UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v. C.A. 75-226

UNITED STATES DEPARTMENT OF JUSTICE and U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,

Defendants.

AFFIDAVIT OF HAROLD WEISBERG

My name is Harold Weisberg. I reside at Route 12, Frederick, Md. I am the plaintiff in this action.

1. This affidavit is in support of a Motion to Reconsider. In it I also include new information relating to genuine issues of material fact, new information showing that there has not been compliance with my FOIA requests, that the required searches have not been made.

2. My qualifications as a subject expert include the assurances of the defendants in this action that I am "perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I."

3. From the time of its remand decision, I have been guided by the words of the court of appeals, that the data I seek to have produced "are matters not only of interest to him (me) but 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." (emphasis added) The appeals court stated, "Certainly plaintiff must do so." Prior to delivering this, what I regard as a mandate to me, the appeals court discussed five "demands" it identified as material facts in dispute. It said also that these were "not all of the factual areas which are in dispute." It said it listed those five areas of dispute to "indicate that summary judgment was clearly inappropriate."

4. "The wit nesses who had personal knowledge of the events at the time the investigation was made" is a broader directive to me than a formulation like "Those who participated in the investigation" or "a few retired FBI laboratory agents." Accordingly, I have sought to inform this Court, first by the depositions of an FBI special agent and three former special agents whose retirements coincided in time with this FOIA request in which they were all involved by prior work or other ways. It had been my intention to proceed in an orderly manner, to do what I understand the appeals court directed me to do as best I could do it within my limitations.

5. I do it without personal, selfish or commercial purpose to be served or, in fact, even possible. I am attempting to serve what the appeals court found to be "of interest ... to the nation" under conditions that make the effort contrary to personal interest, at the cost of work I now will never be able to do and at a financial cost that is burdensome for me.

6. The adverse conditions under which I initially undertook to meet this obligation have since become more adverse. These unfavorable conditions include these that are medical, physical and financial. I also am 64 years of age and without regular income.

7. As my affidavit of July 28 sets forth in more detail, this Court appears to have decided without evidence and contrary to fact that my purposes are financial gain and that somehow obtaining what I seek in this action will enrich me financially. This is neither true nor possible. I have already arranged to give away all my papers and records of all kinds pursuant to a commitment that predated the appeals court decision but is entirely in accord with it. I have begun to deposit my records without any remuneration in a university system, to be freely available to the nation. My financial condition is fairly represented by the fact that for the prior calendar quarter my gross income was less than $650.00.

8. Beginning in early 1975 I suffered a series of serious illnesses. In October 1975 I was hospitalized with what was diagnosed as acute thrombophlebitis in both legs and thighs, resulting in permanent and serious circulatory problems. While I was engaged in seeking further first-person information about the "events" referred to in the appeals court decision, arterial problems in addition to those in the veins were diagnosed. I prepared my July 28, 1977, affidavit, hereafter my "prior affidavit," under conditions that severely limited even my walking. My

physical capabilities are reduced enormously. I require more rest. I cannot now drive my car to Washington. I may not keep my legs down for more than brief intervals unless I am walking. I am required to type and write with my legs horizontal. I do not have ready access to my own files. I am not able to consult with counsel in person except under unusual conditions. I was not able to see him during the period in which I prepared the prior affidavit nor will I be able to see him while preparing this one or prior to its execution. My work also is interrupted regularly by the requirement that I stop every 20 to 30 minutes and walk around. When weather permits, I am to walk more than this outdoors so the blood can return from my lower extremities. In practice, this is hourly. To come back from where I was physically at the time I prepared my prior affidavit, I have spent as much as four hours a day walking. I am confident this Court will recognize these as serious limitations and intrusions into work and concentration.

9. So there can be no further misconstructions or misinterpretations and no doubt that even prior to the court of appeals remand I was engaged in exactly what it states serves the interest of the nation, I inform this Court that all those records I have obtained in this action, the few that relate, albeit not in responsiveness to my request, and the majority, those I specified I did not request, I gave away to others prior to doing any writing about any of them. If and when I receive those other records that from my personal knowledge remain withheld and are within this instant cause, I will give them all away prior to depositing them in the archive referred to above. In making this added assurance to this Court, it is my purpose to leave no basis for reasonable doubt that I have no personal gain in mind, that none is possible, that my efforts represent personal sacrifices that as a first-generation American I want very much to be able to continue far into the future, whatever the future may be for one of my age and medical problems that are beyond remedy or repair.

10. Time alone makes it impossible for me to make a real search of my files and to present copies of all relevant records to this Court. Should this Court later desire copies of records to which I allude, I will provide them.

11. My experience in this field is extensive, greatly more so than that of any other person of whom I know, including FBI agents. My files also are more extensive than those of any person I know or know of. They are, to the best of my belief, more extensive than the combined files of all the few who are

responsibly involved in the same subject. I cannot give this Court the total number of once-secret records of the Warren Commission, the CIA, the FBI and other agencies that I have obtained and studied. I can indicate both the size of these files and the magnitude of the number of records I have read by stating that in a single case I have and have read in excess of 25,000 pages. These include records comparable with and similar to those sought in this instant action.

12. In its Opinion this Court conjectures about what it designates as FBI "practice," having been misled by its trust in the depositions of the former FBI agents and having been denied demeanor evidence, as well as a testing of its credibility. Their testimony was not full, not forthright and not truthful.

13. I have knowledge of the actuality of FBI practice with regard to the distribution of the reports of the FBI Laboratory from having obtained a very large number of unexpurgated samples of this in another case. It is the regular practice to distribute memoranda, reports and other written communications throughout the top FBI hierarchy. Some of the copies of original records I possess contain dozens of initials and bear the initial routing directions showing this. Some records bear the names of 10, perhaps more, officials to whom separate copies are sent. In an effort to withhold this intelligence from me in this matter, such records have not been provided. Instead, I have been given copies with such names obliterated from them by masking. More on this withholding follows.

14. I have not yet been given copies of any of these records distributed elsewhere within the FBI.

15. To show the Court the extent to which this withholding persists and the extent of the dispute as to genuine issues of material fact related to compliance, I provide a few of the many available illustrations.

16. There came a time when, to be able to inform this Court of his delivery of records to me, after the end of the working day the Assistant United States Attorney hand-delivered to my counsel an envelope of records. They were not accompanied by any receipt, inventory or covering letter describing them. My counsel was told and told me they are the records of ERDA.

17. Those records are, from the Gallagher deposition, required to be duplicated in the files of the FBI. It has not provided copies of them. As the Opinion states, a few deliberately withheld records were provided "unwittingly."

18. Many of those pages of records were printouts and tapes that were not

of paper from the Dallas Field Office in this instant cause, not from those compiled there under the direction and supervision of retired Special Agent Robert P. Gemberling, is more than a material fact about which there is a genuine issue. It is irrefutable proof of noncompliance and of the deliberateness of the noncompliance. Frazier's deposition confirmed my prior knowledge, which is what led to his being so questioned. Gemberling now is on the lecture and TV circuit, asking $1,500 plus generous and first-class expenses for each public appearance. He has unlimited access to what continues to be denied to me despite an effort to obtain these records now more than a decade old.

21. There is no evidence before this Court in which the government states that all known files were searched. I have sought this information without success. All we know is that John W. Kilty, an agent who has sworn that his prior affirmation to what is relevant to compliance was a false affirmation, states that he searched some laboratory files. To his knowledge and to the knowledge of the department, this was a deliberately inadequate search. Aside from the records of the higher echelons to which copies are sent and from which nothing at all has been provided, I state, without stating that it is the full extent of my knowledge, in Headquarters alone there are these files that should be searched in compliance and about which there is no affidavit of there having been any search at all:

No. 62-109060, Assassination of John F. Kennedy;
No. 62-109090, Liaison with the Warren Commission;
No. 105-82555, Lee Harvey Oswald.

22. So that this Court can better understand the obfuscation that is built into the FBI's filing systems, I state that my FOIA requests are filed under a "100" number. That is reserved for what to the FBI is "Internal Security." In those files there are records stating that "it has been approved" that my FOIA requests, including this one, not be complied with. These records include the approval of the then Director, in his own hand, "OK. H."

23. From November 29, 1963, on <u>all</u> of the work the results of which are sought in this action was for the Warren Commission. The relevance of a search of the File 62-109090, even the existence of which was not disclosed to this Court by the FBI, is obvious. Yet we have not been informed, by affidavit or otherwise, of any search of it.

24. That the FBI was the investigative agent of the Presidential Commission and not either its master or in charge of the investigation is established by the

Warren Report itself and by its reprinting of both the executive order establishing the Commission and the White House statement thereon. They leave no doubt that the Commission was to have all of the FBI's work. One of the statements of this is "all evidence uncovered by the Federal Bureau of Investigation." (Emphasis added to White House statement of November 29, 1963, quoted from page 472 of the Warren Report, hereafter R472.)

25. That the FBI withheld from the Commission has not been attested to by anyone on behalf of the respondents. This makes a search of the liaison file even more important.

26. On the other hand, if the FBI did withhold from the Warren Commission, then there is motive for continuing withholding and misrepresentation in this instant cause, to hide the fact that it withheld evidence from the Presidential Commission.

27. In fairness to the FBI, I state that early on the Commission's staff did detect such withholding. These records are filed at the National Archives with the subject a euphemism, "Information Breakdown." One of those who wrote such a memorandum is Staff Counsel Charles A. Shaffer.

28. In the foregoing I intend a partial response to the language of the Opinion at the bottom of page 10, sufficient to show "whether there is any genuine issue as to the existence of reports and other materials plaintiff Weisberg seeks." The specifications of the foregoing paragraphs include "reports" in addition to those the existence of which I have already established and "other materials" that have not been provided. One of the many material facts that remain in genuine issue on this is the Court's presumption on "reports" that Special Agent Paul Morgan Stombaugh did not file the report of the study he was directed to make although retired Special Agent Robert Frazier testified on deposition that he had directed that this be done and that to his belief I had been provided with a copy of it.

29. It is the position of the Opinion that I was limited to the five areas enumerated by the appeals court and to nine specifications of noncompliance by my counsel, that I was limited to deposing retired special agents by the appeals court, and that I had stated in court I did not intend to take more depositions or live testimony. None of this is the case. My counsel was providing illustrations that were not and were not intended to be all-inclusive.

30. Following its enumeration of these five areas, the language of the appeals court is "The above listing is probably not all of the factual areas which are in dispute between the parties ..."

31. This Court never asked me what my intentions were with regard to either further depositions or testimony in court. It cut off my counsel when he was responding on this question on March 30, 1977, and it then twice refused to permit me to testify.

32. The presumptions of the Court, after it foreclosed further testimony in court or by deposition, are not correct. That I planned further depositions was known to government counsel at the end of the first calendar call after the remand. He then asked my counsel and me for names. We both responded by giving him an initial list of 10 to 12 persons whose addresses we required from him. This was not all those we were considering and we so informed him then. We were delayed by his refusal to provide any names, such as those who typed the reports sought, or the addresses of those who had retired. We did not obtain this information for a long time, until ordered by this Court, and then we were not provided with the names and addresses of those others who had knowledge of the preparation of the reports.

33. Those "witnesses who had personal knowledge of the events at the time the investigation was made," the language of the appeals court, does not mean FBI special agents only. Nor does it mean government employees only. The "events" were, in fact, not in Washington but in Dallas, Texas. James T. Tague, whose affidavit I provided after this Court made it impossible for me to depose him, as I had already arranged to do, was a witness to and a victim of those events.

34. In what follows I state what was possible for me and what was not possible pursuant to the mandate of the appeals court, what I planned by way of first-person testimony and what prevented my providing the Court voluntarily what it did not ask me to provide it at all. In this I remind the Court that it addressed no single question to me and on March 30, 1977, it twice refused to permit me to testify. This represents one of the problems and realities with which I had to contend, the clearly antagonistic and prejudiced attitude of the Court as specified in my prior affidavit. After this Court indulged in what I believed to be threats and I regarded as personal insults, after it made baseless assertions suggesting that I intend this FOIA matter to enrich me personally and required such enrich-

ment for my sustenance, I believed I had to proceed with the depositions with the greatest caution not to provide this Court with any basis for any other unwarranted aspersions or complaints.

35. There are also the realities of paying witness fees and court-reporter costs in the taking of depositions along with my physical condition and an apprehension regarding it that materialized, a further and serious deterioration in my health represented by the since diagnosed arterial impairment. When my means are represented by a gross income of less than $650 for the past calendar quarter, paying any such costs, particularly when they are not in pursuance of personal gain or for any use that can return any of those costs, is not easy and cannot be undertaken or contracted lightly.

36. With the record in this case I feared that, were I to state the names of those I planned to depose and then not call any, I would be criticized. I also feared that, if on deposition I learned of others to be deposed and had not included them in such a listing, this Court would foreclose me on that ground alone. When this Court held that even responding to initial interrogatories was somehow an abuse of the government, I did have serious apprehensions about how it would respond to such depositions. That it cut me off with four and then when the transcripts had not been filed and the last two had not even been typed, I believe my concerns on this score were entirely justified.

37. If as I believe it clearly did not the appeals court limited me to federal employees as witnesses, there are many among those who were Members and of the staff of the Warren Commission. My counsel did recommend calling a Member who directly participated in what is at issue in this instant cause. We then both decided that this would be misinterpreted as publicity seeking, as some kind of stunt, which it would not have been. Of the Commission staff we did consider calling, there are those I did plan to call if necessary and if I could pay the costs. The most obvious are the former general counsel, the former staff director who was in a liaison role and the staff counsel most directly involved in the neutron activation testing and the results. Some relevant records are already in the record in this instant cause. However, until we knew what we might learn from the second day of depositions, we could not be certain, we were not certain, and as of the time we were foreclosed we still had no way of being certain because the transcript had not been prepared.

38. We were, in fact, at the very beginning of the discovery process, not at all at or even near its end.

39. As a relevant example of the material facts that remain in dispute, there is the total disagreement between what Gallagher represented in his deposition, that he did not begin any bullet-related neutron activation testing until May of 1964, and the statement of Commission General Counsel J. Lee Rankin to the Members of this Commission, already in the record in this instant matter, that as of January 27, 1964, such testing had been commenced several weeks earlier. This Court has in the record two statements on this in total disagreement, that which had been secret by Rankin, which I obtained under FOIA after years of effort, and that which it was still impossible for this Court to have on March 30, 1977, Gallagher's deposition, which had not been typed.

40. It was and it is my belief that the responsible course of action for me, particularly after this Court's comments on what is burdensome for the government, was not to note any deposition of Rankin or the others of relevant knowledge until after the Gallagher deposition, until it was certain following Gallagher's deposition that deposing Rankin and others was necessary.

41. On the material questions of the existence of tests and reports I have not received and when the tests began, until Gallagher swore in direct contradiction to what Rankin told the Commission, there was no basis for calling Rankin on that particular issue, although there could have been on other questions. However, when we were just at the beginning of discovery, we could not be certain. As of my last knowledge, Rankin resided in New York. Calling him would have entailed what for me is considerable costs in his expenses. I also had to consider this. As the depositions I planned continued, it was possible that the information Rankin possessed might have been adduced from other witnesses. One is his former assistant, the one in the liaison role, Staff Counsel Howard Willens. Another is the aforementioned Shaffer. To the best of my knowledge, they resided and still reside in the Washington area. Melvin Eisenberg is the staff counsel of interest in the neutron activation aspects of this matter. I do not know his whereabouts. When the time came I might well have had to determine, assuming I was financially able to depose either, if deposing one and not the other might suffice. I also wanted to trouble nobody without real need.

42. When I proved to this Court that from a Kilty affidavit alone there was

proof of the existence of records not provided, Kilty promptly provided a second affidavit that in plain English states that he swore falsely. When I so informed this Court, its response was not to determine which if either of the contradictory affirmations was truthful - it turns out that neither was the truth - but to direct threats at my counsel and me. In and of itself this posed the most serious problem to me. As I saw it, when another swore falsely to the material, I, not he, was threatened. I also interpreted this as a virtual license for the government's witnesses to utter false statements about compliance and the existence of records sought in this instant cause. I believe the subsequent record validates my apprehension. I also believe that under the circumstances my apprehensions were neither unreasonable nor unjustified.

43. There are others from whom I would have liked to have taken testimony.

44. The appeals court spoke of the existence or nonexistence of records. I was already faced with unresolved false swearing to material facts in dispute, whether or not certain tests were performed and whether or not, if performed, they could have been expected to yield results and reports. One of the means of presenting evidence to this Court on this point is by establishing whether or not such tests should have been performed. One of the means of determining this is by expert testimony. An expert witness could interpret what for me is gibberish, what was made more incomprehensible by the manner in which it was delivered, the "raw material" that to a degree but still not completely relates to both spectrographic analysis and neutron activation testing. Expert testimony could also add meaning to the test Frazier did testify to having ordered and did testify he believed had been given to me, testing of the anterior of the President's shirt and of the knot of his tie.

45. These are among the reasons I had to consider and I in fact did consider relating to taking testimony from expert and other witnesses who were competent to testify to the tests, the need for there to be records, and what was tested.

46. With regard to the holes in the front of the shirt, I note in this connection that there is not even pro forma denial of my evidence that they were not of ballistics origin and that in and of itself, because this undermines the official explanation of the assassination of the President, has a great bearing on tests required to have been made and on motive for withholding any such tests and their results.

47. I have presented this Court with a photograph of this damage to the front of the President's shirt. It shows that the slits, not holes, do not coincide. When I obtained that picture, not from the files of the Warren Commission but under an FOIA request, I sought an expert opinion from a professional criminalist. That criminalist is a public employee, not with the federal government. He is on the staff of a coroner's office. He is one of several such experts I did have in mind. Another, in private practice and often testifying on behalf of police, is an expert I had produced before another court, where he testified without contradiction in direct opposition to an affirmation by the same retired FBI agent Robert Frazier deposed in this instant cause. Still another is the expert ERDA's official Paul Aebersold had in mind and about whom he wrote the Department of Justice in a letter that was kept secret until I filed this complaint. Then there was Aebersold. I sought but could not find him. I did not know he was no longer alive until Gallagher so testified. Aebersold made ardent recommendation. He expressed anxious willingness to supply AEC's facilities, in itself directly opposite Gallagher's representation of when he could have performed the tests. Here alone there are direct conflicts, dispute as to material facts, new genuine issues I have not been able to resolve as would have been possible with further testimony if and when possible and justified.

48. There is no doubt at all that if I could have paid for it I would have taken depositions other than those noted. Two days before the March 30, 1977, calendar call, we did tell government counsel of the coming depositions and received indications of opposition. However, taking the testimony of those who have sworn to having made searches or to compliance seemed to be the next reasonable and logical step. If as a result of those depositions we obtained the records that clearly existed and in some instances to my personal knowledge do exist, the taking of any other testimony might have been unnecessary and this matter could have come to an end.

49. Because this Court did not ask me, it had no way of knowing that I had been exploring means of deposing retired FBI Laboratory Agent William R. Heilman, the one who made what is represented as the spectrographic examination of the curbstone. (His name is not indexed in the 15 printed volumes of Warren Commission testimony.) I have received no report on this test, only a few pages of dubious worksheets. I believe such a report should have been prepared. I believe the few pages provided required further inquiry. / I had heard that Heilman retired to Florida.

I had no means of financing a trip to Florida for my counsel and me or paying for Heilman's coming to Washington. I did, believing Heilman to be in Florida, seek an alternative means of deposing him.

50. The Opinion interprets the transcript at page 4 in stating that my counsel "indicated that no further depositions of FBI employees who had participated in the Bureau's investigation were planned." The transcript discloses that my counsel was asked, rather, what he had "scheduled." (emphasis added) I did not and I do not believe the appeals court limited me to retired FBI employees.

51. There is also more than the foregoing to validate the statement of my prior affidavit quoted at this point, "(t)his Court refused me the depositions my counsel and I consider necessary to meet what I regard as the mandate of the court of appeals ..."

52. The footnote at this point reads: "Counsel had previously indicated he planned to depose plaintiff, an employee of the National Archives, which had custody of the evidence involved, and an FBI special agent who had not participated in the investigation but whose affidavit had constituted part of the Government's response to plaintiff's request."

53. There is no citation to the source of the footnote. There also is no time at which I was asked about this by the Court and no time at which to the best of my knowledge my counsel ever specified any such limitation to anyone, in or out of court. The statements of my counsel quoted from page 4 of the transcript were not completed because the Court cut him off with a question. They also begin on the previous page, which is required for a proper understanding of what is quoted only in part on page 4.

54. My counsel specified that during the depositions we had been able to take we obtained evidence relating to files that should have been searched and were not and of tests that had been ordered but on which we had received no results. He then reported to the Court the next two depositions I planned, those of not one but two FBI agents "who have searched the files" because "we would hope to establish" that the files in question had not been searched.

55. The Court then stated, beginning at the bottom of page 3 of the transcript, "I take it you don't have any further depositions scheduled." (emphasis added)

56. At this point, the second day after the last two depositions, we did not have the transcripts of them. I also had not been able to confer with counsel about the future depositions.

57. My counsel then began to respond:

> Mr. LESAR: I have not scheduled some. I do intend to take - - I think they will be very short depositions - - two depositions from Messrs. Kilty and Marion Williams. And I would also take Mr. Weisberg's deposition, because he has some matters which we think are relevant that we want to get into the record.
> THE COURT: That, I wouldn't think, would have much to do with your FOI request.
> Mr. LESAR: No, I think it has very much to do with it, your Honor.

58. After this brief, interrupted and incomplete representation of the status of the case in which we sought to establish the existence or nonexistence of the records sought, the Court abruptly cut off my counsel and turned to government counsel. The Court did not interrupt government counsel. After this the Court turned to my counsel for response and continued interrupting his effort to respond. It asked questions and interrupted responses with incorrect opinions, the first of which was "This is just complete speculation on your part." My counsel's representations of the taking of test samples from the tie about which the Court questioned him are factual, not speculative, as is his statement that we have received no report of that testing.

59. The Court next interrupted my counsel with what appears to have been an attempt at ridicule, a question that in any event has no basis in either fact or reason:

> THE COURT: Is it your claim that it ought to have been knotted again?
> Mr. LESAR: Pardon?
> THE COURT: Is it your claim it should have been knotted?
> Mr. LESAR: No, it - -
> THE COURT: Taken off the body and then reknotted?

60. This provokes wonder if the Court even read the evidence I submitted after much trouble and when I was unwell.

61. My counsel was finally able to explain that the tie had been cut off and that it is the knot that was of evidentiary value and that photographs of it were requested as the basis of testimony. The Court then, as it generally does, took government representations at face value. It believed a misrepresentation of the agreement between the government and the representative of the executors of the estate of the President, an agreement that does provide for the taking of pictures for research into the assassination and for official proceedings.

62. Later the Court said my counsel could not depose me on the credibility

of the former agents. This meant that the Court compelled us to assume responsibility for four adverse witnesses who had every interest in not testifying fully and truthfully, who in some cases were arrogant and insulting.

63. The Court then indicated it had reached a decision in advance of hearing us or even the typing of the two depositions we had just taken.

64. When I asked my counsel to ask the Court to permit me to testify on credibility, the Court refused. Even when I reminded my counsel and he informed the Court that the pictures in question would enable me to "testify to the existence of tests we have not been given the results of," which I believe was the issue before the Court and is a disputed material fact, the Court refused and abruptly called the next case.

65. There are other questions relating to the depositions of the three retired agents and their refusal to testify to what I believe was and is relevant. My counsel told me that in depositinns these matters are presented to the Court later for resolution. The retired agents were arrogant, insulting, evasive and in other ways nonresponsive. I did anticipate that in the planned depositions of Marion Williams and John Kilty we would have less than wholehearted cooperation. When confronted with this Court's decision, reached prior to the hearing and prior to its reading of all the depositions, I did ask my counsel, as a last resort, to ask that I be permitted to testify to credibility. I was present at the taking of the depositions and could testify to what transpired, although limited without the transcripts.

66. Frazier and Shaneyfelt repeatedly refused to answer and made demands for extra payment of what they termed fees as expert witnesses. Gallagher appeared to have left all of his recollections in the J. Edgar Hoover Building when he left it.

67. Nonetheless, in an off moment, Gallagher did give indication of a later "formal report" I have not been given. He was asked about this at page 86 and about the alleged "formal report" of the day after the assassination, the only one thus far produced and so described. He described this November 23, 1963, letter as "to that date" the "formal report of the entire examination." Asked "Was there another examination later that he (Frazier) prepared a report on?" Gallagher responded, "I imagine there was. It probably went to the chief."

68. Gallagher told the general counsel of ERDA an untruth in 1974, leading

to his filing a false ERDA statement claiming that there had been no neutron activation analysis of anything except the paraffin casts. When Gallagher was asked about this at page 89, his first response was "I don't recall what I told him." Asked again, he claimed "I have no way of knowing. This doesn't strike me as being of paramount significance, and I don't remember." He persisted in evading and not responding and pretending that he did not know he lied about what is of "significance" in compliance in this FOIA matter, whether or not the tests were made on which there were records to be provided, those that include the "unwittingly."

69. The repeated false statements as to the testing of Q3 Gallagher shrugged off as "honest mistakes" on pages 91 and 92. His failure to make a record with Q3 as he did with Q15 he dismissed as "This is probably an oversight on my part, evidently." This relates to my obtaining those records the Opinion recognizes were provided "unwittingly." They came from ERDA, not the FBI. Even what the Opinion on page 19 misunderstood to be on his own initiative, a departure from permeating claim of no recollection, was <u>not</u> on his own initiative. I was there and saw what happened. Gallagher pretended not to remember any neutron activation testing of Q3 until he was shown a record by government counsel, who even pointed out that identification to him. Following this, Gallagher interjected at pages 90 and 91, "The question was labored for quite a while on specimen Q-3 and why I didn't analyze it. I think the answer is clear here. Q-3 data is represented in this chart, and the reason Q-3 is not analyzed, the background count was 462 counts. The net count from the specimen was 463." Even then he claimed not to recall whether or not he made a report on the significance or lack of significance of these counts.

70. The last of the government's self-contradictory affirmations had stated there had not been <u>any</u> neutron activation testing of Q3. When my counsel asked Gallagher about these contradictions and his contradiction of both versions, he claimed, "I just was of the opinion of that myself." Of official representations that he had not undertaken an essential test he said of the questions asked him, "you almost talked me into this myself."

71. When he was again asked about the testing of the curbstone which showed only two of the nine elements of the core of the bullet that supposedly left a mark (without regard to the fact that the alleged bullet was jacketed with a copper alloy), this followed on page 107:

> Q. Did you ever see a microscopic examination of the curbstone made by anyone: Do you recall that?

A. I recall seeing the curbstone.

Q. I am asking about the report on the microscopic examination of it.

A. It just goes without saying that a microscopic examination -- this has been the procedure for 30 years in the FBI. We don't say, "Dear contributor, we subjected your evidence to a microscopic examination; we fondled the outside of the bullet and measured the outside of it."

Q. The reason I was asking is because we don't have it.

72. This Court was denied demeanor testimony. It did not have this transcript before it when it foreclosed further testimony, although Wigmore's engine had hardly begun to turn over.

73. One would never dream that Gallagher had performed essential tests when an American President was assassinated. One would expect him to have at least a little more recollection of his investigation into the killing of an unwanted cur dog.

74. Despite his arrogance and feigned absence of recollection, throughout his deposition there are hints as well as statements indicative of other germane records that are not provided. Gallagher left without doubt that once he left the FBI "Nobody else could testify from my notes." Yet the then Director assured the Commission and the nation that the FBI would forever continue this as an open, forever unclosed case. This would be impossible without reports not provided.

75. Yet from the record we do not even have all the notes he admitted making.

76. I believe that the other agents' refusals to respond and Gallagher's incredible lack of recollection should have been presented to and considered by this Court. I could not do this fully without the transcript which then did not exist. The only means by which I could even make indication to this Court was by first-person testimony, having been there and heard the questions and answers. I also believe that if we had had to go back to the Court a second time with such questions after the depositions of Williams and Kilty that were "planned" and noted, this Court would have held me somehow at fault.

77. In foreclosing me from deposing Williams and Kilty, I was not only foreclosed from establishing what records were and were not searched, which I believe is material and is in dispute. I was foreclosed from raising questions about the missing report that Frazier did testify to having ordered and did state he believed had been given to me. The Opinion conjectures Frazier was wrong. In itself, this leaves a material fact in dispute. My consultation with a criminalist indicates that such a test and a report on it were essential.

78. By prohibiting my testimony on credibility and my deposition to make a record of less than full truthfulness if not untruthfulness on points of material fact in dispute, the Court was misled by these depositions. The opinion contains substantial factual errors relating to the making of tests and reports on tests as well as to what tests were even possible. More recently I have obtained proof that even the FBI's response, which it described as full and the court described as generous, was to the FBI's knowledge not full. It provided another applicant with records it did not provide me as ERDA provided me with records nobody provided this other applicant.

79. Under date of April 10, 1975, the FBI sent my counsel a letter in which full compliance was represented, not for the first or the last time when it was, knowingly, not compliance at all. This letter is attached as Exhibit 1. Over the signature of Director Kelley it represents that the 54 pages to be provided is all the FBI had on the radiation testing.

80. Attached as Exhibit 2 is an exchange of correspondence between the FBI and Emory L. Brown, Jr., of Howell, New Jersey. I obtained these by mail under date of October 5 of this year, when I did not know of the Opininn. Despite the Gallagher deposition, the covering letter states that there had been no neutron activation testing of Q15. The FBI did not provide this other requester with any record with regard to Q3. It did give him 57 pages, rather more than the 54 represented to me as all it had.

81. Director Kelley's September 17, 1976, letter to Brown states that names obliterated should not be obliterated and that he was replacing for Brown these pages from which there had been improper withholding. In the ensuing year this has not beendone for me. I believe this information, these names, was withheld from me following the appeals court decision to deter my being able to effect compliance and to limit the testimony I could take on the tests and on compliance.

82. Following the Gallagher deposition, under date of July 15 of this year, Thomas F. Kelleher, Acting Assistant Director, Laboratories Division of the FBI, wrote Brown. In that letter he changed the official claims with regard to Q15 to make them consistent with the Gallagher deposition. He also confirmed that Brown was given 57 pages of records, whereas I was given only 54. This establishes still another proof of noncompliance and creates still another point of material dispute. He did not provide Brown with copies of records I published in

the cited book, Post Mortem. Instead of addressing the question of copper alloy, the real question in this matter with regard to Q3, Kelleher refers to the absence of lead in that specimen. He also provides the lab standards for the core material in question that is not in accord with what Gallagher stated on deposition.

83. At pages 57 and 58 Gallagher testified that he did his own "homework," that he set up his own standard comparison charts. Kelleher writes, above the table he provides, "The 'laboratory comparison samples (bullets)' used in the spectrographic analysis ... are commercially available lead standards the analysis of which follows:"

84. In his August 6, 1977, response Brown raised questions of overt noncompliance with his request even after I had published what was not provided to him as well as technical questions that, to the best of my knowledge, after the passing of two months the FBI has not addressed to him.

85. From the Opinion and from the chaotic and uncollated records I obtained from ERDA, records still not provided by the FBI, I believe that at the least this Court has been misled. From my having been given some data with regard to the companion specimen, Q2, I believe there is involved more than the mere misleading of this Court.

86. However, I was given Q2 copper records, despite Gallagher's claiming to the contrary, making another material fact in dispute. In the official account, Q2 also held part of the copper jacket of what is claimed to have been a single bullet. This, of course, made comparison more essential. Proof of common origin is essential to the official solution to the crime. Conversely, proof that Q2 and Q3 were not from one bullet was destructive to the official solution. It would mean there was a conspiracy and an unsolved crime of great magnitude. The same principle applies to all bullet-material specimens, whether of core or jacket material. Despite the alleged informality of "practice" in the FBI, presumably even more informal when the President was killed, we have the representation of the Opinion of nobody minding the store. We have a Gallagher who forgets to make notations, does not know what happened to his records, even does computer calculations in his head and then makes no notations of them. "He might have skipped the step of noting down the readings and done the tabulations in his head" is the conjecture at page 6. From the Opinion the hazard to the computer

industry is great indeed. Given enough Gallaghers, there would be no need for these fantastic calculators. The ERDA printouts I have received of four-digit figures are pages wide and of many pages. It is a unique Gallagher who can keep all of this in his head, not making notes, yet not recall making any tests and comparisons when asked about them, about the killing of a President and about studies for a Presidential Commission. Only thus are there no records. Gallagher carries in his head what for other humans requires the most sophisticated and elaborate of advanced machinery. But this same marvel of a head is utterly devoid of other recollections. Unless it has a record to confront. Faced with the lack of records on the Q3 he claimed not to have remembered at all, Gallagher then alleges he replaced the machine and did the calculations in his head. Making no notations, of course, because he was in Oak Ridge, not Washington, because there was nobody else to answer to in the FBI and no Presidential Commission to satisfy. Nobody else had to know anything.

87. The Opinion at page 19 says that "The lack of results for Q3 ... is consistent with Gallagher's previous statement that copper is normally not susceptible to neutron activation." Attached as Exhibit 3 are two articles from the Journal of Forensic Sciences and one from a standard text. These are among the available contradictions of Gallagher and the FBI on the capabilities and usefulness of the process with regard to the testing of materials of copper in criminalistics. These studies were assisted by the national law enforcement agencies of Canada and the United States, the latter Gallagher's former employer. This is another dispute about material fact. Exhibit 3A is ERDA NAA records referring to copper.

88. The Opinion states at page 19 that on deposition Gallagher was "unable" to "recall" whether he had subjected the windshield scrapings, Q15, to neutron activation testing. The Opinion quotes him as describing the sample as "inadequate" from page 71 of his deposition.

89. Once again Gallagher's revival of failed memory was not spontaneous. On page 70 he twice claimed not to recall until he was shown one of the ERDA records given to me "unwittingly." Suddenly on page 71 his resuscitated memory attributed the lack of any other record at all to the claim "I didn't obtain any" results. Asked, "Did you make any report on the significance of that?" he responded, "Except that the sample wasn't adequate."

90. Not even "unwittingly" was I given by either ERDA or the Department

any report stating that the Q15 specimen was "not adequate."

91. With Q15 there are no elaborate printouts for Gallagher to have discarded because his since-retired head was the FBI's means of eliminating the need for costly computers. There is, in fact, no record at all save for the otherwise blank form showing that the specimen was submitted to neutron activation analysis at Oak Ridge.

92. Absent some Gallagherian proof that the FBI has file cabinets only to store its records in wastebaskets and burnbags, there has to be Gallagher's report that Q15 was "inadequate." No such report has been produced.

93. Kilty is the FBI scientist with a side expertise of swearing in contradiction to himself. Once again he is also in contradiction to Gallagher. The Kilty who swore that Q15 was submitted to neutron activation analysis and then, having produced no records after his search, that it had not been subjected to neutron analysis, also has not produced the Gallagher "inadequate" report. Now we have still another version, from the same FBI Laboratory. This is the Kelleher letter to Brown. In the Kelleher version the samples were too small. They were not too small to have been subjected to spectrographic analysis. They were not too small to be seen with the naked eye even before they were removed from the windshield. They also were not too small for Frazier to carry them before the Warren Commission and to testify about them when they were identified as Exhibit 841 (Volume 17, page 840, or 17H480). Yet Gallagher admitted that he could test a sample as ultra-tiny as a half of a millimeter - a half of a thousandth of a meter. Deposition, page 33.

94. It is surprising to me that the Court appears to have been unaware of this. It is in Frazier's Warren Commission testimony very near the parts not in this Court's records but quoted in the Opininn at pages 15 and 16. There it is conjectured that when Frazier testified under oath that Gallagher did submit a report, it really means that Gallagher did not submit a report. This duplicates the burnbag for files situation relating to the same specimen and Gallagher's "inadequate" report. To the FBI computers are not for use, "report" does not mean "report" and the records are not provided.

95. Frazier testified to the Warren Commission of the projectile responsible for the Q15 residues that "it could not have struck the outside layer because of the manner in which the glass broke and further because of the lead residues on

the inside surface." (5H69) This immediately precedes Frazier's testifying that Gallagher "submitted his report to me and I prepared the formal report of the entire examination." What immediately follows this quotation is Frazier's testimony about the photograph he personally took of the windshield of the limousine. He testified that this photograph "is a photograph which I took on November 23 showing ... the crack in the glass and the lead residue ..." (emphasis added)

96. On page 19 the Opinion states that, as with Q3, Gallagher "left his worksheets virtually blank." There is no worksheet on Q15. Gallagher was asked about this on deposition after he did admit submitting a sample of Q15 to radiation. No Q15 worksheet is provided. The Opinion conjectures that an inadequate worksheet on Q3 and no worksheet but an entirely different record on Q15, one that is made at the beginning of radiation, "account(ing) for the Department's assumptions in its answers to plaintiff's interrogatories that no neutron activation analysis of these elements had been conducted."

97. The absence of any relevant records in the presence of proof of their need to exist is another of the material facts in dispute. If from its record the Court's preference for not citing Kilty's self-contradictory affidavits can be appreciated, the conjectures of the Opinion based instead on interrogatory answers are not based on fact. Moreover, Kilty qualifies himself as an expert on the matters to which he attested. He is one knowing the science and the subject matter, one who undertook to deliver lectures to me on my alleged ignorance, repeated by the Opinion.

98. The assumption of faithfulness to fact in Gallagher's conjectures on page 20 are not based on the records ERDA provided me. There the Opinion conjectures that the content of the missing printouts was "duplicative of that on the worksheets, and hence the printouts themselves might not have been kept." With what did not relate to the killing of the President they were kept, only by ERDA. I have no way of knowing whether the ERDA printouts relate to the bullet evidence but I believe some do.

99. These conjectures are about material facts that remain in dispute. In every instance the existing record, for all its abbreviation by the Court, is one showing the existence of records not provided in response to the FOIA requests and the complaint. In every instance, the evidence of the Warren Commission is that the records existed and much more, that the Warren Commission expected the

records to be preserved forever. Thus the Commission asked Frazier (5H69) about his "formal report" and about Gallagher's "report." "Are his report and your formal report a part of the permanent record of the FBI then?" Frazier's response, "Yes, sir," which is consistent with the assurances of Director Hoover, does not say "except for what Gallagher has in his head" or "except for what Gallagher threw away" or anything of this nature. The question has no point if the Commission understood the "formal report" to be the November 23, 1963, letter to Dallas Police Chief Curry because that letter was already a "permanent record" of the Commission. The Commission did not merely keep it in file. It published it in facsimile. The question also could not refer to the letter to Chief Curry for another reason - that letter does not even refer to some of the bullet-metal comparisons that were the subject of the testimony before the Warren Commission. Q8 is a conspicuous example of this. On pages 16 and 17 the Opinion designates Q8 correctly as "the live round."

100. Director Hoover testified before the Commission. (5H97ff.) In that testimony he averred that he personally went over all the Commission's requests of the FBI, all its responses and the FBI's reports. (5H99) Hoover could not have read what was in Gallagher's head only or what had been discarded. There is no basis for presuming that Hoover did not know the business of the FBI. He was its founding father. He testified that the FBI was running out every lead and would continue to do so. He testified to complete thoroughness, even that to assure completeness and the answering of all questions, including those considered not reasonable, "I myself go over these to see that we haven't missed anything or haven't any gap in the investigation so it can be tied down." This is in direct contradiction of all the representations of no records and of results in Gallagher's head only. Unless records remain withheld in this instant cause, there was not a single meaningful report for the Director to read and "go over" so he could assure the President, the President's Commission and the nation "that we haven't missed anything" and "haven't any gap in the investigation."

101. It is at this point (5H100) that Hoover gave the added pledge, "I can assure you so far as the FBI is concerned the case will be continued in an open classification for all time." He went further and said so this would be forever possible, "we have the record" and with the record "we will be able to prove or disprove" any "allegation."

102. I have studied the government's allegations in this instant cause with care. They are not in accord with the pledge to the nation by Hoover. They are contrary to his testimony that "we have the record," the alternative being that the records remain withheld in this instant cause or have been destroyed. Hoover's guarantees and assurances of thoroughness and of the preservation of all records and of the need for this preservation in perpetuity so that all reports, rumors and speculations could be answered by the FBI could not be more definitively and explicitly stated. He went out of his way in this testimony to reiterate these guarantees and assurances.

103. In this instant cause we have the allegation that irreplaceable evidence was discarded. Gallagher needed nothing but his head, the one of no recall. The spectrographic plate relating to the examination of the curbstone was discarded as the lab was cleaned up. Nothing could be more impossible from Hoover's testimony. That the exact opposite was the desire and concern of the Commission is made explicit in the question of the Commissioner who was later President (at 5H100): "Under your authority from the President ... it is not an authority with a terminal point. It is an authority that goes on indefinitely?" Hoover's response was emphatic: "Very definitely so. The President wanted a full and thorough investigation made of this matter and we have tried to do so. ... I think we must, and certainly we intend in the FBI to continue to run down" any and all reports or allegations of any kind. Obviously, this is impossible with the destruction of any investigative records or the failure to compile and preserve any.

104. Hoover gave this testimony on May 14, 1964, <u>prior</u> to the date Gallagher, if in contradiction to Rankin, gives as the beginning date of the neutron activation testing of all bullet-related evidence, prior to the resurrection of the curbstone from its Dallas oblivion and the claimed discarding of its spectrographic plate. May 14, 1964, was <u>after</u> the other spectrographic examinations reports on which we are now asked to believe do not exist and never did exist. In contradiction of these guarantees, we are now to believe that what the AEC regarded as the most essential item of evidence to be subjected to these scientific tests, "the live round," was not subjected to <u>any</u> tests - and the reason is some fancied interest of "posterity." From the testimony of the greatest expert of them all, Hoover, the interest of posterity is diametrically opposite, calling for all possible examination of all evidence, including "Q8: The Live Round."

105. Other available evidence supports Hoover's representations and contra-

dicts virtually totally those now made by his successors and the retired agents who would have it believed that the FBI kept no records outside the wastebaskets.

106. As an example of the fineness of detail of the scientific work of the laboratory, there is its work on Oswald's pubic hair and his blanket. The Commission's Report goes into detail on pages 586-591, complete with the elaborate FBI charts of an entire hair, a longitudinal and a cross-section of the hair and of cotton, wool and viscose fibers. There was no question about the blanket. Indubitably and uncontradictedly, it was the blanket of Lee Harvey Oswald. Yet with the collaboration of the Dallas police, the FBI obtained pubic hair from Oswald before he was killed, compared it with the fabled precision of the FBI lab with hairs vacuumed from Oswald's blanket and, after exhausting all the possibilities afforded by science, the FBI lab concluded first that these were pubic hairs, next that they were Oswald's pubic hairs and thus that, because Oswald's pubic hairs were on the blanket, the blanket that everyone knew was Oswald's, indeed was Oswald's. In keeping the Director's word in this instance, the lab did the totally unnecessary, and made and kept records of it. It did this for all the world as though anyone other than Oswald's wife should have concern over whose pubic hairs were on what was without peradventure of doubt known to be Oswald's blanket to begin with.

107. With the FBI having used the lab in such futilities that are at best window-dressings, the same FBI and the same lab now in this instant cause want it believed that it was less diligent with the actual evidence of the crime; that, like the biblical maiden entrusted with the keeping of the family vineyards, her own vineyard she did not keep. It made no single meaningful report on the overall spectrographic or neutron activation testing; none of the combination of these tests; has no real report of any nature; does not have most of its own work records; that it went to all the trouble of conducting costly tests at the overloaded Oak Ridge reactor and didn't bother to keep even the printouts while seeing to it, as Gallagher himself testified, that nobody would have the remotest notion of what was tested or the actual results of such testing.

108. It is because of these representations that, from my extensive personal experience with the FBI's records in this and similar cases as set forth herein and as recounted in my earlier affidavits, I was forced to seek, obtain and present to this Court evidence that bears on the existence or nonexistence of the

records sought and on the need for them to have existed where it is now claimed they do not exist. This refers to the uncontradicted medical evidence and matters related thereto in my prior affidavit and to the affidavit of James T. Tague and what relates to it.

109. All of this evidence is interrelated. All relates to tests made and required to be made; to records that exist or do not exist; and to whether records exist that have not been provided under FOIA and in response to this complaint.

110. Among the records not provided are those of the consultations between the two respondents in this instant cause. The December 11, 1964, letter by the late Dr. Paul Aebersold, then Director of Isotope Development of the AEC, refers to conferences between them beginning "within less than 24 hours of the assassination" and extending over a period of several weeks "with various persons in" the Department of Justice. The Aebersold offers included "our laboratories experienced in obtaining criminalistics evidence." Gallagher's explanation on deposition is that there was no security within the agency entrusted with the keeping of all the nation's atomic and nuclear defense secrets; and that the Oak Ridge facilities had so overwhelming a backlog that the FBI could not get the use of them for six months. The FBI's refusal of the other facilities where there was the country's preeminent expert in the criminalistics area of nuclear research Gallagher seeks to explain by an alleged fear that one AEC contractor would exploit the classified work while another, a commercial competitor, would not.

111. What the AEC's director of that aspect of its work anticipated is 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" one, the "live round." He does not suggest "similar," which means other than identical. He states "identical" as the scientific capability. In this the record holds still another and an exceedingly material direct contradiction about which there is a genuine issue - if the government's representatives and its representations are truthful.

112. Where Gallagher claims not to have preserved "measurements," save possibly for some in his head and there forever beyond retrieval, the AEC expert states that it is by these "measurements" that determinations are made. Thus we have no measurements of the testing. All of the large amount of scientific literature I have read shows exactly what the Aebersold letter states to be both

the evidentiary need and the capability of the testing.

113. In such an investigation the possible test results are positive, negative and of no conclusion being reached. The expert conclusions are stated together with a tabulation of the results of all the tests. The purpose of the tests is to establish proof and from it to reach and present conclusions based on the evidence yielded by the tests. In this instant cause we have no such statement of conclusions, no such statement of evidence in the form of a consolidated tabulation of test results - not even all of the measurements and no representation of any measurements comprehensible to those who would or could be called upon to use them outside the FBI lab.

114. Dr. Aebersold correctly states the criminalistics and evidentiary situation and need related to the allegedly untested Q8 or live round. There is no direct connection between Bullet 399 and the rifle at the time of the crime. It could have been planted, for example, the suspicion not diminished by the absence of a chain of possession of it, its uncertain history and the alleged absence of any tests to determine whether or not it bore human residues when it is required to have transited the bodies of the President and the governor. On the other hand, however it got there, the unfired round was in the alleged fatal rifle. I state it in this way, "however it got there," because no clip was found in the rifle designed for the clip to feed bullets from a reservoir to be fired in repetition. I recall no report indicating that the live round bore any markings of this clip. I have FBI records proving that all the shells had marks of being chambered on other occasions in this or another rifle. Whatever other evidentiary problems there may have been regarding the allegedly untested Q8, it nonetheless is the only ballistics evidence connected with the rifle at the time of the crime. In turn, these little-understood actualities made the ballistics evidence weaker and added to the importance of the spectrographic and neutron activation testing. By comparisons of Q8, Q1, Bullet 399, and of them with all the objects allegedly struck by bullets and of all the recovered fragments, there was an evidentiary package that was capable of establishing whether all the shots did or did not have a common origin in that rifle and at that time. If the proof is negative, then the crime of assassinating the President remains unsolved. If it is positive, there was no need for withholding at any time and the official account is beyond reasonable dispute with regard to a single assassin. It is this simple.

115. Because this is the real situation and because there are neither reports nor a substitution for the reports in the "raw material," when confronted with the court of appeals' directive stating what I "must" do through "the witnesses who had personal knowledge of events at the time the investigation was made," which is the time of the crime itself, to the degree possible for me I sought out such witnesses.

116. Some had left Dallas. Some had died. I did obtain and file Tague's affidavit. I did obtain and file the published version of the Dillard curbstone photograph and the contemporaneous description of what it shows. I did obtain Dillard's duplicative pictures the FBI did not fail to return. I can file them. I have since sought further relevant evidence. I will file with this affidavit any I obtain by the time it is completed.

117. Without any exception what I have undertaken to do in serving the Court is precisely what Director Hoover swore the FBI would do and what the FBI has failed to produce in this instant cause.

118. In footnote 6 at page 20 the Court suggests "that plaintiff's allegations regarding the curbstone extend far beyond testing materials supposedly not furnished pursuant to his FOIA requests." (emphasis added) It then refers to the Tague affidavit, acknowledging that it and my prior affidavit "are directed toward establishing that the mark on the curbstone underwent a drastic alteration, from a chip in 1963 to a smear in mid-1964 ... It is not clear from plaintiff's affidavit whether he is asserting that the FBI removed the wrong curbstone, or that the curbstone is the same with only the mark different." This is referenced to paragraphs 185 and 194 of my prior affidavit.

119. My request is for reports. The government's substitution is "raw materials" of the laboratory. This leaves the request itself without response. Aside from reason and logic, there is the expert word of Hoover and of Aebersold on the tests to have been conducted. On them I have received no reports and no real results, only what proves the need for more tests. I address this further below. "Supposedly" does not represent the actuality. There are no reports, there is no "raw material" on the testing of the curbstone before it was altered, as the government has not disputed, prior to any known testing and by a means that made later testing invalid.

120. The Opinion represents a similar misapprehension in footnote 1 on

page 1 in stating "There is no indication that the FBI followed the AEC recommendations to the letter ..." (emphasis added) If the government's representations and what Gallagher testified to on deposition are true, there was no FBI "following the AEC recommendation" because it is insisted that Q8 was not subjected to either of the tests in question.

121. The curbstone evidence, the medical evidence and the clothing evidence all relate to tests that were required to have been made and are claimed to have been made. The questions that remain are of records - whether or not they have been provided and if they have not been and are withheld, motive for such withholding. These are questions of material fact.

122. Were any of Gallagher's recollections of probative value as they relate to Q8, they do not resolve these questions in any way. He was not the only FBI lab agent who performed such testing. He testified that others did perform such testing, including on cloth. With four inconsistent accounts relating to Q3 and Q15, the genuine questions about them and tests and results are not resolved.

123. Unless I present the kind of evidence I undertook to give to the Court in my prior affidavit, the situation I am in under the Act is that the government can deny me access to its files, make any claim no matter how ridiculous or unreasonable, lie under oath with impunity and by these and other means I have confronted over the years negate the Act and make sport of the courts.

124. Because I am a qualified subject expert,in the prior affidavit I was able to present evidence to the Court that bears on the fidelity of the government's representations under the Act. This is evidence that establishes that there was the need for the testing in question if the FBI did its job. In this, as stated above, the evidence is interrelated.

125. The Opinion errs in its interpretation of what my prior affidavit states with regard to the curbstone and the absence of reports on tests of it. Paragraph 185 is explicit: "Mr. Shaneyfelt did obtain the right piece of curbing. It now has no chip, scar or hole." This is entirely accurate. All the deposed witnesses who did not refuse to testify on this question did not testify in contradiction to the representation of my affidavit when all had the curbstone as it now exists before them. The government has not contested my quoted language or the description that follows it of the changes in the curbstone's appearance after the assassination and before it was removed from the Dallas streetside. There

is no inconsistency at all in Paragraph 195, which states in full, "The piece of curbing Mr. Shaneyfelt removed to Washington is not identical in appearance with the piece depicted in the contemporaneous pictures Mr. Shaneyfelt had." The Tague affidavit is not only confirmatory of the actual alteration in the appearance and condition of the curbstone, it dates the alteration to prior to the time in May 1964 that he returned to photograph it only to find it patched.

126. Despite the language of the opinion relating to this and similar matters, "sounding of conspiracy," given the opportunity to controvert this evidence, the government has been totally silent. This leaves a dispute over material facts in the record or no dispute relating to my affidavit and Tague's.

127. Because my language is not equivocal and because I provided the Court with "before" and "after" photographs, I am at a loss to understand the misinterpretation of the evidence I have presented.

128. In terms of tests and of reports of tests not provided, some of the relevant facts that are not in dispute are:

> There is no evidence on whether or not the FBI made any tests of the curbstone prior to its removal by Shaneyfelt. I believe such tests were required. I have received no information at all relating to any such tests.
>
> The FBI has pictures of the curbstone as of the time of the crime. It took photographs in July of 1964, when it removed the curbstone. Comparison of these photographs made clear to the FBI that the hole caused by the ballistics impact no longer existed. I have received no report on or about this from the government.
>
> In testing the new surface of the curbstone, the FBI knew it was testing the meaningless except in what can be described as "sounding of conspiracy."
>
> The area subjected to the July tests is an inch by a little less than an inch. The area required for the testing in question is as little as a half of a millimeter. In performing the test, the FBI detected but two of the nine known elements of core metal that can be retrieved by the test performed and that from a minuscule sample.
>
> The suspected bullet was encased in a jacket of copper alloy of which no trace appeared in the testing.
>
> The FBI was not able to associate whatever caused this ballistics impact with either the Presidential car or any of its occupants or any of the wounding of either occupant.

129. Based on this set of unquestioned facts and whether or not the FBI had been grossly negligent in not conducting immediate curbstone tests, the FBI knew that its July testing was of what was not relevant to the actual assassination shooting. I have not been provided any report of any investigation of this or of any record of any kind informing anyone in or out of the FBI that there was possible evidence of a conspiracy in the drastic alteration of the curbstone which obliterated the evidence it once held; or any report that informed any such official of the known fact that the original evidence no longer existed; or any

report that the testing could not have any meaning in association with the earlier spectrographic and neutron examinations.

130. What is in dispute is whether or not there are such records. I believe there should be such records.

131. The foregoing history of the curbstone is a more likely explanation of the disappearance of the spectrographic plate relating to it than that it was discarded in a routine "cleaning" of the lab. The space required in storing is inconsequential. Moreover, the other spectrographic plates exist. I have seen them, albeit having been told untruthfully that what I was shown was all of them.

132. Neither reports nor worksheets have been provided with respect to the tests conducted on the President's shirt collar and tie at the points said to have been damaged by Bullet 399 and by it only. This required me to present to the Court evidence relating to the collar area of the shirt and the knot of the tie.

133. Faced with Frazier's testimony that he did order tests by others of expertise he did not possess on the slits in the front of the President's shirt, the Court undertook to try to find Frazier in error on this and to state that Frazier personally made the tests he testified he had ordered another to make - only he did not remember it.

134. Frazier testified before the Warren Commission on an occasion other than reflected in the Opinion. This, his first testimony, was on March 31, 1964. (3H390ff.) He then accredited himself as a firearms expert only. He testified to education in training and experience in firearms only and to FBI experience in firearms only. He gave as his field of expertise only "firearms identification." At the end of this testimony he was accepted by the Commission "as a qualified witness on firearms." (3H390-2) (It was during this appearance that he testified to the marking of bullets by "even a piece of coarse cloth, leather," (3H431) whereas no markings of bone were analyzed on Bullet 399.) During his second appearance (5H58ff.) when he was asked about tests of the clothing, he stated, "I had a spectrographer run an analysis." (5H59) At this point he stated, "I don't actually know whether I am expected to give the results of his analysis or not." (5H59) Told he was, he thereafter testified to the work of others, including when he specified he did not have copies of their records with him.

135. SA Paul Morgan Stombaugh first testified on April 3, 1964. (4H56ff.) He then identified himself as "assigned to the hair and fiber unit of the FBI

laboratory as a hair and fiber examiner." He then was qualified by the Commission "as a witness in this area." (4H56)

136. Frazier was not in error in testifying on deposition that he referred the examination of the front of the President's shirt to Stombaugh. What the examination was required for was not ballistics in nature. There is no dispute in the record over whether or not that damage to the shirt and tie were not of ballistics origin and were the normal consequence of urgently necessary and normal medical practice. While it was ignored that the shirt and the tie were removed in this manner, it is the only testimony on that point before the Warren Commission.

137. It is obvious that the slits do not coincide. The photograph showing this I obtained under FOIA is before this Court. I have examined other photographs taken for me of this evidence. The government has failed to dispute this.

138. The Court's conjectures relating to Frazier's entirely uncontested testimony that he did order a test of the front of the shirt are in the Opinion under "Testing of the Clothing" at pages 17-19. My representations relating to it have not been challenged by the government. Frazier asked for the right to read the transcript of his deposition. In addition to the Assistant United States Attorney, a representative of the FBI Office of Legal Counsel was present at the deposing. In the months following the deposition, no request of any kind has been made to correct or change the transcript. Frazier's testimony is consistent with logic, reason and FBI practice.

139. The test he had made was properly not made in his unit and was properly made in Stombaugh's. Frazier's personal examination of the clothing was not for making these kinds of examinations. It was limited to what is related to his firearms expertise. Because the damage to the collar and tie were not of ballistic cause and were from being cut off, the examination fell to the hair and fibers unit of which Stombaugh is part.

140. Whether or not the Court is shocked that such evidence as I have presented to it could be ignored in the investigation of the assassination of a President, as I am and for years have been both shocked and motivated, the Court's conjectures led it into factual error.

141. The government had not claimed that the Stombaugh test does not exist. It merely ignores the matter entirely. Only if its existence were to be contested would there be a genuine question of material fact in dispute. The question is

one of withholding, a question the government has not addressed.

142. The existence or nonexistence of reports and records on this and related matters is inextricably intermeshed with the fact of the assassination. It is for this reason only that I address the evidence that relates to the making and existence or nonexistence of tests in terms of the controlling factual evidence.

143. While Frazier testified that he did not recall whether or not he personally buttoned the collar to determine whether or not the slits coincided, he never expressed any doubt about his ordering an examination by hair and fiber experts whose examination would not be limited to a visual examination to determine whether or not the holes coincide exactly. (Pages 60-62 are attached as Exhibit 4.) The fact is that Frazier volunteered "I had it examined by another examiner..." The Opinion cites only one question. This part of Frazier's deposition was directed at the cause of the damage, which required an expertise other than Frazier's. Frazier repeated that he had asked for the examination he believed was by Stombaugh and expressed the belief that a report had been given to the Warren Commission and to me. He was explicit in testifying that a report had been made. Before the Warren Commission he testified that all reports of this nature were collected and preserved by him. He therefore had added basis for personal knowledge.

144. In discussing the damage to the shirt collar and tie by going outside its own record for evidence, the Court made factual error. The Opinion states of the shirt: "CE 394 was discussed only twice in the course of the Commission hearings, by Cmdr. James J. Humes, a pathologist at the Naval Medical Center ... and by Frazier himself." This factual error is followed by another, "Frazier stated first that he himself had conducted the examination of the President's shirt." (emphasis added)

145. In his Commission testimony (5H60) Frazier was not asked whether only he had examined the clothing and he did not so testify. Frazier's uncertainty on the cited page (5H61) relates not to whether or not he performed "the examination" but to whether the damage to the shirt was of ballistics origin.

146. While I do not know how the Court could have overlooked the proof in my affidavit that Dr. Charles Carrico "discussed" the shirt "in the course of the Commission hearings," the fact is that he did.

147. Diana Hamilton Bowron is the emergency room nurse who, with Nurse Margaret M. Henchcliffe, cut off the clothing in Dr. Carrico's presence. Nurse Bowron testified, "... and Miss Henchcliffe and I cut off his clothing ..." (6H136)

148. Since-retired Secret Service Agent William Robert Greer, on that day the President's driver, was in the emergency room. He was not asked it until it was clear that he had not seen the front of the President's shirt. He also appears to be the only witness Commission Counsel Arlen Specter asked about the condition of the President's clothing:

> Mr. SPECTER. Were you able to observe any wound on the front side of the President?
> Mr. GREER. No, sir; I didn't, I never seen any on the front side of the President. The only thing I saw was on the head. I didn't know at the time of any other injuries on him.
> Mr. SPECTER. As to the front side of the President's body, were you able to observe any hole or tear in either his shirt or tie?
> Mr. GREER. No, sir; I didn't and I brought them back, those things, and I didn't see them at the time. I probably didn't inspect them very closely but they were handed to me in a paper bag to bring back... a nurse got two shopping bags and I held them and she put the President's suit, his belongings into the two bags including ... the shirt they had torn, they had torn it to take it off him." (2H125)

149. Greer not only testified about the shirt, he gave testimony that assumes more importance in the light of Frazier's cautious and self-serving caveat not quoted in the Opinion but on precisely the page cited in the Opinion, Volume 5, page 60, "the fibers around the margin of the hole were - had been pressed inward, and assuming that, when I first examined the shirt it was in the same condition as it was at the time the hole was made..."

150. Greer's testimony makes it apparent that the handling of the clothing made it impossible to state that the direction in which the fibers pointed when Frazier first saw the shirt was the same "as it was at the time the hole was made."

151. Along with Greer in the Presidential car and at the Naval Hospital was since retired Secret Service Agent Roy Kellerman. Kellerman was not an easy witness to question. He was anxious to skip from the Dallas emergency room to the autopsy in Bethesda as he did but not before giving some testimony on the shirt and tie. He did not permit then Commissioner Gerald Ford to complete a question that began, "But he had his tie and his collar still - " Kellerman interrupted to say, "Still on," but that he never saw the President's neck because he had other duties and "at that time, I did not observe him." Only when as with Greer, who also had and exercised other protective duties, it became certain that

Kellerman had not examined the shirt and tie did Specter ask, "Did you observe any hole in the clothing of the President on the front part, in the shirt or the tie area?" Kellerman's was the automatic answer, "No, sir."

152. Dr. Malcolm Perry testified about the shirt, that "the shirt had been removed by the personnel there in the emergency room, I assume." (6H12)

153. Frazier testified about the shirt more than once at the point in the hearings cited in the Opinion. In addition to his qualifying any statement on the direction in which the fibers pointed that:

> "The hole (sic) in the front of the shirt does not have the round characteristic shape caused by a round bullet; (5H61)
> the slits could have been caused by other than a bullet; (5H61)
> the tie had been cut off; (5H62)
> from the tie alone there is no indication of what caused the nick in it; (5H62)
> "no metallic residue found on the shirt at the holes in the front;" (5H62)
> "no metallic residue found on the tie;" (5H62) but
> "metallic residue" was found on the back of the shirt. (5H62)

154. Dr. Humes testified about the shirt at more than one point. The quotations in the Opinion (footnote 5, page 18) reverse them and in so doing alter their meaning. This also makes it appear that all of Dr. Humes' relevant testimony was at one point. The question he was asked on page 366 of Volume 2 begins on page 365. It was whether the holes in the back of the jacket and the shirt coincide. In response to this question he responded, "We believe that they conform quite well" and "coincide virtually exactly with one another." The questioning relates to the conjectured direction of the shot.

155. Dr. Humes did not see the clothing until March 16, 1964, moments before his testimony began. (2H364)

156. The prior question is essential in understanding the response, quoted in the Opinion without regard to the question, thus changing the meaning of the answer:

> Mr. SPECTER. Will you take Commission Exhibit 394 and describe what that is, first of all, please?
> Commander HUMES. This the shirt, blood-stained shirt, purportedly worn by the President on the day of his assassination. When viewed from behind at a point which corresponds essentially with the point of defect on the jacket, one sees an irregularly oval defect.
> When viewed anteriorly, with the top button buttoned, two additional defects are seen. Of course, with the shirt buttoned, the fly front of the shirt causes two layers of cloth to be present in this location, and that there is a defect in the inner layer of cloth and a corresponding defect in the outer layer of the cloth.
> Mr. SPECTER. Is there any observable indication from the fibers on the front side of the shirt to indicate in which direction a missile might have passed through those two tears?
> Commander HUMES. From an examination of these defects at this point, it would appear that the missile traversed these two layers from within to the exterior. (2H365

157. It thus is apparent that Dr. Humes' conjectures, based upon a cursory examination of the fibers of the shirt after it had been much handled over a four-month period, are limited to direction. These conjectures are not related to the questions here at issue in this instant case or to the withholding of the test Frazier directed to be made.

158. What Dr. Humes testified "coincide virtually exactly with one another" on page 366 is not the slits in the front of the shirt. He was not asked if those two slits in the neckband "coincide virtually exactly with one another."

159. From checking recollection, not a complete search, I inform the Court of these seven others who "discussed" the shirt in addition to those two called the "only" ones in the Opinion.

160. In the Court's researches into the Warren Commission testimony and from the point in it that the Opinion quotes, it appears to have overlooked Dr. Humes' testimony that is pertinent to the "sounding of conspiracy" and "the alleged destruction of assassination evidence and falsification of test results." (Opinion, pages 22 and 21) As of March 16, 1964, four months after the crime, Dr. Humes testified that "this tie is still in its knotted state, as we examine it at this time. The portion of the tie around the neck has been severed apparently with scissors or other sharp instrument accounting for the loop about the neck. (sic) The tie is tied in four-in-hand fashion." (2H366) On the next page he added that there "is a superficial tear of the outer layer only of the fabric of this tie." He was not asked but this was at the extreme upper left hand of the knot as worn. This placed it, as worn, at the fold of the collar. This is to say higher than the location of the slits in the shirt, both of which are below the collar button.

161. If the Opinion were not in factual error under "Testing of the Clothing," the Warren Commission testimony it overlooked entirely supports my affidavit, does not in any way or at any point contradict it, and requires there to have been precisely the kind of specialized test to which Frazier did testify. If such a test established that the slits and the nick of the tie were not of ballistics origin, as beyond question they were not from the uncontested evidence I have presented to this Court, then the test Frazier asked to be made had to be but the beginning of a series of other inquiries records of which have not been provided, as the Stombaugh test and the report on it to which Frazier testified have not been provided.

162. The failure to provide such test results, Stombaugh's or any other, is a genuine issue of material fact.

163. There are other factual errors in the Opinion. Some relate to the credibility of those deposed, about which I was not permitted to testify, and to other genuine issues of material fact.

164. Bearing on Shaneyfelt's credibility is what the Opinion states under "Laboratory Procedures" at the bottom of page 6: "Shaneyfelt testified that he had not submitted a report on the four frames allegedly spliced out of the Zapruder film of the assassination because the film print from which he worked was complete. Shaneyfelt Deposition, at 21."

165. The formulation of the Opinion is in error. Frames in their entirety are missing from the original, not the copies made from the original before the original had these frames removed. So the question is not related to the presence of these frames in the copies of the original.

166. The expert testimony he did not give the Warren Commission is this: that copies cannot be "complete" with 8mm. film. In the copying process about 20 percent is automatically removed. This is the film surrounding the sprocket holes by which the film is advanced. On exposure this part of the film captures images. The images are not visible on projection because that area is on the side away from the lens and the main part of the film and because a sprocket moves the film on projection. However, on examination outside of a projector, the image not seen on projection is visible. Shaneyfelt did make examinations other than by projection. He also made copies of individual frames. These are called "slides." When slides were made from the original Zapruder film, it was immediately apparent that this section of the film was of significant evidentiary value. One example has to do with Phil Willis, another photographer who was in a straight-line relationship with Zapruder, with the President between them the time the first shot is said to have been fired. There is universal agreement that one of Willis' still pictures was taken immediately after the President was struck. The evidence of the Zapruder film confirms all eyewitness testimony. The official account is that the President could not have been struck before Frame 210 of the Zapruder film as Shaneyfelt numbered the frames.

167. Those frames entirely missing from the original Zapruder film are 208-211. It thus is impossible to determine whether Willis is in them. The

marginal material of the original, the part not seen on projection and not preserved in the making of copies from the original, shows Willis going out of range of Zapruder's camera at about Frame 204. By then Willis is seen to have removed his own camera from his eye. Shaneyfelt testified to none of this as the FBI's and the Warren Commission's expert. What is not known, unlikely as the possibility may be, is whether Willis reappeared in the margins of the Zapruder film. This is not known because those frames no longer exist.

168. If Willis did not reappear in the Zapruder film, then the Zapruder film proves the President was shot prior to Frame 210 because Willis had lowered his camera prior to Frame 210 and had already taken that picture. This also Shaneyfelt did not testify to before the Commission.

169. There is no doubt that, as a photographic expert and from having a copy of a copy of the Zapruder film "from which he worked," Shaneyfelt knew that the copy he had was not "complete." Testimony that it is complete is untruthful, knowingly untruthful.

170. Moreover, in his numbering of the individual frames of which he made copies for the Commission, Shaneyfelt jumped from 207 to 212. Examination of these as printed by the Commission (18H19) discloses that neither 207 nor 212 is a complete original frame. The splice in each is apparent. Attached as Exhibit 5 is that page of the exhibit of still pictures as prepared by Shaneyfelt and published by the Commission.

171. There is factual error in the Opinion under "Neutron Activation Testing" at pages 12 and 13. This relates to when what testing was done. The Opinion states: "When plaintiff's counsel asked him to explain the delay with respect to other items, Gallagher pointed out that the FBI's access to the reactor was limited, and that the paraffin lifts were tested early because they were tested solely by neutron activation analysis, whereas bullet samples were tested by spectrography as well. Id. at 65."

172. This non sequitur is one of the many points in the depositions that illustrate the danger to justice and to the Court from denying further testimony, particularly relating to the credibility of those who have become trained and skilled at being professional witnesses and who on occasion present a special point of view if not in fact a predetermined "line." My personal experience includes instances in which FBI Headquarters directed that necessary records not be

given to United States Attorneys not trusted by Headquarters. To further this control, from records in my possession Headquarters also sends inadequate and incomplete written reports to the prosecutors, making them completely dependent upon the personal apperances of the FBI's professional expert witnesses. A conspicuous case in the King assassination is the United States Attorney at Memphis. The FBI would not even present its "evidence" in which Frazier was most important to that United States Attorney or seek to obtain an indictment of James Earl Ray in Memphis, where the crime was committed. This was later confirmed in the Report of the Office of Professional Responsibility. These professionals, possessed of a scientific knowledge not duplicated by judges and counsel, become adept at misleading them. While in this instant case false swearing is not uncommon, government misrepresentations are less uncommon. Shaneyfelt's misrepresentation with regard to the Zapruder film is one. What the Opinion quotes from Gallagher at pages 12 and 13 is another. This particular Gallagher untruth relates to whether or not earlier tests were made on which no records have been provided.

173. Stombaugh illustrates how professional these agents become as witnesses. Between an unspecified time in 1960 when he was assigned to the hair and fibers unit and his April 3, 1964, testimony before the Warren Commission, in four years or less, he had testified as an expert in 28 states and had made "several thousand hair examinations and about twice as many fiber examinations." (4H56) He appears to have been the junior in expert-witness experience of those who worked on tests relevant in this instant case. Those deposed had completed the service required for retirement and were much more experienced at twisting, misleading and misrepresenting.

174. Were I to have tried to undertake to correct each and every one of these misrepresentations, to attempt to anticipate which one might mislead the Court, the taking of the depositions would have become no more than an interminable wrangle. For this reason I did not interrupt that deposition when Shaneyfelt interjected the malicious and malevolent allegations about me. Instead, at the end of that day I told the Assistant United States Attorney and the representative of the FBI's Office of Legal Counsel that I would waive the statute of limitations in writing if Shaneyfelt would enter the suit he alleged he had wanted to file over my early writings. When Shaneyfelt actually did send me a bill for expert witness fees over and above the prescribed ones, which I had paid

in advance, I waived the statute in writing and dared him to sue. He has been without response. He will not dare make his integrity and the integrity of his work in the John Kennedy assassination an issue before a court of law with one of my subject expertise and my detailed knowledge of his work.

175. The fact with regard to this particular falsity by Gallagher upon which the Court seized is exactly opposite Gallagher's misrepresentation. Everything he subjected to neutron activation analysis was in Washington, in FBI Headquarters, before the paraffin casts were. And the spectrographic examinations, or at least those thus far acknowledged in this instant cause to have been made of those objects, had been made. Unless there were spectrographic examinations other than those acknowledged, Gallagher's testimony is false. The falsehood is one of many relevant to genuine issues of material fact that are in dispute and by which this Court was misled.

176. It is the claim that the entire so-called "formal report" of all the spectrographic examinations of bullet material save that of the curbstone is the November 23, 1963, letter to Chief Curry. Here I attach a different copy of that letter to illustrate how the Court misled itself in going outside its own record and misinterpreting an incomplete excerpt from Frazier's testimony before the Warren Commission (5H69) relating to what would be permanently preserved in the FBI's files, in the sense of only there, of what was not otherwise available. The copy attached as Exhibit 6 is from Chief Curry's book, which was also "preserved" in 7-11 Stores, its major means of distribution.

177. In this letter the FBI reflects the completion of much more testing than Gallagher testified to and the preparation of the letter itself by November 23, 1963. With respect to the evidence reports on which are herein at issue, this amounts to little more than a list to which at best ambiguous descriptions are added.

178. Attached as Exhibit 7 is another page from Chief Curry's book. This facsimile reproduction of a Dallas Police Department record to which former Chief Curry added a note shows that as of the time of this November 23, 1963, FBI letter, the paraffin casts were still in Dallas and had not been requested by the FBI. This shows that Gallagher testified falsely in stating that the paraffin tests were available to him before the other objects were.

179. The note bears on the reason the FBI later wanted the casts and

wanted to make neutron activation tests of them it then kept secret. It is correct but understated to represent no more than that the paraffin testing of Oswald's right cheek "did not reveal any nitrates from having fired a rifle, thus offering no proof that Oswald had recently fired a rifle." The lack of nitrates on the cheek is exculpatory of Oswald's having fired a rifle.

180. This also illustrates the selectiveness of Gallagher's and other testimony herein at issue and the character of the testimony the Court did not permit to be examined by other testimony. Gallagher was the last witness before the Warren Commission. (15H746-52) The purpose of his testimony was to make it appear that traditional nitrate testing to detect residues that come from gunpowder as well as other objects are not dependable. He did not testify to a single other test he performed. Nor did he testify fully and truthfully about the tests to which he did testify, the neutron activation testing of those paraffin casts. He did not testify to what I learned from the dumping upon me of the majority of the records I have obtained in this instant cause, those I had specifically said I did not ask for or want, the paraffin-cast testing.

181. Those records reflect numerous test firings of the so-called Oswald rifle in the neutron activation testing, the making of casts of the cheeks of the shooters and the neutron activation testing of those casts. The hidden results, so far as I know, have never been published anywhere. To the best of my knowledge they were kept secret until, as a desperate act that successfully deceived this Court into believing that a large volume of relevant records had been given to me, these records rather than those sought were hand-delivered to my counsel after the end of a working day. This was then used in support of a successful effort to prevail before this Court.

182. In all cases in the Oak Ridge tests significant deposits of gunpowder were deposited on the cheeks of the shooters. In all cases those traces were picked up in the tests. It is in this test series that Gallagher detected a 30 percent variation in the powder taken from different shells. He testified on deposition that, with a test fine to parts per many millions, he did not pay any attention to a variation of 30 percent. Generally, minute variations are considered significant.

183 To Gallagher and to the rest of the FBI, what did not indicate Oswald's guilt, the official "line" laid down by Director Hoover, was not significant.

Rather than investigating to establish all possible fact, as the record in this instant cause already shows with regard to the lab, it was seeking only the incriminating. This provides a motive for continued withholding of relevant records.

184. In its dependence on the word of these agents, the Court also was misled about what it calls the "practice" regarding the conveyance of FBI information to the Commission. While without doubt there was some informal contact, the actual practice was for records to be delivered by a courier with a covering letter signed by Hoover and stating on the face that delivery was by courier. Hoover was a fabled record-maker and record-keeper. Where agents had outside contacts, they also made written records. When Gallagher, for example, was phoned by Dr. Vincent Guinn, he made a record of having received that call. Guinn is the expert urged by Aebersold as the best in the criminalistics use of neutron activation testing, the one whose services Gallagher and the FBI would not accept. The record Gallagher left is paraphrased, "Look, boss, I didn't even give him the time of day."

185. What is at issue with regard to records, their existence and whether or not they have been provided, is not addressed by the Opinion at this point, pages 5-8. I know of no report relevant herein that reached the Warren Commission other than by courier. I know of no such Commission record I did not seek prior to filing this FOIA request. I know of no report to the Commission including any meaningful statement of all the tests and none, of course, including a tabulation of the results of all the tests. Whether or not there was any informality, whether in actuality there was nobody tending the FBI store, is not material to the delivery of what I have not received or to whether or not it exists or should exist.

186. Nonetheless, the Court may wish to know that for personal contact there was an official liaison arrangement set up by the FBI. It was on a higher level than that of laboratory agents.

187. The Court has chosen to dismiss the corroborated evidence of Tague, which means that the FBI knew it was testing the irrelevant in testing the curbstone as retrieved by Shaneyfelt. It also ignores the evidence of the doctors, save for arguing that Frazier did not mean it when he testified to ordering a test of the front of the President's shirt. The evidence of this nature I presented to the Court relates to testing required to have been made; to fact of the

crime bearing on the need for testing; and to what testing could not show and thus motive for withholding the results and other relevant records.

188. The reason we have not been given the results of the test of the slits in the shirt that Frazier testified to having asked for, an essential investigatory requirement, is because such tests show that the slits were not caused by a bullet or a part of a bullet. The test had to show exactly what the evidence I presented from the Dallas doctors shows, that the wound in the front of the President's neck was above his shirt collar and was an entrance wound rather than an exit wound. This is opposite the line laid down by Director Hoover as it is opposite all official accounts of the crime. I am well aware that this also means there was a conspiracy to kill the President because it means that the crime was committed by more than one person. I am aware of the great official reluctance to acknowledge this frightening actuality. There is an equally great reluctance to let it be known that when the President was assassinated the FBI did not solve the crime. The Presidential Commission did not escape what in its executive sessions it openly characterized as its captivity by and in fact dread of Hoover and the FBI.

189. I note also that these executive session transcripts were withheld from me until I used FOIA to obtain them. The Commission and its general counsel actually anticipated that if they were to ask Hoover searching questions he would tell them "it is none of our business," the words of the early executive session of January 22, 1964. This transcript Commissioner Allen Dulles asked to be destroyed, which was agreed to. The stenotypist's tape escaped the memory hole and under FOIA it was transcribed for me.

190. The Commission knew Hoover was withholding from it and accepted the withholding out of fear of him and the FBI. It is explicit in these transcripts as it is in other records I have obtained.

191. I do not present these matters to argue the assassination case. I present them as relevant to continued withholding, motive for continued withholding, and to show that whether or not there is a copy of an FBI record in the Warren Commission archive is not related to whether or not the FBI has such a record or has made distribution of such a record. That the test to which Frazier testified is not reflected in the Warren Commission files is unrelated to whether or not the test was made.

192. With further regard to the evidence presented in my prior affidavit

and its bearing on the making and the existence of tests, when I went to Dallas in June to obtain evidence for this Court, I found that the doctors I wanted to see were no longer there. Thus in my affidavit I recounted my prior interviews with them and the testimony that is relevant from the Warren Commission records.

193. On Friday, October 14, 1977, I received a copy of an unpublished official record that is relevant to this prior evidence, to the need for there to have been the test Frazier testified to having asked of the hair and fibers unit, and for the results to be recorded and clearly understood. The official document I received October 14 has never been published. It contains basic fact of the crime as immediately reported by the best witnesses then available relating to those events, the Dallas doctors. It contains information the FBI Laboratory had regarding the objects immediately subjected to testing, such as the bullet and clothing and fragments. This document is one of the records referred to in my prior affidavit, one of those records Commission Counsel Arlen Specter pretended he could not then present to the Commission and to the badgered and much-abused witness, Dr. Malcolm Perry. Dr. Charles Carrico was the first physician to see the President, Dr. Perry the next. Dr. Perry, a professor of surgery, was the President's attending surgeon.

194. This record was never unavailable to officials. To now, save for a colleague who assisted in my quest for it after I was taken ill and after I was told by Press Secretary Ron Nessen that the record was not still stored in the White House, it has been a secret simply because officials wanted its content to be secret. Specter wanted not to have this evidence before the Members of the Commission and in its record or it would have been there.

195. The White House Press Office arranged for a press conference as soon as the doctors were relieved of their emergencies, to inform the people of what had happened to their President. I attach as Exhibit 8 a copy of the official White House news conference transcript obtained from the Lyndon Baines Johnson Library.

196. Beginning on page 4 it is apparent that the doctors described the anterior neck wound as one of entrance and as nothing else. The words of Dr. Perry, confirmed by Dr. Kemp Clark, chief neurosurgeon, are "There was an entrance wound in the neck," illustrated in relation to his own Adam's apple. On page 6, "an entrance wound in the front of the throat. Yes, that is correct. The exit wound, I don't know."

197. At the time of the crime Hoover had not laid down the line and those involved in the investigation proceeded as they normally proceed, to try to learn and to obtain evidence. Frazier was completely correct to ask for the examination of the shirt slits then. But that was before the new President put Hoover in charge of the investigation. This turned out to be for six days only, until the Commission was established. Prior to those six days, and including part of November 23, 1963, the Secret Service had jurisdiction. The FBI's work would have been reported to it, a risk if the FBI did anything but its best and most complete possible work.

198. The entire later FBI investigation, which is based on the single-assassin theory ordained by Hoover, had to work around this fact - there was at least one shot from the front. This is one need for the testing no record on which has been provided, whether it be to confirm or to fail to confirm such questions as did a bullet cause the damage to the President's shirt and tie. This is the test Frazier testified he had asked Stombaugh to make.

199. All sorts of other tests were required by this evidence, especially the most painstaking testing of bullet materials. With shots from front and back the bullet material of the crime and of the wounds could not be of common origin. Reports of such tests have not been provided. Motive for withholding them is apparent - they cannot confirm what Hoover ordained and what thereafter was fixed upon the country, and they do prove the opposite.

200. Nothing else explains the lack of definitiveness with such large specimens, as specimens for neutron activation and spectrographic analyses go. Bullet 399 was virtually unscathed. The "live round," Q8, was complete. There were two large fragments, Q2 and Q3. There were three smaller fragments from the back seat of the car and those removed from President Kennedy and Governor Connally. The smallest of these is larger than the minimum requirement specified by Gallagher, a half of a tiny millimeter. With all these samples, a definitive statement of conclusions was possible. A complete tabulation of measurements and other evidence in support was essential.

201. Nothing else explains the claimed failure to perform either test on the "live round," Q8, the very one the AEC expert considered most important. In regard to this evidence and relevant records, the Opinion is repeatedly unfactual. It winds up crediting a fairy tale.

202. The Opinion confuses Q1 and Q8. While Q1 is "CE # 399: The 'Pristine Bullet'," as the heading on page 14 describes it, it is not the unfired bullet, Q8, the one Gallagher alleged was not submitted to spectrographic or neutron activation testing in the interest of "posterity." Gallagher was fully aware of samples taken from Q1 and of the tests of these samples. The confusion of the Opinion is more difficult for me to understand because I have provided enlarged photographs taken for me by the National Archives showing the removal of samples from CE 399. This removal of samples from "The Pristine Bullet" is in the depositions and in other evidence. In fact, Frazier testified on deposition to what he did not testify before the Warren Commission, to the removal of a second sample from it for spectrographic testing. He told the Warren Commission of only one.

203. Yet at the bottom of page 14 the Opinion states, "Gallagher indicated also that a directive to preserve CE 399 'for posterity' precluded his testing different portions of the bullet for composition." In fact, no such "directive" has been produced and while there remain questions about the testing and the results, there is absolutely no doubt at all about "his testing different portions of the bullet for composition." He did precisely this, core and jacket both.

204. It is, as my prior affidavit makes clear, the "live round" or Q8 on which we have been given no reports of any of this testing. Relating to it the Opinion conjectures at pages 16 and 17 that no spectrographic or neutron activation testing "was necessary because it was sufficient that the live round was of the same manufacture as" other cartridges. This is no less true of millions of other cartridges, one of the reasons for the tests. No cartridges have been connected with the shooting of the President. Manufacture is not relevant. The Opinion says it "seems eminently reasonable" that this, what the AEC presented as the most important of these tests, allegedly was not performed. In the same paragraph the Opinion states of the "inference to be drawn, uncontroverted by any other evidence," is that it was sufficient "that Q8 was subjected to visual scrutiny only." The need for other than only visual examination is in the evidence in this instant cause, including in the form of the AEC's urgent recommendation that all testing begin with precisely this test. As stated above, this live round was the one connection between any bullet or cartridge and the rifle at the time of the crime.

205. Had there been such a "directive" as has not been produced the entire

claim to this fancied interest of posterity precluding any investigation relevant to the crime of the assassination would remain a cruel hoax. If for some reason that is neither apparent nor conjectured nor testified to there was any need not to remove virtually microscopic-sized specimens from a cartridge that was not used in the crime when specimens were taken from the one said to have been used in the crime, any imagined interest of "posterity" could have been preserved without making any alteration at all in the appearance of the "live round."

206. The simple means by which this could be done is commonplace. Throughout the world shooters do it all the time in reloading ammunition. It is called "pulling" a bullet. This means removing the projectile from the shell. Once it is done samples of core and jacket can be removed from the base and the projectile and the shell reunited to reform the complete cartridge. By taking the specimens from the base, which becomes invisible on the rejoining of the two parts, there is no perceptible alteration in the appearance of the "live round."

207. Years ago, in my earlier studies of the ammunition and the shooting, I purchased similar ammunition at my local gunshop and asked it to "pull" samples. To make display safer, because the primer contains an explosive charge, albeit a small one, I also had it discharge the primer. So the Court can see the degree to which it was imposed upon by Gallagher's entirely unsupported claim relating to why he and the FBI allegedly failed to make the test the AEC described as so important, I attach as Exhibit 9 both parts of what was once a single cartridge of this kind of ammunition, the bullet and the shell from which the primer has been detonated.

208. The alleged "directive" was not produced in compliance with the request or with discovery. It is mythical. This testing is no less essential than the AEC stated. The "posterity" interest is so spurious nobody in official capacity would put his name to such a farce and an indescribable preclusion of evidence in the investigation of the assassination of a President.

209. In all of this I believe the existence of the unproduced "directive" becomes another genuine issue of material fact. It has not been produced. Gallagher testified to its having been issued. This Court has credited that testimony.

210. From my knowledge and personal experience there are genuine issues of material fact relating to the existence or nonexistence of records that have

not been provided. Faced with government obduracy and its long history of withholding of which I have personal knowledge and experience; with tolerated false swearing to compliance; and with an obvious FBI motive in withholding, to meet the obligation imposed upon me by the court of appeals I have presented evidence relating to the need for there to have been tests and records not provided. Without my doing this there simply is no way of addressing official false swearing and deliberate violation of the Act. With both I have personal experience, especially with the FBI.

211. The interpretation of the opinion at the bottom of page 10 amounts to a statement that nothing else matters as long as the government denies having a record, even if the denial is admittedly false. It is my long personal experience that false denials are persisted in only to have records produced when courts require them to be produced. My files hold thousands of pages of records the nonexistence of which had been sworn to. They hold thousands of pages of FBI records delivered after full compliance had been sworn to. In that case, in this instant case and in other cases, noncompliance by the FBI was "ordered."

212. These are realities from my long experience. By the interpretation of the Opinion at the bottom of page 10, there is no record that would be provided under the Act if the government did not want to produce it or if the applicant did not already have it and did not need the Act to obtain it.

213. With regard to some records not provided, there is not even an official denial of their existence and relevance in the record. There are all the relevant records of, among field offices, that of Dallas at the very least from the uncontradicted testimony of those deposed. There are all the copies circulated among the FBI hierarchy, if not elsewhere, the normal practice from my personal experience and from thousands of records I have obtained outside this instant cause. There is nothing in the record to dispute Frazier's statement that he asked for additional testing and his belief that copies of the reported results had been given to me as well as to the Warren Commission. There is no affidavit attesting that any of the foregoing and other known repositories of such records was searched. There is the material disagreement between the evidence that somebody began neutron activation testing of bullet materials early in January 1964 and the Gallagher claim that he did not begin any until May.

There is no disagreement that the FBI did not provide its copies of the kinds of records that, belatedly and after it had attested to full compliance, did come from ERDA's files. All these illustrations are those of which I have personal knowledge.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 15TH day of October 1977 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1978

NOTARY PUBLIC AND AND FOR
FREDERICK COUNTY, MARYLAND