosures beginning in December 1977, the FBI failed to disclose a quite substantial number of pages in the same files that it calls "bulkies" or "enclosures behind files" or "EBF." However, with perseverance I obtained about 40,000 pages of these withheld bulkies. Reflecting the importance of the Office of Origin as a repository, about 25,000 of these pages of bulkies, most often of laboratory material on regular-sized paper, are from Dallas. FBIHQ has about 15,000 pages, or only three-fifths as much as the Office of Origin.

34. This will, of necessity, be a long affidavit and it will have many attachments. It is not practical to attach copies of all the records cited but I have, will preserve and will provide copies of any not attached if desired by the Court. The defendant has all records of which copies are not attached. I received them through other FOIA efforts. All are cited by their official file identifications.

35. I do not and I cannot draw upon all the records disclosed to me outside this litigation. I am, for practical purposes, limited to those records which appeared likely to have pertinence when I first read them and of which I then made copies for the anticipated present use. If I could make a complete search, I am without doubt that more official records like those attached would

emerge, with further evidence of tests made and not reported in this instant cause and of pertinent records still withheld. More bearing on official motive for so widespread a campaign of official misrepresentation and deception does exist and if any court desires it I will undertake to provide it.



II. THE REQUESTS

36. All FOIA cases begin with a request. I did file the request, did appeal, the appeal was ignored, as is not unusual within my extensive experience, and thus I filed the complaint. In conference with the FBI, the request was amended to include what it terms "raw material."

37. The Court has commented on the cost of this long-lasting litigation. It has been costly to all parties. The Act requires the government to disclose all nonexempt information. Internal FBI records disclose that no pertinent records are within any exemption. Yet it did withhold and it still does. Some records within the 1974 request were not provided until 1981. I in particular am victimized by these costs. For me they have been great. Being required to litigate has prevented me from continuing with the writing the FBI does not like and decided, in 1967, that it had to "stop."

38. This case, which I believe is the oldest of FOIA cases, would never have gone to court at all if the bureaucrats in the Department and the FBI, more concerned with keeping secret what is embarrassing, had not ignored the expressed wishes of the Attorney General. I was denied this information for more than three years after the request that includes it. When the Department finally got around to my May 1977 request in the winter of 1980-81, I did get records pertaining to the subject matter of this litigation. They are from the Department's 129-11 file.

39. In a TV appearance on "Face the Nation," Attorney General Ramsey Clark, referring to withheld information about the assassination of President Kennedy, appeared to me to have been misinformed, particularly in attributing all withholding to the General Services Administration. I so wrote him on March 12, 1967, the day of that broadcast. I referred specifically to the withholding of the spectrographic analysis material and the fact that his Department insisted it was public, whereas it was not. I offered to document this and other instances of similar withholdings. (Exhibit 1)

40. The Attorney General paid attention to my letter. He caused an inquiry to be made before he wrote Director Hoover (whose response, if any, is not included in this file). The information he received from the Archivist

confirms what I informed the Court and the Court was unwilling to believe. It states, among other interesting and pertinent things, that "There is no indication in the relevant files of the Commission that the spectrographic analysis laboratory report was received by the Commission." (Emphasis added) This is followed by specific reference to other FBI Laboratory examinations known to have been made, but those reports "also are not in the relevant files of the Commission." Pertaining to other Laboratory work having to do with photographs which I had stated had been withheld from the Commission, the Archivist again confirmed me, reporting that there had been many other requests but the items listed, including the photographs pertaining to the assassination, "are not in the relevant files among the Commission's records." This is only natural for the FBI because some of those photographs were reported to show the window in which the FBI says Oswald alone was and alone was shooting. (Exhibit 2)

41. If those photographs supported the FBI's claim, they would not have been withheld. I have seen some and they dispute what the FBI reported.

42. The Archivist confirms what I also stated to the Court, that the FBI claimed that all the spectrographic information it had is contained in the FBI's consolidated report that is CD 5, pages 162-194 (actually, 164). He attached those pages for the convenience of the Attorney General. (Exhibit 3) What the Archivist reports was the then standard FBI fraudulent misrepresentation - obviously fraudulent to anyone with any subject-matter knowledge because it refers only to the first day's specimens.

43. After receiving this information the Attorney General wrote Director Hoover, attaching my letter and the Archivist's. He pointed out that no spectrographic reports were found in the Commission's records, "although a report was referred to in the FBI testimony before the Commission." This is precisely what I stated to the Court at the outset of this case. He continued by repeating that the Archivist had had other requests for Laboratory reports and that they, too, "were not in the files of the Commission." Also missing were "certain pictures and correspondence," all of which the FBI had and referred to in what it provided to the Commission. (Exhibit 4)

44. The Attorney General noted that, subsequent to the Archives'

receipt of the Commission's files, it "has acquired other items relating to the assassination which were not before the Commission." He stated policy: "That it would seem desirable to make available in the Archives as much of the historical record as is possible ..."

45. Attached to the front of this as I received it is a routing slip from the head of the Office of Legal Counsel, Fred M. Wozencraft, to the Attorney General. (Exhibit 5) Wozencraft had been involved in earlier decisions to implement President Johnson's policy of disclosing all that could be disclosed. He wrote, "The annexed references to the FBI of questions raised by Harold Weisberg's letter and the expanded comments of the Archivist is suggested as a result of a conversation between Martin Richman and Barefoot Sanders. If the Laboratory reports and other items mentioned exist there seems to be no reason not to have them in the Archives for use of assassination researchers." This was my May 23, 1966, request, that the withheld information be made available to everyone.

46. The other records in this series report the unsuccessful effort to find the letter in which I had made the request. (See Paragraph 54 below and Exhibit 6.) The Department did not locate it because it was in FBI files and the FBI appears not to have volunteered it. It was disclosed in the FBI's general releases of 1977-78.

47. FBI silence when it should not be silent in such matters was and continues to be quite costly. As a result of FBI silence when the owner of one of these pictures did not get it back after lending it to the Congress, the government is reportedly defending a lawsuit to obtain it. From what was published, the picture was taken by the since-remarried Mrs. Mary Moorman. It was sequestered with the files of the HSCA. She wanted it back. What the FBI kept secret from everyone, especially from the Warren Commission, and what I did not learn until I obtained Dallas files in C.A. 78-320, is that the Dallas FBI made and in secret kept copies of these photographs. The Commission would borrow and return the original, each time with the FBI as its messenger, and on no occasion did the FBI offer or lend its copies. I reported this shuffling back and forth, which did cost time and money when there were great time pressures, in my third book. The FBI could have provided a copy to the Congress, as it could have to the

Commission, or it could have offered a copy as a replacement. Nothing of the sort is reported and thus there is the totally unnecessary time and cost of defending unnecessary litigation, litigation that, like this case, was forced by the FBI.

48. The file also includes the draft of a three-page letter to me from Assistant Attorney General Wozencraft. It was never sent. Had it been, I would have provided a copy of the letter that was not provided to the Attorney General and the other information I had offered.

49. Admittedly, no secret processes are involved in the withheld information, no informants or arcane intelligence sources or methods are endangered, and to those who are not subject experts there was and is no apparent reason for the FBI's reluctance to disclose the spectrographic and later the NAA information. There also is no apparent reason for its refusal to do as the Attorney General and the Office of Legal Counsel and other high Department officials wanted done. The real reason is to protect the FBI from deserved criticism and to hide what discloses the FBI's sad, really frightening, deficiencies and dishonesties. These are not mere oversights in the FBI's performance, particularly not of its vaunted Laboratory, when the President was assassinated.

50. From the foregoing record and subsequent history, it is apparent that the only reason this case was ever in any court, taking the time of district court, going to the appeals court as often as it has, and even to the Supreme Court, after which it was considered by the Congress, is the refusal of the FBI to do as the Attorney General and other high Department officials wanted it to do and the Congress intended it to do. What the Attorney General wanted done was no more than announced White House policy. But the FBI did - and does - what it desires, not what the Attorney General or the President say or the law requires.

51. Some of the reason for the FBI's obduracy and continued suppressions and misrepresentations are indicated in my earlier affidavits. Others are stated below in this affidavit.

52. My 1974 request, which incorporates my 1969 request, is attached to the complaint in this instant cause. With the not uncharacteristic legerdemain of the new and reformed FBI, it has been removed from the main assassination file.

53. Kilty testified (pages 134-5) to a clarification of the request, in early 1975, coming from the FBI's recognition of the fact that I lacked knowledge of what it said was not in its files. Internal records cited below reflect this. There was a conference, requested by the FBI, for the purpose of confirming its understanding that the request did include what the FBI refers to as "raw material." Kilty testified to the FBI's display of some of it to my counsel and me at that conference. Subsequently, when the FBI believed I would never see the internal records, it claimed that I did not want what I asked for and it had displayed and I had said I did want. (I declined only copies of the spectrographic plates. This was because the FBI said it had to charge me its cost of $50 each. There were many plates and I could not pay that charge. It turns out that this claimed cost was phony. These same internal records reflect the fact that the plates were suitable for inexpensive photographic reproduction.) Because prior experience warned me that the FBI is not unwilling to misrepresent, I asked in advance that the conference be tape-recorded. The FBI refused to make and keep a tape. This enabled it to misrepresent and to swear falsely without fear. Kilty recalled that I had requested that the conference be taped. (pages 132-3)

54. When my counsel was questioning Kilty about the inclusive nature of the request, as the FBI understood it in early 1975 and as he is supposed to have searched to comply with it, he mentioned various kinds of the so-called "raw material" and Kilty agreed that it was understood to be what I wanted and was included in what was displayed to my counsel and me. Department counsel eliminated the need for further questioning on this by interrupting to state, "This witness has already stated that he has looked for items within the request within the broadest parameters." (page 135)

55. The FBI functionaries were uptight beginning with my first request, the letter even the Attorney General did not see. (Referred to in Paragraph 46 above.) In order to obtain Director Hoover's approval for ignoring my request, it was deliberately misinterpreted and misrepresented in what was routed through channels to him, as comparison between it and the internal memos makes clear. (Exhibit 7, 62-109060-4132)

56. Where I wrote Hoover that "In his testimony ... Frazier ... did not enter into evidence the spectrographic analysis of this bullet and the various bullet fragments," which is as true and correct as anything can be, the FBI hierarchy, unable to refute what I did say, instead told Hoover what I did not say, "He states that in testimony before the President's Commission evidence was not introduced as to the spectrographic analyses of a bullet and fragments. This is absolutely incorrect ..."

57. There is a vast difference between entering into evidence a carefully prepared and meaningful written account of what the Laboratory found and concluded in its comparison of all the spectrographic examinations related to bullets and shooting in the assassination investigation, which is what the request seeks, and verbal meaninglessness, which is what Frazier gave the Commission in using only the single word, "similar," to refer to the conclusions of the FBI's Lab.

58. There is nothing not distorted in this memo, written for the signature of Assistant Director Alex Rosen by one whose initials are those of SA Kenneth M. Raupach, a supervisor and subject specialist in the General Investigative Division.

59. When Hoover was fed all this falsehood and prejudicial misinformation and he came to the recommendation at the end, "That Weisberg's communication not be acknowledged," he appended, "I concur. H." This was so momentous an occasion, my letter to the FBI seeking the withheld spectrographic information and the decision to ignore it, that in addition to Hoover it is initialed by his closest associate and assistant, Clyde Tolson, Cartha DeLoach, who was next in the line of command, Alex Rosen, "KMR" and others.

60. How truthful and accurate the FBI is, even when it has printed words before it, can be gleaned from a few selections.

A. Where I correctly quoted the FBI's five-volume report, CD 1, as saying that three shots were fired, of which "two hit the President and the third hit Governor Connally," Hoover was told, "He read into this comment that this report did not account for the bullet that hit the curbstone and that the bullet that did not kill the President

struck him in the back, not the neck, and did not go through his body. He said this did not account for the wound in the front of the President's neck ..."

B. In the entire, supposedly definitive FBI report, ordered by the President, there are but two short references to the crime itself. The rest is a diatribe against Oswald. I printed these two brief passages in facsimile. In them there is no mention of the impact on the curbstone, the wounding of Tague or the known and reported wound in the front of the President's neck. (All of this is in the case record and is undisputed.) The FBI was not able to confront the truth so it was untruthful. It did what it has done since then - made up what I did not say so it could be quoted to attribute inaccuracy to me.

C. To convince Hoover and all others who might see this, the memo states that my "background" is attached. It was not in the copy I got and my appeal remains ignored. What the FBI has disclosed ranges from distortion, at its closest contact with reality, to such complete and baseless fabrications as that my wife and I celebrated the Russian revolution every year. Even for the Cointelproing Hoover FBI, this is a particularly vicious way of referring to a religious event. After the Jewish high holidays the Jewish Welfare Board rabbi brought Washington area service personnel and their families to the farm we then had where the children could gather eggs, see them hatch and play with the chicks and our other fowl and tame animals while their parents relaxed with a day in the country.

61. Immediately after the publication of the October 31, 1966, executive order requiring the transfer to the Archives of everything considered by the Commission, I went to the Archives to ask for the spectrographic analyses. As 62-109090-539 (Exhibit 8) reflects, the archivist, Marion Johnson, not having anything of that description, phoned the FBI. What this internal FBI memo does not reflect is that SA Courtlandt Cunningham called back. I was present and could hear the archivist's end of the conversation. Cunningham did not say that

the FBI could not be of assistance. Rather was I referred to pages of the CD that are referred to in Paragraph 42 above and are Exhibit 3. (See also Paragraph 40 and Exhibit 2.) Cunningham and the FBI were not responsive.

62. Remarkably enough, Cunningham also appeared to have the FBI's rewriting of my life story at his fingertips. One statement is, at the least, a great and deliberate distortion, although it was and forever after was very hurtful: "Bufiles also reveal he has had previous contact with Soviet Nationals at the Russian Embassy."

63. What this can possibly refer to I cannot imagine but this is not correct and there is no basis for it or other formulations which suggest a personal relationship. When I was a Washington correspondent, I did go to that embassy on afew occasions as I also had to go to a number of other embassies, but I had no personal relationships and I received no help, not even when they were our World War II allies.

64. What is true would not serve the FBI's evil and dishonest purposes. When I was a correspondent, and at the urging of the Department of Justice, I was a British agent, unpaid and unregistered.

65. Hoover's note is tacit approval of ignoring my request, leading to this long litigation. His assumption that the FBI had transferred all evidence to the Archives is logical but not correct. It had not.

66. The reference to my dismissal by the State Department is distorted. There were never any charges and there was never any hearing. I was reinstated and after the Department apologized publicly for its error, I resigned. The truth is reflected in the attached letter from those who represented me. (Exhibit 9) Thurman Arnold was a former federal appeals court judge and a former assistant attorney general. He was aware of the assistance I gave his division and the Department without any compensation. Abe Fortas had been an Under Secretary of Interior and became a Supreme Court Justice. Paul Porter had been head of the Federal Communications Commission. They say that I was "vindicated."

67. By January 26, 1967, the FBI decided that it had to "stop" me and my writing and publishing. The word is used on the second page of the Lab Griffith-to-Conrad memo of that date. (Exhibit 10) It went upward through the

chain of command. It was written by SA Lyndal L. Shaneyfelt. Where Shaneyfelt's complaints have any contact with reality, they are carefully distorted to accomplish the purpose of deceiving and misleading Hoover. My writing is accurate.

68. By January 31 the FBI's Legal Counsel Division concluded the legal research by which it decided that the FBI could sue me, with Shaneyfelt as its front. (Exhibit 11) It also says of me that I must be "stopped now." At no point does it represent that after reading my books it had found any factual inaccuracy. (These are not the only FBI internal records that say the FBI must "stop" me.)

69. Copies of these records reached Hoover, through Tolson. Hoover, who they all knew was terrified at the thought of any agent being involved in any lawsuit (as the late Assistant Director William Sullivan states in his book) left the decision to sue or not to sue up to Shaneyfelt who, on paper at least, had initiated all of this.

70. Having deviously accomplished his purpose, of appearing to be anxious to defend his reputation, his work and his FBI, Shaneyfelt chickened out. He wrote the Griffith-to-Conrad memo of February 7, 1967 (Exhibit 12) in which he makes as graceful an exit as he can. In this elaborate game, Hoover was deceived and misled. While Shaneyfelt here states that there would be no benefit to the FBI from suing me, the rationale for the original proposal was that there would be benefit to the FBI from the suit because it would "stop" me.

71. The extent to which the FBI could and did go to try to ruin a single little-known writer is beyond belief. I do have its records that are explicit in documenting its dark deeds. Truth is indeed a mighty shield because the FBI's dirty tricks backfired. In New York, where I was to appear on a TV talk show, it provided what it calls "public source information," used by four erudite lawyers. They were to ruin me on camera. They failed, it made that show an exciting confrontation and it immediately made my book the best-selling work of nonfiction. There was the identical result shortly thereafter when one of the FBI's political informers made a similar effort on the radio talk show with the largest audience on the west coast. My book sold out in San Francisco almost overnight.

72. This encapsulation reports some of what went on within the FBI

when I first attempted to obtain the release of the withheld scientific tests sought in this instant cause and some of what the FBI did when it was confronted with a factual indictment of its performance in the investigation of the assassination of the President. It could not refute my work so it engaged in a campaign to defame me, ruin my reputation and with it the credibility of my work, the accuracy of which it dares not try to assail except in the blackest of secret behind-the-scenes efforts. Each of these factors provides a separate motive for the continued withholdings. More pertaining to the FBI's motive appears below.

73. Other FBI records which I cannot retrieve easily now hold the supposedly legal opinion that because the FBI does not like me its dislike is all the legal basis it needs for not complying with my requests.

74. On November 27, 1974, I renewed the request that was litigated in C.A. 2301-70 and added the neutron activation testing. (Exhibit 13) In the assassination file it is included in Serial 7147. Part of that Serial, as is true of other Serials of that time, was transferred to another file instead of placing copies in other files. As a result such pertinent records are not in the assassination file. These transfers, made more than two years later, coincide with developments in this litigation ~~and with~~ after the remand of the appeals court. Exhibit 14 reflects such a physical removal from the proper file.

75. The Legal Counsel-to-Adams memo of December 17, 1974 (Exhibit 15) observes that no exemptions appear to apply to the information I requested and that the initial request is expanded to include NAA information. The memo was actually drafted by SA Thomas Bresson. He later claimed that I said I did not want NAA information. By this scheme he first withheld and then delayed my receipt of any NAA information.

76. A Lab memo of January 24, 1975, with Kilty's initials (Exhibit 16) says that it is clear that my request "must extend" beyond the formal reports. Although the spectrographic plates were not provided because I was told each would cost $50 and I could not pay the total sum, this memo reflects the fact that much less costly means of reproduction were available - normal photography. By not informing me of this and by claiming the actual duplicating cost was $50

each, the FBI succeeded in withholding copies of the plates from me for more than six years, while providing them to other and later requesters. This record also states that the FBI, and Kilty in particular, knew that the NAA material totaled about 1,000 pages. They were not offered to me. Instead, I was first provided with 21 pages. Yet on several occasions Kilty swore to complete compliance.

77. The FBI asked for a conference. I asked that it be tape-recorded so that later there would be no confusion over or disagreement about what was agreed to. Kilty admitted in his June 16, 1981, deposition that the FBI refused this. As a result, it was able to misstate what transpired at that conference. Kilty did testify that it was understood that the request was all-inclusive (pages 128, 130). During the Kilty deposition, Department counsel also indicated that I was to have been provided with everything. (Page 130)

78. The FBI's internal memo on this conference is, as usual, self-serving and less than accurate and factual. (Exhibit 17) It does report that raw material was within the request and that this includes the NAAs. My special interest in the fragments, the windshield specimen and the curbstone are recorded. The memo reflects the opposite of the later pretense that I then waived all interest in NAA information.

79. By March 31, 1975, the FBI had decided to disclose a total of only 17 pages, nothing like the admitted 1,000 pages of NAA information alone. After my protest, it hand-delivered five additional pages relating to the curbstone spectrographic examination. (Exhibit 18) As is shown below, the FBI deliberately withheld and still withholds some of the curbstone examination records from the one report it provided. It still has not provided all records of all pertinent spectrographic examinations, as is detailed below from FBI records not provided in this instant cause.

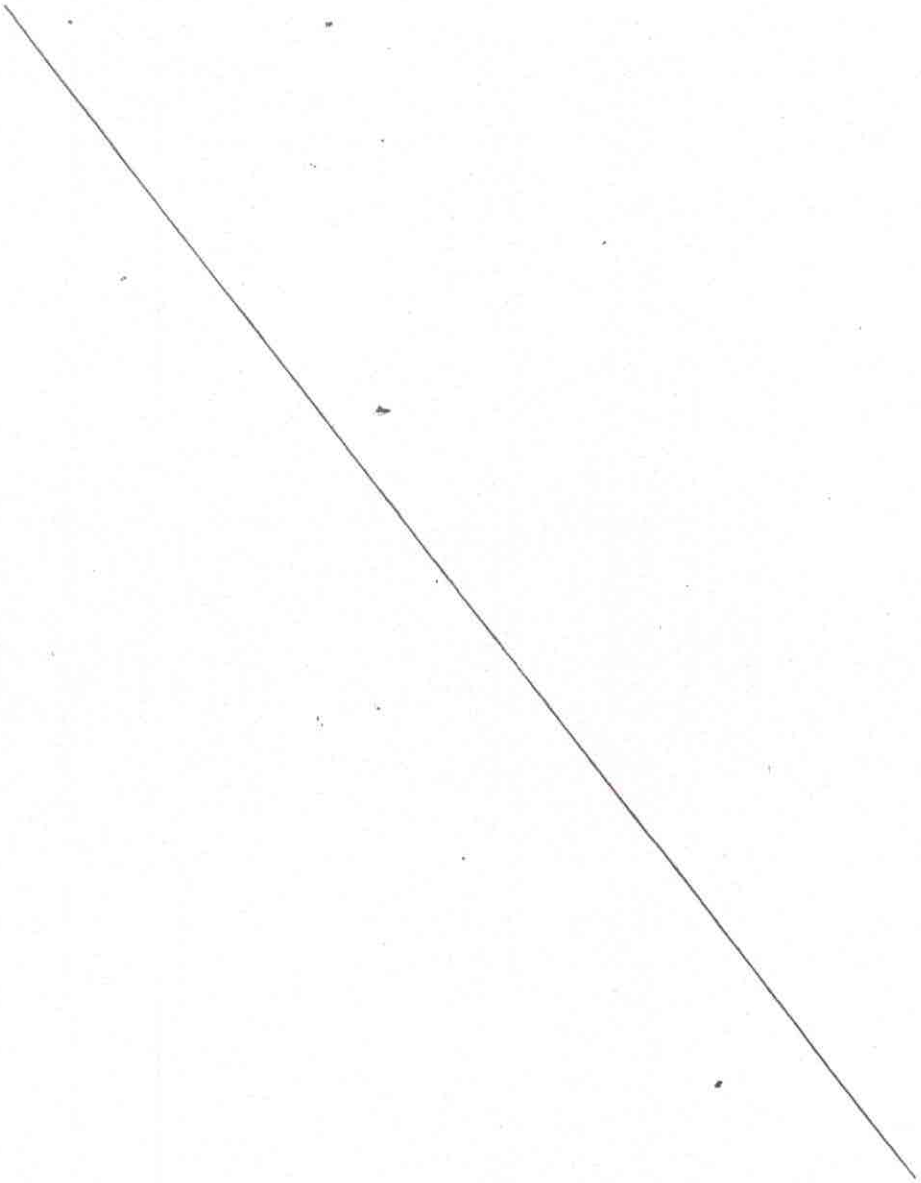
80. From the available records it appears that the Civil Division simply made up the untruthful representation that the FBI seized upon as the basis for its campaign of noncompliance beginning with my C.A. 2301-70, the first effort to obtain the spectrographic information. The Lab then admitted that many pertinent records existed. (Exhibit 19, the 8/19/70 Williams-to-Conrad memo.) The existing notes are described as "detailed." I have not received any notes

that are detailed. Any criticism of the FBI is, as always, "vitriolic and diabolical." These characterizations are repeated so often they must have held special appeal for the Director. The capability of spectrographic examination is given as showing that "samples may have originated from the same or different bullets." In this investigation the FBI not only did not make any such determinations - the ostensible purpose of the testing - it deliberately avoided the definitive testing, as is set forth below. Williams gives two reasons for the withholdings, both misrepresentative and misleading. The first is that interpretations can be made only by trained scientific personnel. Trained people exist outside the FBI and understanding some of the information does not require any scientific training. The second claimed reason is that "opening the Bureau's investigative files would set a highly dangerous precedent and could do irreparable damage." If disclosing the requested information would have opened the investigative files, that still was no precedent because five years earlier the FBI agreed to the disclosure of a vast amount of "raw data" by the Warren Commission and the National Archives. A considerable volume of "raw" FBI data is published in the Commission's Report and throughout its volumes of evidence. Williams' untruthful claims were made to frighten the FBI hierarchy and as part of the FBI campaign against FOIA. Actually, after I obtained some of the "raw data," it was published in major newspapers and broadcast. More than five years have elapsed. The FBI has yet to claim in this instant cause that there was any damage to its legitimate functions. There was none and there could be none. Any threat was to FBI illicit and improper activities and to dishonestly reported information. Williams appears to have taken his lead from the Civil Division which, five days earlier, asked the FBI to "provide a statement of how your law enforcement purposes would be hindered were the materials sought subject to public disclosure." (Exhibit 20, last three lines) The Civil Division made up what is not true to withhold and the FBI liked and repeated its fabrication.

