UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff	:
V.	:
UNITED STATES DEPARTMENT OF JUSTICE and	:
U. S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION	:
Defendants	:

AFFIDAVIT OF HAROLD WEISBERG

My name is Harold Weisberg. I live at Route 12, Frederick, Maryland.

1. This affidavit addresses noncompliance in this instant cause; the existence or nonexistence of the records sought, with new evidence of the existence of records not provided and motive for withholding the records;sought; the need for taking more depositions in order to continue to establish the existence or nonexistence of these records and to continue identifying other places where such records may be filed; and new evidence of the need for still withheld records to exist. This affidavit is also filed in compliance with the expression of desire by this Court. After refusing to permit that I be deposed and after refusing to permit that I then and there testify, subject to cross-examination on the matters at issue and set forth in this affidavit, this Court (June 22, 1977, transcript p.14) told me to file an affidavit. Although this is contrary to what the court of appeals stated in its No. 75-2021 about the form of evidence and contrary to my preference, I comply with the directive of this Court, if at some cost in time and effort and at a time when I am not well.

2. In another FOIA case I have established that most FBI files are not in those allegedly searched in response to my requests in this matter, the FBI Headquarters file and the FBI Laboratory files.

3. My prior experiences include those of an investigative reporter, a Senate investigator and an intelligence analyst.

4. After President John F. Kennedy was assassinated and the inquiry by the Warren Commission began, my attention was captured by a series of "leaks." These

"leaks" began before the Commission took its first testimony and continued through its taking of testimony.

5. From prior experience possible explanations of these "leaks" included a systematic attempt to condition the national and official minds. Such efforts are commonplace in seeking to prepare for the acceptance of official actions. In this instance the "leaks" were by the FBI. It had a known operation of this nature that included T. E. Bishop and other FBI officials.

6. This influenced and to a large degree controlled what the Warren Commission dared do or consider doing. Through other FOIA actions I have obtained once "TOP SECRET" transcripts of its executive sessions in which the Members and their general counsel disclose their awareness of this and their fear of J. Edgar Hoover and the FBI.

7. With these and other considerations influencing my decision, I decided to await the appearance of the official report and then to analyze it. Although it was not my original intention, after completing this analysis I did write and later published a book. It is titled WHITEWASH: THE REPORT ON THE WARREN REPORT.

8. My notes on the Warren Report constitute about a third of a million words.

9. Despite the length and detail of the Report, my analysis showed substantial deficiencies in the evidence. Most of the large volume of the Report bears no relationship to the crime itself. The shortest single part of the Report, a mere 32 pages, is the chapter, "The Assassination.."

10. Much was made of pseudoscience. An example of this is the testing by the FBI to prove that hairs found on a blanket were Oswald's. All the evidence was that this was Oswald's blanket and that of nobody else. Nonetheless, the FBI went to considerable trouble to prove that these were Oswald's hairs and pubic hairs to the exclusion of all others.

11. While the Commission's Report made much of this titillating irrelevancy for which there was no evidentiary need, there was a total absence of the most basic information ranging from the results of scientific tests to what I regard as essential in a homicide investigation, the official certificate of death.

12. The manner of issuance of the Report also troubled me. All proceedings were conducted in secret. The Report is of about 900 printed pages. The evidence alleged to support the Report did not appear with it and, in fact, was not available for another two months. The supporting evidence then was available on an all-or-nothing basis only. People bought all 26 volumes, available in hardback only, or

they were not able to obtain any of the supposed supporting evidence. From prior experience I know that the short lead time in each case, with the 900-page and the 26-volume set of evidence, made impossible any independent interpretation by the press or others, like the Congress.

13. When I read the Report and it alone, I observed certain deeply disturbing characteristics in it. After I was able to compare the Report with the appended 26 volumes, I was even more disturbed.

14. Among these characteristics I found in the Report are:

A. The apparent use of semantics as a replacement for evidence and dispassion. One example of this is repeated reference to Lee Harvey Oswald's alleged dedication to Communism and Marxism. All the Commission's own evidence is that Oswald was an Orwellian. In his secret writing he strongly condemned Russian Communists as "fat stinking politicians" and described American Communists as "betrayers of the working class."

B. Conclusions were drawn in contradiction to 100 percent of the evidence. One example of this is the allegation that the morning of the crime Oswald took a disassembled rifle into the building in which he worked. All the Commission's own witnesses stated this was impossible. All the Commission's checking of the witnesses confirmed their accounts. The Report even stated, in an effort to circumvent this, that no person saw Oswald enter the building that morning. In, fact, there was a witness, Jack Dougherty. He was deposed. He first stated and then insisted that Oswald was carrying nothing when he entered their place of work.

C. There were long delays in conducting the most fundamental investigations. Examples of this have to do with the shooting and the pictures of the shooting. The best-known nonprofessional motion picture and still photographs of the actual crime and its scene were taken by the late Abraham Zapruder and Phil Willis. Although the Commission had planned to issue its Report and conclusions in June, neither was deposed until July, eight months after the crime. James W. Altgens, the Associated Press photographer who took the best-known professional photograph, also was not deposed until then..

D. Countless other photographers, professional and amateur alike, were not used as witnesses by the Commission in any form. (Appendix V to the Report is "List of Witnesses." Examination of it discloses that even newspaper accounts were styled as "witnesses," with no distinction made between affidavits and sworn testimony.) Their film was not even in the Commission's estimated 300 cubic feet of files. Among those who took pictures of evidentiary value and were not witnesses were two whose movie films show the actual killing, Mary Muchmore and Orville Nix. Two photographers, one a TV cameraman, the other an Army intelligence agent, were confined within the building from which the crime is said to have been committed. Both were there during the search of that building. Thomas Alyea took five reels of motion pictures of the search of the alleged crime scene. Neither he nor Army Intelligence agent James Powell are mentioned in the Report. In nine years of FOIA effort, I have not been able to obtain from the FBI a copy of any picture taken by Mr. Powell. Under FOIA the Army assures me it has no record of his reports or pictures. Yet he is mentioned in FBI reports in the Commission's once-secret files, as are Mr. Alyea's five reels of memory-holed film.

E. Those who placed Oswald other than at the scene of the crime, such as Mrs. Carolyn Arnold, were not witnesses. She also is not mentioned in the Report.

F. Among those not seen by any Member of the Commission and not seen by any member of its staff until July, after the scheduled date of completion of the Commission's work, is the third person wounded in the crime, James T. Tague. He was wounded only slightly while standing at the extreme opposite end of the confined area in which the crime was committed, Dealey Plaza. My investigation of this, which relates to still missing scientific reports sought in this instant cause, is included in this affidavit. There is a separate affidavit from Mr. Tague.

G. The Commission's Report mislocated the President's wounds by avoiding the "best evidence" of them. The meaning of this "best evidence" became available to me through another case in the form of an until-then secret study of the autopsy film by a panel of experts convened by the Department of Justice. From the X-rays these eminent experts located the point of entrance of the so-called fatal shot almost four inches above the point in the head the Commission conjectured it had hit. The Commission concluded that the President's fatal wound entered his head near the occiput. It was not at the back of the head but at the top--100 mm. above the occiput. The difference is enormous. This also involves the results of tests sought in this instant case.

H. In the basic evidence of the so-called nonfatal shot the Commission concluded exactly the opposite to the testimony of all the doctors it used as witnesses. None testified that this particular bullet, the almost pristine Exhibit 399, caused the seven nonfatal injuries inflicted on both the President and the Governor. Commission Counsel Specter then substituted what he called a hypothesis. In this hypothesis he went through all the details of the several injuries but omitted the almost perfect condition of the bullet. This reduced the hypothetical question to can one bullet wound two people. (More follows on this as relevant to the existence of nonexistence of other records sought.) That Bullet 399 have inflicted all seven nonfatal wounds is essential to both the Commission's conclusions and to stating there had been no conspiracy.

I. Confronted by the same problem and same predetermination, the late FBI Director J. Edgar Hoover opted a different course. Prior to the appointment of the Warren Commission and within 24 hours of his return to Washington, President Lyndon B. Johnson ordered the FBI to conduct a special Presidential investigation of the assassination. Killing a president was not then a federal crime. After the creation of the Commission, this Hoover report, of five impressively prepared volumes, found space for one paragraph and two added sentences on the shooting itself. Under the heading, "1. THE ASSASSINATION," it states, "Two bullets struck President Kennedy, and one struck Governor Connally." The vague Hoover report thus avoids mention of the "missed" bullet which caused Mr. Tague's minor injury. Later it avoids even mention of the known wound in the front of the President's neck with this evasive language, "Medical examination of the President's body revealed that one of the bullets had entered just below the shoulder to the right of the spinal column at an angle of 45 to 60 degrees downward, and there was no point of exit...." (Attached as Exhibit 1.) This report became the Commission's first numbered file or "Commission Document." It thus is known as CD 1. It was kept secret for several years, until some Commission records became available in the National Archives.

J. Whether the Commission or the FBI or either is correct, there is a radical difference in their accounts of the wounds. Reconciliation of the versions is impossible. Separately the Secret Service also concluded that the first bullet struck the President, the second the Governor, and the third killed the President, without any bullet striking anyone else. It also avoided the known missed shot and Mr. Tague. The FBI in other records accounted for all three shots without accounting for Mr. Tague's wound, either. (Both attached as Exhibit 2.)

K. The total absence of any records of the extensive scientific testing the results of which are sought in this instant cause and of any stated or final or complete and comprehensive statement of their results in any report or in any other matter is inexplicable. They are not in the Report. They are not in the approximately 10,000 pages of an estimated 10,000,000 words in the 26 volumes described as of evidence. They are not in the Commission's files of some 300 cubic feet. The FBI agent in charge of those scientific tests, the since retired John F. Gallagher, was not called as a witness until September 15, 1964. The Report by then was set in type and the type had been formed into pages for printing. Mr. Gallagher was the Commission's last witness. The purpose of this testimony was to get him to state that there is no meaning in the everyday police use of paraffin tests to determine the possibility of the firing of a weapon. This was made necessary by the fact that, according to the paraffin tests of the Dallas police, Lee Harvey Oswald had not fired a rifle. In his Warren Commission testimony, Mr. Gallagher was asked not a single word about the spectrographic and neutron activation analyses he made and supervised, the results of which are sought in this instant cause. (15H747-52) (Mr. Gallagher is one of four agents involved in this testing and this instant cause who retired after it was initiated.) In all 900 pages of the Warren Report, there is no reference to the conducting of these neutron-activation analyses.

15. These are among the considerations that led me concentrate my inquiries on the ballistics and medical evidence. My investigation is of an extent that led defendant's counsel to say of me in his Motion to Strike (pp.2-3) that I am "perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the FBI."

16. What became apparent once some of the Commission's unpublished records became available is that there never really was a homicide investigation. There was an immediate preconception of the solitary guilt of the lone accused. The massive expenditure of effort represented by the Warren Report had as its purpose seeking to make this predetermination acceptable. From the time the Commission staff first began to outline its work, these outlines which I obtained and published center around Oswald's guilt. They predate the investigation.

17. This is explicit in the Commission's own executive sessions. Without legal sanction the transcripts were stamped TOP SECRET by the court reporter and were withheld. By means of FOIA I obtained the transcript of the executive session of January 22, 1965 (attached as Exhibit 3). That date was before the Commission took testimony from a single witness. General Counsel J. Lee Rankin informed the Members that "the FBI is very explicit that Oswald is the assassin or was the assassin, and they are very explicit that there was no conspiracy." He informed the Members that this was in sharp contrast with his nine years of experience with the FBI. (He had been Solicitor General.) "They claim they don't evaluate, and it is uniform prior experience that they don't," he continued. He then reported that the FBI had "not run out all kinds of leads ... Yet they are concluding that there can't be a conspiracy without these being run out." (Transcript p.11) After a brief further discussion Mr. Rankin continued, "But when the Chief Justice and I were just briefly reflecting on this and we said if it was true and it ever came out and could be established, then you would have people think that there was a conspiracy to accomplish this assassination that nothing the Commission did or anybody could dissipate." (Transcript p.12) The meaning is clear as Commissioner Hale Boggs understood in agreeing. Commissioner Allen Dulles followed with "Oh, terrible." Mr. Boggs also was emotional. It influenced his speech when he rejoined, "Its implications of this are fantastic, don't you think so?" "A", probably the Chief Justice, said one word, "Terrific." After further consternation over the possibility of a conspiracy, Mr. Rankin told the Commission of the FBI, "They would like to have us fold up and quit." (Transcript p.12) Mr. Boggs interpreted, "This closes the

case, don't you see," to which Mr. Rankin added, "They have found the man. There is nothing more to do. The Commission supports their conclusions, and we can go home and that is the end of it." After further speculation about whether or not Oswald had had any connection with the FBI, there was agreement with Mr. Dulles' recommendation, "I think this record ought to be destroyed." (Transcript p.13) (The stenotypist's tape escaped destruction. It was transcribed for me under FOIA. Instead of having the original court reporting firm make the transcript, the National Archives had it doen at the Pentagon. This accounts for the misspelling of names and their absence as well as a few other minor errors.)

18. Five days later there was another executive session on the same problem. On January 27, 1974, Mr. Rankin was even more blunt. This also was prior to the taking of any testimony or the beginning of any real investigation. He told the Commission, "We do have a dirty rumor that is very bad for the Commission, the problem and it is very damaging to the agencies that are involved in it and it must be wiped out insofar as it is possible to do so by this Commission." (Transcript p.139) Beginning on page 153 and running for several pages Mr. Dulles, former Director, Central Intelligence, assured his fellow Commissioners that perjury is the highest expression of patriotism by the federal agent. The Chairman, also Chief Justice, asked of this, "Wouldn't tell it under oath?" Mr. Dulles responded, "I wouldn't think he would tell it under oath, no." The reason Mr. Dulles gave is "He ought not tell it under oath. Maybe not tell it to his own government but wouldn't tell it any other way." ("Any other way" included in court.) Aghast, Commissioner John McCloy asked, "Wouldn't he tell it to his own chief?" "He might or he might not," Mr. Dulles responded. "If he was a bad one then he wouldn't." In this Mr. Boggs saw that "our problem is impossible." Mr. Dulles assured the others that the only one to whom he personally would tell the truth is the President. (With such exceptions as the Francis Gary Powers U-2 flight and the Bay of Pigs.) Mr. Dulles then declared that, as head of intelligence, he would not necessarily tell the truth to the Secretary of Defense. On this bothersome question of conspiracy and whether or not Oswald had had an FBI connection, Commissioner Richard B. Russell, then also chairman of the Senate intelligence oversight committee, said, "They would be the first to deny it. Your agents would have done exactly the same thing." Mr. Dulles agreed, "Exactly." (Transcript p.143) When Mr. Boggs asked Mr. Dulles, "Did you have agents about whom you had no record whatsoever?" Mr. Dulles replied in language made awkward by the sensitivity of the situation, "The record might not be on paper.

But on paper would have hieroglyphics that only two people knew what they meant, and nobody outside of the agency would know and you could say this meant the agent and somebody else could say it meant another agent." (Transcript p.152) There was general agreement with the same words used about such agents by both the Chief Justice and the former head of CIA, "Terribly bad characters." Mr. McCloy's statement that "I have run into some very limited mentalities both in the CIA and the FBI" is followed in the transcript by "(Laughter)." (Transcript p.162) (Pages 139, 153ff, 143, 152 and 162 are attached as Exhibit 4. I obtained this transcript under FOIA in C.A. 2052-73. I used the copy of the long tranacript that was provided to me for facsimile reproduction in the fourth of my WHITEWASH series. These copies are from the book, copies of which can be provided for the entire transcript.)

19. The National Arhhives had withheld this transcript, claiming exemptions (b)(1) and (b)(7). In its letter to me of June 21, 1971, in which these claims were falsely asserted, the National Archives also made no mention of the executive session of January 21, 1964.

20. Whether or not there was a conspiracy, with or without Oswald as the assassin and with or without his having had any connection with any federal agency, is a question of fact that is determined by evidence. Some such evidence is sought in this instant cause.

21. The Commission Members knew before they held a single hearing for the taking of testimony that the late J. Edgar Hoover was determined that it conclude there had been no conspiracy, that he had decided to state this without having run out all the leads bearing on it and that he wanted the Commission to "fold up and quit."

22. At the time of these admissions, which include the expectation of untruthfulness under oath by federal agents, some of the tests the results of which are sought in this instant cause had not yet been performed. All these tests were performed by the FBI whose Director had already decided what they could and could not show. The Commission was aware that he was determined there be no evidence indicating or proving a conspiracy because he had already decided there had been no conspiracy.

23. Whether or not Oswald was a lone assassin or even an assassin is addressed by the results of the scientific tests performed on the bullets, the fragments of bullets and the objects struck by bullets or fragments. Of the neutron activation analyses there was no mention in the Commission's Report. The FBI agent who performed the NAA and the spectrography, John F. Gallagher, was not asked to testify to the results of these examinations. Instead, S.A. Robert Frazier testified, "He submitted

his report to me and I prepared the formal report on the entire examination," the "formal report would remain part of the permanent records of the FBI." (5H69) Mr. Frazier did not even have the results of Mr. Gallagher's examinations with him when he testified. (5H67) Nothing has been provided in this instant cause or under any known circumstances anywhere or at any time that can be called a "formal report." Moreover, at the time of Mr. Frazier's testimony May 13, 1964, some of the testing had not been performed.

24. What Mr. Frazier and the FBI have since sought to represent as this "formal report" was not preserved exclusively in the FBI's files. It is no more than a letter to the Dallas Chief of Police dated November 23, 1963. It is in the Commission's published record. It was written long before much of the testing was commenced.

25. On March 21, 1964, Mr. Frazier did testify that some testing one might have expected to be performed was not done. (4H428-9) This relates to Bullet 399, on which there was no chain of possession and no certain source within the Dallas hospital. It was not recovered from the body of either victim although it is alleged to have wounded both. Mr. Frazier made no tests for human residues. He also ordered none. On deposition he claimed there was no need for such testing despite the total absence of proof that the bullet had been in the body of either victim.

26. Testing that was required to be done if the crime were to be investigated seriously required an effort to establish common origin among substances subjected to spectrographic and neutron activation analysis if that were possible and to establish guilt or innocence. For example, if the tests established that more than one kind of ammunition had been used, this would mean more than one person firing, or on that basis alone that there had been a conspiracy and an unsolved crime.

27. In all that has been produced in this matter, there is no single record that states whether or not more than one kind of ammunition was used or could have been used. There likewise is no statement of positive proof in the comparisons. There is only the meaningless description of "similar." This word means only "having a resemblance" or "analogous." "Analogous" means "having resemblance" and "corresponding in certain ways." Given the nature of bullets, all those of copper-alloy jacketing and lead-alloy cores are "similar." To say that two compared specimens correspond "in certain ways" only is to say they may be dissimilar or in fact are dissimilar.

28. For more than half a century less evasive interpretations of spectrographic examinations have been possible according to the readily available scientific litera-

ture. Neutron activation analysis can be more precise, as Mr. Gallagher testified on deposition.

29. The assassination of President Kennedy was described as "the crime of the century." By any standard it is the greatest of crimes. It negated an entire system of society. It nullified our representative method of self-government by an act of extreme violence. It required the most painstakingly careful investigation. The magnitude of what investigation there was, regardless of its purposes, is boasted of by the Commission in its Foreword: "... the Federal Bureau of Investigation conducted approximately 25,000 interviews and reinterviews of persons having information of possible relevance to the investigation and by September 11, 1964 submitted 2,300 reports totalling approximately 25,400 pages to the Commission." (Rxii). With as vast an investigation as these statistics suggest, we are now to believe that there was no single, lucid statement of the results of all this scientific testing. None has been provided.

30. On deposition Mr. Gallagher testified that what others did not know made no difference because he had the meaning of the results of the tests in his mind. On deposition he also appeared to have left his memory behind when he retired from the FBI. And unfortunately, his mind was never before the Commission for its evidence relating to these tests. His mind also is not in its files. The President appointed the Commission only to be in charge of this unprecedented investigation. Without a comprehensive statement of the evidence and its meaning set forth by experts in all the related fields of scientific testing, this most essential evidence of the crime was outside the Commission's consideration. Neithers its Members nor its staff were skilled in such testing or in interpreting the results.

31. Massive as is a published record of about 10,000,000 words in 26 printed volumes, the spectrographic results were reduced to this simplified hearsay:

> Mr. Frazier. That examination was performed by a spectrographer, John F. Gallagher, and I do not have the results of his examinations here, although I did ascertain that it was determined that the lead fragments were similar in composition. (5H67)

32. On deposition Mr. Frazier, whose manner was arrogant and contemptuous throughout - he kept repeating demands for extra compensation in the form of expert witness fees - underlined the meaninglessness of his own use of the word "similar." Mr. Hoover had informed the Commission, in response to a staff inquiry, that compounds containing lead and other ingredients found in bullet cores are quite common. In response to my request for the spectrographic analysis of the curbstone where there

was the impact of a bullet or a fragment of a bullet, I received a four-line hand-written note: "Small foreign metal smears (see attached for location) were run spectrographically (Jarrell-Ash_ & found to be essentially lead with a trace of antimony. Could be bullet metal. No copper observed." While this worksheet, one of those none of which ever reached the Commission, says "Could be bullet metal," Mr. Frazier on deposition testified that it also could have been one of many common substances, including the "wheel-weight" of an automobile tire. (Wheel-weights did not kill the President or wound James T. Tague.) The worksheet is an exhibit in the deposition.

33. What he described as a "smear" was an inch by three-quarters of an inch. If made by one of the alleged bullets without copper traces, it was made by a core with a diameter of about an eighth of an inch. The two elements of the "smear" and the nine elements of the bullet core are not "similar."

34. There remain other and serious evidentiary problems with this so-called "smear" bearing on the existence or nonexistence of the records sought as well as motive for their nonproduction if they do exist. Microscopic quantities only are needed for this testing. The "smear" was an inch by three-quarters of an inch. There are seven other elements in the core of the presumed type of bullet. There is no mention of any other core element. There is no report of any kind explaining to the Commission that this could have been a wheel-weight as well as a bullet core. There is no listing of the evaluation of lead and antimony as compared with that shown in the other analyses of the bullet-core material.

35. The statistics relating to the FBI's work are not nearly as impressive as the Commission understood them to be in referring to the filing of 2,300 reports by the FBI relating to its investigation of the JFK assassination. Nor is the figure of 25,500 pages.

36. In C.A. 75-1996, after eight years of FOIA effort, I am still in court seeking the records relating to the assassination of Dr. Martin Luther King. In that case as in this instant case, my initial request was totally ignored. In that case, however, we have obtained records that prove orders were given to violate the Act and ignore my requests. These records state that the order to ignore my FOIA requests relating to the JFK assassination also was given. The undisputed testimony in C.A. 75-1996 is that there were two dozen such ignored requests that were long ignored by last September. They remain ignored today. If the orders not to comply with the Act were not given by Mr. Hoover, they are recorded in communications between two of

his then top assistants, Assistant Director Rosen of the General Investigative Division and Assistant to the Director DeLoach. Nonetheless, in C.A. 75-1996, from a single file and to the end of June of this year I received about 20,000 pages. This single file is the FBI Headquarters file. It does not include the many related files. It does not include what the Attorney General estimated at 200,000 other records in field offices. It does not include the balance of this single file.

37. In the King case there is what can bear on the existence of nonexistence of records in this instant case and on motive, if there were records not made or not produced. In the King case the records produced do not indicate any comparative test firing or the testing of the barrel of the rifle to determine whether it had been fired recently. With in excess of 200,000 records being generated by the FBI in that case, it claims that these tests were not necessary because what remained of the fatal bullet did not hold the marks required for traditional ballistics comparison.

38. In the King case the FBI's records represented as all those on or related to the ballistics evidence and related testing also do not include stated results and reports like those sought in this instant cause.

39. These facts in the King case and the existence or nonexistence of reports such as are sought in this instant cause relate to FBI practices and to the existence or nonexistence of the records sought in this instant cause.

40. I was the defense investigator in the case of Ray v. Rose, in the habeas corpus petition and the subsequent evidentiary hearing.

41. I made a study of the manufacturers' and other literature, such as that of the National Rifle Association. I also consulted others of expertise. In the King case 421 records were initially withheld, including the court records of the extradition. The latter were actually confiscated with the assent of the British government and then security-classified by the Department of Justice. Thereafter the Deputy Attorney General assured me his Department did not have them. Under C.A. 718-70 I obtained the 200-page extradition records from the Department and in this learned of the security classification and of the existence of a duplicate set of the records although possession of any had been denied. Among these classified and withheld records was the affidavit of this same S.A. Robert A. Frazier. In it he swore: "Because of distortion due to mutilation and insufficient marks of value I could draw no conclusion as to whether or not the submitted bullet was fired from the submitted rifle."

42. My optical examination of what remained of the fatal bullet during discovery in Ray v. Rose indicated exactly what would be expected because of the design of the bullet and from all the literature about it. The specimen bears a remarkable resemblance to the boast of the manufacturer's catalogue. Optical examination disclosed that there was no visible mutilation or distortion of the stub of bullet that remains and that the spiral markings imparted by the lands and grooves of the rifle during firing appeared to be clean.

43. I arranged for examination by an expert ballistics witness known to me by reputation only, Professor Herbert McDonnell, of Corning, New York. Most of Professor McDonnell's testifying is on behalf of police.

44. I met Professor McDonnell later that month during the evidentiary hearing. I then took him to the office of the clerk of the court where he made his examination of the remnant of bullet.

45. As we left the office of the clerk of the court after Professor McDonnell's examination of the evidence, he told me, "I wish I had that good a specimen in most of my cases."

46. The next day Professor McDonnell testified that, given this specimen and the rifle in question, upon test-firing that rifle and recovering the test-fired bullets, he could, by comparing them with the specimen, testify as to whether or not the specimen had been fired from that rifle. He was not cross-examined on this testimony. No rebuttal witness, S.A. Frazier or any other, was offered to that Court.

47. These experiences in the King case do not persuade that all representations and affirmations by the FBI can be accepted. However, those experiences referred to involve the same personnel and the same tests.

48. On deposition Mr. Frazier testified that all reports of the kind sought in this instant cause are sent to the field office of origin. In the case of the assassination of President Kennedy, this was the Dallas Field Office. I have received no single record from the Dallas Field Office. I have not been given any affidavit from the Dallas Field Office attesting that it has no records of any kind that are called for in this instant cause.

49. In the long history of this case I have seen no first-person affidavit attesting that the records sought do not exist and did not exist. In the first case, C.A. 2301-70, and in this instant case an affidavit attesting that the records sought do not exist is a total defense. Instead, the same FBI whose secret records show my FOIA requests were ordered to be ignored suddenly started offering me what

I had not asked for instead of what I did ask for. With a competent affidavit proving that the sought records do not exist, there would not have been the long and costly litigation.

50. The limited depositions that have been permitted have produced proof of the ordering of tests that are relevant to the existence or nonexistence of those the results of which are sought in this instant action. This will be explained further.

51. One deposition produced still a third sworn version relating to the performance of a test no results of which have been provided. S.A. John Kilty first swore that there was a neutrol activation testing of the traces from the Presidential windshield. When I pointed out to this Court that I had received no result of that testing, S.A. Kilty merely swore that there had been no such test. Now Mr. Gallagher has sworn that there had been this testing. I had the proof of that. So his failed memory recovered and he stated he did not like those results, that they were worthless. My FOIA request is for the results, whatever the FBI thinks of them.

52. While I have neither the training nor experience of FBI agents, homicide investigations are not entirely outside my personal experience. I participated in them as a Senate investigator in the late 1930s where such investigations were essential to the legislative purposes of that investigation. During that period the Department of Justice selected me of the entire staff of that committee to assist it in an expert capacity in the case of U.S. v. Mary Helen et al,, the Harlan County, Kentucky, conspiracy case of 1938. In the case of Ray v. Rose, the Department of Justice, the State of Tennessee, Shelby County and the federal district judge all recognized me as the defense investigator. None of the witnesses I produced in that case were rebutted.

53. From this experience and others, including what the Department itself describes as having given me a knowledge of the Presidential assassination investigation greater that is possessed by any present FBI agent, I have learned that evidence of the kind sought in this instant case does not stand alone. Test results are part of the evidence only. Their meaning often is controlled by other essential evidence. I illustrate this from the above-cited prior experience.

54. In the "Bloody Harlan" case there was proof that a sum of money and a supply of dynamite were given by the association of the corporate defendants to one Ben Unthank with instructions to kill an organizer of the United Mine Workers' union named "Peggy" Dwyer. Shortly thereafter this dynamite was placed under the room of the hotel in which Mr. Dwyer was sleeping in Pineville, Kentucky, and detonated.

Despite this proof of Unthank's possession of the dynamite and its use, he did not detonate it. There was a series of subcontractings that ended with one R. C. Tackett placing and detonating the dynamite.

55. In the King assassination the FBI admits it has no proof that the fatal shot was fired by the rifle Ray had purchased. Even if there were such proof to prove beyond reasonable doubt that this rifle had fired the fatal shot, it was necessary to place Ray at the scene of the crime when that shot was fired. If it can be proven that he was elsewhere when that shot was fired, he could not have fired it.

56. To illustrate this further, based on my investigation the District Attorney General was questioned in the evidentiary hearing in Ray v. Rose. He testified that, contrary to representations made by the Department of Justice to procure Ray's extradition from England, it was not possible to place Ray anywhere in the city of Memphis for the two hours prior to the killing. He further testified that there was but a single witness who could place Ray in the City of Memphis at any time. What I did not then know and have learned recently in C.A. 75-1996 is that this single witness was a mental case and at the time scheduled for trial was inaa mental hospital.

57. In the JFK assassination investigation, the rifle from which all the shots are alleged to have been fired was never placed in the possession of Lee Harvey Oswald. It is alleged that he purchased that rifle by mail order but even proof of its delivery to him is lacking.

58. As with Ray, Oswald was not placed at the scene of the crime when the crime was committed. Witnesses the FBI knew could place Oswald elsewhere at the time of the crime were not called by the Commission, like Mrs. Arnold cited above.

59. Despite evidentiary voids, the FBI did not test the bullet or the fragments attributed to that rifle for human residues. This includes Bullet 399, which was not recovered from a body, and five significant fragments recovered at two different times in two different searches of the Presidential limousine. With no proof that any one of these crucial items of evidence had ever been in a human body, not one of the six having been taken from either, and with this FBI oversight, if oversight it was, the evidentiary burden to be borne by the tests the results of which are sought is much weightier.

60. Other proofs of the assassination of President Kennedy limit as well as burden the meaning of the scientific tests and their evidentiary value. They can bear on the existence or nonexistence of what S.A. Frazier called "formal reports."

61. From what has been obtained by all means in this instant matter and what I

had earlier obtained from the files of the Warren Commission, there is no single record reasonably described as a "formal report" - if any can even be called a report.

62. In February 1975, at their invitation, Mr. Lesar and I met with S.A.s Frazier, John Kilty who provided the self-contradictory affidavits in this matter and Thomas Bresson of the FOIA unit. Mr. Frazier then represented that his "formal report" is the letter of November 23, 1963, to Dallas Chief of Police Jesse Curry. This letter is on a printed form the printing of which included the signature of Director Hoover and the heading of which is "Report of the FBI Laboratory." Although this was published in full as an exhibit by the Warren Commission and was later published in facsimile by former Dallas Police Chief Jesse Curry in his book, JFK Assassination File, pages 90-94, in the first records I was provided in this instant cause there was a copy of a carbon copy of the first part only.

63. Anticipating that there would be subsequent disagreement over what transpired at this conference, I asked counsel to ask the FBI to tape-record the conference and to preserve that tape recording. It refused.

64. The examinations made are listed in this November 23, 1963, letter as "Firearms - Spectrographic-Microscopic Analysis - Fingerprint - Document."

65. That this was any kind of report on all the evidence is impossible. Much of the evidence had not yet been delivered to the FBI. Neutron activation analysis had not been commenced.

66. Although some spectrographic analyses had been performed, it does not include basic comparisons.

67. It does not include any report on the analysis of the copper-jacket material.

68. It does not include any comparison of the results of the testing of the core material of Bullet 399 with the fragments.

69. Assuming there is actual meaning rather than evasion in the use of the word "similar," all it says relating to the lead cores is "The lead metal of the Q4 and Q5, Q8, Q14 and Q15 is similar to the lead core of the bullet fragment Q2."

70. In this and in other ways it raises substantial questions it does not address. One is that "It could not be determined whether specimens Q2 and Q3 are portions of the same bullet or are portions of two separate bullets." Both are fragments recovered from the front seat of the Presidential limousine. If they are not "portions of the same bullet," on this basis alone it is certain that another and unaccounted-for shot was fired, meaning there was at least a second shooter. This

makes a definitive report on other than ballistics comparisons important. It is missing.

71. Q1 is the Bullet Exhibit 399. Q8 is the unfired cartridge recovered from the so-called Oswald rifle. None of the six above-itemized lead-core specimens is reported to have been compared with either the Bullet 399 or the unfired cartridge. Q1 and Q8 are not reported to have been compared with each other. Although Mr. Frazier testified on deposition to what is not in his Warren Commission testimony or any of the Commission's files, that a specimen of core was removed from Bullet 399, there is no reference to the results of any such test in this document. On deposition Mr. Gallagher, who performed these tests, claimed that no samples were taken from the unfired cartridge in order to preserve its supposed "historic" value.

72. Prior to the drafting of this letter, the Director of Isotope Development of Defendant ERDA, the late Paul C. Aebersold, offered that agency's aid and facilities to the Department of Justice. In his letter of December 11, 1963, Mr. Aebersold referred to "our laboratories experience(d) in obtaining criminalistics evidence" and stated that "it may be possible to determine by trace-element measurements whether the fatal bullets (sic) were of composition identical to that of the purportedly unfired" round recovered from the rifle, Q8. These are the essential comparisons not made or in any way referred to in what has been represented as the "formal report." If Mr. Gallagher is to be believed then the FBI, faced with a choice between absolutely essential evidence in this great crime and an unprecedented concept of historic value, opted for Orwellian history.

73. Where the FBI never deviates from the meaningless usage of "similar" referring to composition, Mr. Aebersold refers to the possibilities of this testing with the word "identical" relating to composition.

74. When I began this separate inquiry 11 years ago, I was confronted with an absence of meaningful records. There were some equivocal and semantical records. To this day there is a total absence of any available consolidated unequivocal and specific statement of all these test results, any statement or report on them that would be comprehensible to the Members of the Commission, their staff or the public, all of whom had an interest in the assassination of the President and its investigation. In 1966 I began asking for what is sought in this instant action. I asked the National Archives for the results of the spectrographic analyses, those "formal reports" of Mr. Frazier's cited testimony. Mr. Marion Johnson, who is in immediate charge of that particular archive, told me that he knew of nothing of this nature in

the Commission's records. In my presence he phoned the FBI and asked the same question of Laboratory Agent Courtlandt Cunningham. When Mr. Johnson produced the record to which Mr. Cunningham referred him as the entire results of all the spectrographic analyses, it was this November 23, 1963, letter to Chief Curry. As noted above, this letter was written before the FBI did some of the tests.

75. Mr. Hoover never responded to my May 23, 1966, request that all results of scientific tests be made public.

76. In order to carry my investigation forward it became necessary to search for and seek to obtain other evidence related to and bearing on the existence of that which is sought in this instant cause.

77. To the degree possible I sought not to depend upon eyewitness accounts and to use official records, especially those generated by experts, such as the medical evidence.

78. I made diligent and persistent efforts to obtain all the medico-autopsy evidence and what relates to it, such as the evidence held by the clothing of the victims.

79. Once again I was confronted with wrongful claims to nonexistence or to exemptions. Over the years, especially under FOIA, I have obtained a large number of such records. In no single instance was any claim to any exemption justified once the record was obtained and could be examined.

80. To illustrate the obduracy with which I was confronted in my efforts to obtain the release of records held secret, I cite three interrelated cases, all three of which are relevant to what is sought in this instant cause and to whether or not such records do or should exist.

81. There is a letter agreement in which the autopsy X-rays and photographs and the President's clothing are given to the government under specified conditions.

82. In fact, the film was Navy property and was required by Navy regulations to be preserved in official Navy files.

83. There is what is called a "Memorandum of Transfer" that is pretended to transfer certain of the autopsy materials to the Kennedy family, particularly the late Senator Robert Kennedy. (Attached as Exhibit 5. I used the original record provided for facsimile production in my book, POST MORTEM, from which this is copied.)

84. In fact, this transfer was made to the deceased President's former secretary who had an office in the National Archives Building as the representative of the Kennedy Library, which is under the National Archives.

85. Althoggh many photographs of the President's clothing were readily available at the National Archives and were published by the Warren Commission and even more extensively by other means, all were unclear. These also did not include photographs that from my knowledge and experience should have been taken to show evidence.

86. When I requested a copy of the letter agreement, it was refused to me on the claim that any use would be sensational and undignified. Despite this seemingly permanent preclusion of its release, when a newspaper reporter who had no familiarity with the evidence in the JFK assassination but could smell a sensation was at the Archives for another purpose, he was beseeched by Dr. James B. Rhoads to ask for this letter agreement under FOIA. Dr. Rhoads told him that this would require that Dr. Rhoads give it to him. The resulting news story created a nationwide sensation that attributed suppression of evidence to the Kennedy family.

87. When I sought a copy of the "Memorandum of Transfer," response by Dr. Rhoads required about 100 days although in 1968 and 1969 there was no FOIA backlog and the Act specified 10 days. First it was denied as the personal property of the Kennedys deposited in the Archives for safekeeping.

88. When I next requested a copy of the government's copy, it was called a medical record and refused.

89. I then requested this same record of the Secret Service, which created the record. The Secret Service decided to give it to me but through the National Archives.

90. When I protested the ensuing interception and withholding, the Archives again claimed the medical exemption and continued to withhold. The Department of Justice upheld this position.

91. With the passing of time I was able to pursue this thoughthe appeals mechanism. It was released at the last moment before I would have filed a complaint. The time required was more than six years.

92. Examination of the two-page document discloses no reason for withholding it except to avoid official embarrassment and to continue to blame the Kennedys for withholding evidence. In fact, there is no word that states the transfer was to h the Kennedys.

93. The autopsy film and other <u>original</u> autopsy and <u>original</u> autopsy-related records are included. These were all federal property. There is no reason to believe they ever left federal hands. Copies of some of these records have been provided to me by the National Archives, not either Mrs. Evelyn Lincoln or any Kennedy or Kennedy representative. There is every reason to believe and from my long experience I do

believe that this was a device for hiding records to make them unavailable. None of the records were Kennedy property. To my knowledge they have been in the National Archives.

94. Among these are important original records the Warren Commission did not have and others of which it had only copies that differ significantly from the originals. All of this relates to records sought in this instant cause and the need for them to have been made.

95. Despite Navy regulations to the contrary, the Secret Service obtained from the Navy all original copies of the autopsy protocol that remained. These were made after the first autopsy report was burned in the fireplace of the recreation room of Dr. James J. Humes, the Navy pathologist in charge.

96. My investigation of this incineration of evidence establishes that it followed reporting that Lee Harvey Oswald had been killed. This means when it was known there would be no cross-examination of the pathologists in any trial. The holograph of the autopsy protocol that replaced the burned one, the typed original copy and all carbon copies of it, are included in what the Navy surrendered. The Secret Service transferred this to the Archives and the Warren Commission never had it. (Attached as Exhibit 6 is the holograph. These copies are made from a xerox I had made prior to using the original xerox for facsimile reproduction in POST MORTEM.)

97. Also included but not listed in the Memorandum of Transfer is the official certificate of death by the Presidential physician, his handwritten version and the typed copy. (Attached as Exhibit 7) The Warren Commission never had or in any way used the certificate of death. This is particularly relevant to what is sought in this instant cause, in part because it supports the FBI's version of the location of the rear, nonfatal would the President suffered. It disputes the Commission's mislocating of this wound which was made possible by the avoidance of all this evidence. The Warren Commission placed this wound in the neck. The death certificate places it "in the posterior back at about the level of the third thoracic vertebra." This locates it about six inches down on the back at a point that coincides with the bullet holes in the President's jacket and shirt. This also makes it impossible for the same bullet to have wounded Governor Connally, again consistent with the earlier FBI and Secret Service accounts of the crime and again bearing on possible motive for withholding records.

98. These once-hidden original records contain the written approval of the President's own physician of substantive changes in the unburned holograph of the autopsy protocol.

99. At least one change was made that Dr. Burkley did not approve. Where Dr. Humes' holograph in its fourth paragraph states "Dr. Perry noted ... a second, puncture wound in the low anterior neck in approximately the midline," the version typed at the Bethesda Naval Medical Center the evening of the day it was written, Sunday, November 24, 1963, was altered to eliminate the words "puncture wound." They were replaced with "much smaller," which is not the same as or even "similar" to "puncture." (R539)

100. Examination of the holograph establishes that all the other uses of the word "puncture" were eliminated in the editing of the holograph, in each case substantially altering the meaning.

101. On page 7 of the holograph there is an important example of the many substantive changes made by Dr. Humes in consultation with his colleagues and military superior. It, too, is approved by Dr. Burkley. It describes and locates the fatal wound as "a puncture wound tangential to the surface of the scalp." This was altered to read only "a lacerated wound." (The "sanitized" typed version given to the Secret Service by the Navy appears in the Warren Report on pages 538-43.)

102. The originally secret report of the Department of Justice's panel of experts (p.11) states that the X-rays locate this wound about four inches higher than near the occiput, where the autopsy doctors told the Warren Commission. This higher location <u>is</u> "tangential to the surface of the scalp." This cannot be a description of a wound at the occiput, which is the protuberance at the bottom of the back of the head where it joins the neck. The panel measured upward from the occiput.

103. When Dr. Humes turned his autopsy holograph in to Admiral C. B. Galloway, commander of the Bethesda Naval medical installations, Dr. Humes also prepared two certifications. One attests that "I have destroyed by burning certain preliminary draft notes relating to" the President's autopsy, identified by its number, A63-272. Under Dr. Humes' signature is written "Accepted and approved this date George G. Burkley, Rear Adm MCUSN Physician to the President." TThe President's own physician approved the destruction of this essential medical evidence of the crime.

104. Dr. Humes' second certification identifies the records he "handed to Commanding Officer, U.S. Naval Medical School, at 1700" the same night. The itemization includes "Autopsy notes." Admiral Burkley "accepted and approved" in the same words. These two certifications are attached as Exhibit 8 as copied from POST MORTEM, in which I used the originals in facsimile.

105. The next day Admiral Galloway "by hand" gave Admiral Burkley what he described as "the sole remaining copy of the autopsy protocol." He also stated "This command holds no additional documents in connection with this case." He asked for a receipt. (Attached as Exhibit 9)

106. A receipt was prepared by the Secret Service the next day. It includes the "notes of the examining doctor." (Attached as Exhibit 10)

107. The Archives insists it has no such notes. There is no mention of them in the "Memorandum of Transfer."

108. Despite the magnitude of the crime, despite the eminence of the person of the President, despite his importance to the nation, there appear to be no notes remaining of those that were taken during the autopsy. Not only are they essential in all autopsies - they were used in preparing this autopsy protocol.

109. The radical contradictions of the official explanations of the assassination of the President - and there are others - place a heavier evidentiary responsibility on the records sought in this instant cause, especially to support the official Commission/FBI determination that Oswald was the lone assassin and there there was no conspiracy. They also make other evidence more important in my continuing investigation. The President's clothing is such evidence.

110. I believe that words in a contract mean what the dictionary says they mean so I requested that copies of four views of the President's clothing be made for me.

111. The GSA letter agreement accepting the materials listed therein from the representative of the executors of the President's estate provides in I(b) that there shall be access "To any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof." In III(1) it also specifies that "In order to preserve" the clothing "The Administrator is authorized to photograph or otherwise reproduce any of such materials" for those entitled to access, which includes "Any serious scholar or investigator of" the assassination and what relates to it "for purposes of his study." I requested that photographs be taken of the collar of the President's shirt; of the knot of the necktie, from the left side as worn and toward the body; and of the small area of the back of the shirt centered on the bullet hole, an area of about a half-inch. My request was refused by the National Archives. It alleged first that the contract means other than it says. I filed a complaint pro se, then having no alternative. That Court was assured in an affidavit by the Archivist, Dr. James B. Rhoads, that I had not made a request, the initial requirement under the Act. The record in that case now

holds the request, the appeal and the rejection of the appeal.

112. At the hearing in that case, C.A. 2569-70, the government gave that court an inaccurate account of the provision of this contract and of Archives regulations then in effect. It was told that while photographs could be taken for me, they could not be given to me. On the government's assurance that the requested photographs would be taken and shown to me, the case was dismissed.

113. Then and since the Archives has refused to supply me with a copy of its own regulations then in force. I had obtained one and filed it in C.A. 2569-70. My request of this year for a copy to present to this Court in connection with the depositions is without response.

114. The Archives regulations then applicable, headed "Regulations for Reference Services on Warren Commission Items of Evidence," in the second of its five provisions, stated unequivocally that "Still photographs will be furnished researchers ... Copies will be furnised on request for the usual fees." The last part of the fifth provision, which relates to the objects that are not to be touched, like this clothing, specified "photographs of these materials will be furnished to researchers as a substitute for visual examination of the items themselves. In the event the existing photographs do not meet the needs of the researcher, additional photographs will be made. A charge may be made for unusually difficult or time-consuming photography. Photographs reproduced from existing negatives or prints will be furnished for the usual fees."

115. After representing other than this to the Court, the Archives merely rewrote its own regulations to make them consistent with the misrepresentation made to that court.

116. When I sought to have copies of these photographs made for me to present to this Court as part of the depositions, even the making of xeroxes of them was prohibited. These photographs depict the areas of the clothing subjected to the testing in question. They relate to the evidentiary requirements to be met in the assassination investigation. They also relate to the contradictions in the different official accounts of the crime. These in turn relate to the test results sought, to the possible nonexistence of records as well as their existence, and to motive for withholding records if they do exist.

117. With regard to the knot of the President's tie, the Archivist assured the court he would photograph for me, he did not make such a photograph. No photographs were taken until I protested to that court. The Archivist then wrote me that "We have found that at some time in the past the knot in President Kennedy's necktie

was untied. We have therefore prepared photographs of both the front and the back of the tie in the knot area."

118. Immediately and since then my requests for an investigation of the destruction of this evidence and who did it have been refused. It is the knot, not the tie, that held evidentiary value.

119. The official account of the Warren Commission is that the Bullet 399 entered the back of the President's neck near its base, transited his neck toward the left without striking any bone, exited underneath the button of the collar on the front and nicked the left side of the knot, after which it sped abruptly to the right where it also dipped to enter Governor Connally's chest under his right arm. Here it is said to have smashed four inches of his right rib and on exiting to have blasted its way through the heavy bones of his right wrist, then to have come to rest below the skin of his left thigh, depositing a fragment that remains attached to his left tibia.

120. The photographs copies of which have been denied for this Court's consideration and record address the possibility or impossibility of this as do the records sought in this instant case. Importance is not limited to the exotic maneuvering required of this bullet in transiting the neck without striking bone (according to the Department's own panel of experts this also is false. On page 13 of their once secret report, under the heading Neck Region, it reads X-rays Nos. 8, 9 and 10 and states "Also several small metallic fragments are present in this region."), then making a sharp and downward right turn to execute the sharp turn to the left that led into the Governor's chest, right wrist and left thigh, improbable if not impossible as this appears. The purpose of my limitation to the President's shirt and tie relates to the tests and their results and the meaning of the results, a meaning I have found in no official record after more than a decade of searching.

121. Without knowing the history of the destruction of the evidence of the tie knot while it was in official hands, which requires an investigation only officials can conduct and they refuse to conduct it, it is possible to know some of the consequences of this destruction. This, too, relates to whether or not the records sought were made.

122. As delivered by the hospital and as it reached the FBI lab, the tie was still knotted. As photographed by the FBI the tie was knotted. As used by the Warren Commission the evidence of the tie was its knot. The FBI and Secret Service were the official custodians of all such evidence. This remained true until the issuance of

Executive Order of October 31, 1966. (Federal Register, Vol. 31, No. 212, pp.1396ff) In it the Attorney General states:

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

All was to be transferred to the National Archives.

123. When I sought to learn who could have destroyed this evidence, I made inquiries of Marion Johnson, who is in immediate charge of that archive. He informed me that he supervised the transfer of the closed containers of this evidence from the FBI. In the Archives, he told me, it all was placed in a large safe. Only he and Dr. Rhoads knew the combination. He also told me that from the time of this transfer to the time the pictures were to be taken he had had no occasion to open those containers and he knew of nobody else who did.

124. Under FOIA and from the Deputy Attorney General rather than the FBI I obtained several of the existing FBI photographs of this clothing that were not in the files of the Warren Commission. For some reason I cannot explain I was actually sent original photographs rather than copies. Legends were taped to them by "Magic" transparent tape. One of these is of the collar of the President's shirt. This particular picture, a much smaller print, has the identifying legend typed on the back.

125. The President wore specially tailored shirts. The pictures of it published by the Warren Commission make the cloth appear to have a series of individual solid stripes. These original and clear FBI photographs show that each of these broad single stripes is actually made up of three parallel stripes. As would be expected of so fine a specially-made garment, each set of stripes coincides perfectly where the two ends of the neckbadd meet for the collar to be buttoned. The button and the buttonhole line up perfectly. There are the ragged vertical slits about which Mr. Frazier testified before the Warren Commission without the aid of this picture to illuminate his testimony and with less than full fidelity. Although allegedly made by a bullet while the collar was buttoned closed, the slits do not coincide! The slit on the button side is entirely below the collarband. It can be seen to have two ragged areas, a smaller one to the left as the picture taken from the front is viewed, the right side as worn. The slit on the opposite side, the left as worn, is much longer and extends well onto the collarband about halfway to the buttonhole.

126. These facts create major evidentiary problems for the official account of the crime. The problems are compounded by the evidence of the knot of the tie. The

nick on it was at the very top of the left side as worn. There just is no bullet that could simultaneously cut through one side of the shirt below the neckband only and simultaneously nick the top of the knot only and that at the opposite extreme.

127. My request of the Archives was for four views only, to be photographed by its photographer. The fourth was for "A picture of the tie in place underneath the collar with the collar buttoned." While from the evidence without this photograph it is apparent the official account is a total impossibility, I wanted this photograph to depict the exact position of the nick on the knot in relation to the shirt collar. From the Warren Commission photographs it had to be at the very top, where the knot touches the top of the collar. Additionally, it is possible that the area of the nick might have been under the edge of the collar, which is undamaged. With the tie unknotted it was impossible to take such a photograph.

128. All this interrelates with the unauthorized change in the autopsy protocol which eliminated the statement that the Dallas doctors identified the wound in the front of the neck as one of entrance rather than exit.

129. This combination of facts also required the most precise and definitive tests such as those the results of which are sought. The alternative is leaving the assassination of a President an unsolved crime.

130. All contemporaneous accounts quote the Dallas doctors as specifying this was an entrance wound. Commission Counsel Arlen Specter pretended in his questionings before the Members that no texts or news accounts were available. The doctors' press conference was arranged by the White House press office. It makes and preserves transcripts. This one is stored in the LBJ library. I have a copy. The doctors are unequivocal. The statement that it was a front-entrance wound is repeated several times in the transcript. Later and in writing, the chief of police made the same statement, that the front neck wound was made from the front.

131. Great pressures were placed on the Dallas doctors thereafter. They were given to understand what was expected of them and that this consisted of restricting themselves to direct and limited response to those questions asked. More on this follows. Still more can be provided.

132. Dr. Charles James Carrico was the first physician to see President Kennedy in the Parkland Hospital emergency room. The first two nurses were Margaret M. Henchcliffe and Diana Hamilton Bowron.

133. Questioned about the removal of the President's clothing, Dr. Carrico testified it was "as is the usual procedure." (3H361-2) The usual emergency procedure

is to cut clothing off where speed is necessary.

134. Commissioner Dulles had not been cued in on the circumventions built into Counsel Specter's questioning. Mr. Dulles interrupted to ask Dr. Carrico about this front neck wound, "Will you show us about where it was?" Dr. Carrico testified while indicating, "There was a small wound here." To this Mr. Dulles said, "You put your hand right above where your tie is." (Emphasis added) Dr. Carrico confirmed this with "Yes, sir."

135. The two nurses first involved in the emergency procedures were deposed in Dallas, by the same Counsel Specter. No members of the Commission were present. Margaret Henchcliffe (6H139ff) testified to long experience with gunshot wounds, to have just preceded Dr. Carrico into the emergency room and to this front neck wound as one of "entrance." (6H141) Nurse Diana Bowron is one of those who wheeled the emergency room stretchers. (6H134ff) Her relevant testimony is, "Miss Henchcliffe and I cut off his clothing so treatment could be started.

136. Dr. Malcolm Perry, who performed the tracheostomy, is one of those who immediately described the front neck wound as one of entrance. He made the tracheostomy incision through it. In a 1968 interview with me, he described how, although he knew the President was irreversibly dead, his instinct was to make a cosmetic incision, along the lines of the creases of the skin so the incision, which would never heal, would not show.

137. On December 1, 1971, I interviewed Drs. Perry and Carrico at Parkland Hospital. Dr. Carrico told me there was no hole in the shirt or tie when he first examined the President. He first unbuttoned part of the shirt front to hear the chest. He confirmed that the bullet hole was above the shirt collar. He confirmed that clothing was then cut off to save moments that may be precious to life. He demonstrated with his own tie how it is cut off. This is as close to the knot as possible without getting slowed down in the extra thickness of the knot. The tie is grasped in one hand and pulled from the body while the cut is made with the other hand. A righthanded nurse would take the tie in her left hand and cut with the right. Because of the danger of injury to the patient from the scalpel, the collar button and the top of the shirt are unbuttoned. The top button remains on the President's shirt. Before the tie was unknotted, it was visible that this tie, too, was cut off as close to the know as possible without losing time in the extra thickness of the knot, exactly as Dr. Carrico described to me and as Counsel Specter did not ask.

138. Dr. Perry readily admitted that Dr. Humes understood him correctly to

have stated the front neck wound was one of entrance. The nurses had cut off the President's upper clothing before Dr. Perry reached the emergency room. He told me what had been a guarded secret, that before the doctors testified they were shown copies of the autopsy protocol by federal agents so they could conform with it. I am aware of no official record of this at best dubious practice. It was a form of intimidating the Dallas doctors. The pressures on Dr. Perry were particularly hard because he is the first of the Dallas doctors to have described the front neck wound as one of entrance.

139. As we talked he relived those unforgettable emergency room procedures. He had to look at this wound closely because it was where he was cutting with the scalpel. He described it as with a ring of bruising, "as they always are." This is true of entrance wounds only. Dr. Perry said this twice.

140. Dr. Perry also told me what the Warren Report and ~~hides~~ testimony hides, that he had been called in on the surgery of Governor Connally because he also was an expert on arterial injury. This had to do with the Governor's thigh wound, officially attributed to Bullet 399. The other doctors feared the fragment that caused it might be near an artery. To perform his medical function it was necessary for Dr. Perry to examine the wound itself and the X-rays.

141. He described the wound as much too small to have been made by a bullet. He demonstrated with his fingers that the fragment was less than a half-inch under the skin. His fingers indicated it had come to rest about three inches after penetration. He believes it was caused by a fragment, which is what the Dallas Police report on it states, and that fragment could not have come from Bullet 399. (Exhibit 11)

142. Dr. Perry has considerable experience with gunshot wounds. He is a hunter and is sufficiently skilled to reload his own ammunition. He has other and deep doubts about the autopsy protocol, describing it as incorrect. He signaled out for ridicule the Bethesda testimony that the bruise on the President's pleura might have been caused by the tracheostomy. He said that when he had learned of this bruising he had wondered whether it had been caused by fragmentation.

143. From the once-secret report of the Department of Justice's panel of experts (p.13), we now know that there was fragmentation in this area of the body despite the Commission's testimony that there was none and the repetition of this incorrect statement in the Warren Report. The three autopsy doctors also reviewed the autopsy film and filed a report with the Department. The Department kept it

secret, too. Their report (p.4) pretends to say there was no fragmentation in this region, which is what they swore to before the Warren Commission. This version is that the film "showed no evidence of a bullet or any major portions of a bullet." One still wonders how many minor ones - and how they got there if not from Bullett399.

144. The foregoing bears on the importance of the evidence in the still-withheld photographs, the absence of the reports on the relevant scientific tests and the absence of any record on what I learned about for the first time in the deposing of Mr. Frazier. He testified that he had directed that a study of the kind I made from photographs be made of the shirt itself. No such report has been provided.

145. There now is no possibility that Bullet 399 can be believed to have caused the damage to the front of the President's shirt and tie. They were subjected to spectrographic analysis. That spectrographic analysis showed no traces of any kind of bullet metal. From the official solution traces would have had to be of the copper-alloy jacket. Traces of copper were found on the back of the garments, according to Mr. Frazier's Commission testimony. From the available records there was no report explaining the absence of traces of bullet from the shirt front and tie, so the Warren Commission could understand the significances. We are to believe that with a Commission directed by the President to make this exhaustive investigation all that counted is whatever Mr. Gallagher had in his head. And that the Commission was not to be given the results of scientific tests in reports stating their meaning.

146. This proof that the damage to the front of the President's shirt and to his tie was not of ballistic origin and that both were caused during the emergency medical procedures, add still other burdens to be borne by the results of the scientific testing if anything is to remain of the official account of how the President was assassinated - that Lee Harvey Oswald alone killed the President.

147. Separate from the evidence that the President's front neck wound was caused by a shot from the front, which eliminates the possibility of its having been caused from the rear or by Bullet 399, there is the question of the five wounds Governor Connally sustained. What caused or could have caused them? Testing of the recovered fragments could not have shown Bullett399 to be their source.

148. All known fragments were not recovered. Some were lost in the cleansing of the Governor's wounds. At least one remains in his chest, another in his thigh. The total weight lost by Bullet 399 is about two grains besides what is cut off in the firing by the barrel of the rifle. More on this follows.

3/ ~~149. Separate from the evidence that the President's front neck wound was~~

149. The previously cited FBI Laboratory letter to the Dallas Chief of Police does not include the lead core material of Bullet 399 in the comparisons it reports and of which it says only that there is similarity. Nor is there the report of these comparisons with the unfired cartridge found in the so-called Oswald rifle. However, all the testing necessary for the comparison with Bullet 399 had been done. All that is missing is the expert opinion of the spectrographer who performed these and the other tests - his reports on this testing.

150. This parallels the absence of any expert opinion from the same spectrographer to account for the total absence of traces of bullet on the shirt-front and tie. Mr. Gallagher did not live or work in a vacuum. The opinion of the Dallas doctors that the front neck injury was from the front was widely broadcast before the corpse reached Washington, long before any of the tested evidence reached the FBI labs. It was all over the newspapers, radio and TV. If nobody in the FBI watched the around-the-clock reporting of nothing else on TV, the FBI does have and does watch and use news agency teletype machines. The letter to Dallas was not written until the next day.

151. From the long-withheld Department of Justice panel report on its expert reading of the X-says and pictures, now it is known that there was a previously unreported fragment 6.5mm in diameter below the wound at the back of the President's skull. (On p.11. No other dimension is given) This is not reported in the autopsy protocol. It was not testified to by the autopsy pathologists. They did testify to having examined those X-rays. What they did not testify includes that the same X-rays were made available for study prior to testimony.

152. From the same source it is now known that the point of entry of the fatal shot to the head was four inches higher than officially alleged (p.13). The account of the Commission is that this bullet exploded forward and out of the right side of the head only, creating a massive wound that extended to above the temple.

153. Although for years its existence was denied and the record itself was denied to me, I finally did obtain a copy of the receipt given by the two FBI agents present at the autopsy for what this receipt describes as "a missle." (Exhibit 12) The available FBI records contain no reference to it so there is no description of this "missle." It has not appeared in any of the known physical evidence. It is known that these agents left the autopsy with two minute fragments of bullet core metal recovered from the front of the President's head. These two tiny fragments do not make one "missle." On deposition Mr. Gallagher professed no knowledge of this

"missle" the agents delivered to the lab where he was to have performed his tests on it. He described a "missle" as anything that moves through the air. From his testimony those agents could have carried a cloud to the FBI for Mr. Gallagher's testing relating to the assassination of a president.

154. The five fragments recovered from the Presidential limousine are officially attributed to the explosion of the single fatal shot in the head. That all have a common source and that the two tiny fragments from the hospital both come from that source is an evidentiary minimum. We have obtained no statement in any form, whether or not a report or a "formal report," stating this evidentiary minimum. In my extensive examination of the Warren Commission's files there is no such document. There is not even a suggestion of this. The possibility or probability if not a positive statement is well within the capability of these tests. Unless all seven fragments plus the one of 6.5mm diameter all come from a single fatal bullet, the official solution to this serious crime is destroyed. Now we are to believe there is no such record, either. If this were the result of the scientific testing, what reason would there be not to have a forthright and complete statement of it in a lucid report? Essential as this proof was to the official solution that no such report has been produced does not persuade that the tests support the official solution.

155. The Warren Commission's testimony and the Department of Justice panel report (pp.10-11) agree that there is a distribution of dustlike particles of lead in the front of the right side of the President's head. The panel elected to describe these as extending from back to front. They extend just as much from front to back. Their existence and location are not normal from the design of full-jacketed military ammunition manufactured in accord with the Geneva Convention on humanitarian warfare, the kind allegedly used. Under the terms of that agreement military ammunition is to be designed to deter fragmentation to the degree possible. This is to avoid the most horrible of wounds and to permit survival from wounds more likely to be through-and-through.

156. Fragmentation into many dustlike particles is entirely consistent with ammunition designed for other non-military purposes. Dr. Perry is but one of many amateur experts and experienced hunters who told me this is common with some hunting and what is called "varminting" ammunition.

157. Whatever that 6.5mm. fragment in the back of the head came from and whether or not it is the "missle" the FBI agents receipted, it is not all that is

not accounted for in any of the FBI's or Warren Commission's known records relevant to these facts. There is no worksheet ordering any testing that can be attributed to either a fragment of 6.5mm diameter or anything else that could be this "missle." However, this combination, of many dustlike particles plus a ausbstantial remnant, is in accord with the design of ammunition for killing animals and not making through-and-through wounds. Such ammunition is designed to mushroom or explode or both on contact. The forward part of the bullet spreads out, comes apart or both. The back end remains as a stub to continue until its energy is expended. A possible explanation of the concentration of these 40 dustlike particles is expectable because they are so small. They thus lack the energy for deep penetration in even soft material like brain matter. There is no report setting forth such a possibility, no scientific evaluation given to the Commission by the FBI and no relevant record that has been provided to me. Also missing is any scientific report on the possibility or probability of the five fragments recovered from the limousine, the 6.5mm fragment at the back of the head and at the same time these 40 dustlike fragments all coming from a single bullet. If it is a fact that these 40 particles are indicative of ammunition opposite in design from military ammunition, that certainly is within the knowledge of the FBI's experts. It would be the kind of information essential in any solution of the crime and to the investigation of it by the Presidential Commission. This represents the kind of information required by the Commissioners and the lawyers who were their counsel. (The Commission had no investigators of its own.)

158. There remains the missed shot. It caused the minor wounding of a bystander, James T. Tague, from whom a separate affidavit is provided. Mr. Tague was standing within a few feet of the diametrically opposite extreme of Dealey Plaza from where Oswald is alleged to have fired all three shots of the official account.

159. During the limited depositions permitted it became apparent that the former FBI agents were going to be as uncooperative as possible. It was apparent that they were skilled in being uninformative from long experience in avoiding testimony of significance. With Mr. Gallagher it was an ever-failing memory, for all the world as though the assassination of a President and his quintessential role in the investigation were everyday affairs to be cast aside by the busy mind. In his case his allleged inability to recall was emphasized with accomplished histrionics. Each time Mr. Frazier was asked questions relating to whether or not certain tests were made or should have been made, he interrupted to make demands for the payment of

added fees as an expert witness. When he did not, AUSA Michael Ryan did, registering an objection that interrupted the flow of the questions and my counsel's concentration. Not once during the taking of the four depositions did the AUSA or the representative of the Office of Legal Counsel of the FBI, Mr. Emil Moschella, remind the witnesses that the taking of their testimony had been ordered by the court of appeals. When my counsel had been informed prior to the taking of the depositions that what to me are exorbitant and inappropriate fees were being demanded, I instructed my counsel to inform the former agents that I would pay the prescribed fees only, as I did, and if they were unwilling to testify openly and fully as ordered by the court of appeals they could refuse and we would present that question to this Court. Mr. Frazier nonetheless repeatedly interrupted to make such demands, as did Mr. Shaneyfelt. Mr. Frazier insisted on reading the transcript prior to signing and then not only did not do this but did not respond to a certified mailing from the court reporter. This finally led the court reporter to notify all counsel with an April 18, 1977, certification of the foregoing that concludes"Since all attempts to have the deponent read and sign his deposition have failed, this deposition is being filed without his signature." It is indecent to me that there was this spurious claim to being called under subterfuge and to entitlement to fees as expert witnesses when the matter in question is that of the assassination of a President and its official investigation and when the questioning was limited to the mandate of the appeals court. From the manner of these agents and from my personal knowledge of the evidence not still withheld, it does appear that they may well not have performed some tests for which there was apparent need simply because the FBI knew in advance that the results of the tests would show other than is required by the official account of the assassination.

160. Despite this, the witnesses did indicate the making of tests relating to which I have not received a single report. For all the testimony about the making of microscopic examinations, there is not a word in a single report along the line "Microscopic examination of this specimen shows that ...." followed by something along the line "The FBI Laboratory interprets this to mean ..." I have received nothing of this nature about any other scientific test, either. As noted above and as will be enlarged upon below, with the questioned bullet having a dozen elements and the core having nine elements, no reading on the two of the nine elements detected on spectroscopic examination is provided. Nor is any comparison with any of the other relevant samples. The simple worksheet, which specifies other examinations on

9/ ~~which~~ no reports have been provided, account for

which no reports have been provided, does not account for or indicate any evidentiary interpretation of the absence of the other seven elements. While it does state that what was detected "could be bullet metal," it was, from the Frazier deposition, no less likely to have been made by a wide variety of more common objects.

161. The overt antagonism and the personal behavior of Mr. Shaneyfelt were particularly offensive in such a proceeding. At one point he interrupted it to allege that I had libeled him in my writing and that suing me had been discussed by him and the FBI office of legal counsel. While in more than a decade I have received no word of complaint from any FBI agent of whom I have written, this interruption does serve to make it apparent that Mr. Shaneyfelt has knowledge of my writing and from this alone his claim for expert witness fees is a fraud.

162. To leave no such taint upon the record in this matter once that deposition was concluded, I informed government counsel that if Mr. Shaneyfelt would file suit against me I would waive the statutes of limitations. If there is one certainty in all of this matter it is that Mr. Shaneyfelt will not permit his work when his and my President was killed to be examined by one with comprehensive knowledge of the facts and of his work. The skills he practiced range from obliterating stripes in shirts to omitting heads where the evidentiary question was the meaning of the shadow cast by a nose. (Shaneyfelt Exhibit 23, 21H466) His photographic accomplishments with the pictures of the curbstone follow herein. He even managed to provide the Warren Commission with pictures of the President's other clothing that obliterated the pattern of the cloth.

163. For all of this, under date of March 29, 1977, Mr. Shaneyfelt billed me at the rate of $35.00 per hour "For professional services in the form of testimony in the matter of Weisberg vs. U. S. Department of Justice." (Exhibit 13) My response was to refuse to pay this bill, to return to his allegations that I had libeled him, to waive the statute so he could sue me and then to challenge him to sue. Having gotten his effort at prejudice into the record, this brave retired FBI agent fell silent. I have had no response.

164. Among the key evidentiary elements about which neither he nor any of the others deposed would testify is the feel and the appearance of the point on the curbstone struck by a bullet or a fragment of a bullet. Mr. Shaneyfelt personally supervised the digging up of that curbstone and its shipment to the FBI Laboratory. The diligence of the FBI in pursuing this essential evidence required that it be avoided for about nine months, until July 1964.

165. When all refused to testify to this it became necessary for me to attempt to pursue this by other means. This Court refused me the depositions my counsel and I consider necessary to meet what I regard as the mandate of the court of appeals in serving what it described as the interest of the nation.

166. The reason all these FBI experts refused to testify to the condition of that curbstone is obvious: The part struck by a bullet is visibly and tactually the smoothest part. Anyone who has fired rifles or pistols, as I have, knows this is not the expectable consequence of a bullet striking any object. This relates to the making of tests and the existence or nonexistence of reports thereon.

167. Aside from my own interest in the subject, an interest that has impelled me to devote more than 13 unpaid years to investigating it, there is this language of the court of appeals I believe imposes added obligations upon me: "The data which plaintiff seeks to have produced, if it exists, are matters of interest not only to him but to the nation. Surely their existence or nonexistence should be determined speedily on the basis of the best available evidence, i.e., the witnesses who had personal knowledge of events at the time the investigation was made... It must be done with live witnesses either by deposition or in court. Decades ago Dean Wigmore said that cross-examination 'is beyond doubt the greatest engine ever invented for the discovery of truth.' We think it time for the trial court to start the engine running, and thereafter to make detailed findings as to what the evidence adduced establishes."

168. When this Court accepted unsworn, misrepresentative and entirely misleading representations about what transpired in the taking of the depositions, then refused me the opportunity of responding, and then choked this engine before it could start to run, it confronted me with a Hobson's choice: to forget about my rights under the Act and all my efforts on this aspect of the subject alone going back more than 11 years and in this not meeting the obligation imposed upon me by the court of appeals or to do what was neither medically nor financially in my interest. (I plan no further writing on this subject.)

169. The actualities of the four depositions and denials by the government, extending even to copies of photographs of the evidence, limited my ability to pursue the only "best available evidence" to which I could have access, "the witnesses who had personal knowledge of events at the time the investigation was made." These witnesses were thus limited to the curbstone and the "missed" shot about which we have not received a single report, "formal report" or any other kind.

170. I was aware that death had eliminated Dallas County Sheriff J. E. (Bill) Decker, his Chief Criminal Deputy Alan Sweatt and Deputy Sheriff Eddy Raymond (Buddy) Walthers. Deputy Walthers was killed while I was in Dallas on an earlier visit and planned to interview him after having spent much of a day with then Chief Criminal Deputy Sheriff Sweatt. Mr. Sweatt was openly contemptuous of the FBI's and Commission investigation. He told me that, although he had been in charge of the sheriff's investigation of the assassination, he had not been interviewed by the FBI And was not a witness before the Commission. He was not a witness. (R498, List of Witnesses) His name is not mentioned in the text of the Warren Report. It is mentioned on one occasion only in the Appendix. That page (R809) fails to state what Mr. Sweatt told me, that Commission Counsel Specter refused to permit Mr. Sweatt to be present in his own polygraph room even as the guard the Sheriff required for Mr. Ruby. That page avoids this by stating that the Sheriff had "announced his intention of having" his own polygraph expert present when Ruby was examined. The crime committed by Ruby was a local, not a federal, crime. This Appendix to the Report gives no explanation for the absence of Mr. Sweatt. The account is so meager it does not state who the supposed polygraph experts were. Mr. Sweatt told me that when he was ejected from his own polygraph room it left no expert there, that the FBI agents who operated the polygraph were inexperienced with it.

171. However, it is this same Chief Criminal Deputy Sweatt who supervised the taking of the initial affidavits that were, without his identification of them, included in the Warren Commission's evidence. The same is true of the first available photographs.

172. Mr. Sweatt told me that he still possessed these photographs. He showed me where he had them stored. We discussed other elements of evidence in the absence of Deputy Walthers. When Mr. Walthers was murdered,while I was there, I devoted myself to other lines of investigation, partially set forth herein, because of the financial limitations that restricted the time I could then spend in Dallas.

173. Mr. Sweatt is not alone among those with "personal knowledge of events" I had interviewed on those occasions when in the past it had been possible for me to get to Dallas. He also is not alone among those who do not hide their disbelief in the official account of the assassination. In addition to those doctors already quoted, among officials only this open disbelief extends to the then chief of police, who after admitting his disbelief to me did so in his cited book, and the District

Attorney, Henry Wade, who is also a former FBI agent. Mr. Wade has believed from the first, as have the others for varying reasons, that the crime was beyond the capacity of any one person. Mr. Wade greeted me on the morning of June 14, 1977, with, "Well, when are you going to give me a case to take to court?" I believe the foregoing is relevant to explaining the resistance of the government in this instant cause as I have experienced this resistance to disclosure, going back to 1966. I believe it also is relevant to the existance or nonexistence of the records sought and to whether or not they should exist.

174. Having been in touch by phone and by mail with the other man injured during the assassination and knowing that he and others still possessed the "personal knowledge" of the appeals court's language, I went to Dallas on June 10, 1977.

175. In October 1975 I was hospitalized for what was diagnosed as acute thrombophlebitis in both legs and things. I have been informed that the damage is extensive and irreversible. One of the consequences is a steady diminution of my physical capabilities. Following that trip I required further medical attention. Since then I have been under added medical limitations. Initially I was permitted to walk only about a hundred feet at a time. As of the time of the preparation of this affidavit, whether or not surgery will be required is an existing question of which my doctors have informed me. This medical situation has delayed and interfered with my preparation of this affidavit.

176. While I do not attribute this medical reverse I have suffered or its potentially serious consequences to this Court, the trip to Dallas was required of me because of this Court's choking off of Dean Wigmore's engine before I could get it running.

177. While in Dallas I learned from Mr. Tague that he had made a contemporaneous record relating to himself, his observations, his minor injury and to others who also had personal knowledge. He also recalls the part of these unusual and historic events in which he was involved.

178. In his affidavit Mr. Tague states it was a mystery to him why all official Washington-based investigators ignored him, the fact that he was slightly wounded and what he knew about the so-called "missed" shot and its impact on the curbstone near which he was standing.

179. One of those I then sought out seeking evidence relevant to the existence or nonexistence of records sought in this instant cause is Tom Dillard, Dallas Morning News photographer. Mr. Dillard was in the motorcade from which he took

several other pictures used as Warren Commission evidence. The next day he and James Underwood, a television cameraman, accompanied by Mr. Tague and Deputy Sheriff Walthers, went to that point and took photographs of what all existing records of the period describe as a "chipped" place on the curbing or in similar language reflecting that some concrete was missing. An electrostatic copy of the brief account and of a picture Mr. Dillard then took are attahhed to Mr. Tague's affidavit instead of the less legible copy he had preserved. These copies were made for me at the Dallas Morning News from its library clipping. The caption is headlined "CONCRETE SCAR." The brief text reads,"A detective points to a chip in the curb on Houston (sic) Street opposite the Texas School Book Depository. A bullet from the rifle that took President Kennedy's life apparently caused the hole." The contemporaneous words I underscore are "scar," "chip" and "hole". Two photographs provided to the Warren Commission by the FBI, obtained from the Archives, and two its photographer took for me are attached as exhibits to the deposition. The FBI prints are those of one frame of the Underwood footage and the best of Mr. Dillard's three pictures.

180. Because the same picture as provided to the Warren Commission by the FBI's photographic expert Lyndal L. Shaneyfelt is badly overexposed, which means deliberately overexposed, I asked Mr. Dillard to prepare a clear print for me from his negative. Mr. Dillard searched for quite some time without finding that negative. He found two others of which he did make copies for me. Of the missing negative Mr. Dillard said, "I guess the federales never returned it."

181. Mr. Dillard, too, was aware of the apparent lack of official Washington interest in the evidence held by this scar or chip or hole caused by a bullet or part of a bullet during the assassination. His explanation may account for the end to the long delay in the Warren Commission's expressing an interest to the FBI and asking the FBI to make the investigation the FBI avoided making on its own initiative. This was not until the eighth month after the assassination. Mr. Dillard told me he had met Barefoot Sanders, the United States Attorney for Dallas, at a function. Mr. Dillard asked Mr. Sanders why nothing had been done to investigate this mark of ballistic impact during the assassination. Mr. Sanders had his assistant, Martha Joe Stroud, write the Warren Commission. As recently as the National Archives' June 29, 1977, letter to me it claims not to have that letter. It has records referring to the letter.

182. After correspondence back and forth that followed further communications from Mr. Sanders' office the FBI in Dallas said it could not find this mark on the

curbstone. It attributed the disappearance of this scar, chip or hole to the erosions of weather and street-cleaning equipment. As a result, S. A. Shaneyfelt was sentfr from Washington to retrieve that wounded curbstone. His means of locating it were simple. He obtained the help of Mr. Dillard, Mr. UUnderwood and their pictures and with the further assistance of background intelligence he did locate that spot. He then had this section of the curbing cut out and flown to the FBI lab in Washington. There, this late in the investigation, it was subjected to microscopic and spectrographic analysis. I have been given no report on either. On deposition Mr. Shaneyfelt testified to personally taking macrophotographs of that piece of curbing. The National Archives reports there are no such photographs there. The FBI has provided none. Mr. Johnson was present during that and the other depositions during which the curbing was used. His then verbal assurance to me has on my request been repeated by the Archives in writing. There are no enlargements of the damaged area of the curbing.

183. All the former FBI personnnel questioned during the depositions refused to describe the appearance of that spot on that curbing as of 1977. I examined it shortly after the issuance of the Executive Order of October 31, 1966. During these depositions it appeared as it had then. That condition is depicted in other pictures Mr. Shaneyfelt took and that were published by the Warren Commission. In the prasnce of my counsel, Mr. Lesar, and of Mr. Johnson in May 1975 I supervised the taking of two photographs of this same curbing so that they might be as clear as possible and so that they would include rulers by which distances could be measured.

184. Mr. Shaneyfelt also photographed it in Dallas preparatory to removing it to the FBI Laboratory in Washington.

185. There now is no scar, chip or hole in Mr. Shaneyfelt's and subsequent pictures. By photographic intelligence and precise measurements set out impressively for the Commission, Mr. Shaneyfelt did locate and did obtain the right piece of curbing. It now has no chip, scar or hole. To my personal observation it had no chip, scar or hole when I first examined it toward the end of 1966. Where this visible damage was, at exactly the point the Dillard and Underwood photographs show a portion of concrete missing and show the lighter color of the previously unexposed concrete, there now is a perfectly smooth surface. It is smoother to the touch and darker to the eye rather than lighter. It is not of the same shape. It is unblemished. That this ~~repair had~~ repair had been made by July 1964 is visible in the photographs Mr. Shaneyfelt took then.

186. Mr. Tague's deposition taken by the Warren Commission's counsel Wesley J.

Liebeler states that prior to this deposition the mark had disappeared. Mr. Tague states this was in May 1964. He swore to the Warren Commission that when he went back to photograph that mark to show his parents when he was about to visit them the mark no longer existed. The Warren Commission also knew that Mr. Tague had taken photographs. Knowing that the mark had disappeared and that Mr. Tague had taken photographs, neither the FBI nor the Commission asked Mr. Tague for his photographs. They have since disappeared.

187. Mr. Tague ttestified to his surprise when Warren Commission Counsel Liebeler was aware of his having taken these pictures. It was mose surprising still when Mr. Liebeler asked Mr. Tague if a picture he then showed Mr. Tague is one that Mr. Tague had taken. As he testified, Mr. Tague did not know that anyone knew he had taken these pictures.

188. As noted above, once the curbstone was in Washington it was subjected to scientific testing. The work order specifies microscopic and spectrographic. If there is such a thing as an FBI "formal report" on either examination, none has been provided in this instant cause.

189. What was provided is copies of records printed by the Warren Commission in which Mr. Shaneyfelt emphasizes over and over again that the witnesses said there was no mark of any kind, only what he called a smear, and the few sentences of meaningless comment referred to above on the Jarrell-Ash testing. That Mr. Dillard did not say there was no mark of any kind is apparent from the above-quoted caption on his published pictuse, the negative of which "the federales" did not return. This is also apparent from Mr. Dillard's taking the initiative in calling that entire matter to the attemnion of the then United States Attorney in Dallas. That the lettem prompted by Mr. Dillard's initiative also has suffered a mysterious disappearance from the Archives and that no effort to replace it has been made is not consistent with the testimony of the Archivist on his practices when he appeared before a House of Representatives committee toward the end of 1975. Although this letter is among the records to have been delivered in this instant cause and although its existence is disclosed in other records, I was not even informed of its mysterious disappearance until I asked for it.

190. Mr. Tague and others with personal knowledge were not interviewed by Mr. Shaneyfelt. He produced no personal statements. He does not report asking for or obtaining any evidence from the police or the sheriff's office despite the existence of FBI records establishing that sheriff's personnel did have personal knowledge.

Mr. Shaneyfelt's long experience as an FBI agent did not prompt him to ask the Dallas newspapers for any contemporaneous accounts of the appearance of the point of impact on that curbstone when all the records disclosed a visible mechanical damage Mr. Shaneyfelt then argued about rather than investigating. An obvious example is the wording of the caption on Mr. Dillard's picture, quoted above, as compared with Mr. Shaneyfelt's representation of what Mr. Dillard allegedly said. At the time in 1964 Mr. Shaneyfelt made his representations, there was every reason to believe they would remain secret. There was no "Freedom of Information" Act. My examination of the Warren Commission executive session transcripts discloses that the Commission had decided against publication of its evidence until pressure from the White House compelled it to.

191. The FBI lab worksheet brief note quoted in full above also says "(see attached for location)." As provided to me by the FBI there is an attached sheet of paper on which there are two sketches. The upper one fails to orient the spot from top to bottom. It does not identify the curve of the curbing where it bends from Vertical to horizontal. It does locate the spot by measurement from each end of the curbing and by the measurements of the spot, three-quarters of an inch in the vertical direction and an inch in the horizontal dimension. No shape is indicated. This gives the impression that it is of regular shape if not rectangular. It required no microscope for so incomplete a sketch. (The entire worksheet was introduced into evidence during the depositions.)

192. The lower sketch represents direction and angle. At the end of the line indicating the angle from the horizontal surface of the curbing, there is an arrow to show direction. The angle is given as 33 degrees. If this were projected backward in the direction from which Oswald is alleged to have fired all the shots, he would have had to have been suspended in the air, twice or more as high above the street as the roof of that building.

193. However, the direction shown by the FBI's sketch is the opposite direction. For this to represent the origin of the shot that caused the scar, chip or hole in depicted in the contemporaneous picture, it had to have originated from somewhere inside the sturdy structure of the Triple Underpass. That structure is solid enough to carry a wide expanse of railroad trackage and all that crosses on it.

194. The piece of curbing Mr. Shaneyfelt removed to Washington is not identical in appearance with the piece depicted in the contemporaneous pictures Mr. Shaneyfelt had.

195. Going along with the visible alteration of the "scar" on the curbstone, the FBI's own sketch showing the opposite from the supposedly correct direction, the detecting of only two of the nine elements in the bullet's core and the total absence of any reading on those two elements detected on the spectrographic examination, which in turn is not compared with the readings made of those elements in the other samples tested, there is no report on the meaning of all these facts when combined. Each individually is from an FBI record. Each individually rebuts a basic part of the official accounting of this assassination. Collectively, if they do not tell the full curbstone/Tague story, they are an overwhelming rebuttal of the Warren Commission's accounting of the "missed" shot. As shown above, the FBI early in the investigation took a different course. It ignored this missed shot. It ignored Mr. Tague. It filed its supposedly definitive five-volume report ordered by the President without mentioning either this missed shot or one of the President's known wounds. That it now represents it did not prepare <u>any</u> report on this set of facts or any part of them is as horrendous a self-accusation as the FBI can make.

196. As the FBI knew that the Dallas doctors had stated that the President was shot from the front before it dispatched the ludicrous November 23, 1963, letter to Chief Curry now represented as the only "formal report," so also did it know before then of the Tague wounding and of the Dillard picture. The Tague wounding was immediately broadcast, first by Patrolman L. L. Hill on the police radio prior to subsequent news broadcastings. (In fact, the FBI transcribed the recordings of the police radio broadcasts for the Warren Commission.) The Dillard picture was transmitted by the wire services. From the very first the FBI knew that Mr. Tague was wounded and that the probable cause was a chipped-off piece of concrete. Mr. Tague attests that it never sought him out. Now we are also to believe, contrary to a vast amount of evidence in the FBI's own files, that when Mr. Shaneyfelt and the FBI Dallas Field Office could find no missing piece of concrete this was not the subject of any kind of testing. We must also believe there was not any kind of regular or scientific report to account for the filling in of a very obvious hole in the concrete. We are also to believe from the absence of any reports that when the FBI had supposedly satisfied itself that there was no concrete missing and thus there was not this explanation of how Mr. Tague was wounded, there was no real investigation to determine how he was wounded. Aside from my own examinations of Warren Commission records, and for the early stages of the investigation they were diligent, regular and persistent, I have been assured by the Archives that there is no such record. In this instant

cause the FBI has provided none. One does not need the training and indoctrination of FBI agents to know that this does not represent an investigation of any kind, less that of the assassination of a President.

197. From what I have received from the FBI in this instant matter, it is necessary to believe that all the bulllets fired in the assassination were magic bullets. The one that injured the curbstone has to have been magical in more than atoning for this with a concrete bandaid. It also has to have possessed the great magic of divesting itself entirely of the copper-alloy jacket in which it was encased. Considering that there was nothing but air between its alleged point of firing and its point of impact, this is not an inconsiderable feat of magic. From the time it was fired it had about a fifth of a second for this marvel before it was compelled to practice other magic on the concrete curbstone. It would seem that if the FBI Laboratory could file no scientific reports on all its scientific examinations, the least it could do was report on this magic.

198. There is other magic relevant on this point. There is no Warren Commission record, no record provided by the FBI reporting that in May 1964 Mr. Tague did take home movies of the once-scarred curbstone. Mr. Tague swore to the Commission that he did not know that anyone knew he had taken such pictures. How the Warren Commission knew remains as mysterious as the healing of the concrete and the disappearance of Mr. Tague's movies.

199. Faced with a failed memory, arrogance and obduracy during the depositions following more than a decade of plain stonewalling by the FBI, it became apparent to me, prior to the time this Court shut down the evidentiary engine before I could get it running, that other means of bringing information to light were necessary. These had to be within the financial and medical limitations by which I am restricted.

200. My interpretation of the expression of the court of appeals in C.A. 75-2021 is that I am to seek to establish whether or not the records sought exist. My counsel confirmed this interpretation to me.

201. From prior experience I believed this Court would be unmoved by the further proof of FBI false swearing in the depositions. It had been unmoved by earlier proofs, except to admonish my counsel and me that we could be sued for stating this truth. At the calendar call of July 15, 1975, rather than heeding the proof of official false swearing, this Court stated, "you might get yourself faced with a lawsuit." (Transcript p.12) Among what I take to be other than expressions of detachment and believe can be

taken as disclosure of bias, this transpired at the close of the first calendar call of May 2, 1975:

> THE COURT: I assume Mr. Weisberg, at least for the time being, has other means of support, doesn't he, Mr. Lesar?
> MR. LESAR: Well, his financial circumstances are not good, but that is a situation I do not expect to change, in any event.
> THE COURT: Good enough to hire you.
> MR. LESAR: He has had my services without any fee.
> THE COURT: All right. Okay. May 21..... (Transcript p.12)

202. That I have engaged in this long and unpaid labor for commercial gain and that from this instant cause any remunaration is possible for me is gratuitous and baseless. It is also entirely contrary to fact, if it were in any way material. Most use of FOIA is by commercial interests, as the Department of Justice has testified recently. As of May 2, 1975, I had lived almost a dozen years in debt from this work and was still in debt from it. When this Court so spoke of me I was ill with pneumonia and pleurisy and was unable to be in the courtroom. I have never been in the courtroom in a suit I purchased myself. For years I have worn and was able to wear only those given to me by others when they went out of style.

203. Confronted with the realities set forth above and the need to seek to establish the existence or nonexistence of tests and the reports on tests and having long personal experience with the FBI's unfaithfulness to fact, I undertook another means of seeking to establish whether or not other tests should have been performed and whether or not they should have been the subject of reports. Of necessity this involved the relevant fact of the crime.

204. The effort I made was possible because of the controversy swirling around the House of Representatives committee on assassinations. Despite this Court's contrary assumptions and statements about it and me, I have been public critical of this committee, based upon its record of other than serious methods, its irresponsibility and its publicity methods that are repugnant to me.

205. Earl Golz is an experienced investigative reporter on the staff of the Dallas Morning News. I knew him. I phoned him and suggested several interviews, lines of questioning and the probable answers to these questions. Mr. Golz did as I suggested. He also interviewed others with first-person knowledge of fact of the assassination of the President that is relevant to whether or not there should have been tests and reports on those tests. One of his news accounts, attached as Exhibit 14, received nationwide attention, including in Washington, after it appeared the morning of April 21, 1977. This was the day before the status call of April 22.

206. Mr. Golz interviewed Dr. Robert Shaw, one of Governor Connally's surgeons,

as set forth above. He asked Dr. Shaw questions not asked of him by Commission Counsel Specter as well as some that had been asked and answered only to be disregarded in the Report.

207. In Dr. Shaw's expert opinion, Governor Connally was not struck by any bullet that struck the Presidant. Here I note this is what the initial investigative reports of both the FBI and the Secret Service state as quoted above.

208. Dr. Shaw stated that the bullet that had been displayed to him, Bullet 399, "was not consistent with" what he would expect from his knowledge of Governor Connally's wounds.

209. What he knew had happened to Governor Connally's wrist he stated "would have deformed a bullet badly." His expert opinion of Bullet 399 is that it "just didn't seem to have lost enough of its metal substance."

210. He recalled that the Commission "never questioned me about" his belief that Bullet 399 had not inflicted all of Governor Connally's wounds and that it had not first hit Presidant Kennedy and then inflicted all of the Governor's wounds. (In fact, Dr. Shaw and his colleagues had suggested this voluntarily when not asked it directly, as set forth below.) He stated that this single-bullet theory "was being pushed very hard by a young lawyer" who "evidently was able to sell this thing."

211. In stating that "from the standpoint of the governor's wounds I never felt the single bullet theory was not a good one," Dr. Shaw offered his own belief, that those two fragments found in the Presidential limousine where Governor Connally had fallen over on his wife probably came from the shattering of a bullet that did strike the governor.

212. My review of the testimony of the doctors before the Warren Commission, made after the appearance of this story, confirms what Dr. Shaw said. It is in the testimony that the Commission ignored, testimony I believe should have caused detailed testing and the stating of results by the FBI.

213. All the doctors testified they did not credit the single-bullet theory. All the Dallas surgeons in their testimonies said what Dr. Shaw told Mr. Golz, they had seen more metal in the governor's wounds than could be accounted for as having come from Bullet 399.

214. Dr. Gregory testified exactly as Dr. Shaw stated about the bullet that caused the governor's wounds not having first struck the President. "I would believe that the missle in the Governor behaved as though it had not struck anything but him." (6H103) Twice on one page Dr. Gregory testified to disbelief in the single-bullet

theory. (4H173) On succeeding pages Dr. Shaw testified that, on the basis of weight loss alone, Bullet 399 was disqualified from its conjectured career. (4H113,114)

215. When Mr. Dulles asked Dr. Shaw if "two bullets" could have wounded the Governor, Dr. Shaw testified, "Yes; or three."

216. The three pathologists who performed the autopsy on the President confirmed the Dallas doctors' testimony on the fragments and Bullet 399. The phrase used by Dr. Humes is "I cannot conceive." (2H376) His testimony was confirmed by Drs. Pierre Finck and J. Thornton Boswell.

217. Dr. Gregory had, in fact, testified in accord with Dr. Shaw's opinion that fragmentation of a bullet that wounded Governor Connally accounts for the two fragments recovered from where he was seated. Dr. Gregory testified, "Here was our patient with three discernible wounds and no missile within him of sufficient magnitude to account for them, and we suggested that someone ought to search his belongings and other areas where he had been to see if it (sic) could be identified, or found rather." (4H125) The Governor's clothing had an entirely different history that follows below.

218. In support of Dr. Shaw, Mr. Golz also interviewed the nurse who was in charge of the operating room on November 22, 1963, Audrey N. Bell, and a Texas State Police officer who guarded Governor Connally, Charles W. Harbison. Neither is mentioned in the Warren Report. Neither was a witness before the Commission in any form, not even by reference to newspaper stories.

219. Nurse Bell earlier told Mr. Golz that, instead of the three fragments recovered from Governor Connally's body in the official account, her recollection is of four or five fragments being held in a container. Mrs. Bell did state this is her recollection after 13 years and that she now has no proof of her recollection.

220. Following appearance of this story, Mr. Golz heard from Trooper Harbison. His recollection is of being given a second set of Connally fragments and of personal delivery of them to an FBI agent in the hospital doorway.

221. There are no records produced in this instant case bearing on what this policeman guard or the operating-room supervisor say. If their recollections are correct in any degree, there are unaccounted fragments delivered to the FBI and no results of any testing of any such fragments. There are no worksheets yet provided making any reference to any such fragments.

222. There are references to two of these fragments only and to Nurse Bell's alleged role in conveying them in a series of FBI paraphrases of interviews of November 22, 23 and 29, 1963, in seven consecutive pages of the Commission's fifth numbered

file, CD 5, pp.152-8. (Attahhed as Exhibit 15) In no single instance are any of these FBI FD-302 form paraphrases accompanied by a first-person statement by the witness.

223. From long and extensive experience with such FBI methods, I state unequivocally that the FBI has an abhorrence of first-person statements and that in its investigations of the assassinations of the President and Dr. King, when it was compelled to obtain such statements, the agents, not the witnesses, wrote them out. From this extensive personal examination of FBI records, I estimate to total 50,000 pages and of which I have considerably more than half this number in my possession, I further state that these statements are commonly angled to eliminate what the FBI did not want and are not uncommonly so erroneous that on reading them the less timorous witnesses corrected them. A relevant illustration is the case of Mrs. Carolyn Arnold, in which the FBI stated a time other than she gave. It later wrote out a statement for her in which it again gave the wrong time. She corrected it. Mrs. Arnold, who was not a witness before the Warren Commission as those confirming witnesses she named also were not, placed Oswald other than in the alleged sniper's nest at the time of the crime. The alteration of the time she specified altered the meaning of her evidence, which tended to be exculpatory.

224. The infidelity of these CD 5 FBI records does relate to one possible explanation of the absence of what is sought in this instant cause: an instant FBI cover-up and nonperformance of the responsibilities imposed upon it by the President and expected of it by the nation.

225. On page 152 of this unpublished file the then administrative assistant to the Governor is represented as saying the impossible. He is also represented as having knowledge he did not have and could not have. What would confound any further inquiry by other than the FBI is the adding to this of an entirely wrong location of one of the Governor's wounds, "the governor's left shoulder." The direction of the shot that caused that wound, "from the rear," is outside this assistant's knowledge. It describes the bullet that caused this wound as "the spent bullet," although a considerable added career is attributed to it by the FBI.

226. The wound was actually under the <u>right</u> armpit. Mislocating it on the left side is consistent with the allegation that this wound came from a bullet that exited the President's neck.

227. This page is not alone among these FBI reports in stating that only a single fragment was recovered from the Governor's body by his surgeons. It next identifies still another Texas Highway Patrolman as the one to whom a fragment was

given for delivery to the FBI. It does not even give this police officer's full name, identifying him merely as "Nolan." (It was Bobby N. Nolan of the Tyler district.) Next it begins the construction of the "single-bullet" theory by stating that this same bullet wrecked the Governor's wrist. However, it does report what the doctors did state, that only "a piece" of a bullet "came to rest in the governor's left thigh."

228. Although this FD-302 is only two dozen lines long, it was not dictated and typed until the next day. On the next day (p.153) the same FBI agent, J. Doyle Williams, "corrected" an error not included on page 152. He also does not refer to having made any error. Instead, in less than 10 full lines of typing, he "notes" that his FD-302 "reflected the metal fragment in question removed from the Governor's body was lodged in the Governor's left thigh." At no point had he reported the fragment as coming from the thigh. He then reiterated that there was but a single fragment "in question," that it "was actually removed from the Governor's right arm according to Dr. Gregory and Nurse Bell and that no surgery was performed in connection with the left thigh." The latter statement is both untrue and misleading. But it advances a "single-bullet" theory.

229. There was surgery there, but not to remove that fragment. Page 154, by the same agent on November 23, quotes Dr. Gregory incompletely and inaccurately on this: as having said only that "no surgery was performed to remove same," this fragment, and that X-rays only "indicated the possibility of a small fragment imbedded in the left thigh." The "disposition" of the allegedly single metal fragment is attributed to "Supervisor Audrey Bell" by Dr. Gregory. This at least confirms her account of having had "custody" and responsibility, as she states.

230. The FD-302 of an interview with her (p.155) limits her personal knowledge to an undescribed part of the surgery, "performed" by Drs. Gregory and Shires only. This unnecessary imprecision is complicated by attributing to this unidentified surgery the removal of a single "right arm" fragment. Dr. Shires was the surgeon on the thigh, Dr. Gregory on the wrist. The operations were performed at the same time. This brief FD-302 concludes by stating "Miss Bell stated she did not know of her own knowledge of any other metal fragments which have been removed from the Governor's body during surgery." It is not only the recent statements of the avoided witness Miss Bell that characterizes this statement - it is the admitted existence of the three fragments removed during the surgery when she was the supervising nurse and the custodian of these fragments.

231. FBI Agent Williams interrupted the rewriting of history while it was

happening to leave no chain of possession in this sequence of reports on even that solitary fragment. His page 156 quotes Trooper Nolan as having turned this single fragment over to the Dallas police.

232. Next there are two pages (157 and 158) of the FD-302 on what was delayed for a week, until November 29, the obtaining of "a copy of an X-ray negative ... which reflects an X-ray of the left thigh of Governor Connally which was taken on November 22, 1963." (sic) With it was a written report by the hospital administrator. The report is quoted, not attached. The administrator provides a precise locating of the actual fragment, not the mere possibility of it attributed to Dr. Gregory on the day after the X-raying and the surgery. This location and description begin with reference to more than "an X-ray." There were at least two. It states the reading is of "AP and lateral films of the distal portion of the left thigh." "AP" means anterior-posterior. "There is," the administrator wrote, "one density that remains constant in both films." It is located to decimals of a centimeter. After referring to the difficulty of "precise measurement," it estimates "that the greatest length in the AP projection is about 3.5mms and the greatest width about 1.3 mms. Measurements of the density in the lateral projection reveal the greatest length to be about 2 mms and the greatest width to be about 1.5 mms. The long axis of the metallic object is oriented generally along the axis of the femur." SA Vincent Drain concludes by reporting that "This copy of an X-ray was delivered to the FBI Laboratory on November 30, 1963."

233. Having memory-holed one of these X-rays the FBI also memory-holed all the evidence both X-rays held. It is not beyond the skill of the FBI to fashion a fragment of bullet core of this approximate dimension and weigh it. The problem with providing proof that this was done is simple - the entire official account of the assassination of the President would be jeopardized if not destroyed by it.

234. I have been given no FBI Laboratory reports that include any estimate of the weight of the fragment remaining in Governor Connally's chest or of the one in his thigh. Yet there were only a few grains of metal said to have been missing from Bullet 399. I believe it is apparent that any serious and complete investigation of such a homicide in which there was no positive eyewitness identification of an assassin and in which all indications are that the crime was beyond the capacity of any one man required such FBI Laboratory procedures. These procedures also could be helpful in evaluating close questions that might present themselves in other FBI Laboratory work. One of these is whether or not the various items of evidence did have or could have had common origin. These kinds of tests also have long-established and court-recognized

definitiveness as negative evidence. Truth also requires negative evidence be known.

235. One of the other facts set forth in the medical reading of these X-rays is that the length of the fragment was parallel with the thigh bone and that its greatest measurement was also parallel with the thigh bone. With the later theorizing that Bullet 399 went into the Governor's leg backward only, as it also allegedly made a shambles of his wrist while smashing it backward only, there is no FBI record of any nature produced in this instant proceeding demonstrating how this was possible or how a fragment 3.5 mm long could be accounted as having come from the length of Bullet 399. Other evidence proves this is impossible.

236. To now I have received no single record relating to any FBI testing of any nature based on or caused by any of the established medical facts, those obtainable or obtained from the medical witnesses and not avoided as well as those obtained and then avoided.

237. The previously mentioned Dallas Police General Offense Report on the shooting of Governor Connally (Exhibit 11) states that after the wrist was damaged "A fragment continued, entered the interior portion of the left thigh,causing a flesh wound." This report of the immediate local police investigation is identical with what Dr. Perry had not been asked and what he told me, that this wound was caused by a fragment, not by an entire bullet. Exhibit 15 also so states.

238. The Warren Report gives the dimensions of the Governor's thigh wound as "two-fifths of an inch in diameter." (R93) It does not go into treatment, which is set forth in the hospital's Operative Record on this surgery. This November 22, 1963, operative report states that "the bullet tract was explored." Then "the necrotic fat and muscle were debrided down to the region of the femur." After this surgery to remove matter from the wound, it was washed and closed. This is consistent with what Dr. Perry, who was not questioned about this, told me.

239. The FBI stated there was no surgery in this wound (Exhibit 15)

240. More questions relating to this evidence dealing with the Governor's wounds, to the possibility of FBI withholding evidence and to whether or not there should be tests and results not yet supplied are raised by existing FBI correspondence. The depositions show that letters signed by Director Hoover were often drafted by the laboratory agents involved. On April 16, 1964, the Director signed such a letter about the damage to Governor Connally's clothing. (Attached as Exhibit 16) There is no real description of the holes in the back of the Governor's shirt in this letter. This letter states (p.2) what in fact is not true: "the holes corresponding to the

three holes referred to above were found in the shirt." These three holes "above" are in the coat, one in the back, one in the front, one at the edge of the right sleeve.

241. The Commission had the Governor's clothing. It says of the back of the shirt, "An examination of the Governor's shirt disclosed a very ragged tear five-eighths of an inch long horizontally and one=half of an inch vertically on the back of the shirt near the right sleeve 2 inches from the line where the sleeve attaches. Immediately to the right was another tear, approximately three-sixteenths of an inch long." (R94) This clearly states there were two holes in the back of the shirt but only one in the coat. Because two holes in the shirt do not "correspond" with one at that point in the coat, this letter does not represent fact faithfully.

242. According to all the Commission's evidence, the Dallas medical personnel were experienced in gunshot wounds. What is represented by these many evidentiary questions like the two holes in the back of the shirt and only one at that point in the jacket troubled the Governor's doctors, as set forth above. But instead of the FBI launching the immediate search for bullets and fragments of bullets, it totally ignored these urgings of the doctors. For an experienced police agency, it did not require doctors to tell them "that someone ought to search his belongings and other areas where he had been," as Dr. Gregory testified. This long and deliberate avoidance of the clothing accounts for both the destruction of some of the evidence it held as well as the long delay, from November 22, 1963, to April 1, 1964, for the examination of the clothing.

243. In contrast, the President's clothing was flown to Washington and examined immediately by the FBI.

244. Other evidence establishes that it was no secret that hospital personnel gave the Governor's clothing to Congressman Henry Gonzalez when nobody else wanted it. It was then in an ordinary bag. This clothing remained in the Congressman's closet for months, until he gave it to Mrs. Connally. Not unpredictably, when Mrs. Connally saw these bloody garments she "cleaned" them, the word of this Hoover letter.

245. Also not unpredictably, as a result of more than four months of FBI avoidance of this essential evidence, "Nothing was found to indicate which holes were entrances and which were exits. The coat, shirt and trousers were cleaned prior to their receipt in the Laboratory, which might account for the fact that no foreign deposits of metal or other substances were found on the cloth surrounding the holes." (Exhibit 16, p.2) In all my search through thousands of records and in what has been provided

3/ [illegible]

in this instant cause I recall no single reference to any effort by the FBI to locate and/or obtain the Governor's clothing.

256. If in unaltered state it was known that the clothing held precious evidence.

247. This deliberate avoidance of essential evidence did not, however, destroy all the evidence held by the clothing. There remains, for example, the fact that, coinciding with two holes in the shirt, two bullet fragments were found, in the words of Dr. Gregory's urgings, "where he had been" - exactly where he had been when hit. Here it is noted that the Hoover letter, Exhibit 16, does not refer to two holds in the back of the shirt.

248. Mr. Hoover gives the size of the hole in the back of the coat as 1/4" by 5/8". His avoidance of the evidence remaining in the shirt is so careful he provides no dimensions of what is represented as a single hole in its back.

249. The hole in the coat is exactly half the size of the larger of the two holes in the shirt. (R94) Neither corresponds in size with the size of the wound itself. This is not given by the Commission, which merely refers to it as of "small size." (R92, attributing this to Dr. Shaw) Dr. Shaw's measurement of this wound in his two-page "Operative Report" is "3 cm." This is one and a quarter inches - not "small" compared with a bullet having a diameter of about a quarter of an inch or the holes in the shirt and the coat.

244. No FBI report of any kind has been provided in which it explains, reconciles or in any manner addresses these differences in the sizes of the holes in the garments, between them and the size of the wound, and the presence of two holes in the shirt where there is but a single hole in the coat and a single wound in the body.

250. For all the boasted intensity and extent of the FBI's investigation of this crime, in the Report and all 26 appended volumes, and in all my searchings of the estimated 300 cubic feet of records in the National Archives, I recall no addressing or explaining of the disparity between two holes in the shirt and a siggle wound and a hole in the coat. I recall no explanation except the one recently provided by Dr. Shaw. It is the result of my prompting of Mr. Golz in an effort to assist this Court and to seek to establish whether or not other reports should or do exist.

251. In this connection I note the language of the remand decision the last paragraph of which states that this Court should make "detailed findings as to what the evidence adduced establishes." While this Court was sufficiently explicit in refusing to hear any evidence, and this at a time when it did not have all the depo-

sitions, I nonetheless regard the presentation of evidence by whatever means remains possible for me as my obligation in response to the quoted language of the remand decision. No Laboratory or other report addressing the immediately preceding paragraphs, the simple arithmetic, two fragments equal two holes, has been provided in this instant cause.

252. However, the day after Dr. Shaw's opinion became known this Court foreclosed me from taking other evidence in court and by deposition as it is within my capabilities. (Calendar call of April 22, 1977)

253. Further bearing on this and the immediately preceding paragraphs I note that other and related disparities exist with the angles attributed to this shooting and these holes and the Governor's wounds. There is no laboratory or other report in which the extreme and significant differences are reconciled, analyzed, examined or reported in any way.

254. In Exhibit 16, over Mr. Hoover's signature, the FBI reports that "It was determined from the locations of the holes in the coat and shirt that a bullet entering the back, passing undeflected through the body and leaving the front, would have passed through Governor Connally at an angle of approximately 35 degrees downward from the horizontal and approximately 20 degrees from right to left if he was sitting erect and facing forward at the time he was shot."

255. In validation of this "determination" no laboratory report or report of any other kind has been produced. Aside from the vertical angle, which is addressed below, the Governor was sitting directly in front of the President. The bullet is alleged to have been going toward the left as it allegedly exited the President's neck. If Governor Connally "was sitting erect and facing forward at the time he was shot," there simply is no means by which a bullet already to the left of the center of Governor Connally's chest could have entered it at its right extreme.

256. There is no FBI report presented to establish the conjecture of this letter, that the alleged bullet was "undeflected." All the evidence is to the contrary, that it smashed an appreciable portion of his fifth rib from the inside and then exited from the other side.

257. While measurements from the clothing alone cannot be definitive, this FBI conjecturing of angle is in conflict with all other evidence, including that of the FBI. There is no Laboratory or other report that reconciles, examines or in any way explains these considerable differences or relates them to the existing evidence.

258. Bullet 399 is also alleged to have been undeflected as it transited the President. The vertical angle as given by the Commission is just under 18 degrees, whereas that through the Governor is given at over 25 degrees. (R107) Nothing but a few inches of air separated the two bodies. Mr. Frazier testified to a 35-degree angle. (5H72) Other federal agents represented this same angle as of 45 degrees. (Commission Exhibit 689, 17H346) The correction made by Dr. Shaw of still another angle in another chart made by federal agents is in Commission Exhibit 680. (17H337) On that chart the agents placed the point of entry too high and that of exit too low, Dr. Shaw testified. His correction, measured with a protractor, differs from all other attributed angles. Once again there is no FBI report, from the Laboratory or of any other origin, explaining, reconciling or authenticating any of this.

259. The angle of 45 degrees, obviously wrong, coincides with what the FBI initially stated (Exhibit 1), that the angle through the President was not less than 45 degrees. On page 18 the FBI states, as of December 9, 1963, more than two weeks after the crime, that "Medical examination of the President's body revealed that one of the bullets had entered just below his shoulder to the right of the spinal column at an angle of 45 to 60 degrees downward, that there was no point of exit, and that the bullet was not in the body." (This explanation magically coincides with the appearance of the magic bullet.)

260. As represented by other unnamed federal agents in Commission Exhibit 689 this knowingly incorrect angle is projected to show an alleged possibility of hitting the Governor's thigh. With Dr. Shaw's correction in Commission Exhibit 680, the "undeflected" conjecture of the Hoover letter is without basis. This bullet could not have come close to the Governor's thigh and his thigh wound is unexplained.

261. There is no FBI Laboratory or any other report or analysis of any kind setting forth how a bullet leaving the Governor's chest at an angle of 25 degrees could dip and then turn, first going downward to his thigh and then changing course inside it to run parallel with it as is required by the operative report.

262. There likewise is no FBI Laboratory or any other report or analysis of any kind showing how an undeflected bullet could leave the President's body at an angle of 18 degrees and thereassume an angle of 25 degrees into, through and out of the Governor's body.

263. Bearing on the existence or nonexistence of records and on Exhibit 1 herein as quoted above, there is an unpublished FBI report in the Warren Commission's records.

(attached as Exhibit 17) It quotes the Naval Hospital pathologists as stating that "this bullet worked its way out of the victim's back during cardiac massage performed at Dallas hospital prior to transportation of the body to Washington." Then, after noting the delivery of what became identified as Bullet 399, it states, "The above information was received by communication from the Baltimore Office, dated November 23, 1963. I have never been able to obtain a copy of this "communication."

264. While the Warren Commission was to conclude this was an error in the original belief of the autopsy doctors, I know of no record in which the FBI has retreated from its statements that the bullet found under never-established conditions at the Dallas hospital, Bullet 399, did not go through President Kennedy's body. This, of course, presents even more persuasive reason to believe there has to have been other and very careful and extensive testing and comparisons of the available evidance and explicit and comprehensible reporting thereon because it leaves the President's anterior neck wound and all of Governor Connally's wounds without any explanation at all.

265. The original FBI locating of this wound below the shoulder in opposition to that of the Warren Commission, which placed it in the neck, is not without substantial support in records that were withheld for years. The Warren Commission never had the official death certificate referred to above. In it the President's own physician, Admiral George B. Burkley, states this "wound occurred in the posterior back at about the level of the third thoracic vertebra." (Exhibit 7) This is about six inches down on the back. At this point it coincides perfectly with the holes in the back of the President's coat and shirt.

266. The death certificate changes all conjectured angles. It makes impossible any of the FBI and Commission conjectures relating to the Governor's wounds. No FBI Laboratory, "formal report" or any other kind of report has been produced in which the Laboratory agents or any others address either the meaning of the death certificate as it applies to the tests the results of which are sought, to any tests required by it or to what it does to all the conjectures represented as the solution to this crime.

267. Under any circumstances the investigation of the assassination of a President would not be an easy investigation. It is the most sensational of crimes. By its nature a crime of this magnitude is certain to foster suspicions and rumors without end, often without reason. From these considerations alone the standards imposed upon its investigators exceed the exacting requirements of justice in ordinary homicide cases. This became an even more difficult investigation in many ways. In turn, this

required the observing of still higher standards in obtaining, evaluating and reporting on the essential evidence. ~~One of the~~

268. One of the causes of greater difficulty is the fact that with hundreds of onlookers there is no single person who could identify any shooter or any weapon.

269. The FBI immediately complicated its problems by what in my extensive inquiries, which include exceptionally extensive examination of many thousands of FBI and other once-suppressed records, is its normal practice in crimes that are certain to attract major attention. It craves favorable attention and it seeks it. It immediately seizes control of the investigation and then it withholds evidence - from even the United States Attorneys and the Department.

270. When the President was killed Texas law only was violated. The FBI immediately took possession of all the evidence possible. This includes items of evidence the results of the testing of which are sought in this instant cause. The degree to which it did this is illustrated by the post-midnight demand of November 27, 1963, by FBI Agent Vincent Drain on Chief Curry. The FBI Headquarters wanted Oswald's property and the one remaining empty rifle shell the Dallas police had held for its own investigation. (7H404)

271. The FBI moved immediately - when it had no authority - to freeze out the Secret Service. Among federal agencies the Secret Service alone then had legislated jurisdiction and responsibilities. An illustration of this not in the Warren Report or its 26 appended volumes has to do with the purchase of the alleged assassination rifle. The FBI beat the Secret Service to the company that sold it. The FBI then ordered the officials of that company to talk to no one. It took much of the day after the crime for the harried Secret Service to learn that the FBI had seized this evidence, yet had not shared it. (Secret Service Chicago Office report of 11/23/63)

272. This FBI domination extended to the Secret Service being foreclosed from investigating leads bearing on the possibility of Lee Harvey Oswald having had associates in New Orleans. My personal investigations of this produced information not in the available official records. This information can lead to the FBI, to which they do point.

273. Limiting myself on this to the official records in my possession originated by the Secret Service, I state that the FBI New Orleans Field Office, on learning of the Secret Service investigation of Oswald's literature and its source, foreclosed the New Orleans Secret Service. The FBI in New Orleans phoned the FBI in Washington.

The FBI modestly refers to its Washington headquarters as SOG, representing Seat of Government. FBI HQ, claiming exclusive jurisdiction, then was able to direct the Secret Service headquarters to order its New Orleans office to suspend this investigation.

274. As one result relevant, simple and easily performed investigations do not exist in the official records.

275. Further related to this literature noninvestigation, the FBI never told the Warren Commission the identification of a fingerprint other than that of Lee Harvey Oswald lifted from some of Oswald's literature the FBI obtained from the New Orleans police. There thus remain this and other mysteries relating to who besides Lee Harvey Oswald was giving out "his" literature, a handbill he did not obtain personally from the local printer. When the New Orleans Field Office indicated Oswald had not obtained this literature from that printer (Commission Exhibit 1410) these field reports were rewritten into a Dallas FBI memorandum. It said exactly the opposite with such persuasiveness the Warren Commission repeated it. (R291)

276. In New Orleans Oswald also used what had been the address of an anti-Castro group organized and financed by the CIA. The Commission was never able to obtain a copy of this use of that address from the FBI. In the last moment it obtained a copy from the Secret Service.

277. Many similar illustrations are available. In recent years open grumbling by local authorities is less uncommon. The thrust is that the FBI moves in to grab the publicity. In the most recent case of this of which I know from being in that studio, the Governor of Tennessee told a nationwide TV audience on June 15, 1977, that the capture of James Earl Ray, who had escaped jail, was jeopardized by the publicity-seeking FBI agents who moved in and did seize nationwide attention. In fact, the FBI had nothing to do with the recapture of Mr. Ray.

278. Once the FBI takes this control as in the investigation of the assassination of the President, it assumes added obligations. This is especially true where it preempts local authority as it did in Dallas and in Memphis. In neither case did it provide local authority with all the information it had. In both cases it withheld deliberately. This also is true of the prosecution of Jack Ruby, to my personal knowledge. With special reference to test results of the kind sought in this instant action, what it did supply did not provide either the basis for a competent direct examination of the expert witnesses nor even by any remote suggestion any means by

which the local prosecutors could confront cross-examination. I state this also from personal knowledge, from thousands of pages of once-secret records in my possession.

279. What this means in such cases is that nobody but the FBI knows what the scientific evidence means or can mean. In practice this means that all others are dependent on the FBI and the FBI controls what can be testified to or known. An illustration of this is the previously cited case of the ballistics evidence in the King assassination, where a competent independent expert testified that Robert Frazier's sworn statement is not true. He was not challenged or even disputed by the FBI or anyone else.

280. In the Presidential assassination we are now told that required tests were not made and thus there are no reports. In the King assassination the FBI did not even test-fire the alleged murder weapon. This is an ordinary, easy and inexpensive procedure. The FBI's supposed explanation is that no point would have been served. This has been directly disputed in open court by a qualified technical expert, as stated in the paragraph immediately preceding.

281. In the Presidential assassination and relevant in this case, we know that the shells from which all the bullets in the crime were allegedly fired had all been chambered on earlier occasions and not only in this weapon. We have been given no report on the comparisons of these shells with each other and the intact bullet, Q8.

282. We are told on deposition that some tests were not made to preserve the historic value of a cartridge. Not a tiny smidgeon, one of microscopic size, could be removed for the performance of tests the results of which we do not have. Yet at the same time the historic specially built vehicle in which the Presidential party rode into this great tragedy was rebuilt in haste. This destroyed the evidence it held and eliminated its use in the essential reconstruction of the crime. It was a unique vehicle. Dubious as are the official claims relating to that one bullet of all those gyrations and its causing all seven nonfatal injuries, giving these claims any possibility of credibility depended on this unique vehicle to the exclusion of all others being used in that reenactment.

283. To my personal knowledge and from my personal experience, the record of the FBI in these matters and in this instant cause is one unworthy of presumptions of truthfulness or of good faith. It lies, sometimes under oath. I have obtained under court action in another case internal records in which on the highest levels it is reported that ignoring my requests under FOIA had been ordered. Earlier it had assured that court it had no record of my relevant requests. When the initial request

involved in this instant cause reached the FBI, it also was not complied with. It reached Mr. Frazier, among others. On deposition, he testified to knowledge of it and to ignoring it. When I then filed an FOIA complaint, a Laboratory agent with no first-person knowledge swore to an assortment of disasters that would befall the FBI if it complied with the Act. These included destruction of FBI law-enforcement capabilities and the exposure of its informers. All by making available the results of nonsecret tests. A total defense would have been an affidavit swearing that the records sought did not exist.

284. Those agents of first-person knowledge who retired after the filing of the request in this instant cause then had not retired. As no affidavit was supplied by them in the first case, so also was no affidavit supplied in this case until after all had retired. This is not a record justifying trust. It is a record in which the FBI's sworn word, where responsive, is commonly untrue. We thus have three contradictory sworn versions relating to the testing of the specimen Q15, two contradictory ones from the same agent and a third version from a retired agent. There are other such sworn contradictions.

285. From extensive personal experience in examining so many thousands of FBI records not previously examined by other than officials, I am familiar with its creating a "deniability" posture in which the wrong person executes an affidavit despite the existence of records alleged not to exist. From records I received recently in another case I have both the false affidavit by the wrong affiant and the records proving this false swearing. FBI HQ wanted the false affidavit filed and it was filed.

286. In this affidavit I have sought to show this Court that there is proof of the making of tests reports on which have not been supplied; that other tests of which we have been given no results were required to have been made; that known repositories of such reports, including the field office of origin, have not been searched at all; that some of the records provided as test results are ludicrous; that reasons given for not performing certain tests simply cannot be believed; and that it can reasonably be expected that if the FBI met its obligations after the President was killed it performed many more tests than indicated and that if anyone outside the FBI lab were to use the results of those tests reports had to have been supplied.

287. I have also provided proofs of the destruction of evidence that admittedly was the subject of tests on which we have no reports. Two examples are the unknotting of the tie, where the knot was the essential part of the evidence; and the curbstone, which had its wound repaired during the months the FBI avoided it, leading to a

meaningless representation of a test of the scab, not the wound.

288. I have produced new evidence that required the making of tests and the stating of results. One example is the misrepresentations of the FBI regarding the injuries to Governor Connally and the damage to his clothing, together with other relevant medical evidence ranging from the reading of the X-rays, on which no reports have been provided, to the medical opinions, on which no reports have been provided, where individually and together tests and the stating of the results of those tests were required in a real investigation.

289. I have produced new evidence relating to the Governor's thigh wound. This shows it was not caused as alleged, requiring stated tests and reports not provided.

290. I have produced new evidence regarding <u>all</u> of the President's wounds, <u>all</u> requiring the explicit stating of the results of those tests that were made and also requiring tests of which there has not been any record provided.

291. I have produced new evidence of the crime itself with regard to the President's wound in the front of the neck, the one the FBI originally tried to ignore. I have produced new evidence that the damage to the front of the President's shirt and the damage to the tie were not from a bullet. I have produced proof of the ordering of tests relating to this, yet I have received no record of these tests, neither worksheet nor report. The tests now known for the first time to have been made of those areas of this clothing required further reports also not provided. (The FBI is the only apparent culprit in the destruction of the knot of the tie after it removed the sample of ~~cloth~~ cloth for testing.)

292. I have produced new proof relating to the fatal wound showing it was not where officially represented. Relating to this I have produced a receipt the FBI signed for "a missle" it obtained for testing. I have received no report - not even a worksheet.

293. I have produced new proof of a large fragment of bullet in the President's head not referred to in any FBI record I have ever seen or had provided in this instant cause. It is the only large fragment that can with certainty be said to have caused the President's death, even to have been in his body. Again there is no report on any testing of it. No worksheet, no report. Whether or not it is the aforementioned "missle" of which the FBI seized possession and of which not another word has ever been heard. This assumes even more significance when considered with the proof that without a single piece of evidence to be tested that was proven to

have been inside either body the FBI failed to test any of the recovered ballistics samples for human residues.

294. Use of the FBI's work in the investigation of the assassnation of the President was not by the FBI. It was for a Presidential Commission. Reports were essential to this Commission's functioning. The absence of such reports as are sought in this instant cause can be taken to mean that the FBI set out to prevent the functioning of the Commission; to control what the Commission could and could not do; and to ordain its conclusions.

295. The Commission came to recognize and to fear this very early. When I finally obtained the long-withheld transcript of the executive session of January 22, 1964, it showed that the Members stated this. It also stated that the FBI wanted them to adopt without question what the FBI said and that if they raised questions the FBI would tell them it was noam of the Commission's business. Then the Members decided to destroy this secret record of their fears and incapacities.

296. This is the real FBI in its relations with a Presidential Commission.

297. One issue before this Court is whether this will be the real FBI in perpetuity.

298. My personal experience with it in numerous other FOIA matters is that my easily met requests going back to 1969 have not yet been complied with. From my personal expeeience any compliance with the Act by it in such political cases can be expected only under compulsion and then with difficulty and endless delay.

299. The absence of reports is not because the FBI went on an economy binge when the President was killed. It also is not because the FBI avoiding making records. I have personal knowledge of the amount of paper the FBI generates. It astounded me to learn that any agency of the responsibilities of the FBI would waste so much time in utterly useless record-making. Its practices in this regard are clear in my recent examination of about 20,000 pages of to now withheld records in another matter. When an irrational or unreasonable letter was written to the Director, it was not ignored. There was a searching of the FBI's files to determine if there was a record on that person. These records made and kept extend to the saving of earlier irrational or unreasonable letters from the same person. No letter at all friendly to the Director went without response, but not until after consultatinn with the files. Only then was a written recommendation made on whether or not to respond. When newspaper clippings reflecting opinion were sent to Washington, as they were in great volume,

each contained a comment on the prior attitude of the paper and/or the writer toward the Bureau and/or the Director. The FBI keeps files on all kinds of writers. Recently I obtained from it a copy of a minor article of a decade ago about me in a minor weekly paper published near where I lived. It keeps files that enable it to give the Director an instant reading on writers and publications and publishers. Once again written memoranda on whether or not a letter should be sent, and why. When messages were received from the field offices containing information deemed worthy of consideration by higher FBI echelons, those messages were needlessly but regularly rewritten to appear to come from one of higher rank. It also was not uncommon for there then to be no change in the language of these memos from the language that reached Washington. From the sheer volume of the pointless and useless records that were the practice of the period in question, if there are not reports that are relevant in this instant cause and that remain withheld, it is not because the FBI was reluctant to make records.

300. Such records should exist. It was the obligation of the FBI to inform the Presidential Commission. The manner of informing is by providing written reports. The reports sought in this instant cause are the basis for the beginning of any real investigation. They are essential to the establishing of the body of the crime. Without such reports as a beginning point, no real investigation was possible.

301. Whether or not others agree with my opinion, based on an investigation duplicated by nobody else in time or depth or the information it has yielded, I believe that the official solution to the assassination of the President is no longer tenable. There is no question but that an overwhelming majority of Americans, by every known measurement, including repeated polls, are not satisfied with either the solution or the investigation. I believe from my experience and my knowledge of the investigation and of the evidence it produced that the real reason the reports sought in this instant cause have not been produced is because they do not support the official account of the crime.

302. This is a suit for public information, for records. The Act under which it is brought requires a good-faith search with due diligence. The subject matter is the results of scientific tests as incorporated in reports. The defendant unilaterally opted a substitute, the so-called "raw materials," work-papers and the like. Few worksheets have been produced, fewer than are referred to. In all of this I have not received a single piece of paper than can fairly be called a report. Unless

Mr. Frazier swore falsely to the Warren Commission, there were reports of the nature sought in this instant cause. Yet not one has been produced.

303. By far the greatest percentage of records produced are those for which I did not ask. They were then represented as compliance and misrepresented to present me as somehow ungrateful. They relate mostly to the neutron activation testing of paraffin casts of Oswald's hands and face made by the Dallas police. However, if they are a fair sample of the amount of paper generated by such testing, then as they relate to what I did request under FOIA it should require file cabinets to hold all that paper.

304. For years the government failed to file an affidavit stating on the basis of first-person knowledge that the records sought did not exist, a total defense under the Act. The government has not once stated that the records I seek should not exist. Between the sworn assurances of Mr. Frazier to the Warren Commission and the absence of any claim that the records sought should not exist, there remains the presumption that from my long experience in such matters is a reasonable presumption, such records do exist and are not provided. One of the possibilities is that they are not filed in the Laboratory but are elsewhere. Dallas, the office of origin, is an example. On deposition Mr. Frazier testified all reports were sent there. No affidavit has been supplied stating that the Dallas files have been searched. This alone is ample proof of the opposite of good faith or due diligence.

305. I have not designed this affidavit to try the facts of the Kennedy assassination. To the degree I appear to have done this, it was forced upon me by the government. In this very proceeding it has accredited me as it has accredited no other person of whom I know, as knowing more about the assassination investigation than anyone employed by the FBI. I have drawn upon this knowledge and expertise to present evidence of the crime that addresses the need for the making of tests, whether or not such tests should have been or were made and reports incorporating the results prepared.

306. Based on the expertise the government itself has voluntarily bestowed upon me, I offer the opinion that if the representations of the government in this matter are true, if in the face of all the need for tests to establish the basic fact of the most terrible of crimes, and if in the face of the facts set forth in this affidavit the FBI prepared no such reports, the name of our capital is Byzantium, not Washington.

307. Prior to the filing of all the transcripts of the depositions and only

two days after the last of those permitted was taken, this Court ended my taking of depositions, as I was directed by the court of appeals. This Court did so despite proffers of proof by my counsel. (Transcript pp.1-3) It then interrupted my counsel to entertain the government's unsworn, unsupported and factually incorrect representation of what the depositions show. (Transcript pp.3-8) When my counsel sought to present testimony under oath, this Court refused. (Transcript pp.3,12) Instead, it confessed a prejudgment against me reached without having received all the existing evidence: "My temptation was to enter a 60-day order of dismissal, giving you 60 days to come in and reopen if you could show good cause." Instead, it accepted the government's proposal and gave it "30 days to file a dispositive motion, and assuming that will conclude the case, you will have an opportunity again to relitigate in the court of appeals, which you have successfully done in the past." (Transcript pp.12-13)

308. The government was to provide an affidavit. (Transcript p.6) It has not.

309. It was to "itemize" those "documents which the FBI has produced." (Transcript p.7) It has not.

310. When my counsel offered testimony on the existence of tests the results of which have not been provided, this Court refused that, saying I could do it in an affidavit. (Transcript p.14)

311. Without all the evidence before it, while refusing other evidence and prior to the affidavit it stated I could supply, this Court held "we have reached the end of the rope in this case." Having found evidence unnecessary and irrelevant, this Court then addressed repeated false swearing and the more than a decade of official stonewalling in these words, "the Government has gone out of its way, as far as I can see, to accommodate you and Mr. Weisberg." (Transcript.p.12)

312. The Court was even-handed in closing all off. It thanked government counsel only. (Transcript p.14)

313. Despite this Court's aspersions, I am neither a man of means nor in a position to profit from this case, were it my intention, as it simply could not be when it represents more than a decade of officially frustrated effort.

314. The cost of hhe depositions was burdensome for me. I am without regular income. If this Court had told me in advance that it would rule without the depositions and without permitting me to complete them, I at least would have been able to consider whether the costs and time of proceeding could be justified for me.

315. When I did not know if I could pay the costs of taking the depositions,

I could not in good faith specify all in advance. However, after the first calendar call following the remand, my counsel and I did discuss this with the Assistant United States Attorney, at his request. We did indicate that, depending on factors beyond our control, we would be willing to take more depositions than we have. Those my counsel identified to this Court on April 22 are among them. The Assistant United States Attorney then did not object.

316. My work is little understood. It is not like that of those who seek cheap sensations and pursue whodunits. My work is a large study of the basic institutions of our society in time of great stress. It is the lamentable thrust of my work that our institutions have failed in those great stresses that have been the subject of my studies. I regret that a federal district court has not provided an exception to this tragic if not dangerous rule.

317. At my age, in my medical and financial conditions, from experiences both painful and extensive and with the decade-long history of this case, telling me that I "have an opportunity" to "relitigate in the court of appeals," to which I have been three times already, is a Catch-22.

318. There is another part of my work, explicit only on the few occasions of my being before collegiate audiences. I encourage the young to strive for rectification when society's institutions fail, regardless of the apparent odds. Although there are times I can barely drag myself around, this Court having given me a choice between accepting institutional failure and dragging myself still again, I will not accept or become part of institutional failure.

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HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 28th day of July 1977 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires _____

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NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND