FILED: AUGUST 23, 1977

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.

Deficiencies of the WC Report.

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 or 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 amd 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, 1964 (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 underscored 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 J. 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 Archives 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.

Note - copy (might use)

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 or 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 all 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 in a 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, Q9, 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. Although 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 through the 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 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." The 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)

Evidence missing

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 possession 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 neckband 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

What Hoch's work is worth is for the FBI

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 t ranscripts. 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 i

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 knot 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 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 singled 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 Bullet 399.

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 Bullet 399 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.

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

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 statute 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 tactically 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.