81. From this summary it is apparent that from the outset, from the time of my May 23, 1966, request, the FBI was determined:

> Not to disclose the requested information, even though it is not within any exemption of the Act;
> that I not get nonexempt public information;
> that the Attorney General's desire that this information be disclosed

did not alter the FBI's determination not to disclose it;
that the FBI intended to "stop" me, which actually means to stop my writing, publishing and search for public information under the Act;
that considerations of truthfulness or untruthfulness were not material in the FBI's campaign of noncompliance, which required misinforming and deceiving the higher levels in the FBI and the Department and the courts;
that the untruths spread throughout the bureaucracy also were presented to the courts.



III. THE SEARCHES

82. As the preceding sections of this affidavit reflect, there was never any search to comply in C.A. 2301-70. While SA Williams swore, in an affidavit executed August 20, 1970, that he had "reviewed the FBI Laboratory examinations" sought in that litigation, no record reflecting any such "review" exists in the large volume of disclosed records I have read. What Williams actually did is take his cue from the concoction of the Civil Division. He alleged that compliance would cause irreparable damage to the law enforcement responsibilities of the FBI. He attested to an assortment of improbables and impossibles, including "exposure of confidential informants." He even swore that it could lead to "blackmail." In his effort to swear that compliance would totally wreck the FBI, Williams swore to other blatant untruths, such as that the information sought was "compiled for law enforcement purposes as a part of the FBI investigation into the assassination." There was, as a number of internal FBI records state explicitly, no law enforcement purpose and no FBI jurisdiction. Hoover seized the case without any authorization. Later he was asked by President Johnson to conduct a "Presidential investigation." The investigation conducted for the Warren Commission could not have had any law enforcement purpose because, explicitly, the Commission had none. Furthermore, Hoover testified to the Commission that his was not a law enforcement investigation. Perhaps the most blatant of Williams' sworn lies, sworn six years after publication by the Warren Commission proved them lies, is his claim that the assassination records were "not disclosed ... to persons other than U.S. Government employees on a 'need-to-know' basis." More than six years earlier, thousands upon thousands of pages of these records were published, in facsimile, in the Commission's Report and appended volumes and many times that number were freely available at the National Archives.

83. The Department took unusual steps to be sure that I would not have an opportunity to prove the Williams affidavit was falsely sworn and had the intent of deceiving and misleading. It xeroxed the affidavit before it was sworn to and then, never providing a copy of the executed affidavit, which has the date of execution on it, filed the unsigned xerox, doing this so few days before the calendar call that there was no opportunity to rebut. (The facts are more fully

set forth in the case record.)

84. To this day there has never been any real search, not even after the last remand of the appeals court again required it. This is clear in the June 16, 1981, Kilty deposition, quoted below. Kilty virtually boasted that he did not seek all pertinent records. What search he claims to have made was guaranteed to avoid pertinent records. As later Paragraphs show, pertinent records that are part of what Kilty swore he searched were not provided. These records alone prove that Kilty was not truthful about his search. Or he deliberately withheld pertinent records and swore that he did not - even after he and the Department were notified that I would prove this. While I will go into this in greater detail below, here I state that there are pertinent FBIHQ records that I obtained outside this litigation and Kilty swore to a search of those files.

9 85. Before he was deposed on June 16, Kilty attested to a complete search several times. He had attested to searches of the central files only. Until then he had insisted that the Laboratory had no files, as he claimed when he was deposed in C.A. 75-1996.

86. Kilty alone, allegedly, conducted the searches. Of him the Department stated that he had "the best personal knowledge of the FBI's files regarding the plaintiff's request." (5/21/75 calendar call transcript, pages 2 and 3)

87. Allegedly based on Kilty's alleged searches, the Court received regular assurances of full compliance, beginning with the opening of the very first calendar call, that of May 2, 1975. Department counsel then stated, "I have been assured by my clients that the request of plaintiff in this matter has been fully complied with." (Page 2)

88. As stated above, before this date Kilty had located about 1,000 pages of pertinent NAA records and withheld them. Many other pertinent records remained withheld. Kilty was a bit more careful in his language than Department counsel, although he undertook to persuade the Court that there were no other pertinent records in the FBI's possession. Although he did not provide these thousand pages and others that are pertinent, he attested that a diligent search turned up no other records. This clearly was intended to lead the Court to believe,

as the Court did say it believed, that my request was complied with.

89. Kilty had a ready-made fabrication to explain his total withholding of NAA information. He claimed in his first affidavit that I had said I did not want it. The FBI's internal records leave no doubt that the opposite is the truth. On the face it cannot be believed that I would amend the original request to include the NAA information and then file a complaint including it if I had abandoned the request for the NAA information prior to filing the complaint.

90. Even when my counsel stated that this was not a truthful representation, NAA information remained withheld. At the May 21, 1975, calendar call he stated, "They were quite aware all along that we were asking for the neutron activation analyses." (Page 18)

91. The only apparent purpose served by the FBI's refusal to tape-record our conference was to enable it to fabricate such costly and gross lies and thereby to "stop" me by withholding the pertinent information it did have and did not want to disclose. If the FBI had had honest intent, it would have welcomed the opportunity to tape-record in order to have an unequivocal record.

92. Although by the second calendar call, May 21, 1975, and thereafter I had alleged the existence of pertinent records not provided, Department counsel, at the very time he heard it alleged that Kilty had been untruthful, rather than undertaking to ascertain whether any records were withheld, paraphrased Kilty's affidavit and stated, "The FBI is not aware of any other information which exists, raw data or otherwise, reports ... every good faith effort has been made to satisfy plaintiff so that this law suit can be disposed of." (Page 9)

93. Instead of searching for the information requested, and while complaining loudly about the cost of compliance, which really meant noncompliance, the defendants heaped on me hundreds of pages of records I not only had not requested but I had stated I did not want. (These pertained to the testing of certain paraffin casts. My counsel informed the Court of this on July 15, 1975 (page 17). All of this costly irrelevancy was part of a scheme in support of a motion to dismiss. In order to comply with the rules, the defendants' attorney actually delivered all this stuff I had not asked for on his own time, in person, and to my counsel's home, after the end of the working day. All of this costly

junk was designed to enable it to be alleged that somehow I was greedy and unappreciative - for not dismissing the case when I received all those pages I had not asked for and had said I did not want.

94. Throughout this litigation, nobody representing the defendants ever asked me for any information pertaining to any withheld information or where I had reason to believe any pertinent information might be. This is not because I did not have a record of cooperating with the FBI in this regard, as I did in other litigation. Rather is it because the FBI knew very well that there was other information and where it was. This also explains its avoidance of the considerable amount of accurate information I have filed in this litigation.

A. The Laboratory Has Files, Contrary to Kilty's Representation

95. Kilty represented that the Laboratory has no files. Not only does this make no sense and appear to be entirely impossible, but I had hundreds of copies of FBI records of which a copy had been directed to "Lab Files." Countless records were sent to the Lab from the field offices.

96. For years in FOIA cases it has been the standard FBI false pretense that all its information can be retrieved from its central files, which are indexed. It claims that this is why it searched only those files in response to FOIA requests. It simply is not possible that any FBI FOIA SA does not know better.

97. Kilty is an accomplished professional witness. He has become skilled in avoiding response, in rephrasing questions with his answers and in responding to questions other than those asked. He misleads with consummate skill and while he may try to avoid overt lies, h has not succeeded.

98. Subsequent to his affidavits in this instant cause I was able to depose Kilty on October 12, 1979, in C.A. 75-1996, where the Department alleged he conducted some of the searches, including for information similar to what is sought in this instant cause.

99. Kilty then was asked, "Does the FBI Laboratory have its own files on scientific examinations that it conducts in cases?" Kilty responded, "No." He amplified this by stating that "we put our information regarding our examinations, that goes in the so-called file, the case file." (Page 7) On the

next page Kilty added, "... there is no file or indices (sic) that have anything to do with the examination performed or specimens submitted." Five pages later, asked, "But the Lab itself keeps no separate files?" Kilty was unequivocal, "There are no files in the Laboratory that I know of." On page 20 he testified that "we did not have any Laboratory files" and that "there's no place in the Laboratory to keep any results of tests."

100. When Frazier was deposed on February 24, 1977, in testifying to the usual distribution of Lab reports, he stated that the Lab had copies: "... they kept a copy downstairs (central files), we kept a copy in the Laboratory and they sent a copy to the contributor," in this case, usually the OO.

19 101. When forced to testify in this instant cause on June 16, Kilty admitted that the Lab had and has two filing cabinets that are devoted entirely to FBI Lab JFK assassination information. He testified to searching them after the last remand and in 1975.

102. Kilty also denied that the Lab had anything like an index to the specimens, although ~~later~~ earlier, when deposed in C.A. 75-1996, he did admit that in order not to assign the same number to more than one specimen a card file was kept. He admitted still more when he was deposed in this instant cause. The FBI did have such indices and they later were computerized. (See below, under Kilty Deposition, pages 35ff, especially paragraphs 158, 165, 166.) Kilty is not alone in such deceptions, misrepresentations and sworn untruthfulness. After I stated that I would prove what Kilty had sworn to not to be factual and truthful, the FBI, as it usually did when faced with a challenge to its affiant's truthfulness, switched affiants, even though Kilty was said to be the best informed and was available.

103. The interrogatories I filed after remand were not responded to by Kilty, acknowledged expert and the man who made what searches were made. They were sworn to by SA John N. Phillips on May 6, 1981. Phillips is assigned to the FOIA unit. He did not claim any personal or expert knowledge.

104. In Interrogatory 5 I asked if there is any index by which Lab specimens are identified because without some such means there is no way of preventing the duplication of the assigned arbitrary numbers. The Phillips response 19 was simply "No." However, Kilty testified on June 16 that in fact there is such a list of specimens by number.

105. The response to Interrogatory 9 is not truthful as well as a self-indictment. The FBI was asked if there are any records "pertaining in any way to any change in or disappearance or alteration of any item of evidence subjected to" either test that were not provided. Phillips said merely, "No." However, if it has no other records, the FBI has those of the House committee and it did not refer to or provide copies of those. It dares not because the change in the weight of the bullet, Exhibit 399, by itself destroys the entire official solution to the crime and the integrity of the FBI along with it.

106. The FBI claims not to have any record of the weights of the samples removed from the specimens for testing or any photographs of those samples. With regard to the samples subjected to NAA, which does not destroy them, the FBI conducted no real investigation to determine what happened to them or where they might be. Under discovery it provided a record which merely reports Gallagher's supposition that he destroyed them as radioactive trash. They presented no radioactive danger at all and they certainly were not trash. It also claims it has no records at all pertaining to the destruction of the entire windshield sample, Q15.

107. This self-portrayal of the FBI is of complete indifference about the disappearance of evidence of the assassination of a President when that evidence was in the FBI's possession. We are to believe that it altered specimens without making a record; may have destroyed some when it was supposed to preserve it all and does not care enough to try to find out; and with regard to Q15, the specimen about which Kilty lied under oath, does not have any kind of an FBI record reporting its total disappearance.

108. With regard to any chain of possession of the specimens in question in this case, the FBI was asked in Interrogatory 6 to "list and describe the kinds of records the FBI uses." Phillips evaded any answer by referring to "attached exhibits A and B," which he claims reflect present FBI methods. Both exhibits are irrelevant. Exhibit A is limited entirely to tapes of electronic surveillance and Exhibit B, which is irrelevant in terms of its May 5, 1981, date alone, has to do with a court decision pertaining to field office storage of bulkies. (In that case the evidence was held to be inadmissible because there

was no chain of possession.) There is no reference to Laboratory specimens in Exhibit B nor to the Lab nor to FBIHQ custody of specimens.

109. One apparent reason for Phillips' nonresponsiveness, which really means untruthfulness, is because if the FBI were to admit that it has such records it would be asked to produce them and they, in turn, without any question, would establish deliberate official untruthfulness from the outset of this litigation. They reflect the existence of other pertinent and tested specimens. The FBI does have FD 340s with which the field offices submit evidence to the Laboratory for examination. It does have evidence envelopes which record chain-of-possession information. One such record attached below pertains to the forwarding of a specimen to the Lab for precisely the testing that is at issue. The FBI denied having this and other pertinent records I attach below. Outside of this litigation I obtained FBI records reflecting a chain of possession. These come from files Kilty claimed he did search and from files he did not search and should have searched, files I identified to the Court in 1975.

110. Interrogatory 15 asks about "all abstracts and index cards maintained by Central Records or the FBI Laboratory or pertaining to any item subjected to spectrographic or neutron activation analysis in connection with the assassination of President John F. Kennedy." Phillips' answer is, "Item 15: Defendants have no such documents in their possession, custody or control." This is false. The FBI itself has published the fact that it made abstracts in duplicate to index each record at FBIHQ. One copy was filed by date, the other by serial number. Department counsel knows this very well from C.A. 75-1996. Phillips also should know it from his participation in that case, to which he is assigned. Department counsel strongly resisted producing the abstracts in that case until ordered to do so by the Court. He then produced an abstract for each FBIHQ record in that litigation. After Phillips' false responses were filed, we learned from Kilty, on deposition, that in fact the Laboratory kept 3x5 index cards on the "items subjected to spectrographic or neutron activation analysis." There is an obvious need because without an index there would not be any means of making accurate specimen identification.

111. Motive for these false statements is readily apparent: both the

abstracts and the since computerized records of the specimens tested disclose what was tested, is pertinent, is known to exist and despite all remains withheld. From the searches claimed to have been made in this instant cause, it is not possible that the FBI did not know of its other pertinent and still withheld records.

112. The FBI's response to Interrogatories also states that no Lab records were transferred and that the Lab transferred no ticklers. There is another standard FBI false pretense, that ticklers are always kept for a few days only and then are destroyed. JFK assassination Lab ticklers still exist.

113. The Lab had "a complete set of photographs of all evidentiary items," which it kept in its possession until a time in 1966 not stated on the records in the FBIHQ "Oswald" file. It then transferred these photographs from its possession to the "special file room." This is one of the files Kilty swore he searched. (Exhibit 21)

114. In September 1966 there were extensive transfers of assassination file records from the Lab to that "special file room." There is no attestation to any search in that "special file room." While I cannot state that what follows is complete, at one point in this file, 62-109060, which Kilty claims he searched with care and diligence, 21 transfers are recorded. Serial 4180 (Exhibit 22), for example, was placed in Bin 14 in the special file room. At that time this also happened to Serials 4177, 4178, 4179, 4181, 4183, 4185, 4186, 4187, 4188, 4189, 4190, 4191, 4192, 4193, 4194, 4195, 4196, 4197, 4198, 4199 and 4200. Each of these transfers was covered by a memorandum from the Assistant Director in charge of the Lab, Ivan Conrad.

115. With regard to the ticklers, while I cannot now make the searches required to produce the records of transfer, there were transfers of Lab ticklers, some of considerable size. These were not destroyed. They were preserved, this being an "open" case. I have and have read the records recording these tickler transfers.

116. As with abstracts, specimen indices, records of chain of possession and other such records, ticklers and other transferred records can be a source of withheld but pertinent records and can lead to them. In the past,

when I obtained ticklers, they did hold records not in the main files and not provided from any other source. An example is the so-called "Long tickler" in the King assassination investigation, the existence of which the FBI regularly denied. We were provided with false statements in response to the Interrogatories. Had we not been provided with these false statements, we would have been provided with proof of the existence of pertinent records that remain withheld.

117. These false statements pertaining to Lab records also are required to perpetuate the mythologies about the fabled FBI Laboratory. Exaggerated as it may be, the opinion of the late Assistant to the Director, William Sullivan, is that the Lab is a propaganda arm of the FBI. In his book, The Bureau: My Thirty Years in Hoover's FBI, Sullivan's chapter, "Flacking for the Bureau," is a thoroughgoing condemnation of the Lab as incompetent and staffed with bias and bigotry. This chapter begins, "The FBI's main thrust was not investigation but public relations and propaganda to glorify Hoover." After referring to the FBI's claims for its Lab as "nothing but a show-business spiel," and ticking off a list of its failures and inadequacies, Sullivan said that "Of the 136 agent-examiners employed by the lab when I was with the FBI, 136 were Protestants or Catholics and 136 were white. There wasn't one Jewish, black or Hispanic American." The Lab had special functions not related to scientific examinations. It was used by the FBI to monitor the beliefs of Americans, including me. The Lab did the taping and transcribing. (Some of these records are among those transferred to central files.) The Lab, like the FBI itself, has much to hide. In the JFK assassination investigation, there has never been a time when the work of both the FBI and its Lab were not questioned. Most recently the special House investigating committee found that the FBI's conclusions about the crime were incorrect. The untruthful responses in this case and the steadfast refusals to make a good-faith search are but adherence to what has been called the first law, "cover the Bureau's ass."

118. Whatever motivated it, and details on motivation follow below, there is no doubt that from the first in this instant cause untruthfulness characterized what came from and pertains to the Lab. Copies of pertinent records it swore did not exist or that it could not find, withheld by the Lab in this instant cause, are appended below. There is no question about it, there is permeating untruth by and about the Lab in this instant cause.

B. Office of Origin and Divisional Files Not Searched

119. Two of the known sources of records that were not searched - more, where searches were refused after I requested them - are the other Headquarters divisions and the Office of Origin, Dallas. Kilty and his mentors were faithful to FBI mythologies but not to the requirements of the remand and the Act.

120. After we were permitted to take some of the depositions ordered by the appeals court in its first remand, my counsel informed the Court that we had records reflecting the existence of other records still not provided and of "reports that we have not been given." (Page 2) He also informed the Court that "We also have established the location of files which apparently should contain documents of the kind that we are requesting, and apparently those files have not been searched. Specifically, the Dallas field office of the FBI, and the Communications Division of the FBI. There are also other files..." (Page 3)

121. If by some remote chance Kilty did not learn what every FBI agent learns about standard FBI procedures, if he was assigned to the Lab without learning how the Lab worked, if he still rose to a supervisory role and became virtually a professional witness and still did not learn of the practice of sending reports to the OO, he should have learned it from the case record and from the records he claims he searched. It is not only that we stated that Dallas records were among those required to be searched for compliance, as quoted in the preceding Paragraph. Frazier is one of the FBI's Lab agents who was in a liaison role with the Commission. Frazier also provided the FBI's ballistics and ballistics-related testimony before the Commission. When he was deposed on February 24, 1977, Frazier testified to the Lab's procedures with reports: "The mechanics were: we would send the Laboratory report to Dallas, Dallas was instructed to incorporate that in the investigative report and send it to the Warren Commission." (Pages 19-20)

122. While it is not possible that Kilty did not know that the files of the Office of Origin can provide what is not found in FBIHQ files, if he made the search he claims to have made in the main files at FBIHQ, he learned that all Lab reports were sent to Dallas. The February 10, 1964, Griffith-to-Conrad Lab memo (Exhibit 23), from the FBIHQ Oswald file, with copies in the other mail files Kilty searched, states this: "... Laboratory report submitted, the Laboratory

report will be directed to Dallas."

123. This was not only the usual practice, it was repeatedly reaffirmed to the various field offices. For example, in New Orleans, which in this case was virtually a second office of origin, the files (100-16601-120, Exhibit 24) reflect information not disclosed in the general JFK assassination FBIHQ releases. FBIHQ told New Orleans, "1) In reference to Lab reports, ... b) Dallas will report all results furnished by the Lab in their reports," even when the examinations were made for other FBI offices.

124. All copies of a memo need not be identical, as Exhibit 23 reflects. Significant notations added to one are not added to another. The original, in the assassination file, has a dozen notations. These appear to include the initials of those who read the memo. The carbon copy, in the Oswald file, the Cadigan copy of the four copies routed to the Lab, is captioned, by hand, "Basic Policy," which is underscored three times. The original lacks this annotation; the carbon copy lacks the initials of those who read the document.

125. The procedure of having the OO prepared the report from the Lab's work did present problems of a nature indicating that, in order to know what the report really should say, all copies need be examined. The FBI was and remains without explanation of exhibits displayed to Kilty, Deposition Exhibits 17 and 18. Both are supposedly the identical page of the identical consolidated report sent to the Commission by Dallas, via FBIHQ. The Commission identified all copies of this consolidated report as "CD 5." "CD" means "Commission Document." One Lab test Dallas reported in CD 5 was performed on the TSBD's wrapping paper. The FBI theorized that Oswald had wrapped the rifle in paper it theorized he took from the TSBD. The copy of this page in the file copy of CD 5 states that the test showed that the alleged Oswald paper came from the TSBD. Another copy of this page from a different CD 5, filed under the name of Dallas Police Lieutenant Day, says the opposite, that the samples are not alike. In other respects, these two pages are word-for-word identical. Which is correct remains clouded, but that is how all the evidence pertaining to getting that rifle into that building is, clouded. For example, the FBI found the rifle well oiled, but it found no oil at all on the magical paper in which the FBI wants it believed that the rifle was wrapped.

126. Standard procedure was for Dallas to provide two copies of such reports. On one occasion, when the information reached the Commission from FBIHQ, FBIHQ notified Dallas that "it will not be necessary for the Dallas Office to prepare the usual two copies of the Investigative Report for the President's Commission." (Exhibit 24A. This was a half-year later than the time of CD 5.)

127. The number of Laboratory reports that were sent to Dallas during the first year of this ongoing assassination investigation is reflected by a list of them that was filed separately from the assassination file, as "bulky." (Serial 4180, Exhibit 25) As the six typed pages reflect, where Dallas was not the addressee of the Lab report, it still received one or more copies. Dallas got everything.

128. Kilty, as stated above, initially swore that there were no indices or other such records identifying the various materials examined by the Lab. On deposition he did admit that there was a card file on specimens and he testified that he found this list of them, giving the impression that he found that list only after the last remand. This list includes the special Lab numbers by which each examination is identified and distinguished. These are the very identification numbers Kilty withheld from the records he did provide. These numbers are not with any exemption. When Kilty was asked why he withheld this nonexempt information, the only response he would make is that the lawyers told him to obliterate that information. Other than harassment, the only purpose served by that withholding was to make proving the FBI's untruthfulness and the deliberate inadequacies of its search more difficult. (Exhibit 24 5 is limited to the first year or to the end of 1963. There were subsequent spectrographic examinations, so if it is the list Kilty used, he used an incomplete list.)

129. Dallas has a massive case index. Although the FBI avoided informing the Commission that it had such an index and did all it could to keep its existence secret, I did learn that the index exists and consists of 40 linear feet of 3x5 cards. If Kilty or anyone else at FBIHQ had been at all interested in complying and had asked for assistance from Dallas, the search could have been aided by this index and a separate and quite large communications index.

130. When FBIHQ really wanted information it did not have, it made

the request of Dallas, even when the information originated with another field office. When FBIHQ wanted information about a Chicago character on June 10, 1964 (Exhibit 26), it phoned Dallas, which checked its indices and obtained the information promptly. Dallas, not FBIHQ, then phoned the Chicago office and Dallas, not Chicago, provided the Chicago information to FBIHQ.

131. As I state above, the FBI's response to the interrogatories pertaining to the chain of possession were not truthful and were evasive, misleading and deceptive. However, had the FBI really desired to respond by stating how evidence was accounted for in this case, Dallas indexed this under "Tracing of Evidence." (Exhibit 27) Some of this evidence FBIHQ traced for the Commission through Dallas is the evidence the testing of which is involved in this instant cause. In Exhibit 27, Item (2), identified as "Rifle Bullet C1," is Commission Exhibit 399, also known as Bullet 399. On this one occasion Dallas traced 37 different items of evidence and reported on the tracing in eight single-spaced pages. A handwritten notation reads, "See Wulff for original evidence." SA Paul E. Wulff prepared this memorandum.

134. It simply is not possible that Kilty did not know that a complete search for the requested information required a search at the Office of Origin. Because it is standard FBI practice to route all significant information to the Office of Origin, all special agents know this, particularly agents in the Lab, which services all field offices. In addition, Kilty's search of the files he claims he searched with diligence also showed that Dallas was used as the funnel to the Commission. Kilty's refusal to have a search made in Dallas, particularly after we notified the FBI that Dallas had pertinent records and after the remand, is a deliberate refusal to comply with the remand. It represents FBI determination to perpetuate noncompliance and to withhold significant historical information.

133. I have read all the FBIHQ and Dallas, Commission, Oswald, Marina Oswald and Jack Ruby files the FBI has disclosed, well in excess of 100,000 pages. From my study of this considerable volume of FBI records, I recall only two times that the reporting of Lab work to the Commission was not via Dallas. One was the results of the NAAs, the other the results of the curbstone testing. The curbstone figures prominently in my earlier affidavits. It is addressed in further, new

detail below. It is clear to a subject expert that these exceptions come from the great political importances of those tests, from the great danger they presented to the FBI's preconception of this monstrous crime that it converted into its "solution." This political danger was so great that the Lab just did not take any chances. It eliminated the danger by drafting the letters for Hoover's signature within the Lab. Both are untruthful letters. Both fail to report fully what the FBI knew and what jeopardized the FBI's preordained "solution."

134. It was well known that copies of pertinent records were in various FBIHQ Divisions, those Kilty also refused to search. Many records among those Kilty claims to have searched reflect the removal of copies of attachments in the various FBI Divisions and offices. Any not in the main file can be located from these notations. During the first of the regular reviews to decide which Commission records would be disclosed, the various Divisions reported on their records. One such report, by the Lab and reflecting that it had extensive records, is dated July 19, 1965. (Exhibit 28)

135. A Domestic Intelligence Division memo to the Lab (Exhibit 29) states explicitly that the Lab is to send "4 copies of each" record to SA Stokes. He "will send to the Commission & to Dallas" and "also furnish 1 set for our records here in 645RB." This is a clear statement that the Domestic Intelligence Division had copies of Lab records and in what room those files were. (Other such records not uncommonly include phone numbers.)

136. Even after the FBI and Department counsel were on notice that we had proof that the Divisions as well as Dallas had pertinent records and after the last remand by the court of appeals, any and all search was refused.

C. The Kilty Deposition

137. Reasons for the government's strong opposition to my taking Kilty's testimony, which I had to make still another trip to the appeals court to be able to do, became obvious on June 16, 1981, when he was deposed. Once again he swore in contradiction to himself. He disclosed the inadequacy of the search. He and his counsel tried to pull another con job on the Stombaugh testing of the slits in the President's shirt collar, which do not overlap and coincide as they

must if they are from a bullet. With regard to the NAA testing of Q15, the windshield specimen, fragments of bullet from that impact, he provided still another, his third sworn version.

138. First he swore that Q15 was tested by NAA. I proved I did not receive that information. Then he swore that Q15 was not tested by NAA. On deposition he swore that Q15 was tested but he does not regard it as a test because he does not like what emerged in the printout. Finally, after all these years, he provided the printout.

139. In No. 75-2021, the court of appeals directed that I take testimony, start Wigmore's engine running, to determing the existence or non-existence of the information sought because it is of interest not only to me but also to the nation. But I then was not permitted to take Kilty's testimony.

140. Now that I have deposed him, I have established that in some respects the FBI did not perform the necessary testing. By keeping this secret it was able to deceive and mislead the Warren Commission and through it the country. This is frightening, it appears to be incredible, but the FBI did not make quantitative spectrographic analyses. This Kilty did admit when I was able to ask him. I knew from internal FBI records that it performed both qualitative and quantitative spectrographic analyses on the evidence of the shooting and killing of Dallas policeman J. D. Tippit. Qualitative analyses identify the substances. Quantitative analyses provide the percentages of these substances. Performing qualitative analyses only on JFK assassination specimens the FBI already knew to be of bullet metal did no more than tell the FBI what it knew without qualitative testing. Quantitative testing is required to show common origin - and that the FBI deliberately did not do. There is no question of the FBI's capability of performing quantitative analyses because it did in the companion Tippit case.

141. This to now secret record of the FBI when it investigated the assassination of a President, the most subversive of crimes, alone gives the FBI much to try to hide - but it is not alone. The FBI did hide this and other such information in this case. Despite all the FBI's false affirmations, it continues to hide information in this case. More on the hiding and what was hidden, with examples, appears below.

142. Kilty was asked if, when he began his search, there was anything to indicate that there had been previous searches for this information. His evasive response was "I did not come across any documents which indicated that they had been searched for previously." (Other agents, for example, may have conducted other searches as supposedly but not actually in C.A. 2301-70.) Asked, "How did you go about making your search?" he responded, "I don't recall how I searched for those items in 1975." When asked, "Where did you finally locate them?" Department counsel tried to prompt Kilty away from the embarrassing truth by objecting, "He's already said he doesn't recollect anything about the search." Kilty finally admitted that he found the records he provided in 1975 in the Laboratory, in file cabinets. (Page 38)

143. Kilty testified that after the remand he was directed to two file cabinets in the Laboratory by Frazier and Gallagher (page 43). However, because he also testified that all Laboratory JFK assassination materials were in two Laboratory file cabinets, it is apparent that he did not learn anything from Frazier and Gallagher and that he had searched those two file cabinets, the only ones with JFK materials, in 1975. (Page 39) In turn, this indicates that Kilty represented doing something new after the remand when in fact he did not.

144. The arrogance that characterized his testimony is reflected by an exchange about these two file cabinets, supposedly the only ones with JFK material, those he ostensibly searched with care. Because I knew there is pertinent information not yet provided and Kilty had testified that these two cabinets held all the Lab had, he was asked, "Can you identify the file cabinets as to content?" His contemptuous and nonresponsive answer was, "I can, yes, by opening the drawers and looking at what's in them." (Page 39)

145. Yet it been only a few days since he had, from his own testimony, been through those two cabinets, thoroughly and diligently. Asked when this was by his own counsel (page 110), he testified, "Over several days in the last month or six weeks. ... ten days, at least, on this - - part of ten days, at least." Yet he pretended he could not identify the contents of those cabinets or say how they are labeled.

146. Kilty was asked, "How did you know to go to these file cabinets?"

He testified, "I talked to at least one other agent who was there - - maybe two." Here he identified Frazier as one and later he added Gallagher. The problem with this testimony is that both agents had retired so neither could be an "agent who was there." With regard to Frazier Kilty testified, "He showed me where the cabinets were." There are problems with this. Kilty apparently forgot he testified to searching these two cabinets for 1975 compliance. He also pretended that the finding and searching of these cabinets was new and in response to the remand. Kilty's portrayal of the fabled FBI Lab is that it cannot find its own records, on a current and major case, in its own rooms without asking around and learning from retired people. It cannot be believed that the Lab does not have clerks, does not identify its file cabinets and does not label their drawers. It also cannot be believed that there is not, at the very least, some kind of guide to filed information. The assassination of a President is not an everyday event and it is not inconsequential.

147. Kilty was questioned further about his search because he was remarkably unwilling to provide any detailed and specific information, even though it was so recent and so important a case in which, by his own claim, he had invested much time: "Did you consult Central Records in making your search?" His response was, "I don't recollect if I did or did not consult what you call Central Records - that's the people that search for records and I don't recollect whether I did or not." (Page 42)

148. "That's the people that search for records" does describe the function of the central files office. In fact, they do not permit anyone else in their files. The usual practice is to furnish them with search slips identifying what is to be searched for. They fill out the search slips and list the available records by file and serial number. In my C.A. 75-1996 the FBI paraded a series of its FOIA agents to the stand. All testified that the very first step in a request is such a search. Yet if he is to be believed, the Kilty who claims to have labored so hard and made such diligent searches does not even recall if he even consulted with those who control the FBI's main files.

149. Kilty testified that he obtained only some unidentified sections of the JFK assassination and Oswald main files (on pages 43, 44 and several times

later). He had to request these, yet he produced no record of his request.

150. Kilty also found material in the Lab unassisted, according to another version. For this reason, rather than needing Frazier and Gallagher as seeing-eye guides through the Lab in which he worked in a supervisory position, Kilty testified, "I knew where that (spectrographic analysis) material was." (Page 43)

151. As to the amount of material he reviewed, "I went through cart after cart of sections of files," (page 44) "thousands" of sheets (page 126), but not a single field office file. Beginning in 1978 the Dallas and New Orleans case files were at FBIHQ as a consequence of my C.A. 78-322 and 78-420. Dallas files are the most extensive files and, as Kilty reluctantly admitted, can and do hold what is not at FBIHQ. Yet he made no search of them at all.

152. When Kilty was asked whether the Dallas office had pertinent records, he again was cued not to respond by Department counsel. He was asked, "Is it your understanding - - with respect to the reports that were furnished to the Warren Commission, that the reports went to the Dallas field office and that the Dallas field office incorporated the findings of the F.B.I. Laboratory in a report which they submitted to headquarters and that this report was then transmitted to the Warren Commission?" Department counsel objected, claiming "That was a very compound question - - a lot of parts." (Page 49) Kilty, asked if he could answer the question, admitted that this is what happened. (Page 50)

153. Kilty also sought to evade when asked, "... how can you determine what - - whether or not we were provided with all the reports without a search of Central Records?" After parrying and further obstructionist efforts by Department counsel, Kilty finally claimed, "I don't know" in response to the question, if he had made this request, "would that have assisted your search?" (Page 50) The truth is, as he did know, that this search is required and he did not have it made.

154. Asked if he had made "any request of the Dallas field office, for any reports pertaining to the spectrographic and neutron activation analyses," Kilty replied, "No." Asked "Why not?" he claimed, "Well, copies of all those records were available" at HQ. Asked, "How could you be certain that we were

being provided with all the reports without searches at HQ and Da;;as," he again evaded, saying, "I gave you all the reports that existed." (This is false, as is apparent from what he did not provide that I attach below.) His response when asked, "How could you know" that he was providing everything was, "Based on my search of the records and knowing the items that were subjected to examination. I have found the reports pertaining to those specimens." (Page 51)

155. More than 3,000 pages of Dallas JFK assassination records are missing from FBIHQ files. This was admitted by the FBI and the Department in my C.A. 78-322. The FBI had claimed, incorrectly, that those pages were disclosed by FBIHQ. A check forced by administrative appeal showed that more than 3,000 pages did not exist at FBIHQ, even though Dallas records established that they had been sent to FBIHQ. In this instant cause, where clearly pertinent records were not provided by Kilty, I found them in Dallas files provided in C.A. 78-322.

156. That Kilty found and provided all the known records pertaining to "all the items that were subjected to examination" is not true. The Department and the FBI were on notice long before the deposition that I had proof of the untruth of this claim. Pertinent information Kilty did not provide is at FBIHQ and is attached below.

157. Bearing further on the fact that FBIHQ knew Dallas had records not at FBIHQ, including Laboratory information, is the fact that Dallas has about 10,000 more pages of bulkies than are at FBIHQ. This also is the record in C.A. 78-322.

158. When the questioning turned to lists of the specimens tested, Kilty again was arrogant, evasive and deliberately nonresponsive. He was asked if he would not start searching with a list of specimens tested. He replied, "That possibility is a good one ..." Asked, "Did you do that?" he claimed, "I don't remember if I did or not." Asked how he would get such a list, he said, "You could look at a listing of the specimens to get a list of the specimens." Asked where the listing would be, he admitted, "There's one kept in the Laboratory," something he had earlier denied. After he had drawn the matter out as long as he could, he admitted that this list of specimens tested was in the file cabinets he searched in 1975. (Page 53)

159. Because Kilty did have this list of specimens tested, there can be no excuse for the failure to provide records pertaining to some of the tests known to have been made.

160. Bearing on Kilty's intent with regard to the information I requested is what he testified to when asked if he had provided the NAA printouts in response to Congressional committee request for all NAA information. He treated the Senate's intelligence committee no better than he treated me. He testified that the committee did not receive the printouts and that "I have no recollection of ever - - of those computer printouts being released to anyone." (Page 57) After the Senate committee's and after my requests, the House established its Select Committee on Assassinations, to whose work also this information clearly was relevant.

161. Kilty also claimed no recollection of providing any spectrographic materials. (Page 57)

162. He was read parts of an internal FBI record pertaining to Congressional requests for Laboratory records. There were "ground rules set down in the November 7, 1975 meeting, excisions cannot be made except for certain confidential items ..." He had thereafter obliterated information that is not within any exemption in the records provided to me. When shown two different versions of Lab records, the one he provided to me and one I obtained outside this litigation, he admitted that he had obliterated such nonexempt information as the file, Laboratory, Physical and Chemistry unit numbers and even the date. He also obliterated what is not exempt and was known, the name of the examiner. Asked why he did this, he testified "because I was told to do it." Asked by whom, he claimed, "I don't know..." (Page 66) On another occasion he testified that he withheld nonexempt information from me under instructions of unnamed lawyers.

163. Other than harassment, the only apparent purposes served by withholding such nonexempt and pertinent information was to prevent checking up on the FBI's dishonesties in its affirmations and in proving FBI noncompliance and the deliberateness of FBI noncompliance. It also could interfere with the taking of depositions. It did withhold the identifications of those who should be deposed to establish the existence or nonexistence of the information sought

and not provided.

164. Kilty's explanation for not asking any of the Divisions if they had any pertinent information is the claim that the only information they could have would be "serials of the file section" if they had any from Central Records. (Page 100) This is untrue and he had to know it was untrue. Copies of many records were regularly routed to the various divisions by the Laboratory itself, as is reflected in Exhibit 28 and countless other records. In addition, the various divisions often removed records from the central files copies and added notes reporting that they had done so. These copies remain missing throughout all the disclosed Kennedy assassination main files. Kilty also knew that the divisions maintain their own ticklers of copies of records and that ticklers are often kept as long as a case is open. The JFK assassination case is an open case.

165. Although Kilty had stated that the Lab did not have indices, when pressed (on page 106) about the numbers he had obliterated from the records provided to me, he admitted that there had been card indices and that these have been replaced by computerization. All this indexed information can still be retrieved.

166. Kilty was then asked (page 110) if those cards were destroyed, "What was the point in obliterating that in the records we were given?" Kilty, who did the obliterating of the nonsecrect and nonexempt, responded, "That's out of my bailiwick. That's a lawyer's type work here. I don't know what the lawyers have to say about that" In addition to Department counsel, Kilty was represented by SA Jack Slicks of the FBI's Legal Counsel Division. Neither lawyer provided either an explanation or justification of any lawyer telling Kilty to withhold nonexempt information. Both remained silent.

167. The FBI claims falsely that it can comply with all requests from FBIHQ's central files. As of today it has refused to search other known sources, like the divisions and the Office of Origin, Dallas. Kilty did admit to the FBI practice of sending the originals of Laboratory reports to Dallas, where they were rewritten for the Commission. Whatever the FBI's reason for this costly and time-consuming practice where there was no prosecution in the territory

of the office of origin, it did lend itself to error and what can be interpreted as more sinister than mere mortal error. An example is Deposition Exhibits 17 and 18, cited above. Dallas, having received the Lab's report on the wrapping paper in which, in the FBI's theory, Oswald had carried the disassembled rifle, provided contradictory versions in two different copies of the same page of a consolidated report. One copy of page 129 said that the wrapping paper came from where Oswald worked, the other copy of the same page said it did not. Yet both these diametrically opposite Dallas reports claim to come from the same Lab report. Kilty could not explain this. (Pages 117 ff.) FBI Coounsel Jack Slicks asked for and was given a copy. He said, "I'll look into this." We have heard nothing about it since then.

168. The incorrect version was filed by Dallas to reenforce the case against Oswald. This is not unique. A similar situation still exists with regard to several of the matters of interest to the appeals court, like the testing of the shirt collar and the curbstone. As will be seen below, in both matters the FBI continues to withhold pertinent information.

169. Kilty was asked, "Has any further search been made" since the last remand. He replied, "Yes." When asked to describe his search, he said he searched "all the places where spectrographic plates or data concerning spectrographic plates could be kept and of the items you do not have, namely the curbstone plate. ... I have looked for everything again and I found what I've given you and I can't find anything that I haven't given you." (Pages 120-121) "Data concerning spectrographic plates," he testified (page 121), includes "the spectrographic notes." Kilty's testimony about specific specimens is addressed separately, below.

170. When Kilty was questioned about these specimens, he was asked why he had not searched Dallas, particularly after Frazier's testimony that the Lab reports went to Dallas. In order to avoid response, Kilty first created a diversion over what he had <u>not</u> been asked with, "Not in the wildest, wildest imagination would I ever think that the notes produced by an agent in the F.B.I. Laboratory would be in Dallas." He had not been asked about notes. He had been asked about reports. He was asked again, pointedly, "How about reports?" Only

then did he acknowledge, "Reports - some reports went to Dallas, no doubt about it. They may have gotten all reports." (Pages 126-127)

171. Finally he admitted that there are FBI reports that might not be found at FBIHQ. He then was asked, suppose some of the missing reports are in Dallas, and he replied, with his ever-ready non sequitur, "I wouldn't even know if they were missing." (page 127) He knew the Stombaugh shirt-collar report was missing, and any honest search through FBIHQ main files disclosed the existence of other information not provided. While it is not true that Kilty would not know if reports were missing, he did admit the possibility. Particularly after the last remand this possibility provided more than enough reason for searching elsewhere, especially the divisions and the Dallas office, where I had stated there was pertinent information.

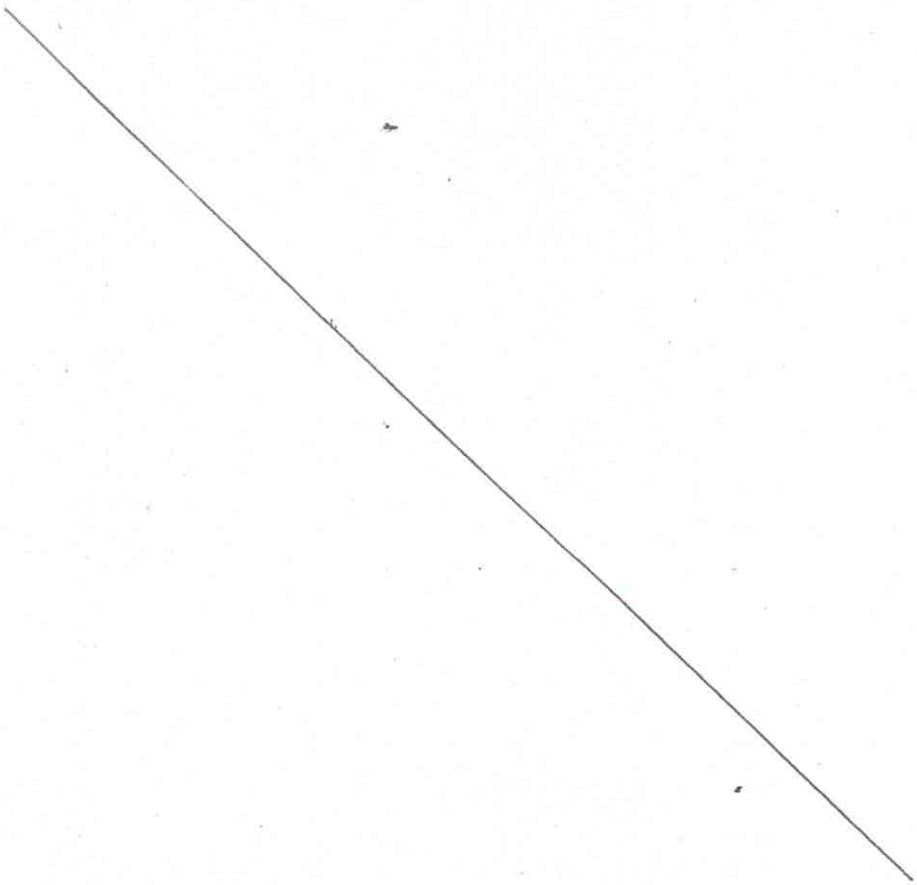
172. He was then asked, "Did you make a good faith, diligent search after the recent remand of the Court of Appeals to find everything that Mr. Weisberg is seeking in this case?" Kilty flaunted his contempt of the courts by rejoining, "I don't know everything Mr. Weisberg is seeking in this case." (Pages 127-128) He did not state how he could make a good-faith search or provide a competent and honest affidavit without knowing what is sought. He testified that he searched only for what Department and FBI house counsel "told me about." Neither disputed him on this.

173. Kilty left no doubt about intentional noncompliance, at this late date in a 1975 lawsuit and a 1966 request, when he blurted out, "And I'm certainly not saying that I've searched for everything that Mr. Weisberg ever asked for in this case." (Page 128)

174. Despite this testimony, on cross-examination by Department counsel, Kilty pretended he had made a diligent, conscientious and inclusive search. Department counsel fed him lines, like "Were you looking for anything that was conceivably implied by that request (of 1974)?" Kilty took the cue, replying, "anything we had that had any connection with it at all, and specifically, "for the items the Court of Appeals had mentioned." (Page 130) He and Department counsel here describe an inclusive request, "anything conceivably implied by the request," anything "that had any connection," and all "the items the Court of

Appeals had mentioned." This volunteered information leaves no doubt about the breadth of the request as the defendants understood the request.

175. On redirect Kilty was questioned again about not searching Dallas files. He then acknowledged that the originals of Lab reports addressed to Dallas are in Dallas files. After Department counsel interrupted several times to try to testify that if a record were missing at HQ it did not have to be in Dallas files, Kilty was again asked, "Would you concede that it's possible that the Dallas field office could have Laboratory reports that you were not able to find in F.B.I. Headquarters?" To this the ever-arrogant Kilty replied, "Well, I didn't look for every laboratory report that exists." My counsel said, "Well, I hope you did, sir," pertaining to information within the request. (Page 138)



IV. RECORDS RELATED TO SHIRT COLLAR, CURBSTONE AND WINDSHIELD TESTING STILL WITHHELD

A. The Shirt Collar Slits and the Necktie Slit - The Missing Stombaugh Report

176. From the moment of the assassination there has been considerable controversy over the wounds and their location, the number of shots fired and the damages they caused. The information sought and still not provided in this instant cause has much to do with whether or not the official theorizing about the assassination, the FBI's and that of the Commission, are even possible. In my earlier affidavits I state that the actual evidence rather than the official theorizing is that the rear nonfatal wound the President suffered was much lower than the Warren Commission Report states. In turn, this means that the damage to the shirt collar fronts and the necktie, subject of testing not provided, cannot have been from a bullet that entered in the rear, which both the Commission and the FBI theorize.

177. The two FBI agents who were sent to meet the corpse and its escort and to remain with the corpse throughout the entire autopsy, filed their first report by teletype as soon as they returned to their office from the hospital (Exhibit 30). It was not provided to the Commission. Of this wound it states without any qualification, "ONE BULLET HOLE LOCATED JUST BELOW SHOULDERS TO RIGHT OF SPINAL COLUMN."

178. There is a vast difference in the trajectory of a bullet that caused a wound just below the shoulders and one that caused a wound in the neck, the official Commission line. I found a reference to this report in 1966 but I was not able to get a copy until 1978, when I found it among the FBIHQ records provided to me as a result of C.A. 77-2155. It contradicts the official theorizing about that wound and it disproves the official theorizing about how the shirt collar and necktie knot were slitted. It confirms my uncontradicted affidavits on these matters. It provides additional motive for the continued withholding of the Stombaugh and other reports, which cannot say what the FBI wants to be believed.

179. The evidence in my earlier affidavits, from what the Commission and the FBI had and ignored and from my own interviews of the Dallas doctors who have personal knowledge, is that these damages to the President's clothing were

not caused by any bullet or bullets. They were made by the scalpels of the emergency room nurses who cut off these garments at those points under the direction of Dr. Charles Carrico.

180. Frazier testified to the Warren Commission that spectrographic analyses, which disclosed traces of metal at the holes on the back of the jacket and the shirt, did not disclose traces of metal on the front of the President's shirt collar or on his tie. On deposition Frazier testified that he had "merely relayed the spectrographer's report." However, he had examined the shirt, as he testified when asked the direct question. (Page 60) When he was asked about the slits in the shirt collar, Frazier volunteered information, a rarity for him. He was asked, after he examined the FBI Lab's picture of that shirt collar, if he could "determine whether or not the holes in that shirt collar overlap." (The official account is that an exiting bullet made both slits in the collar band near the button and button hole.) Frazier did not limit himself to responding to what he had been asked, which is the first part of what he then stated, "I wouldn't know whether you could or not from looking at the photograph." He then volunteered, without having been asked, "This shirt was examined by another examiner for that purpose." (Page 60) He repeated this on the next page, "I had it examined by another examiner for that purpose.

181. Frazier refused to testify to the meaning if the slits did not coincide at the overlap, unless he was paid additional "expert witness fees." (Page 61) He identified this other agent as SA Paul Stombaugh and testified further that Stombaugh did file a written report. (Page 62)

182. Throughout Frazier made it clear that each kind of test was performed by an expert in each field. Gallagher was the spectrographer and neutron activation expert. Stombaugh was a hair and fibres expert. Frazier was a ballistics expert and his testimony was limited to his specialty.

183. Because we were not provided with any copy of the Stombaugh report and more than four years had elapsed after Frazier testified to its existence, this subject was gone into in some detail when Kilty was deposed. It then became apparent that he and his counsel had prepared for this. While they had a report they tried to palm off as the Stombaugh report, they also had been

careful not to mail it. Kilty therefore had to be examined about it ad lib, when my counsel and I could not even confer without contrived objection by Department counsel. There had not been a peep from Kilty or Department counsel about this report until Kilty was questioned about making any search after the remand.

184. "Did you conduct any search for that - - for any report or any notes on any such examination?" he was asked. "Indeed I did," Kilty rejoined, adding, "I found the report that contained the information about this." It was made Deposition Exhibit 19. (Attached as Exhibit 31) Whatever he meant by it, Department counsel here stated, "For the record, this is an item that is not in the Stombaugh report." I was given nothing identified as or that could be "the Stombaugh report" or any notes he made during that examination.

185. This constitutes an admission that the defendant has deliberately misled the courts with regard to the Stombaugh report. It is an unequivocal acknowledgment that Stombaugh did make the examination to which Frazier testified. There was no expression of any regret.

186. In trying to fob off Exhibit 31 as or as including the Stombaugh report, Kilty and Department counsel created new problems. Exhibit 31 does not have any content that could be the Stombaugh report and it does not report on the examination Stombaugh made. It is Frazier's report of the examination which led him to have the additional examination Stombaugh made thereafter.

187. Kilty was asked to show where "it indicates that an examination was made to see whether or not the slits in the shirt collar would coincide if it was buttoned together." (Page 122) "The fourth paragraph from the bottom of page 2 addresses (sic) that," Kilty testified. He then was asked, "Well, it doesn't say that, does it?" Kilty read from the Frazier report, both inaccurately and not from the paragraph he cited. Neither paragraph says anything at all about the test the results of which remain withheld

188. Quite the contrary, Frazier's report fails to state that the two slits coincide - because, visibly, in the FBI Lab photograph I obtained under FOIA, they do not coincide. Spectrographic analysis, which detected bullet metal elsewhere on the garment, did not detect it at these slits or, as Frazier managed

to avoid reporting, on the tie.

189. When Kilty was again asked (on page 122) where it is stated "that any examination was made to see whether or not the slits coincide," Department counsel refused to let him respond on the ground that "the statement (sic) speaks for itself. Whatever it says, it says." The report does speak for itself and what it says is that Kilty, assisted by his counsel, tried another fraudulent misrepresentation, under oath. They seriously and deliberately misrepresented the content of the report in order to pretend that they had produced the results of a test when they did not and when, if produced, those actual results will destroy the FBI's impossible solution to the crime of the century, the assassination of the President.

190. Kilty took no chances. When he was looking for Stombaugh's report, he did not contact Stombaugh. Asked why, he came up with still another non sequitur, "He didn't produce this," the Frazier report, Exhibit 31.

191. For all their supposed desire to do as the court of appeals wanted done, none of the Department's counsel had Kilty contact Stombaugh.

192. Moreover, from his own testimony, Kilty did not begin his search to comply with the remand until a few weeks before he was deposed.

193. To make doubly certain, Kilty did not ask Frazier, who he testified he had consulted, "if this is the report" in question. (Page 123)

194. To leave no possibility of not avoiding anything he could avoid, Kilty did not even trouble to read Frazier's deposition, the few words that pertain to this examination, the results of which Kilty allegedly was breaking his back to produce. "I have no idea what he testified to," Kilty blurted out, interrupting a question to do so. "All I read is a statement in a Court of Appeals thing which may have been taken out of context." (Page 123) He didn't stop there, with this unsolicited opinion of the court of appeals and its "thing." "I don't know anything about it," he continued, nothing omitted in this quotation. "I've not seen Frazier's transcript of his testimony." (sic)

195. Kilty was not without other reasons for being entirely ignorant of what Frazier testified to. He was again asked why he had not spoken to Stombaugh and he said, "I never thought about asking Stombaugh." (Nor, apparently,

did anyone else in the FBI or Justice Department or any of the Department lawyers involved in the litigation.)

196. While Kilty was being asked a question, "if Frazier testified that he had Stombaugh make the examination ..." Kilty interrupted again to declare, "I don't know that Frazier testified to that. I've never seen that Frazier testified that he asked." Having so studiously avoided looking at the transcript of Frazier's testimony, Kilty could safely state "I've never seen that Frazier testified to that." At this point Department counsel objected to any further questioning in the matter. (Page 124)

197. Nonetheless, Department counsel and Kilty did provide the Frazier report (Exhibit 31), representing it as including the Stombaugh report of the examination Frazier wanted made. Yet Kilty also pretended that there is nothing at all to it. He tried to have it both of two false ways.

198. As my counsel tried to establish what was and was not done pursuant to the order of the court of appeals, there were continual objections by Department counsel. He even objected to the question, "What was the basis of your search, if it was not the Court of Appeals decision?" (Page 125)

199. Kilty was asked if he had searched for any copies of the Stombaugh report where copies could have been sent, such as to Dallas, where everything was supposed to be sent. The reason he gave for not making any such search is yet another non sequitur, his claimed inability to find any worksheets in the Lab. He claimed, once again trying to play it both ways, that there had to be a worksheet if Stombaugh made the examination; yet despite his lack of any worksheet, he had no reluctance in providing Deposition Exhibit 19 as holding and reporting the results of Stombaugh's examination.

200. Obviously, after Frazier's testimony, any absence of records in the Lab indicated the need for more intensive searches, wherever any copies of the report might have been sent. Dallas and FBIHQ Divisions are places that certainly should have been searched and Kilty, Department and FBI house counsel all knew it.

201. Actually, Frazier was quite careful in the report he drafted. He also was evasive, misleading and less than fully accurate. The paragraph before

the one Kilty read states that "spectrographic examination of the fabric surrounding the holes in the back of the coat and shirt revealed minute traces of copper." Frazier said nothing here about any spectrographic examination of the front of the shirt or the tie, yet both were examined spectrographically. In the next paragraph, with FBI magic, Frazier reduced the two slits, one in each end of the collarband, to a single slit: "A ragged slitlike hole approximately 1/2" in length is located in the front of the shirt 7/8" below the collar button." The slits are vertical, therefore, even if the 7/8 inch was not intended as a deception, to make the hole appear to be lower than it was, neither can be 7/8 of an inch below the collar button. Moreover, they do not coincide. The slit on the left side is higher. Then Frazier does say that the hole is through both ends of the collar "due to the overlap." He says that "This (sic) hole has the characteristics of an exit hole for a projectile." Projectile does not mean bullet. (Frazier could get an argument from the criminalist I consulted if he represented that the slits have the characteristics of a rifle bullet exit hole.) Then, still without saying it was the result of spectrographic examination, Frazier said that "No bullet metal was found in the fabric surrounding the hole (sic) in the front of the shirt." Of the necktie, all Frazier says is that "A small elongated nick was located in the left side of the knot of the tie, Q24, which may have been caused by the projectile after it had passed through the front of the shirt."

202. This information (and misinformation) established the need for the examination Stombaugh made. It does not include or even refer to the results of the examination he was to make. There is no language anywhere in this report that can be tortured into saying, meaning or even suggesting or hinting at what Kilty and Department counsel represented, that it includes Stombaugh's report. There is no doubt that both knew better.

203. Little wonder that Kilty's tongue got twisted when he tried to make it appear that Exhibit 31 would satisfy the court of appeals. He testified, "It pertained to the examination of the President's shirt that addressed the problem of some kind of overlap situation." (Page 132)

204. Brief as Frazier's teletyped report (Exhibit 32) is and little as it says,

it still was delayed for about 10 days. Earlier, as soon as the Lab looked at the President's clothing, it teletyped a report to Dallas. At the bottom of the first page it describes the slits in the collarband not as bullet holes or as caused by a "projectile." Before the official party line was completely formulated, the Lab told Dallas, "This hole has the characteristics of an exit hole for a bullet fragment." (Emphasis added) However, if it were caused by a fragment, the FBI's entire "solution" to this crime collapses. The FBI's "solution" requires that an intact bullet caused the damage to the shirt and tie. So, true to Orwell and Hoover, Frazier upgraded the Lab's science. He eliminated "bullet fragment" and substituted "projectile." Projectile can mean almost anything in motion.

205. "Bullet Fragment" is not an accidental formulation in which the FBI misspoke itself. The same language is used in a memo of the same day, from SA Jevons to Ivan Conrad, the Assistant Director in charge of the Lab: "The hole (sic) has the characteristics of an exit hole for a bullet fragment." (Exhibit 33)

206. The Commission also was not satisfied with the FBI's inadequate and incomplete reports on the President's clothing. On March 17, 1964, one of the staff counsel asked SA Gallagher, "Would neutron activation analyses show if a bullet passed through the hole (sic) in the front of President Kennedy's shirt near the collar button and also if a bullet passed through (sic) the material of his tie?" (Exhibit 34) The very next day the unsatisfied Commission asked for a written report on the clothing, including "Your reasons for the opinion that the holes in the clothing were either 'entrance holes' or 'exit holes.'" (Exhibit 35) Someone in the FBI underscored "reasons," "entrance holes" and "exit holes."

207. The FBI records cited in this section, like the other FBI and Department records that are exhibits, were not available at the time this case was first before this Court. I received them through C.A. 77-2155, a total of more than 100,000 pages of FBIHQ records, beginning in early 1978.

208. The absence of traces of bullet metal on the shirt collar and tie indicates that those slits were not caused by a bullet. With regard to the tie, on deposition Frazier confirmed what I stated about the tie being cut off. He acknowledged that "It was cut off," adding that "it was off to the side."

Page 64) There is damage to the tie at one point only, the point where it was cut. Where a bullet is known to have hit the President, there are traces of bullet metal, on the back of his jacket and the back of his shirt. Other uncontroverted and uncontrovertible evidence establishes the fact that these slits were caused by a scalpel during the emergency treatment of the President. If there were any doubt that the FBI, the Department and Department counsel knew this before my affidavits were filed, they do know it as a result of my filing those affidavits. Neither the FBI nor the Department made any attempt to refute them.

209. Frazier volunteered that he had Stombaugh make an examination to determine whether the slits coincide. They clearly do not from the FBI Lab's own photograph of them which it did not give to the Commission. (I got it by FOIA request of the Deputy Attorney General.) Frazier also testified that the Stombaugh report was filed in writing. The Department and the FBI are unable to refute the evidence of my affidavits or Frazier's testimony. They switched to fraudulent misrepresentation to continue to withhold records that demolish the untenable official "solution" to that most serious of crimes, the assassination of the President.

210. The continuing official efforts to pretend that the FBI conducted a full and satisfactory investigation by withholding public information, because of the nature and consequences of the crime, are much more serious offenses than what is tragically common in my experience, misrepresentations, deceptions and outright lies and fraudulent misrepresentations in "Freedom of Information" cases.

211. Also tragically, these offenses are not limited to the withheld shirt collar slits report. They likewise characterize the tainted practice with regard to the curbstone and still withheld information about it.

B. The Dealey Plaza Curbstone

212. FBIHQ ordained that there had been no missed shot in the assassination of the President. For months the Commission, no less determined than the FBI, tried to pretend that no shot had missed. Seven nonfatal wounds on the President and Governor John Connally were a great enough weight for two of the three shots to bear. However, the Commission was composed of men who knew they could

not survive criticism the way the FBI did, by the brute power of its indignant denials and, among political figures, fear of it and what it could do. After several months the impact on the curbstone just would not go away so the Commission accommodated it, by rearranging its lone-nut assassin scenario. Under the Commission's revision, one bullet inflicted all seven nonfatal wounds, even though nobody duplicated that penetrating power in the many and various shooting tests. (Paralleling this, nobody ever duplicated the shooting attributed to the duffer Oswald. Of all the best and professional shooters used, in tests arranged to make the shooting easier than at the time of the assassination, not one was capable of the speed and accuracy of the shooting attributed to the man the Marine Corps evaluated as a rather poor shot.) By limiting the extensive and fatal injuries to the President's head to one other single bullet, the Commission had the third bullet available to miss and to hit the curbstone. Little as James T. Tague bled from a spray of concrete or a bullet fragment, for the Commission Tague did not bleed in vain. On its part, the FBI ignored Tague as long as it could and then deprecated him and what he said. As my prior affidavits show, it also left him, his wound and the visible scar on the curbstone entirely out of its supposed definitive, five-volume investigative report. the one in which it solved the crim with a diatribe against Oswald while it almost entirely ignored the crime, the assassination. There are only two of the briefest imaginable references to the crime itself, so factually barren that one of the President's wounds, the one in the front of his neck and the first one reported, is not even mentioned. The FBI's "solution" has the first and third shots hitting the President and the second hitting Governor Connally. Hoover, as the exhibits reflect, insisted on this "solution," regardless of all the facts disproving it and the Commission's different "solution." The mute testimony of this Dealey Plaza curbstone is eloquent in its evidentiary destruction of both of these so-called solutions. It also is eloquent in alleging a conspiracy because, as my prior affidavits and actual photographs show, the FBI could not attribute it to one of the three admitted shots and someone undertook to patch it during the long period it was in official limbo. Of all the many spectrographic plates, the curbstone plate is the only one the FBI claims is missing. It claims, unsworn,

that this one thin plate of all the many thousands the FBI has was sacrificed to glean a fraction of an inch of file space. It is obvious that no official story is tenable when assessed against the known facts. The official story needed all the help it could get. The FBI provided this kind of help by not performing tests it should have performed and knew it should have performed, by avoiding other investigations and by hiding the results of tests that were inimical to its official preconception. Without the FBI's misfeasances, malfeasances and nonfeasances, this most subversive of crimes could not have been allocated to a lone, incompetent nut. (Tague's earlier affidavit is attached as Exhibit 36.)

213. The patching of that curbstone was as visible to the FBI as it was to me. It had capabilities I do not have and could readily determine the fact and the nature of the alteration of this vital evidence of the crime that negated an entire system of society. (As will be seen, especially in Exhibit 44, the FBI knew of and reported this alteration.) Instead, the FBI concocted fairy tales, like the theory that the washing of the streets had worn off this scar that was at the top of the curbstone's face and not in the street at all. Although the FBI has not produced any reference to it, Tague took a motion picture of the curbstone which had made him part of the nation's history and then, when ostensibly nobody knew about it, it but nothing of cash value was stolen from his home. There is no FBI report in the Commission's files reporting the existence of Tague's movie or forwarding frames from it. But, when Tague was finally deposed by the Commission, its assistant counsel, Wesley Liebeler, showed Tague what he mistakenly identified as blowups of a portion of Tague's movie. Yet from the available information, neither the Commission nor its investigators, the FBI, even knew that Tague made a movie.

214. This curbstone was already deep in the memory hole when one of the FBI's innumerable leaks perplexed Dallas Morning News photographer Tom Dillard. The leak was of the "solution" that ignored the Tague and curbstone wounding. Dillard mentioned this to the then United States Attorney, Barefoot Sanders, who alerted the Commission. Only then was the FBI sent chasing after the avoided curbstone which, it seems, was illusive. Nobody in the large Dallas FBI office could think of getting the photographers who contemporaneously took pictures of

the scar and their pictures and thus finding that historic spot. Tague also could have been the FBI's seeing-eye dog, as it without question knew; and whether or not the FBI knew it, as it should have, Chief Criminal Deputy Sheriff Allan Sweatt and one of his assistants, Buddy Walthers, could have taken the FBI there. Both accompanied the photographers. In addition, Walthers had interviewed Tague when and at the spot where he was wounded. Disclosed FBI records report Walthers' presence, that of the policeman and the text of the police broadcast of Tague's wounding.

215. To satisfy the Commission, which could no longer avoid the curbstone and its history, after the Dallas FBI pretended it could not find the curbstone, FBIHQ dispatched its Lab photographic expert, SA Lyndal L. Shaneyfelt. Shaneyfelt was so deeply offended at what I had written about him and his career of servicing the Commission like an FBI Wrong-Way Corrigan that he cooked up the scheme to "stop" me by suing me for libel, only to abandon it once the top hierarchy, including Hoover, were aware of the sacrifice he pretended to be willing to risk to preserve the fair name and reputation of the FBI. I learned about this when we deposed Shaneyfelt in 1977. I then gave him a written waiver of the statute of limitations and offered to pay his filing costs if he would sue me. He never responded. He knew no court would find libel in accurate reporting.

216. None of the FBI people deposed in 1977 would comment on the condition of the curbstone. Shaneyfelt and Frazier asked for expert witness fees, in addition to those prescribed and already paid. Shaneyfelt, after refusing what he called expert testimony without payment of this extra fee, nonetheless had the gall to send me such a bill.

217. Since then a great amount of FBI records have been disclosed through FOIA. Among them are many pertaining to this curbstone. They provide no comfort to those still wedded to any of the official solutions to the crime. They do confirm my affidavits, in considerable detail. As will be seen from the selection of them that follows, the FBI knew that the curbstone had been altered, as I had stated; it kept that information from the Presidential Commission and from the Court and me. It preferred to deceive and mislead the trusting Court.

218. The FBI records from which these exhibits come are the FBIHQ

general assassination releases of December 1977 and January 1978, which I obtained by C.A. 77-2155, and those of the Dallas and New Orleans field offices, which I am obtaining through C.A. 78-322. The files are identified as the assassination, Oswald and Commission "main" files. Without doubt, there are other pertinent files but they remain withheld. Whether or not connected with this instant cause, the FBI is still dragging its feet in the lawsuit for the Dallas files, filed in 1978. It has yet to keep any one of the schedules by which it obtains more and more time from that court.

219. While embarrassing information has been withheld under spurious claims to exemption, there were no subject experts involved in the processing of the cited files, so some embarrassing information escaped.

220. There is much that is pertinent that was not known until after I received the cited records. For example, the Dallas FBI prepared a cover-the-Bureau's-ass memo stating that the pictures taken by Charles Bronson are worthless because they do not even show the TSBD. Friends of mine in Texas did the normal checking and examined Bronson's film, leading to extraordinary attention to it in the Dallas Morning News. It is known that Bronson, contrary to the FBI's blatant untruth, has almost 100 frames or individual pictures of not only the building, but of the window in which the FBI claims Oswald alone was and those around it. There is no Oswald in the Bronson movie. Some distance away from the window two objects are in motion. As a result of the request of the House assassinations committee, for more than two years the FBI has been supposed to have an independent enhancement and analysis made of this film. My Texas friends also presented to this House committee something else the FBI had so studiously avoided, an interpretation of the recorded Dallas police broadcasts that identified the firing of more than the three shots. This was confirmed by two independent teams of experts. Again the FBI drags its feet. Finally, after long delay, this new analysis was farmed out to the National Academy of Science. It has not yet reported. Then, in anticipation of this new analysis that could again besmirch the FBI, for reasons neither stated nor innocent, the FBI released its own scrupulously dishonest version. This was an effective attempt at intimidation. Although the new report is long overdue, it has not been issued. No explanation

of the inordinate delay has been made.

221. Locating these previously withheld records should have been automatic for Kilty because he swears he searched the files from which they come. Kilty still did not make a good-faith search or he lied and deliberately withheld pertinent records or he did both.

222. Initially, the FBI pretended that it had no Lab curbstone records at all. In what was represented as full compliance, I received none. After my vigorous complaint, I received what was described as the entire curbstone Lab report (Exhibit 40), but as will be seen (Exhibit 41), several pages were secretly removed from it. No claim to exemption was made. They were not accounted for. They were just withheld, while the FBI pretended that it withheld nothing. Lawyers ordered Kilty to withhold nonexempt information, like Lab and file numbers. This served only to deter or prevent pursuit of what was withheld. In some instances, the withheld file numbers lead to the significant and withheld records attached below, like Exhibit 41.

223. The FBI fabrications that the single curbstone spectrographic plate was destroyed and that this was permitted by FBI regulations are both refuted by records I obtained under discovery. The FBI is required to preserve all evidence in ongoing and historical cases. In addition, it is required to preserve spectrographic plates for six years after they are transferred from active status. These plates also are required to be kept as long as there may be any need for testimony about them and for as long as they are involved in litigation. While these extensive discovery records were not collected for this instant cause and for the most part are copies of records prepared for other litigation, and despite their glaring omissions they leave no doubt that the destruction of any JFK assassination records is prohibited. There was no sanction for the alleged destruction of the single curbstone plate - if it was destroyed, of which there is no proof at all. However, where plates are properly destroyed, the FBI does have records of it. Kilty was unable to explain this blatantly senseless FBI claim, that this one thin plate only was destroyed, supposedly to save space.

224. The FBI's unsworn representation that it destroyed this one

relatively thin curbstone spectrographic plate to save space is ludicrous, more so when what the FBI has preserved is considered. There are about 25,000 pages of Dallas bulkies and about 15,000 pages of FBIHQ bulkies, plus the enormously larger main files. Most of a quarter of a million pages have nothing at all to do with the crime. They are largely junk. On the other hand, that thin spectrographic plate is not junk and it was essential evidence of the crime and its investigation by the FBI.

225. Of the countless examples of preserved junk and trivialities I observed in reading these many pages, one is so meaningless it took my attention and I made an extra copy of it. (Exhibit 37) The FBI made a replica sack, referred to above, to use when talking to witnesses, in place of the actual wrapping-paper sack the police said they found at the window in which Oswald allegedly was. (Consistent with the imputed magic of the paper itself is the finding of this sack. The police were then photographing everything and anything but they managed not to photograph the finding of that sack or the sack itself.) In using this substitute sack the Dallas FBI used "three pieces of pressed board ... to give bulk to the package to simulate weight in the original package carried by Lee Harvey OSWALD on 11/22/63. These boards were used in exhibiting the sack to LINNIE RANDLE." There is no reference here to the important factor, length. Weight was not a factor at all. Mrs. Randle, like all the witnesses who saw Oswald that morning, refused to be budged from her testimony that what Oswald carried was very much shorter than the disassembled rifle. Yet this much bulkier junk, too long for a file cabinet, was "Sent to Bureau 12/13/63 and returned after examination - presently located in Dallas Bulky Exhibit file." This junk is to remain there, preserved, until, "When the case is closed, these pieces of pressed board will be destroyed." Even all the extra copies of the FD-192 inventory form were kept until 1973. It is obvious that there was no space problem with one thin curbstone spectrographic plate.

226. The FBI did have its own "party line" on the assassination laid down by Hoover. Neither reality nor fact nor the Commission was permitted to intrude. Many of the now disclosed records reflect this. One is particularly illustrative because more than two years after the Warren Report and its 26 volumes of evidence were published, the files in the Archives were opened and a

number of critical books were published and received wide attention. Hoover persisted in his personal fairy tale and nobody in the FBI dared disagree with him. On the third anniversary of the assassination, Rosen addressed Hoover with the customary indirection (nobody ever wrote directly to Hoover), through DeLoach. Rosen reported a Washington Post account of a Life magazine investigative report that was inconsistent with any of the official accounts of the crime. (Exhibit 38) Rosen concluded by reminding Hoover that the FBI's five-volume and supposedly definitive report says "that of the three shots fired, two hit the President and the third Governor Connally." This, of course, memory-holes the missed shot and that curbstone and makes a nonperson of Tague. Bitter-ending Hoover annotated this memo, at this point: "We don't agree with the Commission. It says one shot missed entirely. We contend all 3 shots hit. H" (Hoover underscored "it" twice.)

227. Throughout the FBI, however, it was well known that Tague was wounded during the assassination. One reflection of this is the reply, drafted for Hoover's signature, in response to the laudatory letter from a rightwing admirer who had a question about the omission of Tague from the FBI's five-volume report. (Exhibit 39) The reply, which notes that suitable rightwing Hoover materials also were sent, ducks the question entirely by saying only that "the Commission was unable to determine what struck Mr. James T. Tague in the cheek." A note added to the carbon copy states that Tague "was struck in the cheek by an unidentified object during the shooting of President Kennedy." So, while the FBI had no space for the curbstone or Tague when it had only five large volumes with which to belabor the safely dead Oswald, it was well aware of the fact that Tague was wounded during that shooting. The FBI's problem is that there is no way of limiting the assassination to a lone nut and no conspiracy if the missed shot and the wounding of Tague are publicly acknowledged. There is no other reason for the FBI's steadfast refusal to publicly acknowledge the Tague wounding or the so-called missed shot.

228. Kilty was questioned pursuant to the last remand, about the curbstone, the allegedly missing curbstone spectrographic plate, his searches and other matters. This also was after his knowledge of the remand had been sharpened by Department and FBI house counsel and after his searches, which he testified

included the FBIHQ main files. Kilty was reminded that his second 1975 affidavit attests to "a thorough search." It reads, "A thorough search has uncovered no other material concerning the spectrographic testing of the metal smear on the curbing. He was asked, "What was the nature of the search that you made?" He replied, "I don't, offhand, know what search I made then." (Page 89) This is one time that a claim not to recall can be proven not to be truthful because Kilty also testified to the nature of the searches he made, in the main files and in the Lab's two file cabinets of JFK assassination records.

229. Kilty testified that the spectrographic plates in this case were placed in a plate drawer but he tried to evade when he was questioned about where that plate drawer is located. If his testimony is truthful, the Laboratory has a strange place for its two file cabinets of JFK assassination materials. As he evaded, Kilty first said that the plate drawer is "in the room where they do the emission spectrography" in the Lab. When asked if this meant other than in those two file cabinets, he said, "No, it's not." Asked, "They were in that file cabinet?" he replied, "Yes." This means that the two file cabinets are not in a file room but are where emission spectrography is performed. He then refused to say that it was at all unusual for only this single curbstone plate to be missing from that file cabinet. (Pages 89-91)

230. In his grasping for straws to explain this really unusual thing, the alleged destruction of only one of so many thin plates, Kilty claimed, "Well, this was done completely at a different time and by a different examiner." (Page 92) The time was not different. Within short periods of time before and after it, there were other spectrographic examinations.

231. Kilty tried to pretend that the FBI makes and keeps no records of the destruction of spectrographic plates. Plate destruction records are kept, by the date of creation of the plate, where destruction is permitted.

232. He tried to evade and never did answer when he was asked if plates in an open case are destroyed. They are not, and the Kennedy assassination is an open case. His evasiveness and nonresponsiveness on this can be attributed to the impossibility of accidental destruction in an open case and to his certain knowledge, if only from his examination of the case files, that it is an open

case. There are current records although it was a 1963 crime, a crime of almost two decades ago.

233. Despite starting the fiction that SA Heilman had destroyed this plate, and after admitting that it is he who phoned the retired Heilman in Florida, when Kilty was asked if he asked Heilman if he destroyed it, Kilty replied, "No, I didn't." He also failed to ask Heilman if he knew who might have destroyed that plate.

234. He tried to claim that he had made an investigation of the destruction of this plate, but finally he admitted his "investigation" was limited to checking the regulations. (Page 90) This, of course, also required that he determine if the JFK assassination case is "open" because regulations preclude the destruction of plates in an open case.

235. Finally, he did agree "that it would be unusual to have one plate destroyed." (Page 95) Then he claimed not to know whether the FBI has a regulation prohibiting the destruction of any information within an FOIA case (page 95) although he had just claimed he had checked the regulations. (It does.)

236. He was shown Deposition Exhibit 15, an FBI internal memo on the request litigated in this instant cause. (Exhibit 40) In the magical way of FBI filing, this rather clear copy is from FBIHQ's so-called "internal security" file on me. It is the copy that Kilty produced rather than copies from the assassination or FOIA files. The copy of record, the serialized copy, is the "internal security" copy. This says much about the FBI's mind-set. This copy only was annotated by the Lab. This may mean Kilty himself because he wrote this memo about the to then totally withheld curbstone records. Kilty here uses the words he used in his affidavit, "... an exhaustive search of pertinent files and storage locations has not turned up the spectrographic plates (sic) nor the notes made therefrom." He said he did not recall if his search included asking Heilman where his notes might be. (Page 96) He did admit that "Central Records did not contain all of the notes of the spectrographic examination," and, contrary to FBI pretenses in FOIA litigation, there are "a lot of other things" that are not in Central Records. But even after representing "an exhaustive search," he swore, "I don't remember" when asked, "What pertinent files did you search?" Almost

immediately he disproved his claimed lack of recollection by identifying the files he claims to have searched as "the Kennedy file, the Oswald file." His excuse for this untruth was that he regarded these still active files as "storage locations" rather than files. (Page 97)

237. Although Kilty here stated and later repeated that his "exhaustive search" did not turn up the curbstone "spectrographic plates (sic) nor the notes made therefrom," a handwritten notation to the word "notes" in this quotation reads, "block design & symbols and relative concentrations." How Kilty could report the contents of notes he claims he could not find remains a mystery, not a mystery that persuades that the notes were not available.

238. When asked what he was told by the retired Lab agents he consulted, he replied, "I have no recollection at all of the response I got when I asked the question, where's the spectro plate." In this quest also he did not consult any FBI Divisions (page 99) to ascertain if they had any copies, like of the missing notes (page 100) or any reports.

239. When Kilty was asked, "Did you provide all the pertinent records relating to the curbstone testing?" his typically arrogant response was, "I've provided all the records, pertinent or impertinent regarding the curbstone testing." (Page 100) There is no more inappropriate point for him to flaunt his arrogance. This response magnifies the gross lies to which he swore. As Exhibit 40 reflects, when Kilty managed to avoid entirely the existing records on the curbstone examination and then did not provide them until after I complained in writing, he provided a total of "five pages of documents," which he swore are all there are. This is false because other and more were disclosed to me as a result of the other cited litigation. (See Exhibit 41) What Kilty omitted exposes the deceptiveness of what the FBI reported to the Commission and what he disclosed to me. What was disclosed to the Court and to me says merely that the cause of the "smear" on the curbstone could be an unjacketed bullet or a fragment of lead bullet core. The withheld pages say much more.

240. On deposition Frazier testified to having made his own handwritten notes covering his part of the examination. No notes by Frazier are in those five pages. With further reference to the file identifications that

Kilty testified he removed (not because they are within any exemption, as they are not, but because he was told to do so by the lawyers who accompanied him), he did withhold the identification of the file in which other and withheld curbstone records are misfiled. However, the Lab copies do have the correct serial number added, so misfiling did not hide the record from the Lab or from Kilty. The copy to which I refer is in the FBIHQ "Oswald" file which Kilty swears he searched. But he did not provide it.

241 As part of the spectrographic examination, there were also photographic, microscopic and firearms examinations. As these Lab pages appear in the Oswald file, they are marked 4668X. They are behind what is totally unrelated, Serial 4668. It is the August 10, 1964, Letterhead Memorandum (LHM) reporting inquiry in Germany about an article on the Oswald case published the previous November. Instead of the attachment referred to in the LHM, there are withheld curbstone records, dated beginning July 13. This record is Shaneyfelt's letter to Dallas asking them to find and remove the small piece of curbing. He cautions against "any alterations that would effect such Laboratory examination" as the Commission requested. (Three copies of this withheld record were directed to the Lab.) The next record is the Commission's July 7 request. What the Commission wanted is specific: "We would like to have an analysis made of this mark on the curb to determine whether there are any lead deposits there or any other evidence upon which a conclusion can be reached as to whether this mark was caused by the striking of a bullet." The FBI waffled in the withheld records and misled in what was disclosed.

242. Frazier's handwritten notes identify the specimen as Q609, "Piece of *Curbing*." He has one of the sketches of the curbing on the first page, prior to the body of his notes. That alone markes it as other than the copy Kilty provided, for the Kilty copy has a separate page of two sketches. The first indication of awareness of the patching of the curbstone is on the right of the sketch. It reads, "Barely discernable smoothing off - no groove or" and the rest is largely illegible. A concern for accuracy and informativeness would have impelled the FBI to note that this small portion also is darker in color.

243. The handwritten summary of the results of the examination begins

by identifying only two of the nine chemical elements in the core of the bullet theorized to have been used. The capability of spectrographic analysis includes picking up the elements not mentioned. It therefore appears that they were not picked up. This alone is enough to account for the mysterious disappearance of that spectrographic plate.

244. Next it is stated that "it could have originated from a lead bullet, the core portion of a metal jacketed bullet, such as C1, 2, 3, a (sic) automobile wheel balancing weight or some other source of lead." This is not the same as saying that a bullet or bullet fragment caused the "smear" the FBI tested. There is an appreciable difference between an auto wheel weight and a bullet, particularly on spectrographic examination.

245. But the next page, which repeats the summary, omits what assails the belief that the curbstone as examined by the FBI is exactly as it was at the time of the assassination. What is omitted is the statement that the "smear" could have been caused by an automobile wheel weight. With more than twice as much space on this page, the omission is not from a shortage of space. And, of course, there could always have been still another page.

246. The next Lab worksheet reports an unspecified examination, not of the curbstone itself. Beginning with the assumption that any curbstone shot was fired at about Frame 410 of the Zapruder film (which is described in my prior affidavits) and, naturally, with the assumption that this shot, too, came from the so-called Oswald window, where Mrs. Kennedy was in the Zapruder film at this point is noted. There also is the conclusion that is diametrically opposite what the examination showed, "Mark made by object travelling in general direction away from TSBD." Nothing further on this examination is provided, no note, basis for calculation or basis for the assumptions. This also was not provided in this instant cause by Kilty.

247. The next worksheet is what, belatedly, was provided. It has a page with two sketches and nothing else. The second sketch shows an angle of 33 degrees. The direction is <u>from</u> the right or west, and <u>toward rather than away from the general direction of the TSBD</u>.

248. All of these worksheets also bear the notaton "recorded," with

the dates. Whatever "recorded" means, Kilty did not provide it.

249. Next is the August 12 letter to the Commission that Shaneyfelt drafted for Hoover's signature. It is included in my prior affidavits. It has all the scrimshaw, all the unessentials, and it makes no mention of an automobile wheel weight as causing this smoothing-out of the bullet hole that was once there.

250. What preceding the digging up of the curbstone and the filing of this letter rather than Lab examination reports, this letter designed to mislead the Commission and to rewrite history, is indicative of intent to cover up, mislead and misinform. A variety of FBI records, from the various main files, refer to these matters. Not all are used here because of the volume of exhibits already appended.

251. In the assassination file the Commission's July 7 letter to the FBI, Shaneyfelt's July 13 letter to Dallas and the August 12 letter to the Commission are filed without any fancy X numbering, each as part of Serial 3659. But the Lab work is not part of these records.

252. In the various files are communications in which Shaneyfelt outlined to Dallas what he wanted done. Dallas reported back, sending photographs and providing detailed descriptions of each. Until Shaneyfelt went to Dallas the mark was referred to in these records as the "nick." Once Shaneyfelt was there and saw that the nick no longer existed, he converted it to a "smear." He then conducted no investigation of the patching. For example, under date of July 17, Dallas SAs Robert M. Barrett and Ivan D. Lee filed an airtel (Exhibit 42) covering the sending of the investigation results and the photographs "concerning the nick in the curb shown in photographs" taken by Dillard and TV cameraman James R. Underwood. (Both photographs are attached to my prior affidavits.) As late as the time Shaneyfelt phoned Dallas to report he was on his way, it was still being called "the chip." (Exhibit 43) Until Shaneyfelt's alchemy, it also was referred to as a "scar."

253. Before Shaneyfelt could lay down the new FBI party line on the curbstone, that it had not suffered the mechanical damage quite visible in the contemporaneous news photos, the Dallas assassination investigation case agent,

Robert P. Gemberling, spelled out that there had been an alteration. He did this in the synopsis part of the lengthy, consolidated investigative report that the FBI withheld from the Warren Commission. (Exhibit 44) With regard to "additional investigation" of the curbstone, Gemberling said, "No evidence of mark or nick now visible. Photographs taken of location where mark once appeared."

254. The FBI did not trouble the Warren Commission with the information that the scar or nick that had been visible was no longer visible. And, of course, for all his self-touted care and diligence, Kilty did not trouble the Court or me with it in this instant cause.

255. Contemporaneous crime-scene photographs present a problem to the FBI. They may record what the FBI does not want to acknowledge. The previously mentioned Bronson footage is an example. The Dallas FBI said it was valueless because it does not show the Oswald window when, in fact, it does. It also shows other things that are not congenial to the FBI's pretended solution. With the renewed interest in the missed shot and that general area, and because that area had other investigative importances, the Dallas FBI took pictures there. As is stated in the Dallas SAC's memo to files in the Oswald file (Exhibit 45, Serial 6464), "SHANEYFELT stated that he did not want those photographs in the Bureau." (In FBI lingo, "bureau" and "Seat of Government" or "SOG" mean FBIHQ.) Shaneyfelt was not taking any chance of having on file any photograph that might disprove some FBI claim.

256. By coincidence, Tom Dillard spoke to the United States Attorney at just about the time UPI interviewed Tague and ran a story. The forwarding of Dillard's picture, as reported in my earlier affidavits, is included in another record from Serial 3659. (Exhibit 46)

257. The FBI reacts to news stories the way a weathercock reacts to the breeze, especially if the FBI sees criticism of itself or imagines that criticism may result. So, no sooner did the UPI interview with Tague hit the wire service printer than Inspector J.R. Malley was on the phone to Dallas. (Exhibit 47) Tague reported that the concrete was chipped and that he saw what is called a "crease mark, obviously fresh." In addition, the FBI reacted to what Tague said that many other witnesses reported and the FBI's own records reflect, that

the FBI was more concerned "about whether I knew JACK RUBY." Two days later the cover-the-Bureau's-ass brigade was in operation. Rosen wrote a memo for Hoover (Exhibit 48), routed via Alan Belmont, in which, despite the fact that Tague's name did not appear in the story because he asked UPI to withhold it, Rosen refers to Tague as a publicity seeker. This, apparently, was a phrase that soothed Hoover because it was a common FBI denunciation. Rosen reported that the anonymous Tague was engaged in "an effort to obtain personal publicity." Here also, Rosen came briefly in contact with the evidence. He said that, "Based on information developed recently, it is possible that one of the shots fired by Oswald did go wild." The original FBI interview with Tague is attached. It also says "there was a chip missing" from that curbstone.

258. The Dallas FBI's response to the call from Inspector Malley is what forced Underwood's contemporaneous pictures of the chip out of the curbstone into FBIHQ files and thus to the Commission. (Exhibit 49) The FBI did not get the Underwood pictures as a result of its earlier interview with Tague. It ignored those and the Dillard pictures until, by coincidence, Dillard sent one via the United States Attorney. The Dallas office was intent upon covering itself by sending the Underwood picture. By this time the FBI covering up progressed to where it quotes Underwood as saying there was no chip, even though one is clearly visible in his pictures. Still another attachment, handwritten notes that belong with the Lab work involving the Zapruder film, is explicit. That FBI Lab agent wrote, "Nick on curb lines up w/frame 403." (This was 90 frames or about 5 seconds after the fatal shot.)

259. The FBI performed other tests in connection with the "missed" shot. So complete was the FBI's memory-holing of records pertaining to this curbstone and what happened to it that Kilty and it withheld all information about the testing of a bullet found by Rex M. Oliver. This also appears below in the section on other shots and other tests.

260. If there were any possibility that some entirely irresponsible FBI agent took it upon himself to destroy that single, thin spectrographic plate on the utterly insane notion that he was doing the FBI a service by "saving" it about an eighth of an inch of space in a special file drawer already holding

many such plates, that does not in any way explain the total lack of examiner's notes. They also are missing and for them the FBI has not provided any explanation.

261. These quoted records and others like them, sequestered secretly in FBI files when this case was before the Court earlier, confirm in detail what I stated. The FBI was well aware of the truth so it dared not try to rebut my affidavits. This new information amounts to an indictment of the FBI from its own records. It makes out a case against the FBI, a case of failing to do its duty when the President was killed and thereafter and of continuing to be untruthful as part of its continuing cover-up of the crime and of its failures at the time of and subsequent to the crime.

C. The Windshield, Q15 - All Records Still Not Provided

262. In his affidavit of May 13, 1975, Paragraph 7, Kilty attested that NAA was "used to determine the elemental composition of the borders and edges of holes in clothing and metallic smears on a windshield and a curbstone." Kilty was trying to convince the Court that he had made a good-faith search and had complied with my request. He also attested: "I have conducted a review of FBI files which would contain information that Mr. Weisberg has requested under the Freedom of Information Act. I have had compiled the materials" provided.

263. After I pointed out that no such NAA information had been provided, notwithstanding that Kilty had also sworn to having made the review of the pertinent files, Kilty swore again - to the exact opposite: "Concerning plaintiff's allegation that, although NAA testing was conducted on the clothing of President Kennedy and Governor Connally, he has not been furnished the results of this testing: further examination reveals emission spectrography only was used to determine the elemental composition of the borders and edges of holes in clothing and metallic smears present on a windshield and a curbstone. NAA was used in examination of certain metal fragments, and plaintiff has already been furnished material relating to these examinations. NAA was not used in examining the clothing, windshield, or curbing." (June 23, 1975)

264. When Kilty swore that NAA had not been used to examine the specimen from the windshield (Q15), the record he swore he searched revealed

that Q15 was subjected to NAA. This false swearing appears to have been knowing and deliberate. It is consistent with withholding information about the assassination of the President that can be embarrassing to the FBI.

265. Because I immediately called Kilty's direct self-contradiction to the Court and the defendants' attention and, in addition, provided proof that Q15 was subjected to NAA, any withholding of any information pertaining to the testing of Q15 was knowing and deliberate. That there was such information was confirmed when Kilty was deposed on June 16, 1981. He and the FBI withheld this information for more than six years while pretending that no other pertinent records exist. During those six years there were calendar calls and twice oral arguments before the appeals court. There was much briefing. Through all of this and more, Kilty and the FBI pretended falsely that there was no other pertinent information. Of course, as noted above, Kilty knew about 1,000 additional NAA pages and did not provide them. If he had, what he provided on deposition would have been included.

266. In addition to swearing falsely, Kilty also was misleading in stating that "NAA was used in examination of certain metal fragments, and plaintiff has already been furnished material relating to those examinations." While in this formulation Kilty intends to convey the idea that I had been provided with all information pertaining to all metal fragments, without which he would not be attesting to compliance, he falls short of saying this and, in fact, I was not provided with all such information. Kilty personally knew, as an expert as well as from his personal search, that some pertinent information remained withheld. During the June 16, 1981, deposition Kilty admitted that certain NAA information, the NAA printouts, had been withheld. Not until then did he provide any such printouts. What he then provided he identified as the Q15 and the Q3 printouts. (Q3 is a specimen from the front seat of the Presidential limousine.) The Q15 printout alone proves that Kilty's June 23, 1975, affidavit was falsely sworn because he then swore, after searching, that "NAA was not used in examining the clothing, windshield, or curbing."

267. This raises substantial doubt about the truthfulness of retired SA John Gallagher, the man who conducted the NAA testing, who was also deposed in 1975.

268. It is my discovery of a record reflecting the fact that Q15 was submitted to NAA that left Kilty no real choice by the time he was deposed. This record also was among those he found in his personal search.

269. On this one pertinent point, existence or nonexistence of records on the testing of Q15, Kilty now has sworn to three different versions: that Q15 was tested; then that Q15 was not tested; and now that Q15 was tested but that does not count because he said the FBI does not like the results.

270. My request is for all results of all testing, regardless of the outcome of the tests.

271. If by any remote chance Kilty had slipped up in his earlier searches and attestations in this instant cause, he should have become aware of it a few months later. In November 1975 he was assigned the responsibility of locating records required by the Senate intelligence committee. Its November 6, 1975, request was for five categories of information. Of these, the fourth included the windshield testing. Its November 26, 1975, request had 28 numbered items. These were assigned to the various FBI divisions for searching. In one instance only is the name of the agent who is to conduct the search noted. Opposite Item 8, which is an inclusive request pertaining to the windshield and all testing, "KILTY" is hand-lettered in. Under the date that appears to be December 13, there is a memo reporting that all responsive materials have been collected. It bears Kilty's initials, JWK, and a copy is directed to him. (All three records attached as Exhibit 50)

272. Under date of December 16, 1975, Kilty forwarded a memorandum "responsive to" these items. Although the copy provided under discovery states that this memorandum is attached, in fact it is withheld. The result is to deny the Court and me knowledge of what he provided. This is all nonexempt data, as internal FBI records state, so anything Kilty then provided should have been provided in this instant cause.

273. Bearing on the FBI's and Kilty's intent, the NAA printouts were withheld from all Congressional investigations. Kilty testified on deposition that nobody had ever received these printouts and, specifically, that Congressional committees had not.

274. Not until July 11, 1981, did I finally receive what the FBI describes as all the NAA printouts in the JFK assassination investigation. Actually, most are not included in what then, that belatedly, was provided. There are none of the printouts related to the testing of the paraffin casts about which the defendants made so big a thing in 1975. While I do not want these paraffin cast printouts, they are not accounted for and I did not get all the printouts.

275. Examination of the printouts provided raises still new questions about the FBI's testimony pertaining to Q15. Not fewer than three of the unassembled tapes appear to pertain to it and at least one seems to reflect a separate sample. Because the tapes are unassembled and in the total absence of any explanatory material I have no way of knowing. Counting the pages provided leads to more questions. The copy of the Q15 printouts provided on deposition are on letter-size paper. Those provided on July 11 are on legal-size paper. There appear to be more legal-size pages. This indicates that what was provided during the deposition is incomplete. No reconciliation of any differences was provided.

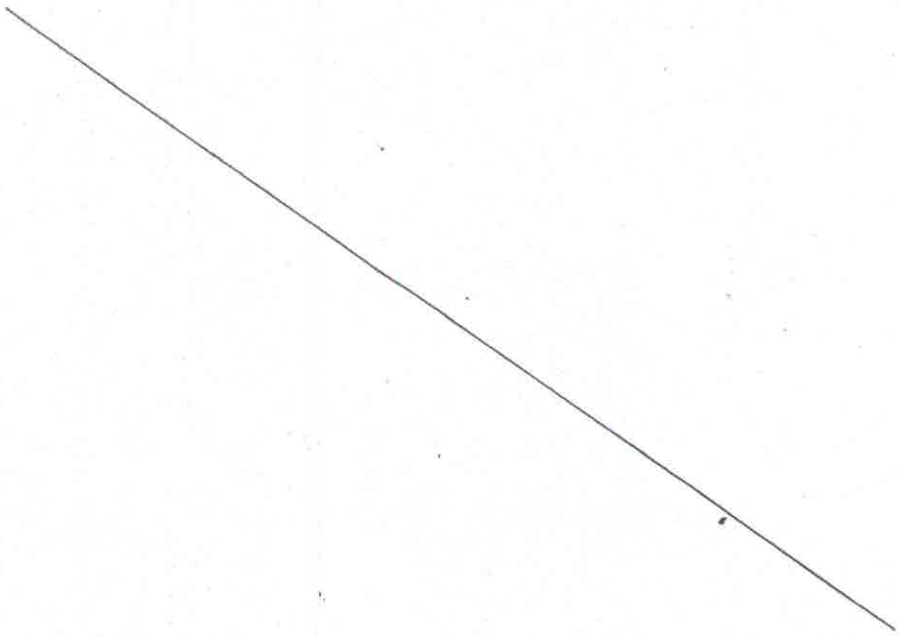
276. If, as both Kilty and Gallagher tried to suggest, the NAA testing of Q15 was valueless, there is no apparent reason for more than one tape. And if by chance this testing was no good, there is no note reflecting this on any of the tapes.

277. However, the FBI and Gallagher did this with another specimen when it believed the result would not be good. On that printout is handwritten, "May be no good (illegible) went down Just before discharge." (Exhibit 51) If Gallagher and the FBI could note the mere possibility that any sample might not be good, it certainly could - and should - have noted that Q15 was no good, if that was the case. As of today no single FBI record provided reports that the Q15 test was no good.

278. If I was provided with all NAA materials, then the FBI went to all this travel, trouble and expense only not to make and keep any comprehensible records at all. Not one has been provided. It makes no sense to conduct these tests and then have no meaningful report on them, particularly not when the FBI

was the investigative arm of a Presidential Commission. It also makes no sense to conduct these tests and have what the FBI knows of them stored away in the mind of SA Gallagher. He is mortal. He would retire. He would, in time, die and then the FBI would have naught of this in its "open" case on the assassination of the President. If the active-duty Gallagher were the same as the deposition Gallagher, trusting anything at all to his memory would be the extreme in foolhardiness. He was blessed with almost total nonrecall and he had the gift of a stagemaster's talent for physically conveying the agony he wanted it believed his failed memory caused him.

279. The Q15 mystery now is even more complicated because, according to Dr. Vincent P. Guinn, who was the House assassinations committee's NAA expert, Q15 no longer exists. Guinn is the preeminent expert recommended by the AEC, forerunner of the present codefendant, but he was strongly and successfully opposed by Gallagher and the FBI. Kilty testified that he had no knowledge of the disappearance of Q15. However, FBI internal records include the statement attributed to Gallagher that he had destroyed all specimens subjected to NAA as radioactive trash - which they definitely were not. More on this appears below under "Specimens."



V. OTHER SHOTS, OTHER TESTS

280. If more than three shots were fired during the assassination, then the failure of the FBI is the greatest in its history. Failure hardly describes the situation because the FBI is the nation's preeminent investigative agency and it was investigating the most serious and most dangerous of crimes, the assassination of a President, or the overturning of our system of society. If any other shot was fired and the FBI knew and suppressed that knowledge, then that is entirely unprecedented in our history. It would be an unprecedented scandal. It would amount also to a subversion by a government agency and it would inspire rumors that the agency itself was involved in the assassination. If there is only reasonable suspicion that another shot was fired, the situation is of similar but of slightly less magnitude in its unprecedented and scandalous nature. And, of course, when it was not possible for any experts to duplicate the shooting attributed to Oswald or the penetrating power imputed to his alleged rifle and bullets, which really means that the crime was beyond the capacity of any one man and thereby, to the FBI's knowledge, a conspiracy, then any other shot removes any possibility of doubt that there was a conspiracy to assassinate the President and change the government or its policies. It boggles the mind to even think it is possible for an agency like the FBI to cover up any information about a crime of this character, the most important investigation in its history; and it provokes wonder if any President is ever really safe, particularly in the making of decisions he may believe may be unpopular. The FBI could have much to hide today.

281. There were reports of other shooting. The FBI made tests associated with these reports of other shooting, but to this day all information pertaining to these tests remains withheld in this instant cause. The withholding is not accidental. The virtual zero possibility of this is reduced even more because I am associated with information pertaining to two such reports in the FBI's own records. I reported one in my second book, the one with the references to the Lab over which it cooked up the plot to "stop" me by a spurious libel suit. I also gave the FBI a fired bullet found in Dealey Plaza, one I believe was a grim hoax.

282. The reported fourth shot in my second book is referred to in FBI files disclosed to me as a result of the above-cited other FOIA litigation but remain still totally withheld in this instant cause. Because these are all reported in the very files Kilty swore to having searched, these withholdings cannot be considered accidental.

283. The defendants were aware from the outset that I was aware of tests pertaining to other shooting. Rather than making an effort to comply or stating that the tests performed are not relevant, at the outset of this litigation the defendants actually argued that an FOIA case ends in the womb if any paper at all is provided. Defendants' counsel argued that for me to expect the requested information in an FOIA case at its very beginning, the first calendar call, "is somewhat of a prolongation - - a needless prolongation of this law suit. There comes a time in every action where the matter is compromised or disposed of by the Court, and we would submit that that time has been arrived at in this action." (May 2, 1975, first calendar call, pages 8-9) Because my interrogatories referred to other such tests, the argument of defense counsel began with, "if there were additional tests performed."

284. This argument and this position represent what within my considerable experience is the major cost of FOIA to the government - the time and money it wastes in an effort to frustrate the Act and requesters of public information. Here it argued that before the case began and even if pertinent information was known to exist and was withheld, the case was over and the requirements of the Act and the intent of Congress were satisfied.

285. The Court was misled by defendants. The Court was led to believe that "everything in the way of a test" is within the request and was disclosed. This is reflected in what the Court stated, referring to affidavits to be provided:

> These affidavits are on personal knowledge. The person in charge of the FBI laboratory, or the AEC laboratory, can state categorically that everything in the way of a test that they have made has been submitted; that no further tests have been submitted (sic) ... (pages 10-11)

The heads of the laboratories did not provide such affidavits and to this day there is no affidavit stating that there were no other tests. The fact is that

as of today there are records pertaining to tests that remain withheld in this instant cause.

286. Although the Court expected the first Kilty affidavit to be on personal knowledge, it was not, as my counsel, without contradiction, stated on May 21, 1975 (page 4). Although the Court had expected the defendants' affidavits to state unequivocally that there had been no other tests, as quoted in the immediately preceding Paragraph, this was not the case. As my counsel stated (page 4), "it does not appear to be made on personal knowledge with respect to .... the very important statement that no other tests were performed."

287. On deposition Kilty gave the impression that there were no other tests and no other records, as he had in his affidavits. Frazier, who was a firearms expert, restricted his response to the area of his expertise, even though he was in a liaison role with the Commission and even though he testified to information outside his area of expertise. He was asked if at any time subsequent to the issuance of the Warren Report there had been any other testing or any reexamination of any evidence in the Laboratory. He replied, "Nothing in the firearms identification line." (Page 72) Unless the tests itemized below do not include any "firearms identification," his testimony is false. As will be seen, there was other firearms identification testing.

A. Additional Shot Reported by Rex M. Oliver - Test Performed

288. Rex M. Oliver, an employee of the Texas Highway Department, found a bullet while working on a road project near the scene of the crime. (Exhibit 52) He reported it to his engineer, who believed it could be the "missed" or curbstone bullet because "it was found in 'just about the right spot.'" Oliver gave the bullet to the Dallas field office (Dallas file 89-43-8869. This is its assassination file), which forwarded it to the Lab with the request that it examine and report on its examination.

289. There was an earlier teletype from Dallas to FBIHQ and five days later a teletype to Dallas from FBIHQ.

290. This exhibit is from FBIHQ's assassination main file, one of those Kilty stated under oath that he searched with more than usual diligence. It is Serial 6786. He did not provide it or any of its attachments or other pertinent

records. These records do exist. Kilty also testified that all the Lab's JFK assassination records are in two file cabinets and that he searched them. If the file cabinets hold what Kilty said they do, these records are in those cabinets.

291. This test, of Specimen Q629, also C329, should appear on the Lab indices of specimens and tests. It has the number PC-B4970. This number was stamped on the Gemberling report from Dallas which forwarded the bullet. It is typed on subsequent records. The Lab also had its own copy of this Gemberling report because this is stamped on the central files copy, "Copy & spec retained in Lab for Lab action and report." The Lab sent a report to Dallas but the examination reported was ballistics only. (This alone establishes the untruthfulness of Frazier's testimony quoted above.) The non sequitur that concludes this report is the standard FBI line, unless they could connect something with Oswald or the rifle, it was of no value: "... this bullet is different from any ammunition examined in the assassination case and could not have been fired from the assassination rifle." The FBI immediately assumed Oswald's lone guilt and then ignored any evidence indicating the error of this unproven assumption. All the circumstances of and all the information about the shot that struck the curbstone is that it could not originate from where the rifle was found. The FBI ignored it to the degree possible and suppressed it from its five-volume report.

292. Visual examination alone told SA Cunningham, who made the examination, that this bullet was much too large for the rifle. If any testing was to have any meaning, it would have to have been a compositional analysis and comparison with the other compositional analyses already made. Without this there is nothing but a presumption that this bullet could not have been connected with the crime. Compositional analysis might have shown the opposite. What testing Dallas wanted is not specified, but it did not need the Lab's services to know that the bullet was much too large for the rifle.

B. Additional Shot Reported by Eugene P. Aldredge - Test Performed

293. In my second book, which was published about December 2, 1966, I brought to light unpublished FBI records pertaining to another shot reportedly fired during the assassination. The report was by Eugene P. Aldredge. I found

the FBI reports in the Commission files in the Archives. As stated above, the FBI read my second book with some care. This book was studied closely in the Lab and in the Legal Counsel Division in connection with that scheme to "stop" me over what I published about the Lab. This book also called the Aldredge shot report to the Lab's attention.

294. Many records pertaining to this shot are included in the FBIHQ main files. A selection of them follows.

295. Aldredge's first knowledge of this shot came from TV reporting at the time of the assassination. The FBI did locate the scar that Aldredge reported and the Dallas agents believed it could have been made by a projectile. However, as I can also attest from personal examination, this scar presented a problem to the FBI's preconception of the crime: "it could not have come from" the so-called Oswald window. (105-82555-5169. A copy of Serial 5169 was routed to Shaneyfelt in the Lab.) However, it did line up with a missed shot at the Presidential car fired from elsewhere. The scar is on the sidewalk south of the TSBD, in line with its western end.

296. Stamped on Serial 5256, which originated in Dallas, is "Copy & specs retained in Lab for action and report."

297. These reports should have surfaced in any search. My second book also called them to the Lab's attention. Defendants had still another way of knowing about these tests during this litigation. Because the records I obtained from the Dallas files pertaining to them are incomplete, I filed several appeals. The first included the records referred to below. When I received no response, not even an acknowledgment, I filed a reminder appeal, with a Dallas record attached, on November 25, 1979. It, too, remains ignored. The defendants were were aware of all of this long before Kilty was deposed.

298. When the Warren Report was issued, Aldredge asked the FBI how it managed to miss the shot that struck the sidewalk near the TSBD because it had been covered by TV at the time of the crime. When FBIHQ told Dallas to look into this, it confirmed that there was the four-inch scar that Aldredge reported and it was where he reported it to be. (Exhibit 53) As usual, Dallas emphasized that

this could not have been caused by a bullet fired from the so-called Oswald window. (page 2, paragraph 1) Four days later FBIHQ told Dallas to look into this further. (page 3) The Lab by then was well aware of this, if it had not been informed earlier, because a copy was directed to the Assistant Director in charge of the Lab, Conrad, attention of Shaneyfelt, the curbstone expert.

299. Dallas scraped a specimen from the scar and sent it to the Lab, requesting a report. (Exhibit 54) The FBIHQ copy from the Oswald file has the stamp reporting a copy and the specimen were kept in the Lab. A handwritten notation identifies the specimen as Q618. This, of course, should appear in Lab indices and lists, in addition to reports remaining in Lab files.

300. This sample sent to the Lab for testing was shuttled back and forth, according to a record I found in the disclosed Dallas files. (Exhibit 55) This is the FD 340 evidence envelope referred to above on which chain of possession information is posted, despite the FBI's refusal to provide this kind of information in response to interrogatories.

301. When this specimen was sent to the Lab, Dallas marked the not-to-be-returned box on the FD 340, but the Lab returned it. Two years later the Lab phoned and wrote, asking the return of the specimen. (Exhibit 56) Again, the Dallas response was directed to Assistant Director Conrad.

302. Exhibit 55 states that the Lab returned the specimen three weeks later. The description on the FD 340 reflects the pertinence of this testing. It reads, "Scrapings from alleged 'bullet' scar on sidewalk of Elm St. Dallas, Texas, at scene of assassination." The FD 340 held an envelope which is labeled, "Box containing material from sidewalk."

303. Aldredge phoned me when I was in a radio studio in Dallas with a group of reporters, including the man who later became mayor of Dallas. Aldredge then informed and later wrote me that shortly after he spoke to the FBI he took a friend to see that scar and that they then observed that "a crude attempt had been made to make the altered mark appear weatherworn to match the surrounding concrete." (Exhibit 57) Another Dallas report (Exhibit 58) of the same date as Exhibit 54 confirms Aldredge on this. Page 2, paragraph 4, marked in the margin at FBIHQ, states that when the Dallas agents rechecked, after Aldredge told them

of the alteration of the scar, "it was noted that there is now some sort of foreign material partially covering this nick in the sidewalk. Scrapings were taken and are being sent to the FBI Laboratory ..." The second scraping means other tests not provided. The agents also report that this attempt was made after September 30, 1964, when their inspection "did not disclose such a filling."

304. The Dallas Morning News' assassination expert is investigative reporter Earl Golz. His reporting has received international attention. After this case was filed, he asked the Dallas FBI for the results of the Lab examinations on the scar reported by Aldredge. (Exhibit 59) While ordinarily federal agencies provide public information to the press, Golz was refused by Dallas. It referred him to FBIHQ. This and specific citation of the information sought were known to the FBIHQ FOIA section because there is the added notation on this FBIHQ 62-109060-7136 record stating, "cc retained by FOIA Section."

305. The testing of the specimens sent by Dallas as the result of what Aldredge reported should at least include compositional analysis. My request is for compositional analyses. I have not received a single piece of paper from the FBI in this instant cause in any way related to the Aldredge report and any of the testing performed as a result of it. This cannot be because the defendants were not reminded with specificity because I did file several appeals, which remain ignored after several years.

C. Additional Shot Reported by William A. Barbee - Test Performed

306. William A. Barbee was prompted by the Life magazine article referred to above to give the FBI a bullet (Dallas referred to it as a "cartridge") "found embedded in the roof" of a building Dallas described as "approximately 1/4 miles from the" TSBD and "in the general line of fire from where OSWALD allegedly shot." Dallas sent this report and the specimen to the Lab for it to examine and "compare with previous bullet specimens" submitted. Dallas did not specify what comparisons, but meaningful comparison includes compositional analysis. (Exhibit 60 is a "bulky" collection of Lab records which are Serial 5898 in the FBIHQ assassination file.)

307. Exhibit 60 includes the envelope/evidence? slide made by the Lab, marked as "evidence" and "do not destroy" and the pill box holding the specimen.

The Lab's internal memo notes four different copies for the Lab, including one to Frazier who swore there were no such examinations, and one for what Kilty swore did not exist, "Lab Files." Notations added identify the specimen by various Lab identifications, including Q614, C327; PC-A3161; JQ-BX; 3B-GX. These were not destroyed to "save space" and it is a wonder that in his searches Kilty did not fall over these and the other existing pertinent records.

308. Next is a Lab worksheet. It says that the examinations were made by Frazier, who swore otherwise, and Bidez. The examinations noted are Firearms (G&A)-Micro, "PorG" and another illegible handwritten notation. The bottom of this page has the warning, "Do not destroy." Several other Lab notations appear on the next record, a Lab report to Dallas saying that the Lab is retaining the specimen temporarily. Frazier also wrote this and the accompanying examination report. It admitted that a ricochet is possible. Frazier concludes with the broken-record irrelevancy, "The bullet could not have been fired in Lee Harvey Oswald's" rifle. Frazier earlier sent the same information in a teletype.

309. An internal Jevon-to-Conrad Lab memo, written by SA Marion Williams, who provided the deceptive, misleading and irrelevant affidavit in C.A. 2301-70, chants the same litany, "It could not have been fired in the assassination rifle owned by Oswald." The four Lab copies of this also include the allegedly nonexisting "Lab Files." (Exhibit 61)

310. After FBIHQ phoned Dallas to try to make out a further case that this bullet did not figure in the assassination, something more than not fitting in the Oswald rifle, Dallas perfected another irrelevancy, again based on the shot coming from the so-called Oswald window of the TSBD. The place where Barbee found the bullet is to the north while that window was on the south side of the TSBD. The demon Dallas investigators could not visualize an investigation in which a shot came from anywhere else. Since then the investigation by the House assassinations committee did conclude that a fourth shot did come from elsewhere.

311. If the Department meant what Kilty and its counsel represented at the Kilty deposition and if it meant what it told the Court and the Court repeated, as quoted above, even if these examinations did not include compositional

analyses, I should have received them because I was to have been given everything. The request is for what figured in the investigation, not what was within anyone's theory of the crime.

D. Additional Shot Reported by Richard Lester - Test Performed

312. The shot reported by Richard Lester was much in the news because he reported it after the House investigation was getting attention and because of his hobby. He spent years of spare time using a metal detector at the assassination scene, particularly the area of the missed shot, known as the Triple Overpass. Dallas 89-43-9928 reports the forwarding to the Lab of the bullet Lester dug up from a point on the railroad tracks that is consistent with a missed shot from the TSBD. The Dallas FBI referred to it as a cartridge, but it is a fired bullet. Dallas delayed sending a Letterhead Memorandum because it had received no report back from the Lab. After waiting 40 days, it sent an LHM, with an airtel. The LHM is the interview report. The airtel notes special distribution, including to the Congressional Inquiry Unit. (62-109060-7620) No records pertaining to this Lester shot report have been provided in this instant cause.

E. Bullet Allegedly Found by Melvin Gray and William Koye - Test Performed

313. Because two college students claimed that one of them, William Koye, had found an unfired bullet where New Orleans District Attorney Jim Garrison claimed an assassin had been lurking behind the picket fence on the Dealey Plaza grassy knoll, there are quite a few records pertaining to this matter in FBIHQ assassination main file. Houston forwarded the bullet to the Lab (62-109060-6271) with a request for appropriate examinations. "Frazier" is written across the face together with Lab numbers, not all legible. One is PC-A5239, with 5a under it and bracketed alongside RX and JH. A stamp says that the Lab has a copy and the specimen. The specimen number is Q628 and C-328. Frazier wrote the report, another one of those examinations he swore were not made. He reached the standard non sequitur, the predictable conclusion, "The submitted cartridge could not be loaded into and fired in Lee Harvey Oswald's caliber 6.5m. Mannlicher-Carcano rifle." No copies of any records have been provided in this instant cause. Distribution of the report included the Secret Service and the Department.

F. The FBI Disclosed Some of Its Real Reasons for Denying Me Public Information

314. The FBI has paranoidal and baseless suspicions about me. These, articulated by the Lab, state a reason for wanting me not to have information. These records also are in the Lab and if nobody primed Kilty, his searches should have disclosed this FBI policy of not complying with the Act with regard to me. The records that follow are from the FBIHQ's assassination main file. They were not provided in this instant cause.

315. As my letter offering specimens to the FBI states (Exhibit 62), the friend who found a bullet in Dealey Plaza was not without some expertise. This is confirmed in the other attached FBI records, particularly the one with information it went out of its way to say I should not have. Because the condition of that bullet so closely resembles the condition of Bullet 399, my friend was prompted to determine whether he could duplicate Bullet 399. He did. It is one of the specimens I offered the FBI.

316. Paranoidal Frazier did not disclose, even to the Baltimore field office, what examinations he performed. (Serial 6983, Exhibit 63) As this record states, the FBI departed from its policy and practice in such matters and did not file its report even with the field office which provided the specimens, in this case Baltimore. The ostensible reasons for wanting me not to have any information are stated as my alleged background and its sick suspicion or fear that I might in some way claim that the FBI was cooperating with me. The FBI distorted when it did not lie outright about my alleged background. I was never a Communist. If these people were not so sick, they would have realized that if I had had any such desire or intention, their failure to inform me about the testing and the extraordinary effort they exerted to see that I had no written record provide more than is needed to charge the FBI with suppression of evidence. Neither my friend nor I had any such interest. The FBI saw to it that I would not have any communication from it by having a Baltimore agent hand-deliver the returned bullet.

317. There is no mention in these records of the fact that Bullet 399 was duplicated. Obviously, the ease with which another fake was made is not without significance, but Frazier pretends that this has no significance. The

red-baiting, a Hoover and an FBI favorite dirty trick, particularly in secret where it could not be rebutted, was an effective way of effecting a turnoff. It was expected to justify any FBI offense. This includes, as the initialings on the General Investigative Division's note reflects, in addition to Director Hoover and not fewer than four others in the FBI's top command, Clyde Tolson, who ranked next to Hoover, and at least three assistant directors. This memo indicates there are other records.

318. The Lab letter to Baltimore, by Frazier, is another of the many illustrations of his untruthfulness on deposition. It says little more than what I told the FBI to begin with. Frazier's concluding paragraph says of me that "we do not want him to be in a position to state that the FBI was cooperating with him in this matter," and as part of this "the examinérs (sic) notes are being retained in the Laboratory Files with other similar material." This states again that the Lab had its own files and that similar materials within my request were known to be there five years before Kilty's supposed searches.

G. The FBI's Own Records Establish That It Did Not Make Good-Faith Investigation With Regard to Any of the Reported Other Shootings

319. It is conspicuous that in each of these once secret reports of other shooting during the assassination, the FBI never once displayed any genuine investigative interest. Its own records are clear on this and on its attitude - the Director's preconception was unquestionable, so there was an ordained lone assassin. If the reported shooting could not be associated with the allegedly used rifle, it was, as predetermined, not relevant. That the official solution to the crime was known to be impossible did not make any difference. The Lab's concern, as Assistant to the Director Sullivan wrote, was public relations. It was indifferent when it received proof of what, without doubt, its experts knew, that Bullet 399's condition could be duplicated without its having struck any person. However, the FBI's and the Commission's theorizing require that it cause several wounds and have struck bone, which does mark bullets. But Bullet 399 was unscratched. When the FBI received an additional fake 399, retrieved from the scene of the crime, it was not concerned about either the ease with which Bullet 399 was faked or why a fake was planted at the scene of the crime. It was concerned, irrationally and unreasonably, about what never entered my mind, that

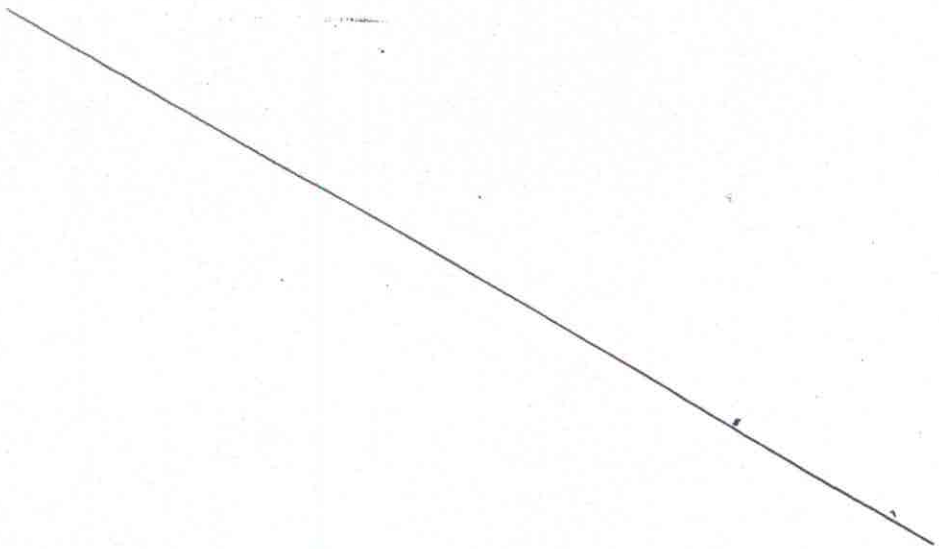
I might make some effort to claim it was assisting me.

320. These are not the only reportings of other shots. These are those where FBI records not provided in this instant cause establish that there were other Laboratory examinations connected with assassination shooting. These also are records that demonstrate clearly that FBI affiants swore falsely.

321. My second book, the one over which the FBI considered filing a spurious libel suit to "stop" me, goes into some of the other reported shootings and how the Commission and the FBI undertook to downplay them and make it impossible for them really to be considered by the full Commission if it had had that desire. It did have that responsibility.

322. Kilty and Frazier, at the very least, did have personal knowledge of these other reports of shootings and records of examinations pertaining to them. Frazier was personally involved in some of the tests he swore were not made and Kilty swears he went over the files in which these records are. The defendant, also, as stated above, was reminded of some of these tests and the pertinence of withheld records in my C.A. 78-322 appeals. These appeals are so totally ignored they lack even pro forma acknowledgment.

323. There is no evidence produced by the defendants in this case that is not attested to by those who have this clear record of untruthfulness as it pertains to the questions at issue, including about the searches.



NONE OF THE SPECIMENS THE FBI TESTED FOR THE WARREN COMMISSION IS AS IT WAS AND THE FBI HAS NOT ACCOUNTED FOR WHY THERE ARE QUESTIONS ABOUT THE INTEGRITY OF THIS EVIDENCE.

324. If the FBI is to be believed, it removed two specimens from Bullet 399 for testing (one of jacket metal, the other of core) and did not weigh either; and it destroyed all the specimens it subjected to NAA. Kilty claimed not to know it, but Specimen Q15 has disappeared entirely and the FBI could not be more indifferent. Today there are the most substantial questions about the integrity of the evidence the FBI tested, the evidence involved in this oldest of all FOIA cases.

325. Dr. Vincent P. Guinn, of the University of California, was regarded by the AEC as the outstanding expert on the use of NAA in criminalistics. The FBI would not permit Guinn to conduct the NAA tests as the AEC's consultant. Guinn did become the expert for the House assassinations committee. He then testified that the specimens produced for his testing "did not include any of the specific pieces the FBI analyzed. Where they are, I have no idea." Reporters questioned him further about this after the end of the hearing. This was reported in the September 9, 1978, Washington Post by George Lardner, Jr., who was one of the questioners. He added:

> Elaborating to reporters later, Guinn said, for example, that he was presented a small container ostensibly carrying all the bullet fragments from Kennedy's brain. It contained two bits of metal, one weighing 41.9 milligrams and the other 5.4 milligrams. Yet, Guinn said, the FBI records showed four other samples from Kennedy's brain, all with different weights. In the same fashion, the FBI data indicated that it had tested three bits of metal from Connally's wrist at Oak Ridge National Laboratories in 1964, two weighing 2.3 milligrams each and another weighing 1.52 milligrams. The container Guinn got ... had two other pieces, one weighing 16.4 milligrams and the other 1.3 milligrams.

326. That the FBI would permit such evidence to become tained in any way is incredible. That it would destroy any of it and would be entirely unconcerned in reporting casual destruction of such evidence, particularly evidence of this unprecedented historical importance, may appear to be impossible to those holding the FBI in high esteem, but it is the FBI's unembarrassedly self-declared record, a record for which it offers no apology. Whatever explains such inexplicable behavior by an agency so experienced in the handling of evidence, an agency so many of whose agents are lawyers, it cannot account for the unwilling-

ness of the FBI to comply with this request after 16 years and its willingness to obfuscate and swear falsely to both the searches and compliance.

327. It is not only the curbstone spectrographic plate that the FBI now claims it destroyed. Where the FBI provides any explanation for its destruction of evidence, its explanations are palpably false. With regard to some specimens, it offers no explanations. With regard to the core or lead material the FBI removed from the base of the bullet, without even informing the Warren Commission that it had done this, it took much more than was necessary and has not accounted for what it took. The excess is sufficient to provide substitutions for actual specimens and to enable tests that would make it appear that all the lead specimens were of common origin. With regard to the jacket or copper material, the FBI appears not to have performed any tests to determine whether or not they are of common origin. If it did, these results are withheld. It has given untruthful reasons for not testing some copper specimens.

328. The FBI deliberately avoided making and keeping the complete weight records that are necessary for preserving the integrity of the specimens. It says it also did not photograph these tested samples.

329. The FBI has never announced that it destroyed any JFK assassination evidence. Most people would assume that nothing like this did or could ever happen. It has never made any investigation of any of the destructions. In this instant cause it has not acknowledged the destruction of any evidence other than the curbstone spectrographic plate and it has provided no proof of its destruction. While I did obtain some admissions during the depositions, most of what bears on the totally unnecessary destruction of this irreplaceable evidence comes from the FBI records obtained outside of this litigation.

330. There is no chain of possession of this evidence. The FBI did not respond fully and truthfully to the Interrogatory pertaining to chain of possession records.

331. Under discovery the FBI did provide records reflecting prohibitions on the destruction of evidence. Law and regulation prohibit destruction of the records involved in this litigation. Unauthorized destruction of historical case records is strictly prohibited, as is any destruction of any information under litigation.

332. An internal FBI Lab record of June 11, 1979, Clark to Herndon but written by Kilty, relates to the House committee's request for the various specimens subjected to NAA. It says that Gallagher was questioned "to determine the disposition of certain fatal ballistics evidence." (Exhibit 64) It says that Gallagher said "that radioactive metal samples were disposed of at Oak Ridge National Laboratory (ORNL). A review of Bureau files indicates that certain fatal ballistics evidence, namely specimens Q1 through Q5, Q9, Q14 and Q15, were examined ..."

333. Parenthetically, this record also means that, if Kilty had no earlier reason to believe he swore falsely in swearing that Q15 was not tested by NAA and thereby prevailed, he did know by the time he prepared this memo and he never informed either the Court or me of it. He never made any effort to relieve his false swearing. While the Court may not like to be reminded of it, immunity in official false swearing is a major cause of long delays, noncompliance and great and wasted costs in FOIA litigation. This record is one of several proofs that Kilty's false swearing with regard to the NAA test performed on Q15, a specimen that now is destroyed and cannot be replaced, was knowing and deliberate false swearing. His and the Department's failure to relieve his false swearing reflects their contempt and their presumption of immunity.

334. As provided under discovery this record is not full and complete. It is made up of parts of two different records. One is barely legible and neither is complete. Page 2 of the first part quotes Gallagher as saying "that it was his recollection that the lead fragments which were made radioactive were disposed of as 'radioactive trash' at the ORNL. This, according to Gallagher, was the appropriate method of dealing with these radioactive samples at the time." What Gallagher called his recollection is inconsistent with records pertaining to the NAA testing for the House committee and with the entire theory of NAA testing, which measures the rapid speed of the decay of the slight radioactivity to which the minuscule samples are subjected. But even if this were not true, preserving radioactive samples of such small size and great importance presented no difficulty or hazard at all.

335. The minuscule quantities and sizes involved are indicated by the

fact that the five samples of Q1 tested by NAA weighed a total of only 17.73 milligrams. A milligram is about 1/30th of an ounce.

336. Guinn outlined his NAA procedures in an August 19, 1977, letter to the House committee. (Exhibit 65) In it he referred to the radiation to which the minuscule samples would be subjected as "quite low, and soon declines to a negligible level, so the activated samples can be returned to the Archives quite safely." In fact, according to the report of the GSA's Director of Preservation Services Division, James L. Gear, (Exhibit 66) this was done the next day with complete safety.

337. It thus appears that if the samples the FBI tested by NAA were destroyed, they were not destroyed because they were "radioactive trash" or because not destroying them created any kind of hazard - except, of course, to the FBI's "solution" to the crime and the credibility of its investigation and investigative methods. If any of the material was destroyed, at any time for any reason, the FBI has not produced a single contemporaneous record relating to it or any request for permission to destroy anything. It does not appear to be normal practice for an agency like the FBI to destroy vital evidence without having some record of the destruction and of the reason for it.

338. Parenthetically, both Guinn and Gear confirm my prior affidavit in which I allege that Gallagher's statement that he did not make any test at all of the unfired bullet found in the Oswald rifle cannot be for the reason he testified to, to preserve its historical value. This is not, historically, the most important specimen in any event. But as I stated, there was no danger at all from the test. This is the test that the AEC's director of isotope development considered most important of all. Gallagher, who did not make that test, also denounced him - after he was dead. Gallagher, whose display of the most imperfect of memories was virtuoso, claimed he had been ordered not to test this specimen but no record of any such order has been produced in this case and none appears in any of the records I obtained by other means. There is no reason to believe that any such record exists or existed or that any such order was given for the stated reason. The Guinn-Gear account of how this was done is exactly as I informed the Court it would be done, by "pulling" the bullet. I also provided an

example of a pulled bullet to show the Court. Guinn used a very fine drill on the pulled bullet and then reunited it with the cartridge case, leaving no visible evidence of the removal of the tiny specimen he took and not impairing either the historical or evidentiary value of the bullet.

339. In sharp contrast with the FBI, the supposed expert on evidence and its preservation, Gear took a total of 56 photographs of the entire operation. Of these, nine were of the pulling, drilling and reuniting of this bullet.

A. Magic With the Magic Bullet

340. Going along with these untruthful and incredible explanations of the claimed destruction of the lead specimens submitted to NAA and the lack of any pertinent record is the lack of any explanation for taking the overly large sample from the base of Bullet 399. Failure to make jacket material NAA tests is not explained by Kilty's pretense that it would destroy ballistics evidentiary values. The inside of jacket material has no barrel marks and the copper alloy jacket material can be drilled as Guinn did with Bullet 399. Jacket material tests could and chould have been made.

341. All efforts to learn the weight of the samples removed from Bullet 399 have been rebuffed. On deposition Frazier testified that he weighed this bullet only on receipt of it, not after the samples were removed. The Archives also refused to weigh the bullet when I asked, claiming that would require it to do research. The late Dr. John Nichols, forensic pathologist of the University of Kansas Medical Center, wrote FBI Director Kelley, SA Bresson and Appeals Director Quinlan Shea in an effort to learn how much had been removed from each specimen. (62-109060-7188) His telegram asking for this information was ignored. He finally got a letter in which Bresson said that none of the weights were recorded, not of the samples removed and not of what remains of the specimens after sampling.

342. Because the House assassinations committee has disclosed the present weight of Bullet 399 (unless there has been more tampering with it), a reason for the reluctance to disclose its weight is apparent: the overly large sample removed could supply minuscule samples to replace the actual specimens and then, on testing, all would test identical with Bullet 399, from which all

would come. The sample removed is not accounted for in any records I have seen. Later the Archives did weight it at least twice but then did not inform me as under its regulations it should have. It was weighed in 1978. The date of earlier weighing is not stated in this GSA memo. (Exhibit 67) The author of the memo accompanied the evidence, including this bullet, subpoenaed for the 1977 depositions. She did not report its weight, if by then it had been weighed. The depositions were after my request for that informatikn. But even if the bullet had not been weighed, weighing it would not have presented any kind of problem to the government. It would have taken less time to weigh the bullet than to argue about it. Refusal to disclose the weight has caused suspicion.

343. More suspicion accrues from the FBI's claim not to have photographs of the specimens analyzed. It claims it does not even have the negatives of the photographs of the specimens that it did take when it first received them. This is inconsistent with keeping the great amount of junk that remains preserved. Also, those negatives would take up less file space than a single one of the many extra copies of the many consolidated reportes from Dallas and New Orleans. Moreover, both offices could provide replacement copies if ever needed.

344. In its listing of the evidence it examined, the House assassinations committee gives the weight of Bullet 399 as 157.7 grains. (Hearings, Volume VIII, Page 365) This weight, the committee says, does not include the weight of a very small fragment. It also does not account for the weight of another fragment that separated in the Archives in the late 1960s but was quite visible. The weight given by the House committee explains agency reluctance to provide any weight. It means that, even without the weight of the visible fragment, the difference in weight from the 158.6 grains when it was first weighed, on receipt by the FBI, is less than a grain, a mere nine-tenths of a grain. This does not begin to account for the weight removed for the initial testing. We do not know how much Gallagher removed for NAA. It could have been all nine-tenths of a grain.

345. As my prior affidavits state, all the doctors who testified before the Commission testified that there was more metal shed in Connally's

wounds than was missing from Bullet 399. All the evidence is that Bullet 399 could not have had the history officially attributed to it. It also disputes the official account of the assassination. This provides motive for untruthfulness in this instant cause and for the withholding of the test records.

346. A grain of weight is extremely light. To make a single avoirdupois ounce requires 437.44 grains.

347. Photographs of Bullet 399, side and base views, are attached to my prior affidavits. When the bullet was received by the FBI, it was slightly flattened and a considerable amount of the core, proportionately, was extruded from the jacket at the base. Frazier testified to the taking of a sample of jacket material for testing. He referred to spectrographic testing only, making no mention of NAA. Frazier did not inform the Commission of the taking of a lead core specimen. As reflected by photographs taken for me by the Archives and attached to my earlier affidavits, the FBI removed all the extruded core material and a relatively considerable amount more, in the form of the inverted cone that is visible in the photographs.

348. On deposition Frazier was asked when he weighed the bullet. He testified that this was before the examination began. (Page 33) Later he testified, "I weighed the bullet before anything was removed from it."

349. He referred to the amount of lead core material removed as "considerable." He testified, "... there has been a considerable amount of lead squeezed out of the back end of the bullet" (page 27) and "... the lead has been squeezed out of the base; it was squeezed out considerably, even more than appears now, because some metal has been removed for examination ... and considerable lead could have been squeezed out of the base." (page 32)

350. The 2.5 grains missing from Bullet 399 at the time it was received by the FBI must, in the official account, include all metal lost by that bullet up until that time. Some is removed by the act of firing, as the jacket is scored by the barrel of the rifle in imparting to it the twist that gives it stability. About 20 percent of the 2.5 grains, or about 0.5 grains, is lost in firing alone. On deposition, when Frazier was asked about this, a matter to which he should have testified before the Commission but did not, he refused

to testify. He was asked, "How much weight would have been removed from that (bullet) in firing?" (He also should have told the Commission this but he did not.) Before he would respond, he demanded, "you ... pay extra witness fees," over and above the prescribed fees which I had paid in advance. (Page 32)

351. Frazier was asked, "Suppose the material removed from the bullet ... for scientific examination ... and the loss ... in firing, exceeded two and a half grains?" The 2.5 grains is the total loss of weight of the bullet before the removal of samples for testing. Frazier's reply was, "Oh, I'm sure it did. I'm sure it did; they took more than - they probably took that much, two and a half grains, out of the bullet in the spectrographic analysis." (Pages 77-78)

352. Frazier thus testified that the FBI removed all that is missing from Bullet 399. In itself this destroys the official acccunt of the assassination and explains why information is withheld and proper searches are not made. This is why the weight was not disclosed.

353. Kilty testified to the minuscule samples required for the tests - for NAA, "less than a milligram," and for spectrographic analysis, "a few micrograms." A milligram is 0.001 of a gram or 0.0154 of a grain, with 28.349 grams or 437.44 grains required for one ounce avoirdupois. A microgram is a millionth of a gram. These are almost invisible quantities. All that was required for the examinations could have been flaked off the extruded core material of Bullet 399. Instead of taking only the tiny amount needed, the FBI removed enough so it could claim that the bullet could have been the source of all the metal deposited in the victims.

354. It is apparent that if the FBI makes full and honest disclosure what it will really be disclosing is the fact that it did not investigate this terrible crime but instead whitewashed and covered up in accord with Director Hoover's preconception, the imaginary solution he dreamed up before the FBI made any investigation, the solution he then foisted off on officialdom and the world.

355. The Commission was aware of this early on. At its January 22, 1963, executive session it decided that prior to investigation, before its first hearing, Hoover wanted it to "fold our tent" and go home and to say he had done all that was to be done. It is significant the Commission decided to destroy all

records of that executive session. It overlooked the stenotypist's tape and under FOIA I obtained a transcript of it.

356. Frazier also confirmed another detail of my earlier affidavits. The FBI did not make any test on the residues on Bullet 399. When there was doubt that it could have had the history attributed to it, it was important to know whether any blood or human tissue was on it. The FBI did not make that kind of test. When Frazier was asked, "Is it possible to detect human residues on a projectile which is removed from a body?" he replied that "it's been done for years. Yes." (pages 20-21) When the FBI had a chance to prove that the bullet had been inside a human body, if it had been, the FBI refused to make the test of which it knew.

357. Going along with this, the FBI refused to perform the most necessary spectrographic analyses, quantitative analyses. In this limited sense, by persevering and deposing Kilty, I was able to do in 1981 what the appeals court said should be done in its No. 75-2021, establish the existence or nonexistence of the information sought. The only available evidence bearing on the FBI's refusal to do quantitative spectrographic analyses comes from Kilty's deposition and he testified that those examinations were not made.

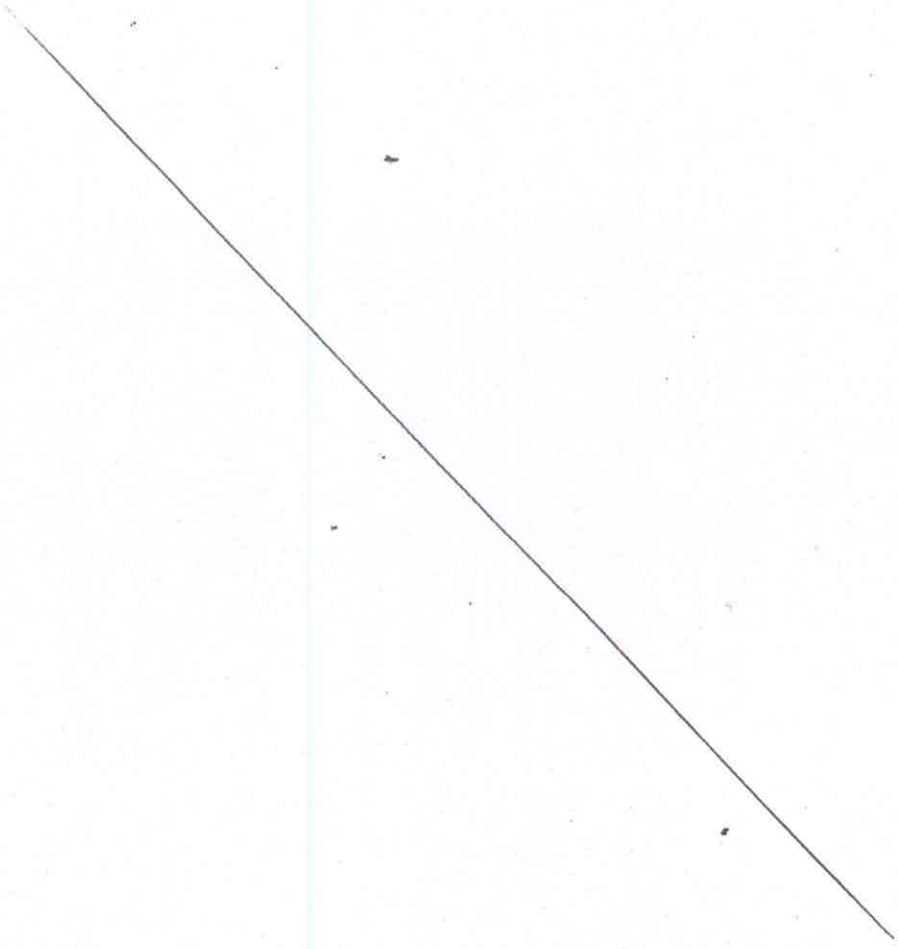
358. It is not only with regard to the weight of the specimens taken from Bullet 399 that the FBI created questions that should not exist. No weight for the specimen Q15 is recorded in any record I have seen. Where other weights were recorded, as in Exhibit 64, Q15 is listed but its weight is not given. It is possible that the weight was recorded, however, and is withheld. Kilty was asked, "did you search for any other records relevant to" the Q15 NAA test, after remand. His reply was, "No, I did not," which is one way of reflecting concern and respect for the court of appeals.

359. Measuring the weight of Q15 presented no problem at all. It was of measureable weight. It was kept in a regular pillbox, a photograph of which is in Part 8 of 105-82555 (EBF). (Exhibit 68)

360. When Kilty was asked about the disappearance of Q15, he claimed not to be aware of it. He did admit to having heard at least some of Guinn's testimony. He said nothing of what he read. Even though NAA, to his knowledge,

does not consume the specimens, Kilty tried to pretend that Q15 had been consumed in it. His scientific basis was, "anything is possible." In the end Kilty did admit that, as of the time of the NAA of Q15, "there was something in there. (pages 75,77,79,80) This seems to indicate that destruction was after NAA was performed.

361. Withholding the weight of @15, destroying it when it cannot be replaced or duplicated, and the repeated false representations about it, serve the same purposes as all the fudging with the weight of Bullet 399 and the specimens removed from it - to enable a dubious if not knowingly false account of the crime to be inflicted on the country and to make much more difficult if not prevent checking up on the FBI with regard to that particular evidence.



VII. "SIMILAR" ALONE AS THE STATED RESULT OF SPECTROGRAPHIC EXAMINATION IS A DECEPTION DESIGNED TO HIDE THE FACT THAT THE FBI DID NOT PERFORM THE MORE IMPORTANT SPECTROGRAPHIC TESTING

362. In my earlier affidavits, which are not rebutted, I stated that for the FBI to say nomore than that two samples of lead compound are similar is, for practical purposes, an admission that they are not the same. This is now confirmed by Kilty. Yet the FBI never told the Warren Commission that any of the specimens it tested in the JFK assassination investigation were other than merely "of similar lead composition."

363. There is nothing to indicate the shortcomings of the spectrographic examinations in any record disclosed to me in this instant cause. I found confirmation of the FBI's shortcomings in records obtained through other litigation. Bearing on this I found what is quite pertinent.

364. Commission Counsel Melvin Eisenberg was questioning Frazier. The transcript, of testimony that was to be published, was originally classified "TOP SECRET." This classification is bold and black at the top and bottom of page 4423. (Exhibit 69) Eisenberg had asked Frazier several times about "apparent matches." Frazier made a much longer response than the FBI Orwellians permitted to be published. That is limited to "We don't actually use that term in the FBI." What was deleted is "but we use them occasionally to say that some of the marks were similar in nature. They were not sufficient to substantiate an identification. That type of terminology is not entirely accurate, either." What then was not deleted is made into a new sentence, "Unless you have sufficient marks for an identification, you cannot say one way or the other ..."

365. If the FBI had not made this radical change in its expert testimony, it would not have dared represent, with respect to the spectrographic examinations, that "similar" meant a match or comon origin identification. Without this Orwellian rewriting the FBI would have underscored the fact that <u>it in fact did not make common source identification</u> in its JFK assassination spectrographic testing.

366. Other records not released in the Commission records, records I did not obtain in this instant cause but did obtain by other FOIA litigation, reflect the fact that the FBI did make the kind of spectrographic examinations

that are required for common source identification. All of this raises the most substantial question of perjury by the FBI agents we deposed earlier in this case and when they testified that "similar" does mean a match. That testimony did deceive and mislead the Court. Its untruthfulness was known to those expert witnesses when they swore falsely.

367. JFK assassination records disclosed after Shaneyfelt, Gallagher, Cunningham and Frazier were deposed gave Kilty no real choice and he testified truthfully, that the spectrographic analyses performed in the JFK assassination investigation are not the tests made for positive identification. Only qualitative testing was done. This merely identifies the chemical elements present. It does not provide the percentage of each that is required for positive identification. Quantitative analysis is required for this and that the FBI did not do. However, it did perform quantitative analyses on the bullets used in the killing of Dallas policeman, J. D. Tippit.

368. The capability of properly performed spectrographic analyses permits more definitive statements than the FBI ever made to the Warren Commission. This capability is covered in the reporting of trials, even in small cities like the one near which I live. In the reporting of a Rockville, Maryland, trial in which an FBI Lab agent gave expert testimony, our paper quoted his testimony that "there are hundreds of different compositions" of lead in bullets, but comparisons he made, between the fatal bullet and those in the possession of the accused, show that all "came from the same batch of lead." I recall no such positive statement in any JFK assassination record or FBI testimony. Yet it is within the capability of quantitative spectrographic analysis.

369. Kilty, when asked about the copies of spectrographic plates belatedly and incompletely provided to me, testified (pages 10-15) that "a strict quantitative analysis could not be done on those plates ... because the standard - - the standards that were used here were not calibrated standards." If calibrated, "the notes that were accompanying them would show what the concentration of the elements were and would measure - - you could have densitometer measurements for each of the lines," or elements. (page 10)

370. Even the examiner who performed the tests "would not be able to

... determine the quantitative results" based on his own testing because it is "too late. You cannot do quantitative analysis on these plates - - strict quantitative analysis." He explained that without "strict" quantitative analysis only what he called a "semi-quantitative" analysis is possible, "for example, one sample has more antimony in it than another." (page 11)

371. The quantitative measurement comes from density measurement. (page 12) If the FBI had done this with the JFK assassination specimens, it would have eliminated any question. Perhaps this is why it did not, and instead we have all the many lingering questions created by the FBI.

372. In limiting the spectrographic testing to specimens that were known, without question, to be bullet metal, performing qualitative tests only disclosed only what was already known without the testing, that the specimens were bullet metal. The FBI knew full well that it could and should have performed the quantitative tests and provided reports on them. Instead, it mislead the Commission by using "similar" to mean "identical." The intent to deceive and mislead the Commission and the nation is apparent.

373. The FBI received three bullets shot into Tippit on March 16, 1964. It did not make the spectrographic examination for eight days, until March 24. On March 17 the FBI made vigorous protest when it heard that the Commission was seeking confirmation of the FBI's work by an "outside examiner." On March 26 the FBI Lab teletyped a Tippit examination report to the Dallas office, saying that the typed report, with photographs, would follow. In this teletype the FBI Lab referred to the limited spectrographic examination as I do not remember its ever once referring to JFK assassination evidence. It said that the bullets were "qualitatively similar." The Commission was not told of the limitations of qualitative testing in any of the JFK assassination records I have obtained from its files. Although at least one assistant counsel was aware of the distinction, I have not seen any Commission record referring to quantitative analysis.

374. A series of Lab records was generated on March 27, three days after the spectrographic examination. In a Jevons-to-Conrad memo written by Gallagher (62-109060-2845), Exhibit 70 it is stated that the fragments from the President's

head are "composed of the same chemical elements" as those found in his limousine. This actually says no more than what was known, that the fragments are of bullet metal. (Earlier Jevons drafted a letter to the Commission (105-82555-1904) in which he postulated the wrong evidentiary need pertaining to these small specimens. He said they were too small to be associated with any weapon. The evidentiary need, however, was to associate them with the other fragments. That was not done because quantitative analyses were omitted.)

375. Gallagher that day wrote another Jevons-to-Conrad memo reporting a conversation with Eisenberg, who asked if the Tippit examinations had been completed. Gallagher then says that "Mr. Eisenberg was advised ... the qualitative analysis (analysis for presence of chemical elements) of the bullet alloys had been completed; however, a quantitative analysis (determination of percentages of the chemical elements) had not been finished. Eisenberg replied that he did not desire the quantitative analysis of the alloys at this time; however, if that aspect proved to be of probative value, he would later request that this be done (sic). The Commission was advised of results of the examination by letter of 3/27/64." (Exhibit 71, Serial 2853 in 105-82555, Not Recorded in 61-109060 and 62-109090.)

376. The letter referred to, drafted by SA Courtlandt Cunningham, (Exhibit 72, 62-109060-2823, Not Recorded in both other files) pertains to the bullet used to kill Tippit. Cunningham is careful to state, with regard to each of the two different kinds of bullets used, that each kind is "found to be qualitatively similar" and no more.

377. The typed report to Dallas on this (Exhibit 73) is dated March 31. On the last page there is the identical limitation, "qualitative analysis," with regard to each of the two different brands of bullets.

378. Not having performed the quantitative analysis, when the Commission later asked for "a positive determination as to the particular origin of the smaller fragments," Gallagher said, in the Jevons-to-Conrad memo of July 6, that the examination "does not permit a positive finding or statement ..." He was willing to give what he referred to as probabilities. (Exhibit 74) In a letter he wrote to go to the Commission over the Director's signature on July 8

(Exhibit 75), Gallagher said they could not "positively" determine which of the smaller fragments came from which of the larger fragments.

379. The FBI was in the clear with regard to the Tippit examination, once Gallagher explained to Eisenberg the difference between qualitative and quantitative examinations and Eisenberg did not want the definitive, quantitative one. But the FBI is not in the clear with regard to its failure to perform quantitative analyses on the JFK assassination speciments or to make a clear record of the different in its Commission testimony or communications.

380. Most of the records cited above would remain unknown if I had not obtained them by other FOIA litigation. The FBI provided no glimmer in the Commission records it permitted to be disclosed or in the records it provided in this instant cause, which did not go to the Commission.

381. The only apparent reason for not performing the quantitative analyses with the JFK assassination specimens is because the FBI had reason to believe the results would not be in accord with the Director's instant divination, which became the FBI's "solution." The more important of these spectrographic examinations, quantitative, appears never to have been mentioned to the Commission or its JFK assassination staff.

VIII. NEITHER HOOVER'S DEATH NOR THE PASSING OF TIME DIMINISHED THE FBI'S DETERMINATION NOT TO INVESTIGATE THE CRIME AND TO COVER UP THE FACT THAT IT NEVER DID INVESTIGATE THE CRIME

382. Those who have not studied as many FBI records on the political assassinations as I have may find it difficult to believe that the FBI would not investigate such crimes with the diligence and persistence of which it boasts. I have examined about a quarter of a million such pages of the FBI's alone and have examined those of other agencies, the Commission and the House and Senate committees. I have conducted interviews and investigated throughout the country and they have been conducted for me by others, amateurs and professionals alike. I have received such assistance from police and sheriff's departments and from other public officials. Unimaginable as it may seem, it is the fact that the FBI, from the first, avoided investigating the crime itself. It continues to avoid real investigation, even when its Director indicates an interest in it. It still has motive for withholdings its records that are not in accord with its pretended solution to the crime or that reflect the inadequacies of its investigations. Records the FBI did not expect to be seen by outsiders when they were generated leave this without doubt. In one instance in what follows I attach what the FBI deliberately avoided even when the Director sent it to obtain that information.

383. Hoover's instant vision/solution is recorded in a number of long memos he wrote, covering his conversations the day of the crime with high officials outside the FBI. These memos were addressed to his highest-ranking assistants. Among those to whom he conveyed his instant solution is the Director of the Secret Service. Others whose conversations are covered in such memos include the Attorney General, his Deputy and White House officials. One of the more revealing Hoover records was written not by Hoover but for him, by his close assistant and de facto director of propaganda, Cartha DeLoach. DeLoach's Division had the Orwellian title, since abandoned, of "Crime Records." It is an eight-page single-spaced memo on the meeting with author William Manchester into which DeLoach had talked Hoover. It includes Hoover's personal account of the day of the assassination.

384. One of the means by which the defendants prevailed in this case before the Congress amended the Act was by claiming what is not true, that the

records were compiled for a law enforcement purpose. A number of FBI records now available state the exact opposite. These include Hoover's, headquarters and field office records.

385. The study of this made by the Dallas office states explicitly that the FBI had no law to enforce. Hoover also told this to Manchester. DeLoach quotes two such Hoover statements on page 2 alone (Hoover also told Manchester that the FBI moved into the case before it was asked to): "The Director advised Manchester that the FBI took this action despite the fact that there was no law making it a federal violation to assassinate the President" and "The Director told Manchester that the FBI immediately entered the case, despite nonjurisdiction ..."

386. Hoover's lone-nut assassin picture, painted in red, was seen clearly throughout the government. It exerted great influence on Deputy Attorney General Nicholas Katzenbach, then also de facto Attorney General. Before the FBI's five-volume report (CD 1) was completed and before the President appointed his commission - before any real investigaton had been made or was possible - Katzenbach sought to persuade the President that, regardless of the lack of investigation,

> 1. The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial.
> 2. Speculation about Oswald's motivation ought to be cut off ... (Exhibit 76)

387. This record is from Department file 129-11. That file also holds the earlier, handwritten drafts. There is no doubt that the memo is by the man who became the Attorney General of the United States. Before any real investigation and with a crime of the magnitude of the assassination of a President, the defendant's official internal line was that, regardless of fact, the country had to be persuaded to Hoover's lone-nut assassin vision and that speculation should be cut off. By speculation, it soon became clear, the government meant anything not in accord with what it wanted to have believed, its and Hoover's party line on the assassination.

388. In a matter of days only this party line was conveyed to the field agents through the special agents in charge of the FBI's field offices.

While I have seen no such written indiscretion in the FBIHQ, Dallas or New Orleans files, the Little Rock special agent in charge did spell it out for "all agents." (Exhibit 77) He attributed what he wrote to FBIHQ:

> The following teletype was received from the Bureau:
> Following is to clarify reporting procedures.
> OSWALD conclusively established as assassin of President KENNEDY. Investigation continuing to develop complete date regarding him, his activities ... Communications in his case should, therefore, be restricted to information pertaining to him and to allegations that a person or group had a specific connection with him in the assassination.

389. The preconception could hardly be stated more explicitly or pointedly. The part about co-conspirators was not seriously intended because Hoover had already decided that Oswald was a lone if also red nut. This part had the purpose of covering the FBI from possible criticism that it did not investigate conspiracy, which it did not. As long as the investigation was not of the crime, there was no limit to the paper the FBI was willing to accumulate. Most of its vast accumulation is of irrelevant junk. It provides the statistics that are the FBI's answer to and explanation of everything.

390. The FBI's disinterest in the body of the crime is clearly reflected in the memo to Hoover through the Belmont channel by Alex Rosen, the Assistant Director in immediate charge of the investigation. (Exhibit 78) On the third day after the crime Rosen recommended that the FBI not accept the copies of the autopsy pictures and X-rays the Secret Service offered. Later the FBI also did not want a copy of the autopsy report. The pictures and X-rays the FBI would not look at are basic in any real investigation, as is the autopsy report. They have been the subject of the most intense controversy ever since. The FBI's refusal of the official autopsy report and pictures and X-rays is an overt declaration that the FBI was writing its own script and would not be influenced or deterred by the most basic fact of the crime. The "OK H" written on Exhibit 78 is Hoover's approval.

391. Katzenbach was so gung ho a lone-nut assassin exponent that he phoned Courtney Evans, the FBI's liaison, at his home the night of the memo to Moyers (Exhibit 76) to discuss it. Katzenbach had seen a telegram in which a concerned citizen said "that Oswald must have had accomplices ... because Oswald was not a sufficiently talented marksman to have committed the crime alone."

Katzenbach regarded this - whether or not Oswald was even capable of the crime - as "minutia." This gave the FBI to understand that in avoiding evidence it would have no problems from the Department because "obviously no report can resolve minutia of this kind." Katzenbach cited this telegram, according to Evans, as an example of "the extremes to which the speculation had gone." (Exhibit 79)

392. As the next paragraph of this memo says, the Department was worried because a Texas state investigation was pending and it "may develop some peptinent information not now known." Rather than welcoming any "pertinent information," Katzenbach spoke to Evans about what to do "in an effort to minimize this" possibility, of pertinent information being developed independently. The Texas officials had to be leaned on "to have them restrict their hearing to the proposition of showing merely that Oswald killed the President ..."

393. On that "minutia" of the shooting capability, it turned out that nobody was able to duplicate the shooting attributed to Oswald. The plan to turn off the Texas investigation also succeeded. The Department and the White House ganged up on it. Its small report was of no consequence at all, except that it did as Katzenbach wanted and it praised the federal report.

394. This record also reflects Hoover's paranoia, the paranoia everyone in the FBI had to live with. Where Evans reported that the liberal Abe Fortas, who was to become a Supreme Court justice, defended the FBI to the President, Hoover wrote, "Certainly something sinister here."

395. There was nothing too demeaning for even the highest FBI officials when Hoover's ego, whims or prejudices were involved. It is not merely that nobody dared to disagree with him. They all broke their backs to keep him happy and uncriticized. Whatever was involved, Hoover was never wrong and somebody else always was. This is part of the present motivation for nondisclosures. The cover-up on Hoover took some ridiculous and extreme forms.

396. I had quoted his Warren Commission testimony accurately and I had published a Secret Service photograph which showed that Hoover could not have been more wrong. Because the Director is Always Right, it had to be proven that wrong is right, even when a photograph proved wrong was indeed wrong. The Commission had asked Hoover why Oswald did not shoot as the Presidential limousine

approached the building in which Hoover said Oswald had his sniper's lair. The limousine approached that building on Houston Street. It turned left into twisting downhill Elm Street, where the shots were fired. The best, the easiest shot by far was as the limousine approached on Houston, not after it had passed on Elm. Hoover told the Commission that trees were in the way on Houston Street. Only it happens that there were no trees on Houston but there were on Elm. .This is what the photograph shows. The FBI's top brass was equal to this challenge because it was so easy to persuade Hoover that he was always right. There are trees on Elm and in what these officials called "the park," so even with no trees on Houston, if there were trees anywhere Hoover was right and I was wrong.

397. Another such example is the transcript of Hoover's Commission testimony. It was reviewed for him by not fewer than 11 FBI personnel, of whom five were assistant directors or of higher rank. Of these, seven made their reviews "on a word-by-word basis." None of them wanted Hoover's actual words to be published for he fractured the language with each breath. He could not say anything simply. He rambled and rambled, reveling in one after another of the cliches he loved so. Moreover, as with me and the nonexisting trees on Houston Street, nobody was about to tell Hoover that he did not know what he was talking about. The solution to this problem was simple: the court reporter was blamed. In the memo Belmont wrote to Hoover through Tolson, he said that the court reporter "did not record the Director's testimony accurately." The only changes, of course, were "as few changes as possible, in order to preserve the intent and accuracy of the Director's testimony." (Exhibit 80) The court reporter's alleged sins included attributing to Hoover as much as entire paragraphs of what he did not say and omitting entire paragraphs of what he did say. Hoover's "intent and accuracy" were recreated by Belmont and those under him through the direct wire they had to Hoover's mind. Hoover's drivel was deleted and, although it could not all be rewritten, much of it was. His gibberish was wiped out through major alterations, described to him as "few changes." If Belmont's memo is to be believed, that nasty court reporter even put racism in Hoover's spoken testimony.

398. I do not suggest that these men, FBI assistant directors, inspectors and supervisors, enjoyed groveling and making indecent spectacles of themselves, even when they expected perpetual secrecy. The real situation is that, if they did not crawl and live false pretenses, they would not survive in Hoover's FBI. Survival and all it means, including respected careers and comfortable retirement, also figure in the false, misleading and deceptive representations and the stonewallings in this instant cause. After Hoover died the FBI still had to face its record under him, a record that, as I have presented it to the Court, is without even pro forma denial.

399. There is no reason to expect the FBI to change on this. The FBI did not depart from this position in this instant cause. It did not change it in the processing of the general FBIHQ JFK assassination releases. It is not changed in the continuing Dallas and New Orleans field office cases, now consolidated in C.A. 78-322. It did not change with regard to my other FOIA requests, some of which remain ignored after more than a decade - under a ten-day law.

400. One of the many flaps the FBI is always able to downplay and eventually stifle occurred by accident, during Clarence Kelley's directorship. This flap had its antecedents in two other flaps over which SA James P. Hosty, the Oswald case agent in Dallas, was disciplined. As a result of the 1975 flap, Kelley was surprised to learn that none of the 18 motorcycle cops who escorted the President had been interviewed by the FBI, with the exception of one to whom it later was sent by the Commission for other reasons.

401. For 12 years the FBI had gotten away with this cover-up, with not interviewing the Dallas policemen who had first-hand knowledge. Then Dallas Police Lieutenant Jack Revill made passing reference to what Policeman James Chaney had said. (Revill caused one of the earlier Hosty flaps with an affidavit quoting Hosty as saying that the FBI knew Oswald had a proclivity toward violence. The written threat that Oswald left for Hosty, leaked after the retirement of the Dallas special agent in charge was safe and secure, was destroyed by Hosty, causing the other serious flap.) On September 4, 1975, Revill told an FBI agent that Chaney had never been interviewed and the agent included this in his report.

This resulted in the generation of many more records than I attach. Even for the up-from-the-ranks Director, getting information was like pulling teeth. The FBI hierarchy stonewalled Kelley as much as it could, and in the end it prevailed. It did not, even after he directed that an inquiry be made, inform him fully or accurately. When finally an explanation was required for the FBI's avoidance of so many first-rate witnesses, it was consistent with the Little Rock memo quoted above: The FBI cared only about Oswald's guilt and did not conduct other investigations. Inspector Malley, who had himself and his own record to protect, "said that, generally, only those persons the FBI knew had information, or were brought to our attention as having information, were interviewed." (Exhibit 81) In fact, as with those policemen and many others, the FBI did ignore "persons the FBI knew had information" because the FBI did not want that information.

402. Dallas recommended interviewing only one of these 18 police witnesses. The General Investigative Division concurred. It recommended this one interview only "in the interest of thoroughness." Orwell could not have put it better, as the following illustrations make clear.

403. Officers James M. Chaney and D. L. Jackson were assigned to guard the right side of the President's limousine. Of all the people in the world, to the FBI's knowledge, they were the closest witnesses on that side, the side of the car in which the President sat. The FBI's claim that it did interview those called to its attention is false, and Chaney illustrates this. Marion Baker, the one motorcycle policeman the Commission had the FBI see, did say that Chaney had made interesting observations. Chaney was so close to the President, as Exhibit 81 states and many pictures show, that at the time he was shot Chaney was only four to six feet away.

404. Chaney told the FBI that its 1975 interview "was the first time he had ever been interviewed officially by anyone regarding the assassination." Chaney also "advised that officer Jackson had never been interviewed, but has retained notes he made following the assassination regarding his observations." (Exhibit 81, page 2, paragraph 1) The recommendation that Jackson be interviewed was "in view of the fact that he has retained his notes regarding his observations during the assassination." (Exhibit 81, page 3, last sentence)

405. What Chaney said he saw was not secret because it was broadcast and discussed publicly in Dallas. It also is included in a record produced by a radio station that interviewed him (KLIF, "The Fateful Hours"). KLIF reporters taped a contemporaneous interview with Chaney in which he said that he had seen the President struck from the front. The FBI just did not want this kind of eyewitness evidence of Jackson's.

406. Chaney also told the FBI that the Dallas chief of police at the time of the assassination, Jesse Curry, "still has the impression that two men were involved in the shooting." One of Curry's reasons for this belief is "a statement made by one of the motorcycle officers at the scene of the crime." (Dallas 89-43-9614; FBIHQ, the facsimile copy rushed to it by wire, 62-109060-7257)

407. Curry is not alone among the top Dallas law enforcement officials of the time of the crime in believing that there was a conspiracy. District Attorney Henry Wade, a former FBI special agent and a crack shot, has always believed this and that the shooting was beyond the capacity of any one man. Chief Criminal Deputy Sheriff Allan Sweatt, who held these beliefs, spent much of a day criticizing and ridiculing the FBI's performance to me. Sweatt, too, was never interviewed by the FBI although the assassination was right outside his office, many of his deputies were eyewitnesses and he collected the first witness statements and the first photographs known to exist.

408. Mysteriously missing from disclosed FBIHQ files is the September 5 follow-up memo to Dallas from the FBI's Inspector General. In Dallas it is 89-43-9508. This is still another indication of the importance of checking field office files, especially those of the Office of Origin, and more particularly when FBIHQ has something to hide. His report coincides with the time Director Kelley ordered that Chaney be interviewed. The Inspector General also said that FBIHQ records indicated that "possibly two other officers ... had never been interviewed." There were 17 others not interviewed.

409. When Director Kelley got the September 16 memo reporting that Jackson had finally been interviewed, he should not have missed the childishness and irrelevancy of the bureaucracy's effort to discourage any further motorcycle police interviews - allegedly because "none have cast any doubts on the

conclusions of the Warren Commission." Actually this is false and is the opposite of what the FBI's own files say. Kelley wrote on the bottom, "How many such officers are there?" Not until after then was he told or was there any record showing that for more than a decade there were 18 motorcycle police motorcade escorts who were not interviewed by the FBI. (62-109060-7345)

410. The FBI's FD 302 form report of the Jackson interview is in FBIHQ files (62-109060-7369). The two agents, whose names the FBI's FOIA censors were careful to obliterate, also were careful not to report anything that Jackson said that was not in accord with the Hoover solution. It is to cover up those who cover up that the FBI withholds their names, not to protect their privacy.

411. The last statement on page 3 of this report is that Jackson "prepared a detailed written account" of what he had seen "and has maintained it in his possession." But this "detailed written report" is not attached. The FBI did not want it on file or to have to confront it. Jackson says the FBI agents did read it.

412. Jackson, a deeply concerned patriot, would not have denied his report to the FBI - if it had wanted it. But with a copy the FBI could not get away with misrepresenting it, as the FBI did do. I had no trouble getting a copy by mail. This copy is faithfully retyped. I added only the page numbers. (Exhibit 82)

413. Jackson gives an excellent account of the motorcade and of popular reaction to President Kennedy, where a hostile rather than the exceptional friendly response was expected.

414. On page 3 Jackson states that he was looking at Governor Connally, after having heard the first shot, and he saw the second shot hit Connally. This is precisely what Connally and his wife have always insisted. The FBI's avoidance of Jackson also avoided the embarrassment of having additional confirmation of the Connallys and their destruction of the official accounts of the crime.

415. Much else that was not known is included in Jackson's notes. His information also is of considerable historical interest. It is information that would have been significant at the time of the Warren Commission if anyone

had really intended a serious investigation of the crime.

416. Jackson was proud of having escorted his President on an earlier occasion. On the day of the assassination he was with the President from the time his plane landed in Dallas until Air Force 1 took off with the corpse. He and Chaney were the first two policemen to reach the hospital. Chaney rushed in for a stretcher and other assistance while Jackson helped remove the injured. Their observation of the wounds would have been important at the time, if serious investigation had been intended. It is deliberate untruth for the FBI to claim that it did interview those it knew had information. It knew of Chaney and Jackson, at the very least, that they had information about the shooting and the wounds. It is precisely because the FBI did not want that information that these two experienced policemen were not interviewed.

417. An enormous amount of paper was accumulated and saved by the FBI. It does not have even the usefulness of garbage, which can be fed to pigs or made into fertilizer. There is no other way of explaining the FBI's refusal to get and file the Jackson report, particularly not in 1975, after the Director's interest. There is no other way of explaining away the FBI's continuing and persistent refusal to interview all 18 of those very best eyewitnesses, the experienced policemen who were in the motorcade.

418. Only the continuing desire to obfuscate, to hide the truth about this terrible crime and to protect the inadequacy and overt dishonesty of the FBI's work can explain these kinds of misfeasances, malfeasances and nonfeasances. Much of the top command of the FBI and its Dallas office were witting.

419. That this and so much else like it could - and did - happen when the FBI was investigating that most subversive of crimes, the assassination of a President, and could thereafter be perpetuated, reflects the need to question any and all representations made by the FBI with regard to its searches under FOIA and its attestations of compliance.

420. Defendant ERDA also has something to hide. It knuckled under to the FBI's prejudices and thus the best expert, Guinn, was not used for the NAAs. It has a partisan and entirely improper record to defend. It subsidized an attack on those citizens who disagree with the official account of the

assassination of President Kennedy by an eminent physicist who has a long record of bias and personal involvement. I obtained some of those records under FOIA. They disclose ERDA's payment of his personal expenses in his personal vendetta. The payment of public funds was made even after he made cracks in writing about what Senator Proxmire might do with that information if he obtained it. ERDA paid for the reprints of his writing. This writing and publishing were not in any way connected with ERDA's functions, with energy, with nuclear or atomic research or with anything other than this eminence's efforts to justify his earlier JFK assassination partisanship. This kind of record provides motive for ERDA's untruthfulness in this case. As the case record shows, ERDA blamed some of its untruthfulness on the FBI and Gallagher. It says he misinformed ERDA. ERDA also refused to collate pages it provided to me uncollated. Nobody else can do this. Those individual sheets of tabulations are unidentified.

421. I regret that the amount of information I believe is required is so extensive. I regret also that time and other problems make it impossible for me to edit and condense. Some repetition results. I do not represent that there is no other information pertaining to test results not provided. There is every reason to believe that there are other withheld records. I am limited to what I made extra copies of when I read records as they were provided to me. Other shooting was testified to before the Warren Commission. Several witnesses say they saw bullets hit Elm Street. Those reports were never investigated, and then the street was repaved. Still another reported bullet hit on the south side of Elm Street. It was photographed within minutes of the crime. Deputy Sheriff Buddy Walthers is in these pictures. One of a series of these pictures was published by the Warren Commission, but neither it nor the FBI conducted any investigation.

422. The FBI proves itself to be untruthful and its own files, withheld in this instant cause, prove that it has pertinent records it did not provide and did not even search for after all the remands in this case.

423. This record can justify almost any suspicion about the FBI. By these persisting dishonesties, especially before courts of law, it brings suspicion upon itself. If it has nothing to hide, why does it lie and continue

to hide? Why, particularly after the Attorney General himself represented its historical case disclosures as full disclosures? Why should any unclassified information about the assassination of a President be withheld, under any pretext, unless that information is embarrassing to the FBI?

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 9th day of August 1981 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

LILLIAN WEISBERG NOTARY PUBLIC FREDERICK CO., MD.

Lillian Weisberg
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

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SUPPLEMENTARY AFFIDAVIT OF HAROLD WEISBERG

424. The preceding 112 pages were sworn to on August 6, 1981, not August 9.

425. The date of the Kilty deposition is June 19, 1981, not June 16. (Paragraphs 12, 85, 101, 104,137, 266)

426. In Paragraph 46, reference is to Paragraph 55, not 54. In Paragraph 128, reference is to Exhibit 25, not 24, and the date is 1963, not 1964. In Paragraph 145, reference is to page 130, not 110 of the Kilty deposition.

427. In the penultimate line of Paragraph 74, "and with" should be "after." In the second line of Paragraph 102, "later" should be "earlier." In Paragraph 146, the first line on page 38, "talked to" should be "asked."

428. Paragraph 140 should conclude with "(See Paragraphs 366 ff.)"

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 1st day of September 1981 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

LILLIAN WEISBERG NOTARY PUBLIC FREDERICK CO., MD.

Lillian Weisberg
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND