

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, :
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 Appellant :
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 v. : No. 78-1107
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 U.S. DEPARTMENT OF JUSTICE, :
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 Appellee :
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AFFIDAVIT

My name is Harold Weisberg. I am the plaintiff/appellant in this case. I reside at Route 12, Frederick, Maryland. My prior experiences include those of investigative reporter, Senate investigator and editor, intelligence analyst and student of FBI records and methods.

1. I have read the Department's Opposition to my Motion for Leave to File Reply Brief with Addendum. This Opposition contains untruthful, unfactual, defamatory and misleading statements. From my knowledge of this case and my extensive experiences in other cases, I believe these numerous unfaithful representations cannot be entirely accidental.

2. I cannot estimate the number of FBI records I have studied but it is a large number. I have obtained more than 150,000 pages of formerly secret FBI records during the past two years. I have studied many thousands of other pages of FBI records, including those published in the 26 printed volumes of Warren Commission records and

those not published by the Commission but stored in the more than 300 cubic feet of its records in the National Archives.

3. As a result of my studies of the FBI, its semantics and its means of circumventing compliance in Freedom of Information (FOIA) matters, I have been able to inform the Department of Justice where the FBI has hidden relevant records and then claimed falsely that the records did not exist. The most recent records I have received from the FBI relating to the assassination of Dr. King are of this nature. The FBI denied they existed, then claimed they had been destroyed, both paralleling the situation in this instant cause, and only when I was able to provide seeing-eye service to the Department's appeals office did I obtain them.

4. In these files, known as "the Long tickler," I found the most recent of many FBI records reflecting its intense dislike of me because of the nature of my work. This record, not provided in compliance with several earlier information requests to which it is relevant, is one the FBI actually filed in five different bank robbery files! I have never had direct or indirect connection with any bank robbery.

5. I have obtained FBI records relating to my published work and the FBI's analysis of it. I have found no case in which the FBI was able to attribute factual error to me. In one instance the FBI, by incredible convolutions, undertook to assure the founding Director that he was correct when in fact, ^{he} erred grossly in his Warren Commission testimony. Thereafter the FBI created and distributed vicious fabrications about me. I have obtained records in which

the FBI decided to "stop" me and other records reflecting that to this end it connived with since retired Special Agent Lyndal L. Shaneyfelt for him to file a spurious lawsuit against me. The FBI used tax money for the legal research to determine whether he could sue me. (He blinked, then chickened. He would not file such a suit when I learned of this scheme and gave him written waiver of the statute of limitations. This was when he was deposed in this instant case.) I have obtained FBI records in which it undertook to undermine my credibility with the White House and with the Congress by such fabrications as that my wife and I annually celebrated the Russian revolution. In 1969 the FBI created a false record alleging that I, a Jew, conspired with a notorious anti-Semite to defame the FBI. This followed my informing the Department of proof of FBI practices later known as Cointelpro.

6. I believe I am the object of special FBI attention because it cannot fault my extensive work and because my work accurately exposes its failings in time of great crises, when President Kennedy and Dr. King were assassinated. I believe these efforts against me, participated in by Department lawyers, are manifest in the present Opposition.

7. I am now approaching my 66th year. Since 1975 I have been severely limited as a result of acute thrombophlebitis in both legs and thighs. In 1977 an added and serious arterial blockage was diagnosed. Either of these conditions can be fatal. The Department and the FBI are well aware of this. In this and in other cases they have combined successfully to waste as much of my time as the courts

will tolerate. The time they have wasted has precluded my writing, one of the means by which I make information I obtain available to others and the means by which I can add the knowledge I have acquired to the records I obtain and make available.

8. One of the Department's means of wasting me was to inveigle a court to have me serve as the Department's consultant in a case in which it is the defendant and I the plaintiff. The Department alleged I could render services it could not obtain from its FBI. This ploy required several hundred hours of my work and a considerable amount of work by my wife, who is of my age and is my only assistant. To further waste me and my limited means, the Department did not provide the dictating equipment it promised, not even the cassettes. It told me to buy the cassettes and that it would repay me. In more than a year it has not repaid me for these cassettes. I also was forced to purchase a dictating and a transcribing machine for which I since have had no need. The Department then refused to pay the consultancy fee. If I sue to collect, the time this will require must come from what remains of my life that I can devote to my work that the Department does not like.

9. Filing false and misleading affidavits and untruthful representation by Department counsel are common practices in all of my FOIA cases. The FBI and the Department have even used as an affiant a very vulnerable person, an FBI special agent who was an unindicted co-conspirator. His false and misleading representations wasted months in my suit for King assassination records. In using him as an affiant, Department counsel was aware that he was an unindicted

co-conspirator, since fired. As a result of his last effort, more of my life was wasted. I was required to respond to 68 pages of his affidavit, ranging from the irrelevant and inaccurate to the overtly false and to address 52 attachments in which he withheld what I then had to and did prove was within the public domain or had been given to another and later requester while it was withheld from me. Until then, out of compassion, I did not inform that court of the fact that he was an unindicted co-conspirator because I knew his retirement could be denied him and because I did not want to add to the suffering of his family. When I was finally forced to prove that he misled that court and to disclose his exceptional status as an unindicted co-conspirator, it visibly shocked that court and led it to state that he should not appear in that case again. Based on this, Department counsel then undertook other means of wasting the time of my counsel and me by defending the man without once addressing the accuracy of my representations or relieving - to this day - the proven falsity of his representations to that court, representations relating to compliance. Nor has any of the information he withheld been provided in the ensuing months. Even what was given to later requesters has not been given to me.

10. The Department Opposition I address in this affidavit serves the same purposes as those encapsulated in the preceding paragraphs.

11. Moreover, this Opposition is still another effort to portray me as some kind of nut who persecutes the poor, defenseless FBI. To do this the Opposition resorts to misquotation of my Motion for Leave to File Reply Brief with Addendum (my Motion). There appears

to be little likelihood that the misquotation is accidental.

12. With regard to a record that had been withheld from me since my first request of May 23, 1966, the Opposition misrepresents at the bottom of page 2 and top of page 3 that it

does not in any way support appellant's allegation that the curbstone was "altered" by the FBI; it merely reports that as of that date no mark was visible. If a change had occurred, the document provides no basis for believing that the change resulted from intentional government action rather than weather conditions and traffic. (Emphasis in original)

13. A relatively minor point here is that once again Department counsel seeks to overcome deficiencies in Department evidence by providing "testimony" in the guise of an Opposition. There is no evidence that the concrete curbstone in question was worn smooth by "weather" or by "traffic," by Dallas drivers dedicating themselves to riding that particular Dealey Plaza curbstone for more than eight months, finding that small part of the paved highway inadequate or that tiny piece of curbing universally attractive for joy-riding. Or, for that matter, that rubber automobile tires would wear down and smooth off one particular small part of that curbstone only. Factually this representation is false. My life's prior experiences include extensive observations of paved surfaces, particularly in recent years, when my medical treatment included extensive walking on such surfaces. I attest that to my observation holes are not worn smooth and obliterated by traffic. I have also mixed, poured and smoothed concrete and observed its durability. From this experience I characterize the allegation that the mark of a bullet could be eliminated by weather as ridiculous "testimony."

14. To the knowledge of Department counsel I did not represent "that the curbstone was 'altered' by the FBI." The language of my Motion (bottom of page 3) is:

... newly obtained FBI documents seem to confirm the evidence adduced by Weisberg which shows that the curbstone was altered or "patched" before it was tested, and that the FBI knew this. In addition, it is obvious that no space would be saved by discarding one spectrographic plate. (Emphasis in original)

15. It is clear that I did not represent that the FBI altered the form of the curbstone, as the Opposition states falsely. It also is clear that I did represent that the FBI knew of the alteration before it tested the curbstone, which the Opposition does not address. I believe that this FBI knowledge provides motive for the FBI's not providing the relevant records. Any curbstone testing, without possibility of doubt, confirmed the visual observation of the FBI's case supervisor in Dallas, that there was alteration. This meant the destruction of the evidence of the curbstone and that the actual tests confirm it.

16. I am not what is called a "conspiracy theorist" in the field in which I work, the put-down by those who thereby seek to lump all criticism of the official solutions to these crimes and of official conduct in investigating them with the irrational. I deal with fact, which makes records more important to me. However, I am constrained to note that more than one person in the FBI was aware of this deliberate destruction of essential evidence bearing on who killed the President and whether that crime was the result of a conspiracy; that there appears to be no one who would have any interest in destroying this evidence other than a participant in the crime or

an accessory; and that in a conference with the FBI prior to the filing of C.A. 75-226, the FBI representatives displayed what they represented as all the spectrographic plates to me and my counsel and with unhidden glee offered me copies at \$50.00 per plate, knowing full well that I could not pay such sums. (Copies since have been provided to another, who did not invoke FOIA, for a much lower charge, but no copies have been provided to me.)

17. Unless the FBI then lied to my counsel and me, if the spectrographic plate of the testing of the curbstone (and it alone) was destroyed, then that destruction followed my request and coincides with this lawsuit in which it is relevant.

18. Appellees allege the destruction of this thin and small piece of film as part of either "periodic housecleanings" or as "duplicative." There is no "duplication" in a single negative. If a duplicate negative had been made, then a negative would exist and could be located. More on this follows below in connection with other misrepresentations in the Opposition. There is no affidavit attesting that there was such a destruction. There is proof that this spectrographic plate was made as part of the testing.

19. With regard to the attachments to my Motion, the Opposition states, "The documents which appellant seeks to append to his brief are not part of the voluminous record of this case." (page 1): "On their face they appear to have nothing to do with the existence or non-existence of the documents requested in this case." (page 2); "are irrelevant to this case," (page 3); "were not before the District Court" (page 4); and what I regard as a deliberate effort

to deceive and mislead this Court, "there is no explanation why they were not available for submission to the District Court." (page 2, paragraph 2)

20. The short answer to all of this is that I could not use records I did not have because the Department withheld them despite their relevance and even after I requested that the files from which I ultimately obtained them in another case be searched for compliance in this instant cause.

21. The Department knows full well "why they were not available for submission to the District Court." It is because the Department withheld them to guarantee they would not be available for the District Court. The Department also knows exactly when it provided the file from which these records come.

22. I obtained these records in another case, C.A. 78-0322, which is for all Dallas Field Office JFK assassination records. The Department refused to search those files in this instant cause. I did inform the district court that the Dallas Field Office files had relevant records because it is the Office of Origin and thus the case-file custodians, the office to which all other offices send relevant information.

23. What the Opposition really argues is that, having succeeded in violating the Act and withholding relevant records throughout the long history of this case, the Department has a license to withhold relevant information in perpetuity, no matter when or how I obtain proof of noncompliance.

24. There is no evidence or testimony that the records I seek

to provide in the Addendum are, as the Opposition claims, "irrelevant." In each and every instance these records relate to the existence of records sought and where and how they were preserved. They also address motive for noncompliance because the records can be seriously embarrassing to both the FBI and the Department. Motion Exhibit 1 leaves no doubt about the alteration of the curbstone. It states this explicitly. This also means that the FBI was aware of the destruction of the original and essential evidence the curbstone held and that the destruction indicated existence of a conspiracy and of a new act in pursuance of that conspiracy. Especially when this relates to what I regard as the most subversive of crimes, the assassination of a President, I believe the subject is not suitable for misrepresentations to courts of law.

25. Consistent with the kinds of misrepresentations set forth in the foregoing Paragraphs of this affidavit and indicative of motive in seeking to prevent consideration of full and accurate information by this Court is what I regard as a deliberate misquotation and misrepresentation of this Court's Order, No. 75-2021. The Opposition represents (at page 2) that this Court stated I was "to depose those who have created the relevant records." This is not true. The actual words of this Court are "... the best available evidence, i.e., the witnesses who had personal knowledge of the events at the time the investigation was made." (emphasis added) On Department motion I was foreclosed from deposing such witnesses.

26. In connection with this misrepresentation, the Opposition alleges, again without testimony in support and in spite of evidence

in the record to the contrary, that "Appellant had full opportunity before the granting of summary judgment to depose those" who "created the relevant records."

27. In addition to misrepresenting the mandate of this Court, the Opposition misrepresents the record. Even if "full opportunity ... to depose" is limited to "those who created the relevant records" I was not allowed to complete the depositions and the record shows this. Moreover, the Department refused to identify all employees of personal knowledge, refused to provide means of finding them and in general stonewalled. Aside from a few of the FBI Special Agents involved whose identities were known to me, the Department effectively foreclosed me from deposing others not known to me who were involved in creating the records sought.

28. The Opposition misrepresents the actuality in hiding the breaching of an understanding with Department counsel with regard to the depositions. I said I would depose no more than was necessary, would learn what was required as we proceeded, and that, in order to minimize costs and time involved, would not note depositions until the taking of some depositions indicated which further depositions were necessary. This understanding was reached after the first calendar call following remand, when Department counsel asked who I intended to depose. I named about a dozen as potentially necessary and asked for the identifications of the clerical personnel involved. This later was refused. In addition, because of severe financial limitations, I was seeking means of deposing a retired Laboratory agent who had moved to Florida. Because I was not able to pay the

costs of going to Florida with my counsel, I had asked a last-year law student with subject-matter knowledge to ascertain if he could act for me under Florida law or, as an alternative, if he could with the participation of one of his law professors.

29. From this and from my strong representations incorporated in the district court record, it is beyond reasonable question that, however "full opportunity ... to depose" is interpreted, it simply is not truthful that I had "full opportunity." I believe this is one of the basic questions before this Court, which accounts for the misrepresentation.

30. Misrepresentations from those who should know better and misrepresentations of the existing record in this case in the Opposition extend (on page 3) to "the third and sixth documents" in my Addendum. Of these the Opposition states that "both refer to 'bulky exhibits,' evidence obtained in the assassination investigation and retained in the Dallas Field Office." Particularly pointed misrepresentations of the existing record lies in "There is no indication that these memoranda have anything to do with the retention of scientific test results generated in the FBI Laboratory in Washington." (emphasis added)

31. Whatever the purpose of including the nuance of "retention," there is absolutely no evidence in the record of the authorized destruction of any such historical record, there is no proof of any unauthorized destruction, and there are FBI regulations precluding this. (Permanent preservation of records is also the thrust of the Warren Commission testimony of Director Hoover, which I entered into

the record early in this long case. Director Hoover assured the Commission and the nation that the FBI would never close this case.)

32. With or without any special interpretation of "retention," the record in this case is clear and is consistent with all my extensive relevant experience with FBI practice: all the Laboratory results were sent to Dallas because it is the Office of Origin. In addition, I obtained this testimony in deposing retired S.A. Robert Frazier. I cited the Frazier deposition as requiring further searches that have been refused and as the need for taking further evidence, from which, rather than having "full opportunity," I was foreclosed on motion of Department counsel.

33. It is a misrepresentation of my Motion's Exhibit 3 to describe it merely as "referring" to bulky exhibits. It states that as of ten years ago and under Public Law 89-318 "all bulky exhibits and evidence ... should be indefinitely retained." This directs exactly the opposite of the unsworn Department representation alleging the destruction of records and of the Opposition's suggestion of "retained" cited in Paragraph 30 above.

34. Similarly, and again dated prior to the filing of this instant cause, Exhibit 6 reiterates this directive and underscores it by reference to "the magnitude and importance of this matter," which require that "(A)ll such materials should continue to be retained in the Dallas Office." I reemphasize that the Department refused to search the Dallas records in this instant cause.

35. By means of C.A. 78-0322 I have begun to receive some Dallas records. The last of these I have received in C.A. 78-0322

are these so-called "bulkies." Their bulk reflects the exact opposite of any alleged destruction. It required eight large cartons to hold the approximately 25,000 pages provided. (While it would have been a practical impossibility for me to suspend all other work to read each and every one of these 25,000 pages to determine whether they contain records withheld from me in this instant cause, which also would have the effect of shifting the burden of proof onto me, there are other reasons requiring that I delay this examination. I report them to the Court. Prior to this Court's Order I had made an agreement to deposit all my records in a university archive. Because of the Court's reference to serving the national interest in that Order and because of my age and impaired health, immediately after the Order I began this deposit. To be certain that all records I receive are deposited exactly as I receive them, I have set up completely separate files of them in a separate place, removed from my working files. I place and keep each original volume of records in a separate file folder which identifies it. When I receive records of up to about 5,000 pages, I am able to make the entries on the file folders as I examine the records and then to file them in the separate area. This is impossible for me with a volume of 25,000 pages. They must be filed prior to examination. I depend on students from a local college when I can hire them to perform this service. The last student I engaged has not yet placed these 25,000 "bulky" pages in separate files. In order to protect them, I have kept these records in the cartons in exactly the condition and order in which I received them.)

36. The Dallas Office made separate indices of its JFK assassination records. It kept this fact so secret Department officials were not aware of it until I informed them. One of these special Dallas indices is of 40 linear feet. (My Motion, Exhibit 5). This, of course, is a vital historical record as an index to the main records in this unprecedented historical case. It is within my request in C.A. 78-0322. Months ago I appealed its denial, without response. I have also asked that it be provided to FBIHQ for the processing of the JFK assassination records the FBI has been processing in several cases as well as for the Congress. To the best of my knowledge, and this knowledge is as of last month, the FBI has not yet made this index available to its own people in Washington. Instead, to stonewall further, it is processing an entirely different index, one that does not provide access to the records in these 25,000 pages of bulkies or to any of the records sought in this instant cause.

37. From the foregoing and from the actual content of the Exhibits, I believe it is obvious that the Opposition misrepresents them in stating "There is no indication that these memoranda have anything to do with the retention of the scientific test results ..." and that the misrepresentation cannot be accidental. Both of these Exhibits, which were withheld from me until I obtained them in C.A. 78-0322, are explicit in directing that all records be preserved. In fact, the Attorney General also directed this in his October 31, 1966, Executive Order, which applied to all agencies.

38. The Opposition next refers to my Motion Exhibit 4. This

reports that "a citizen had recovered a spent bullet in late 1968." The Opposition adds emphasis, " - - five years after President Kennedy's assassination," while admitting that the finding was "in the area where it (the assassination) occurred." In Exhibit 4 the FBI is explicit in holding forth the possibility that this was the bullet that impacted on the curbstone. This is not fairly represented by the arguing of the Opposition, "whether it was of a type that could have been involved in the assassination." (Neither Department counsel nor anyone else can state that any "type" of rifle bullet was not "involved in the assassination.")

39. The Opposition argues that because the Department did not provide me with proof that "it was ever subjected to any testing," there is no reason to believe it should have been or was. I believe it is obvious, based on the prior citations in this affidavit, particularly the assurances under oath of Director Hoover, that the assumption there should have been such testing is not unreasonable. No other "missed" bullet has been identified or located. It is also obvious that the Department has provided no affirmation or other statement that there was no such testing. If the FBI fails in its obligations, it has not so informed me or any court and I know of no reason to assume it failed to perform ~~its~~ ^{these} duties.

40. I have other and personal knowledge of the Department's intent to mislead by the underscoring of "five years" after the assassination. This personal knowledge comes from my having provided the FBI with another bullet also found at the scene of the crime, only two years later than the bullet of Motion Exhibit 4. In that

case, even though I informed the FBI of my belief that the bullet I provided had been "planted" as a deception or cruel hoax, the FBI went to some trouble with it. This included consulting the Dallas police about it. The FBI sent a special agent here to obtain the hoax bullet. That bullet was virtually pristine, as if fired into a recovery tank. This bears on the possibility that the so-called magic bullet, Commission Exhibit 399, also could have been planted.

41. Based on my prior government experience as an investigator and analyst, experience that includes twice being used as a consultant by the Department; on my knowledge of this particular investigation, which the Department has stated in the record in this instant cause exceeds that of anyone now employed by the FBI; on the need to determine whether or not there had been a conspiracy to assassinate the President; and on the need to determine what scarred the curbstone, no projectile having been found at the time of the assassination; I believe it was necessary for the FBI to have obtained and tested this bullet that "was 'somewhat corroded, as if it had been in the weather for a long time.'" This belief is strengthened by the fact "that the 'front' of the bullet," which is to say that part that would have hit the curbstone, if it did, "is the only damaged portion." This means markings for possible ballistics identification remained. Moreover, when even later - 14 years after the assassination - a bullet was recovered from a nearby point at which it could not have been buried if used in the assassination, the FBI engaged in a public controversy in which it complained that what it needed for testing was being withheld from it.

42. FBI records I have obtained in other cases reflect its practice of comparing bullets it obtains with its index of weapons used in unsolved crimes. It is not unreasonable to expect that the FBI made this comparison. Even in Dallas, the discharge of rifles in the downtown area is not an everyday occurrence or a sanctioned activity.

43. In short, the "testimony" of the Opposition is not in accord with FBI practice or with the existing evidentiary needs.

44. The paragraph of the Opposition holding the foregoing efforts to mislead this Court concludes with the kind of non sequitur that is common within my extensive experience with the FBI, the Department and Department counsel who practice what it is no exaggeration to characterize as an excess of adversarial zeal. With regard to the partial inventory of Dallas records I obtained from the Dallas files in C.A. 78-0322, there is this effort to misdirect and mislead: "... it contained no indication that the FBI Laboratory in Washington would have sent any raw test results to the Dallas office." (emphasis added.)

45. What is relevant is any test results, not whatever the Opposition means by "raw test results." There is no contradiction of the evidence I obtained from the Laboratory expert, Frazier: all results were sent to Dallas. But no Dallas records have been provided in this instant cause.

46. There follows still another effort to deceive and mislead with semantics, again as a substitute for nonexistent evidence: "These documents proffered by appellant are irrelevant to this case,

which focuses on the existence at this time of certain other documents sought by appellant." "At this time" is intended to convey the false impression that such records existed earlier and were "destroyed as duplicative" or "discarded in periodic housecleanings," the unsworn Department misrepresentations in this instant cause.

47. There is no proof of any destruction, no proof of any authorization to destroy and no proof of any unauthorized destruction. The records I submitted, rather than being "irrelevant," state clearly that all records were to be preserved and that destruction was specifically prohibited. Moreover, there are controlling FBI regulations and practices that are contrary to the representation of the Opposition.

48. I recall but cannot easily retrieve a number of FBI documents referring to the prohibition of destruction of records. The FBI also requires the recording of authorized destructions. Records related to prospective litigation also are required to be kept. I have many FBI records stamped with a legend requiring preservation because of prospective litigation.

49. Exhibit 1 attached hereto is one such record I recalled and could locate readily because it comes from Director Hoover's own files on the FBI's campaign against Dr. King.

50. Exhibit 1 is captioned "June." This means it is a clandestine surveillance record, one on a very sensitive subject. Exhibit 1 relates to the effort of the FBI's Atlanta Field Office to correct a serious factual error by providing "corrected copies" and asking "that previous copies ... should be destroyed." In the course of

criticizing the Atlanta Special Agent in Charge, the Director got around to "your request as to destruction of the original" record, which held the factual error. The Director wrote "that it is contrary to Bureau record-keeping procedures to destroy originals of any communications even though they contain errors."

51. Were there the alleged "duplication" and destruction of a duplicate, of which the Department has provided no evidence, the original would not have been destroyed. With the spectrographic plate of the curbstone, it is the original that is alleged - outside of testimony - to have been "discarded" to save perhaps an eighth of an inch of space in the vastness of FBI files.

52. Aside from there being no factual or evidentiary basis for this allegation of the Opposition, in the JFK and King cases the FBI kept duplicates of thousands of records and I have them.

53. The concluding effort to incite prejudice, a common one by Department counsel in my cases, could not have been more poorly timed or less supported by any evidence in the record. It is another deliberate misrepresentation, that "appellant ... seeks to have this Court review the findings of the Warren Commission on the basis of appellant's broad-ranging but unsupported allegations of a conspiracy to suppress evidence."

54. In this boiler-plate argument, signatory counsel have not given any reason to have it believed that they have any knowledge of the actual "findings of the Warren Commission" or any reason to believe that I seek any review of them by this Court. It is the district court, not I, who argued the case on the "findings" of the Commission.

55. The poor timing comes from the coincidence in time between the preparation and filing of the Opposition and the finding of the House Select Committee on Assassinations (HSCA) that in fact the FBI and other executive agencies withheld vital information from each other and from the Warren Commission. (In this instant cause I have presented samples of the FBI's and the Department's withholding of essential evidence from the Commission where this was incidental to my establishing that records should exist, the mandate of this Court in No. 75-2021.) This HSCA finding, that there was "a conspiracy to suppress evidence," duplicates that of the Senate's Intelligence Committee and other Congressional committees.

56. If the FBI withholds from Presidential commissions and agencies like the CIA, withholding from a private citizen in an FOIA matter gives the FBI no pause.

57. The HSCA also concluded the assassination was a conspiracy - 14 years after I wrote the first book proving it - and after the committee spent two years trying to conclude there had been no conspiracy.

58. Perhaps it is not "a conspiracy to suppress evidence" when three Department lawyers combine to provide this Court with false and misleading information, to the extent of misrepresenting this Court's Order, but it is a means by which records remain withheld from me and by which I have been denied the opportunity of obtaining proofs.

59. Perhaps it is not "a conspiracy to suppress evidence" that leads these same three lawyers to misrepresent my representations about the curbstone and the still-withheld records of and about those tests and their results, but the fact is that these withholdings

continue and there is no first-person affidavit attesting to their nonexistence.

60. Perhaps it is not "a conspiracy to suppress evidence" to insinuate falsehood to this Court, that I could have presented the exhibits to my Motion to the district court, which means to misrepresent how and when I obtained these and other such records, but it is beyond question that I received each of these exhibits from the Department and that the Department conducted the searches, reviews, processing, copying, packaging and mailing and knows precisely when these records were first made available to me and why.

61. Perhaps it is not part of "a conspiracy to suppress evidence" to represent falsely, and with the intent to incite prejudice, that I seek "to have this Court review the findings of the Warren Commission" when I present evidence addressing the existence or nonexistence of the information sought; when there is a total absence of any refutation of this evidence; and when this is the new version of the litigation which led to the amending of the investigatory files provision of the Act precisely because of official excesses in that case.

62. Perhaps it is not part of a "conspiracy to suppress evidence" to represent to this Court that I believe or have stated "that the curbstone was 'altered' by the FBI," which is not what I alleged, not what I believe, and would mean that the FBI was part of a conspiracy to assassinate the President. This I neither say nor believe. However this Opposition language may be described by its authors, I regard it and castigate it as infamous. It is contrary

to my many public statements I have reason to believe have been carefully monitored by the FBI and not it alone among executive agencies. I regard this as so scurrilous, so contemptible and so much a continuation of the long official campaign of vilification of me by other fabrications that I believe it should be the subject of judicial inquiry as a deliberate official misuse of the courts for improper purposes.

63. If this malevolence is not a separate "conspiracy to suppress evidence" that despite official obstruction I manage to bring to light, it could hardly be more effectively designed to serve this purpose inside government. Court records are permanent records and are immune. Filing a correction alone will not end distribution of fabricated slanders as part of the long-standing official campaign to undermine my credibility and the acceptance of my work in official and public quarters.

64. I do not imagine these things - I have copies of them and records of routings to the President, the Congress, the Attorneys General and other high officials. Long in advance of the FBI's highly touted and supposedly complete release of JFK assassination records a year ago, which was two years after my Privacy Act request should have been complied with and was not, the Department arranged to nullify my rights under that Act by simply not complying with my request and then not acting on my appeal. (To date I have had no action on the appeal.) My counsel's letter to the Attorney General, also well in advance of the unilateral releases, asking that my rights be afforded me, was not even acknowledged. A year has elapsed

and there still is no response. Files I identified by title and location remain withheld. They are embarrassing to those who play these dirty tricks and, in general, stonewall and waste me. Meanwhile, as other records I have obtained state, these police-state practices are used to justify deliberate violation of FOIA. The FBI Director approved that my requests receive no response.

65. Because of my age, health and the scope of my work that by appellees' own admission is unique, ending these abuses, whether or not they are "a conspiracy to suppress evidence," which I believe they are, being able to do my work without improper interference and assuring that the courts may not continue to be misused to these improper ends is now much more important to me. From my extensive experience and long observation, the misstatements and subtle abuses of the Opposition are part of an official campaign to undermine the Constitutional independence of the courts in FTA matters and in this they have often succeeded.

66. Whether or not the Opposition's misrepresentation of it is part of "a conspiracy to suppress evidence," Exhibit 1 to my Motion is a formerly withheld FBI record from the unsearched Dallas file. It entirely supports the evidence I have placed in the record relating to the alteration of the hole on the curbstone, the need for relevant records to exist and motive for withholding them. This synopsis, by the FBI's own case supervisor, states that at the time of the crime there was a "mark on the curb" but that "No evidence of mark or nick on curb now visible." Had I not been foreclosed from discovery and denied any search of the Dallas files after I proved that they are

the major case files and should have been searched, this record would have been provided early in this instant cause. I have it only because those processing records in C.A. 78-0322 have no knowledge of the withholdings in this instant cause. But there is no doubt from the language quoted above and other similar language, like "Photographs taken of location where mark once appeared," that my representations in the Motion and throughout this case are accurate, those of the Opposition are not accurate, and that appellees should have known this prior to drafting and filing their Opposition.

67. The importance of obtaining the withheld records before they can be destroyed is greatly magnified by what transpired before the House committee with regard to some of the specimens it had tested. The man recommended to the Warren Commission by the then AEC, Dr. Vincent P. Guinn, was its expert witness. He testified with regard to the curbstone (meaning the present surface) that there remained not enough residue for any testing. The area is indicated by FBI records as an inch by a little less than an inch. On deposition former FBI Laboratory Agent Gallagher testified that only minute samples are needed. (My recollection is about a half-millimeter.) Guinn also testified that Q15, the specimen from the windshield of the limousine about which Kilty swore in several contradictory ways, all contradicted by Gallagher, no longer exists and that neutron activation does not destroy the specimen tested. Guinn also stated that other specimens given to him for NAA testing do not conform to the official descriptions of the actual specimens.

68. In this connection I note that, while the FBI never told

the Warren Commission about it, the FBI did cut a sample of lead core out of the so-called magic bullet, Commission Exhibit 399. I have not been given any record reflecting this or what happened to the relatively large piece of core material the FBI took from that bullet. I was refused when I asked that the bullet as it existed in the Archives be weighed. This raises a truly Byzantine question: was Guinn given specimens made from the metal secretly taken by the FBI from Exhibit 399? (Photographs the FBI gave the Commission all hide its removal of this metal. I established the fact after the Commission no longer existed.)

69. Also Byzantine and also related to tests and results of tests not provided is a brief conversation I had with Dr. Michael Baden as the HSCA's December 29, 1978, hearing was ending. Dr. Baden headed its forensic pathology panel. I asked him if he had ever examined the President's necktie before it was unknotted. He told me that this year he saw it knotted in the National Archives. The evidence in this instant cause reflects the fact that the knot was undone prior to the taking of photographs of it for me as a result of my C.A. 2569-70. The reconstituted knot was not as it was when the President was killed. It could not be reconstituted to reflect that it was cut by a scalpel, not a bullet. As Dr. Baden's testimony establishes, the knot was reconstituted to represent damage to it in other than the actual area of damage. (His testimony was in September, which is after this case was before this Court.)

70. The last evidence taken by HSCA completely confirms the evidence I assembled and presented in this long case having to do with records that should exist as well as abundant motive for

withholding them under pretext. HSCA concluded from this evidence that there was a conspiracy to kill the President and that at least one shot was from the front.

71. HSCA's proof of a conspiracy to kill the President was public knowledge on December 20, 1978, which is a week before the filing of the short Opposition. It was official knowledge within the Department sometime earlier. According to the committee, it informed the Department prior to the December 20 disclosure. This is to say that the Department was aware of it before it filed its Opposition if not in fact before the Opposition was drafted.

72. The committee's proof of conspiracy to kill comes from evidence the FBI had 15 years ago and apparently ignored. I believe this bears on present motive for withholding of the information I seek in this instant cause. The committee used a recording of the assassination shooting made inadvertently by the Dallas police because a microphone on a motorcycle transmitter was stuck in the "on" position. The FBI had all the Dallas police tapes, those of all police agencies, and transcribed them for the Warren Commission. The FBI's transcription makes no reference to any evidence held by the five-minute segment the committee had studied after critics of the official accounting of the assassination published the fact that it held proof of additional shooting. Even after this 1977 publication, there is no indication that the FBI made any study on its own. While I cannot state in this regard what the vaunted FBI Laboratory did or did not do, I do state that it requires no extensive scientific education to conceive that an open microphone might pick up the sharp

and loud sounds of rifle fire and the shock waves they generate and that the FBI knew all police broadcasting was recorded. I have personal knowledge that for other reasons the government generated, recorded and studied similar shock waves long before the assassination of President Kennedy. I also have personal knowledge that the official investigators of this assassination [REDACTED] were well aware that the state of acoustical science at that time permitted such studies as were just made because in 1964 one was performed in the investigation of the assassination of President Kennedy by Bell Laboratories, at Whippany, New Jersey. Bell was given a different recording - a fake - to determine if it held the sounds of rifle fire.

73. The combination of factors and information in the immediately foregoing Paragraphs, which also address motive for withholding records in this instant cause, impose more responsibility upon me in the role in which I have been cast in this subject. They magnify the significance of the test results sought. They require all possible effort to obtain them or to compel their production before further proofs contrary to the FBI's alleged solution to "the crime of the century" is under even greater dispute and before the FBI is able to find any more memory holes for "missing" or "destroyed" records.

74. In this affidavit I have added information I believe is relevant. In all instances the dates show that, despite the representations of the Opposition, the information was not previously available to me. This information was withheld by the Department, which then inadvertently provided it in another cause. This information proves that unsearched files hold relevant information. This information also shows that further testimony was essential.

On Department motion the district court precluded my taking that testimony. I believe all this information is relevant to whether or not records not provided should or do or do not exist as well as to possible motive for what within my extensive experience is the official norm, not responding truthfully in FOIA matters when there is the possibility of official embarrassment.

75. In this affidavit, and not for the first time, I express concern for the Constitutional independence of the courts and state that one means within my experience by which it is impinged upon is official misrepresentations that, without my being able to address and prove them, the courts have no independent means of identifying for what they are.

76. I can provide redundant proofs of every one of my representations about official misrepresentations and improprieties. Were it not for these practices, continued in the Opposition, this case would not now be before this Court. Gross and deliberate misrepresentation was made by the Office of the United States Attorney to the district court in the earlier case, C.A. 2301-70. These misrepresentations were under oath and by the AUSA personally.

77. I refer to the unknotting of the President's tie and the assurances to that court by the Office of the United States Attorney that photographs of the knot would be taken for me, which ended that case. (Investigation of the unknotting of the tie was refused me when I asked it of the government.) There were other such abuses in that and in later cases, all established in contemporaneous records. In later cases I personally called these continued abuses,

some assailing my integrity, to the attention of the present United States Attorney. He made no response and conducted no investigation. I refer to monitoring of me and of my exercise of First Amendment rights. While the FBI has not complied with my PA request, one field office did provide its report on my very first television appearance, more than a decade ago. (The FBI has indexed and filed my letters-to-the-editor on other subjects.) I have a box full of government transcripts of my personal appearances, not provided to me under FOIA or PA despite the age of those requests, the oldest now more than eight years old. I refer to the FBI's associating me with bank robberies in 1970 and then by inadvertence providing a single record. I know of no way in which the FBI could have made this association except by telephone-tapping and then misinterpreting what was overheard. Records of the plot within the FBI to "stop" me (the word used in internal records relating to C.A. 2301-70 by the since retired agent who provided the false and misleading affidavit that was pivotal in it) were provided only because those processing the records had no way of knowing that the basis for them was false, propaganda to stroke the insatiable ego of the then Director. The special agent who was to have fronted for the FBI is the same special agent who is directly responsible for misrepresentations relating to the mysteriously healed hole in the curbstone. He knows my work is accurate and he dared and dares not sue and have any of his work tested in open court. Incomplete as the records I have obtained are, they show that my information requests were ignored as a matter of high policy and that they were contested in court when the internal

records reflect the legal opinion that there was no basis for refusing the information sought. Frequently the FBI accompanied its memoranda with scurrilous information about me. Thereafter, in every case, there was unjustified withholding. There is no single case in which I did not receive at least some of the withheld information and no case in which there was, on examination, any legitimate reason to withhold - even when the records were classified "TOP SECRET." This is the context of the present Opposition.

76. I was not able to provide this affidavit earlier for the following reasons: The Opposition was delayed in reaching my counsel, as was the copy he made and sent me. It reached me when I was under medically-restricted activity because, for no apparent reason but clearly for reasons connected with my circulatory impairments, I suddenly lost consciousness. Once I was able to examine the Opposition and start to prepare this affidavit, I did so, beginning on New Year's Day. In order to expedite delivering it, my wife commenced retyping it while I was still drafting it.

77. Because I am not able to drive to and from Washington, I was unable to consult with counsel except by phone. It was impossible for me to work faster and unwise for me to attempt to work longer. I worked at least 18 hours each day, without any socializing during the holidays. The only interruptions were by a Channel 9 TV crew that came here and when I was consulted by the press.

78. In my mail on January 3 were copies of Washington Post news accounts that were not in the earliest editions of the paper that reach me. These two stories, attached as Exhibits 2 and 3,

relate to my earlier references to the committee's determination that there had been a conspiracy to kill the President, an admission never made and always disputed in all earlier official investigations. In connection with this litigation, these reports serve an added purpose. They underscore the national interest served by private persons having access to withheld official information relating to these most subversive of crimes.

79. The fact is that the committee brought nothing to public attention that had not already been placed within the public domain by these private persons who were not content with the official explanations of the two assassinations.

80. With regard to the King assassination, all of the committee's dependable information comes from records I obtained in C.A. 75-1996.

81. I believe that much of the official resistance to my obtaining the records I seek comes from the fact that most of the information not in accord with the official accounts of these crimes comes from my work, beginning with my first books.

82. I have made marginal markings alongside two passages on page 2 of Exhibit 2 and one on Exhibit 3 to illustrate this. The first marked passage in Exhibit 2 states that the experts were "able to place the unknown gunman at the top of the grassy knoll, in front and to the right of the presidential limousince." I published this, with the identical photographic proof used by the committee on December 29, in my earliest work. My photographic analysis was confirmed later, in 1967, by Itek Corporation, experts in photographic intelligence. The second marked passage reads, "The film showing

McLain was one turned up last month by outside critics." McLain is the motorcycle patrolman whose microphone was open, broadcasting the shots of the assassination. After the committee spent two weeks without being able to locate the motorcycle in question, it sought help from Robert Groden, of Hopelawn, New Jersey. Groden located the motorcycle in photographs he had. This is what produced McLain. Groden is a photographic technician. He is my friend and associate. His original work was done for me and under my direction. It since has been used by the committee in several ways. At its December 29 hearing the committee used amateur photographer Abraham Zapruder's motion picture of the assassination. This is the enhanced version Groden prepared for me. The committee had sounds of rifle shots dubbed onto it at the appropriate places. This dubbing also was done by Groden, not by the committee or the FBI.

83. Marked in Exhibit 3 are the words "... two gunmen fired at the President that day within a split-second sequence." The inevitability of at least two gunmen firing from at least two directions is in my first book, which was completed in February 1965. The "split-second sequence" appeared first in my second book, of 1966, and there in association with my photographic analysis accurately placing a man at that point, as the committee did with the same photograph only on December 29, 1978. In this connection I note that the copy of the photograph I used and published is an exhibit furnished to the Warren Commission by the FBI and by its photographic expert, Lyndal Shaneyfelt. He and the FBI did not provide this information to the Commission.

84. All of this is embarrassing to the Department and the FBI.

It did not bring to light information relating to the assassination of a President that more than any other critic I brought to light. When the President was killed, it was the responsibility of the FBI and of the Department to do what they did not do and thereafter I did do, largely with information they had. As a result of these official failures, if that is what they were, this most subversive of crimes remains unsolved and, unless since assassinated, assassins roam the land. I believe that an official desire to continue to cover up what can still be covered up provides added motive for withholding from me records that should exist and have not been provided. I believe this also accounts for the character of the Opposition, its subtle attack on me and my integrity (as by the false charge that I regard the FBI as involved in the assassination) and the fact that the Opposition dares misrepresent to this Court.

85. Not until after I had completed the drafting of the foregoing 84 Paragraphs and my wife was retyping them, at just before 5 p.m. January 3, did I have time to look at the morning paper. Because the George Lardner story attached as Exhibit 4 adds materially to the importance of citizen access to withheld information and to official motive for withholding it from me, as well as the fierceness of official resistance to disclosure, I provide this addendum.

86. Another last-minute development in the committee's life is the public showing of a long-ignored motion picture holding significant information relating to the assassination of President Kennedy. I am responsible for this.

87. Lardner reports that the committee called on the Justice

Department to commission an expert study of the motion picture. What the committee held secret is that this is the recommendation of its own panel of photographic experts and how knowledge of the motion picture and its evidentiary significance came to light.

88. This also is a direct result of my C.A. 78-0322, for the Dallas files. In it I received two records, both attached as Exhibit 5. These records bear no indication of having been sent to FBI Headquarters.

89. The amateur photographer in this case is Charles Bronson, who worked in Dallas at the time of the assassination. Since then he has moved from Dallas. Earl Golz, investigative reporter for the Dallas Morning News and also my friend, located Bronson, obtained his films and had Groden analyze them.

90. Most of the front page of that paper's November 26, 1978, edition and two inside pages are devoted to the resultant stories. The page-one banner headline is "JFK film may reveal two gunmen." All of page 12 is devoted to reproductions of individual frames of the Bronson motion picture under the headline, "Film indicates 2 images in 6th-floor windows."

91. That same day, by prearrangement with other of my friends, Groden showed the Bronson film to the press in Washington and explained it. The film shows two images moving at the windows where the official story places Oswald alone.

92. The Dallas FBI, before and after viewing the film on November 25, 1963, wrote the reports I received under C.A. 78-0322 and attach as Exhibit 5. These contain an incredible factual error:

"These films fail to show the building from which the shots were fired."

93. I believe it is significant that the FBI "decided" by the first working day after the assassination that the shots were fired from that building alone. I believe it is also significant, and especially significant in explaining the vigor of resistance to my obtaining records, particularly in this instant cause, that the FBI said the film which actually shows the window from which it claims the shots were fired does not even show the building at all!

94. I also believe that this truly astounding misstatement, which from the very first moments of the alleged investigation of the crime reflects the FBI's determination to insist that there was no conspiracy and that the bird-in-hand Oswald was a lone-nut assassin, reflects reasons why the FBI believes it is virtually required to withhold records from me as long as it can and to the degree it can and that the Department has little choice but to agree. Neither can face their pasts on this subject or the reliving of that past my FOIA cases force upon them.

95. This, too, I believe, further validates my foregoing references to the Opposition.


 HAROLD WEISBERG

Before me this 3RD day of January 1979 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 7-1-82


 NOTARY PUBLIC

ROUTE IN ENVELOPE

SAC, Atlanta (100-8520)

3/12/64

Director, FBI (100-3-118)

PERSONAL ATTENTION

JUNE

COMMUNIST PARTY, USA
NEGRO QUESTION
COMMUNIST INFLUENCE IN RACIAL MATTERS
INTERNAL SECURITY - C

- 1 - Mr. Baumgardner (Field Supervision)
- 1 - Mr. Rosack
- 1 - Mr. Phillips

Reference is made to Bureau "June" letter to your personal attention 3/9/64 which furnished certain observations relative to recent handling by your office of information being obtained through highly sensitive sources.

Another matter has come to the Bureau's attention relative to your office's handling of information from these highly sensitive sources which necessitates further evaluation of your office's administrative handling of captioned investigation.

By airtel 3/2/64 to the Bureau, copies to New York, your office submitted a letterhead memorandum (LEM) of same date under the title of "Communist Infiltration of Southern Christian Leadership Conference, IS - C." This was followed by another airtel to the Bureau, copies to New York, dated 3/2/64 which also enclosed an LHM of same date under the same Southern Christian Leadership Conference (SCLC) title. The latter airtel and LHM were submitted under cover of still another airtel dated 3/5/64, copies of which were also furnished to New York. The 3/5/64 airtel noted that it was serving as a cover for corrected copies of an airtel dated 3/2/64 and that previous copies of the original airtel and LHM should be destroyed. It also noted that your office had originally failed to designate copies for the New York and Bureau files on the SCLC but was making such designation by means of the revised airtel and LHM.

The Bureau received a fourth communication from your office, a radiogram dated 3/5/64, which instructed that

MAR 13 1964
COMM-FBI

BPP:rba
(6)

REC-5

100-3-46-103
WED JUN 11 1964
22 MAR 17 1964

MAR 10 1964

Letter to Atlanta

RE: COMMUNIST PARTY, USA

REGRO QUESTION

COMMUNIST INFLUENCE IN RACIAL MATTERS

100-3-118

Bureau "hold dissemination of LHM forwarded to the Bureau and New York by airtel dated 3/2/64." The radiogram explained that a conversation originally described as between Martin Luther King, Jr., and Harry Wachtel was actually between King and Clarence Jones.

Your office's handling of a discovered error in an LHM, as evidenced by the above-described communications, was somewhat less than desirable on two main points. A close examination of the original LHM and the revised version revealed that these five-page LHM's are exactly alike except for two to three lines in the first paragraph of page 1. Good judgment would have dictated that the most expedient and efficient manner for handling the correction necessary would have been to prepare a revised page 1 rather than a completely new LHM five pages in length. It would also have dictated the desirability for submitting only a very brief cover communication relative to the desired change and thus saved the preparation of almost all of your second airtel dated 3/2/64. Further, there was no necessity for submitting the airtel of 3/5/64 which served only as a cover for a revised 3/2/64 airtel. The fact that you desired to submit extra copies of the LHM for additional dissemination to Bureau and New York files on the ECLC could have been handled either by routing slip or merely left to the discretion of the Bureau and New York for their own reproduction and dissemination procedures. From the foregoing it is obvious that considerable needless clerical, stenographic, Agent and supervisory efforts were expended.

The second undesirable aspect of your office's handling of this matter involves that of timing. The Bureau does not definitely know when your office first discovered the error made in the original LHM. It may have been as early as 3/2/64, which is the date of the revised LHM, or as late as 3/5/64 when your office submitted the radiogram instructing that dissemination be held up. Whenever it was

Letter to Atlanta
RE: COMMUNIST PARTY, USA
NEGRO QUESTION
COMMUNIST INFLUENCE IN RACIAL MATTERS
100-3-116

that the error was found, your office should have taken the most expeditious means available (telephone) to advise the Bureau to hold up dissemination. You would thus be taking all possible action to prevent an embarrassing situation arising wherein the Bureau might be required to write corrective correspondence to outside agencies. For your information, it was only by a stroke of good fortune that the Bureau was able to prevent dissemination of the incorrect LHM after receipt of the radiogram.

The Bureau is also in receipt of your "June" letter of 3/5/64 forwarding a tape recording of the conversation between King and Jones referred to in the LHM's discussed above. Nowhere in this 3/5/64 communication is it stated as to why the recording is being furnished the Bureau, it being noted that your office does not normally submit to the Bureau recordings in this case. The Bureau can only assume that possibly you submitted the recording because of the error which had occurred in the original LHM. If that be the case, such reason should have been indicated in your letter of 3/5/64. If it was some other reason, same should have been stated.

You are instructed to advise the Bureau by return communication as to the reason why the recording was furnished to the Bureau and the disposition you desire made of the recording.

Relative to your request as to destruction of the original airtel and LHM, be advised that it is contrary to Bureau record-keeping procedures to destroy originals of any communications even though they contain errors. The usual procedure is to retain the originals with appropriate notations as to the errors.

Instant communication as well as the referred to Bureau letter of 3/9/64 would indicate the necessity for some reassessment relative to your office's handling of matters in captioned case, particularly those relating to information being obtained from highly sensitive sources.

Letter to Atlanta
RE: COMMUNIST PARTY, USA
NEGRO QUESTION
COMMUNIST INFLUENCE IN RACIAL MATTERS
100-3-118

Correspondence in this and related cases is extremely heavy. You should examine closely the matter of personnel allotment to captioned and related cases and take such steps as are necessary to insure that sufficient personnel are assigned to this case to, in turn, insure it is receiving the meticulous attention warranted. The conference had at the Seat of Government with personnel of your office in December, 1963, highlighted the importance which the Bureau has attached to captioned case. There has been no change. This is still one of the most important cases being handled by the Bureau in the security field. It is absolutely imperative that there be no letdown in the necessary time and attention being devoted to this matter.

The Bureau would be receptive to obtaining any observations or recommendations your office may have relative to the matters discussed herein.

Washington Post

SATURDAY, DECEMBER 30, 1978

*Have
found*



Dallas policeman H. B. McLain: testifying on location of his motorcycle, which had open microphone.

Findings on Tape 'Beyond a Reasonable Doubt'

Second JFK Gunman, Experts Say

By George Lardner Jr.
Washington Post Staff Writer

Two acoustics experts told the House Assassinations Committee yesterday their tests showed "beyond a reasonable doubt" that a second gunman fired at President Kennedy in Dallas 15 years ago from the area of the so-called grassy knoll.

They said the Warren Commission could have done the same work, and reached the same conclusion, back in 1964, without any great difficulty. Far from practicing any "modern electronic witchcraft" on a police recording of the sounds in Dealey Plaza when Kennedy was killed, the experts assured the committee that they used nothing more than "simple, basic physics and geometry," without the help of any newfangled gadgets.

"This is not an arcane science," one of the experts testified emphatically. "It is taught in high school and college-level physics . . . and I think [it] can be understood by anybody who has ever heard an echo."

With less than a week left before it goes out of business, the committee listened to the last-minute evidence with perplexed fascination. The members capped the day-long public hearing by moving into executive session for a potentially divisive

series of votes on its findings in the president's murder. The findings are due next Wednesday.

A majority was expected to agree that someone in addition to Lee Harvey Oswald shot at the president just before he sustained a wound that literally exploded his head on Nov. 22, 1963. That, in turn, as Chairman Louis Stokes (D-Ohio) observed at the close of the hearing, "could point to a conspiracy in the assassination of President Kennedy."

The new findings involve a tiny segment of a police recording that started shortly before the assassination when a motorcycle patrolman left his microphone switch in the "On" position, deluging his transmitter channel with what seemed to be a lot of background noise.

The experts, Mark Weiss and Ernest Aschkenasy of Queens College in New York City, said they were sure of their findings even though they reached them only with trepidation. Weiss said he and his colleague were well aware of the "enormous impact" of their study. Stokes said it could "change the course of history."

With two gunmen firing at the presidential motorcade in Dealey Plaza within the same split second that day, Stokes observed in understated

See KENNEDY, A4, Col. 1

No. 78-1107 EXHIBIT 2

KENNEDY, From A1

fashion, "one can assume an association" between the two assailants and, from that, "one can make a legal assumption of conspiracy."

Weiss nodded. One of the six experts who served on the court-appointed panel that found a series of evidently deliberate erasures in one of President Nixon's Watergate tape recordings, Weiss said during a break that the JFK tape study was by far the more onerous assignment.

"I can't tell you how many times we went through the agony of doing our calculations over and over again," he said during a break. In the Watergate tapes, he said, "there were six heroes" around to console each other and, even then, they kept calling each other and asking, "Are you sure?" This time, he pointed out, there were only two of them, himself and Aschkenasy, and, he emphasized, "we were nervous" when they realized what their study showed.

"Our initial reaction [to the police recording] was 'somebody's got to be kidding; these can't be gunshots,'" Weiss told the committee. But, he said, "the results of our analysis convinced us."

Aschkenasy agreed. "The numbers could not be refuted," he said, pointing out that he and Weiss used nothing more complicated than a hand calculator to do their computations, again and again.

The only other instruments they used, Weiss indicated, were pieces of string to measure distances on a 1963 survey map of Dealey Plaza, some thumbtacks to pinpoint locations, an oscilloscope to observe the waves and shapes of the sounds on the Dallas police recording, and another device to reproduce the waves graphically.

The two experts concentrated almost exclusively on a segment of the tape lasting only three-tenths of a second, which an earlier study had pinpointed as the possible impulse of a shot from the grassy knoll. That study, conducted by James Barger of the Cambridge, Mass., firm of Bolt, Beranek and Newman, had found a high degree of probability that three shots were fired at Kennedy, all from above and behind him, all from the direction of the Texas School Book Depository where Oswald was said to

have set up his sniper's nest. To the committee's chagrin, however, Barger calculated the odds on a fourth shot from the grassy knoll at an ambivalent 50-50.

Weiss and Aschkenasy said they were able to determine the location of Dallas policeman H. B. McLain's motorcycle, which inadvertently transmitted the sounds to a Dictabelt at police headquarters, with much more precision.

Their study indicated the motorcycle had just turned onto Elm Street, 120 feet in back of the presidential limousine, when the third shot rang out, leaving a telltale signature or "fingerprint" on the police tape. Weiss said they found 10 echo patterns within the three-tenths of a second segment that precisely matched sounds emanating from the grassy knoll, traveling carefully measured distances to nearby buildings, and then bouncing off them to hit the motorcycle transmitter at the exact location predicted for it, give or take 18 inches.

He said they were similarly able to

Stokes observed "one can make a legal assumption of a conspiracy."

place the unknown gunman behind a picket fence at the top of the grassy knoll, in front of and to the right of the presidential limousine. Weiss said they were confident of that position, give or take five feet.

He and Aschkenasy added that they were sure, by 95 percent or better, that the sound they had traced was not simply a motorcycle backfiring, or a firecracker, but was indeed a bullet, probably a rifle bullet.

"If I were a betting man, I would say the odds are 20 to 1 [that this is not noise]," Weiss said. "What we're dealing with here is not noise, but in fact a bullet."

The tape also contained strong indications that it was a rifle bullet

since the recording showed a so-called "N," or shock, wave traveling faster than the speed of sound and hitting the motorcycle transmitter milliseconds before the arrival of the noise of the muzzle blast itself.

This supersonic phenomenon is characteristic of rifle bullets, but the committee's chief deputy counsel, Gary Cornwell, informed the members that there were handguns available in 1963 that also shot bullets at supersonic speeds.

Since the basic findings of the study were made public more than a week ago by Rep. Harold Sawyer (R-Mich.), there have been contentions that the recording could not have been made in Dealey Plaza, but Aschkenasy made short shrift of such suggestions.

Asked about the chime of a carillon bell that can be discerned on the tape following the shooting, Weiss agreed that no such chime could be heard in Dealey Plaza, but he said the sound could well have been picked up when some other police motorcyclist in another location in Dallas "tried to get on the channel."

"During the five minutes (the approximate duration of the police Dictabelt and the tape made from it)," Weiss added, "you can in fact hear other transmitters trying to come on. You do hear other voices coming on . . . low but intelligible." In fact, he

said, after the shots have been fired, "You can hear more people coming in with comments that somebody's got his button stuck."

Rep. Christopher Dodd (D-Conn.) wondered if the recorded sounds could possibly have come from a motorcycle in another location.

Aschkenasy's rejoinder was explicit and sweeping.

"If someone were to tell me that the motorcycle was not in Dealey Plaza," he told Dodd, "I would go there—and I would expect to find a replica of Dealey Plaza in that location."

Working from the acoustical findings, committee chief counsel G. Robert Blakey said the panel reviewed photographic coverage of the motorcade until it found the motorcycle in question and identified the rider as

Officer H. B. McLain. (The film showing McLain evidently was one turned up just last month by outside critics.)

Called as a witness yesterday afternoon, McLain, a 26-year veteran who is now a Dallas police accident investigator, said he couldn't remember having a stuck microphone that day, but he said that happened on his old Harley-Davidson so often "that I'm scared to say." He confirmed his position in the motorcade as being to the left of the line of cars and behind Vice President Johnson's limousine.

The Weiss-Aschkenasy study did not cover the three shots from behind, but Barger, who also testified, said he was confident those had taken place. He also endorsed the new findings and agreed the probability of a shot from the grassy knoll was 95 percent or better.

The combined studies thus show the first shot coming from the book depository, a second shot coming from the depository just 1.6 seconds later; a third from the grassy knoll 5.9 seconds after that, and the final shot from the book depository a half-second after that.

Committee members were evidently impressed, although several, such as Dodd and Rep. Sam Devine (R-Ohio), were plainly reluctant to accept the implications. Nonetheless, Rep. Floyd Fithian (D-Ind.) said of Weiss and Aschkenasy after the hearing:

"These guys were unshakable. We hit them with every question but we couldn't shake them. Until some mathematician comes along and proves otherwise, I believe them."

The prolonged session ended with a hurried summary by Blakey who said that that other scientific work done for the committee, including medical, ballistics and trajectory tests, indicated strongly that the shot from the grassy knoll missed the presidential limousine as did one from the book depository, probably the first to be fired from there.

Blakey took the position that the second shot from the book depository hit both Kennedy and Texas Gov. John Connally and that the fourth

not, again from the depository, struck Kennedy in the head, killing him.

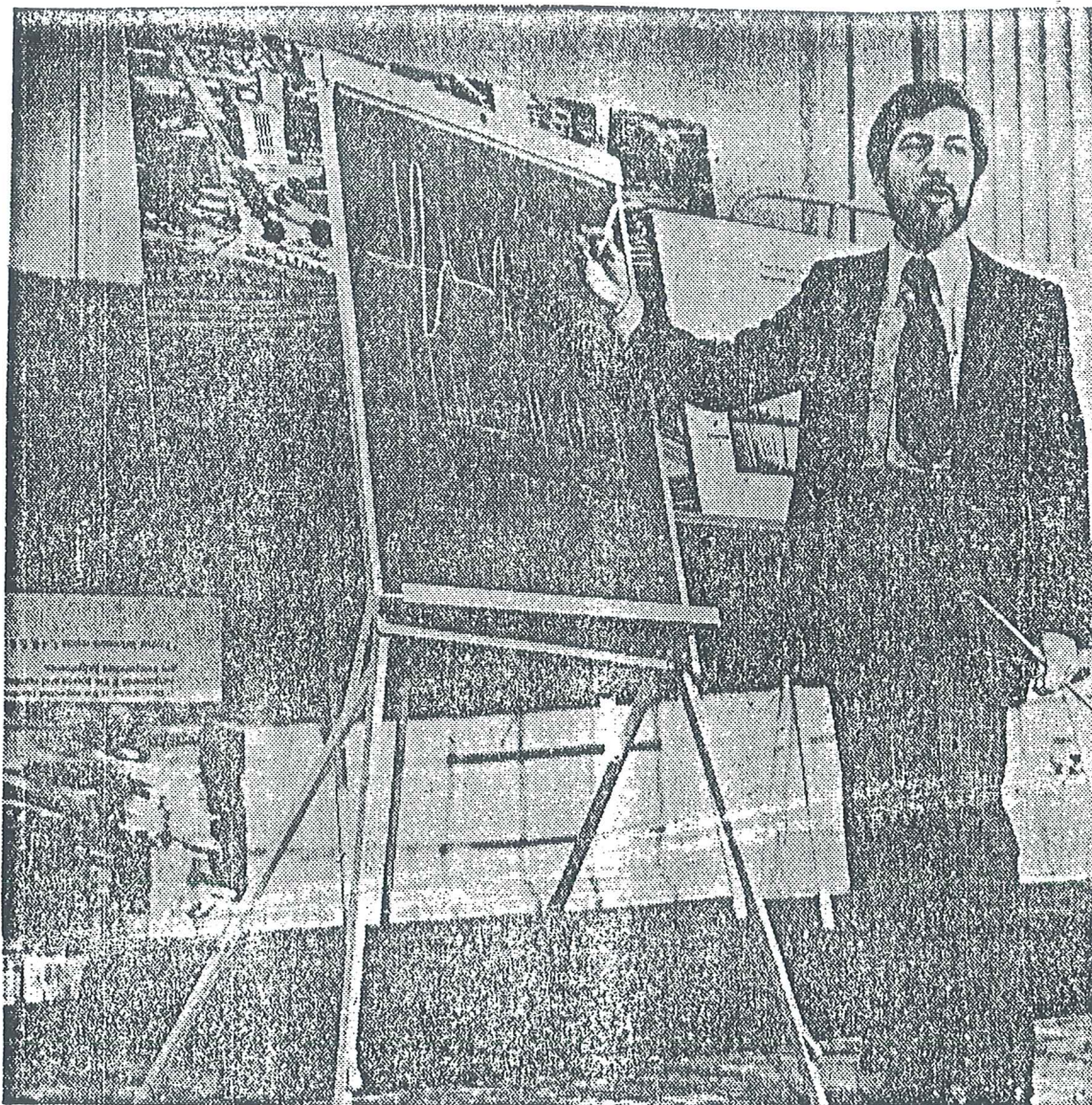
Even so, the evidence of a second gunman, whether he fired accurately or not, ironically leaves the House committee in much the same position as the Warren Commission was years ago, scrambling to patch up its findings and meet a deadline. Stokes appeared to close the door on a renewal of any congressional inquiry and suggested that any loose ends would be bequeathed to the Justice Department.

Regarding its inquiry into the murder of the Rev. Dr. Martin Luther King Jr. in 1968, Stokes said the committee had developed "evidence of the outlines of a likely conspiracy" there.

He was evidently alluding to the committee staff's contentions that James Earl Ray was in part encouraged to commit the murder by reports of a \$50,000 bounty on King offered by two now-deceased St. Louis men. The committee has also sought to develop evidence that Ray's two brothers, John and Jerry, may have helped him and known of his plans. But the testimony has been far from conclusive.

Stokes said he regretted having to leave behind the "loose ends" in both investigations but observed, as he has before, that "life itself has loose ends." In any case, he said one clear lesson could be drawn now from the committee's work and that is "we did not give these men (Kennedy and King) the type of investigations in death which were commensurate with the dignity of their lives. We can and we must promise ourselves that this history will never again be repeated in this nation."

The committee then began wrestling with its official conclusions in a secret session that lasted well into the night. Members refused to comment on what transpired, reportedly passing a resolution to say nothing until a scheduled appearance by Stokes Sunday on CBS television's interview show, "Face the Nation." A summary of the finds, however, may be released before then.



By John McDonnell—The Washington Post

Weiss shows panel how he and Aschkenasy graphically charted police tape sounds and identified grassy knoll shot.

Washington Post

SUNDAY, DECEMBER 31, 1978

JFK-King Panel Finds Conspiracy Likely in Slayings

By George Lardner Jr.
Washington Post Staff Writer

The House Assassinations Committee concluded yesterday in a stunning wrapup of its two-year investigation that President John F. Kennedy "was probably assassinated as the result of a conspiracy."

Convinced by a new acoustical study of the noises in Dallas' Dealey Plaza where Kennedy was killed on Nov. 22, 1963, the committee agreed "the evidence establishes a high probability that two gunmen fired" at the president that day within a split-second sequence.

The members of the panel, headed by Rep. Louis Stokes (D-Ohio), acknowledged that they have no idea who that second gunman might have been.

"The committee is unable to identify the other gunman or the extent of the conspiracy," it said.

The House investigators, however, appeared to be leaning toward the notion that a motley assortment of gangland figures or anti-Castro Cubans, or both, might have been involved.

The Assassinations Committee said it also believes, "on the basis of circumstantial evidence available to it, that there is a likelihood that James Earl Ray assassinated Dr. Martin Luther King as a result of a conspiracy." But it offered no reasons for that terse conclusion.

The findings of the \$5.8 million inquiry were made public in a spare, 17-page summary that Stokes addressed to the clerk of the House, Edmond L. Henshaw. A complete report, including the evidence and scientific studies the committee relied upon, will be published in

segments in the weeks ahead. Stokes indicated that the committee has yet to deal with the problem of securing "the declassification of classified information" for the final report.

The House committee said it still felt that Lee Harvey Oswald fired the shots that killed the president from a perch in the Texas School Book Depository, but it directly contradicted the Warren Commission's finding in 1964 that Oswald acted alone. The report chided the commission for pretending to certainities that were not justified.

Evidently anxious to avoid similar criticism, the Assassinations Committee dealt gingerly with a number of the conspiracy theories that have swirled about the Kennedy assassination for years. Before the acoustical study was presented to it just 13 days ago, the committee had been on the verge of concluding that Oswald, whatever his motivations, was the only gunman in Dallas that day.

In any case, the committee said it believes, "on the basis of the evidence available to it," that neither the Soviet nor the Cuban government was involved in Kennedy's murder.

Similarly, it said, "on the basis of the evidence available to it," that it did not think "anti-Castro Cuban groups, as groups . . . [or] the national syndicate of organized crime, as a group" was implicated.

"But the available evidence," yesterday's report said of both anti-Castro activists and members of organized crime, "does not preclude the possibility that individual members may have been included."

By contrast, the committee stated flatly that neither the Central Intelligence Agency, the FBI nor the Secret Service was involved in the

See ASSASSINATION, A4, Col. 1

Kennedy assassination. It also said that "no federal, state or local government agency was involved in the assassination of Dr. King."

There was no indication in the 17-page submission to the House whether any of the committee's 12 members dissented from the findings. The panel met in executive session Friday night to vote on the report.

The Justice Department, the Secret Service, the CIA, the FBI and the Warren Commission were all criticized in connection with Kennedy's death—the Secret Service for failing to protect him adequately, the CIA for keeping secrets both before and after the assassination, and the others for shortcomings in the original investigation.

In dealing with the Kennedy assassination itself, the committee was plainly convinced that the belatedly discovered shot from the so-called grassy knoll in Desley Plaza—in front and to the right of the presidential motorcade—hit no one.

"Lee Harvey Oswald fired three shots at President John F. Kennedy," the committee stated, as did the Warren Commission before it. "The second and third shots he fired struck the president. The third shot he fired killed the president."

The evidence of a fourth shot, fired just five-tenths of a second before the last bullet from Oswald's rifle, came from a Dallas police recording made at the time of the assassination when a motorcycle patrolman, H. B. McLain, inadvertently turned his transmitter on. The original polyester Dictabelts were available at the time the Warren Commission did its work, but apparently no one thought to submit them to acoustical analysis.

At a public hearing Friday, the committee's chief counsel, G. Robert

Blakey, said it learned more than a year ago, in September of 1977, of the possibility of obtaining important evidence from the recording.

He was apparently alluding to an Aug. 22, 1977, newsletter put out by one of the Warren Commission's critics, Penn Jones of Midlothian, Tex., which dealt with a tape copy of the original recording and contended that it showed as many as seven shots.

Blakey, however, said "no audio sounds could be discerned" on the copy the committee initially got. He said his staff finally located the original dispatch tape and Dictabelts with the help of a retired Dallas police official.

A study by the Cambridge, Mass., firm of Bolt, Beranek & Newman found, after test firings in Dealey Plaza this past August to compare against the original noises, that there were firm signs of three shots, all from behind, and a 50-50 probability of a fourth, from the grassy knoll.

Chagrined by the ambivalence, the committee commissioned acoustical experts Mark Weiss and Ernest Aschkenasy of Queens College in New York City to conduct a more exhaustive study of the noise from the grassy knoll. They told the committee first in secret session Dec. 18 and finally in public on Friday it was "beyond a reasonable doubt" that a fourth shot had been fired from the grassy knoll.

Dismissing suggestions that the noise might have stumbled onto the police frequency from some other location in Dallas, Weiss and Aschkenasy said the echoes it caused a unique signature that could only have come from a motorcycle located in Dealey Plaza approximately 120 feet behind the presidential limousine. They tracked the supersonic sound with precise measurements from the grassy knoll to nearby buildings and obstacles, through the motorcycle's windshield, to a transmitter on the left side of the vehicle. The long-unknown driver, Officer McLain, was located as a result of the work.

The study left the committee, which had been set up in the fall of 1976 to resolve nagging doubts about both the Kennedy and King assassinations, in a quandary.

As one of the committee's members, Rep. Floyd J. Fithian (D-Ind.), observed unhappily at Friday's public hearing, "we may be in a position of having raised more serious questions than we answered as a committee."

The finding of a probable conspiracy, based on the assumption that another gunman firing at the same time as Oswald had to be associated with him, stands out in the summary like a last-minute insert. But as it states, in addition to the acoustical evidence, "other scientific evidence does not preclude the possibility of two gunmen firing at the president." Beyond that, as Blakey stated at Friday's hearing, while most witnesses who had an

opinion as to where the shots came from thought they came from the Book Depository, not a few others, 21 in all, thought they had come from the grassy knoll.

"I have no doubt about it," one of them, S. M. Holland, told the Warren Commission years ago, adding that he saw a puff of smoke as well. "I have no doubt about seeing that puff of smoke come out from those trees either."

One Dallas motorcycle officer threw down his cycle in the middle of the street and ran up, gun drawn, toward the stockade fence—where the experts say the shot was fired. There, as Blakey related yesterday, he encountered a man "who identified himself as a Secret Service agent and was allowed to pass on."

The committee did not dwell on its reasons for not precluding anti-Castro or gangland figures from potential involvement in the assassination, but it has explored evidence that reputed Mafia leader Santo Trafficante once predicted the president would be "hit," in retribution for the Kennedy administration's campaign against Teamsters Union leader James R. Hoffa. At another point, the committee authorized a subpoena for reputed Mafia leader Carlos Marcello of New Orleans, but never called him. Blakey has repeatedly refused to explain why.

Sources quoted by the Associated Press said the committee's final report would cite testimony from residents of Clinton, La., who say Oswald once traveled there in 1963 with the late David Ferrie, an airline pilot and private investigator for Marcello's criminal lawyer. Ferrie was a target of former New Orleans District Attorney Jim Garrison's baroque 1967-68 investigation into the assassination.

Ferrie, before his death, said he felt he was the victim of a "witchhunt." He also spoke vehemently against the Kennedys, but he denied ever knowing Oswald.

In its finding on the King assassination, the committee concluded that James Earl Ray murdered the civil rights leader in Memphis, Tenn., on April 4, 1968, with a single rifle shot. The report also said it was "highly probable that James Earl Ray stalked Dr. King for a period immediately preceding the assassination."

In finding "a likelihood" of conspiracy behind King's murder, the committee was evidently alluding to a much-publicized theory that a \$50,000 price had been put on King's head by two St. Louis businessmen, both now dead, and that word of the bounty eventually made its way to the Missouri State Penitentiary where Ray heard about it and acted on it even though he never collected the money.

At its public hearings, the committee has also suggested that Ray may have had help in escaping from prison in 1967 from his brother, John, and that John and another brother, Jerry, may have known of their brother's in-

tention to kill King and helped him along the way. But the evidence has been far from conclusive.

Despite all the loose ends, the committee is scheduled to go out of business Wednesday. Stokes and other members have made clear they have no intention of trying to keep the inquiry going. Instead, in addition to a wide variety of legislative recommendations, including firm charter legislation from the FBI and CIA, the committee recommended that the Department of Justice determine "whether further official investigation is warranted in either case."

Justice Dept. Will Not Act On JFK Findings for Now

1-3-78

By George Lardner Jr.
Washington Post Staff Writer

The Justice Department indicated yesterday that it will take no immediate action on the House Assassinations Committee's recommendations for further inquiry into the murder of President Kennedy.

The House committee concluded last week after a \$5.8 million investigation that "Kennedy was probably assassinated as the result of a conspiracy." The finding rested heavily on an acoustical study of the sounds in Dallas' Dealey Plaza, accidentally picked up by a police transmitter, when Kennedy was killed on Nov. 22, 1963.

The experts who conducted the study said the Dallas police tape recording of the noises showed "beyond a reasonable doubt" that a shot had been fired from the so-called "grassy knoll" in front of the president, in addition to those that came from the Texas School Book Depository.

Issuing its findings and recommendations in advance of a projected 39-volume final report expected to be released in March, the committee on Saturday called on the Justice Department to:

- Commission an expert study of a long-ignored film taken in Dealey Plaza before and during the assassination "to determine its significance, if any." Private researchers who helped unearth the film in November have maintained that blow-ups of the frames show two figures at the sixth-floor windows of the Texas School Book Depository seven minutes before the murder. The House committee asked its photographic experts to study the film, but their findings apparently were inconclusive.

- Conduct a study of the use of acoustics in criminal cases, with the Kennedy assassination as the prime example. The committee suggested the work be done jointly by the National Institute of Law Enforcement and the National Science Foundation.

The House committee recommended that the department then decide, on the basis of these studies and the committee's forthcoming final report, "whether further official investigation is warranted" in either the Kennedy assassination or that of the Rev. Martin Luther King Jr. in Memphis on April 4, 1968.

However, Justice Department spokesman Terry Adamson said neither the department nor the FBI will take any steps until the committee's voluminous final report, including supporting data, is issued. Adamson said the department would compare the committee's final report with previous investigations and would "take such action at that time as we may determine warranted."

In Gainesville, Fla., a former counsel for the House committee, Kenneth Brooten, suggested that some medical evidence might support the conspiracy theory. He said Kennedy's autopsy showed a hematoma, or blood clot, in the upper back beneath the shoulder blade. Brooten was quoted by United Press International as saying the cause of the clot has never been revealed.

The chief of the House committee's medical panel, New York City's chief medical examiner, Michael Baden, said the entire medical panel was satisfied that the hemorrhaging was caused by a shot that entered Kennedy's back and came out through his neck.

UNITED STATES GOVERNMENT

Memorandum

SAC, DALLAS (89-43)

DATE: 11/25/63

OM

SA MILTON L. NEWSOM

SUBJECT:

ASSASSINATION OF PRESIDENT KENNEDY

Mr. WALTER BENT, Sales Service Manager, Eastman Kodak Company, Processing Service Division, 3131 Manor Way, telephone FL 7-4654, Dallas, telephonically advised his company had received two rolls of 8 millimeter Kodachrome and one roll of 35 millimeter film in a package from Mr. CHARLES BRONSON, Chief Engineer, Zarel Mfg. Company, 9230 Denton Drive, Dallas, Texas.

Mr. BRONSON enclosed a letter with his film, stating that the film had been taken at the instant President KENNEDY was assassinated. BRONSON also advised in the letter that from the position he was stationed when he took the film, he feels quite certain the Texas School Book Depository building was clearly photographed and he feels that the window from which the shots were fired will be depicted in the film. He stated for this reason he believes he may have a picture of the assassin, as he fired the shots.

Mr. BENT stated Mr. BRONSON's letter indicated he desired to be cooperative regarding the film with proper authorities and BENT is of the opinion that BRONSON will have no objection to turning the film over to proper authorities in the event it is of value to the investigation.

Mr. BENT stated that he would make arrangements with Mr. BRONSON to view the film at the Kodak Processing Center and would arrange this so that FBI Agents could be present at the same time interview BRONSON concerning his film of the scene.

Mr. BENT assured his full cooperation regarding all film received of a like nature that may possibly be connected with this matter and arrangements were made with him to immediately notify SA NEWSOM of any film of possible value.

2 Dallas

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The Eastman Kodak Processing Service Division receives all color film made by 8 millimeter Kodachrome in this area and also most other film for the area is processed by this division. Mr. BENT explained that his employees have not worked since Saturday and they are due back to work at 11:30 AM, 11/25/63. When processing of recent film orders begin, he expects other films taken at the approximate time of President's assassination.

He said that BRONSON's film should be processed and ready for viewing by 3:00 PM. He was told that SA NEWSOM would meet with him at that time.

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UNITED STATES GOVERNMENT

Memorandum

SAC, DALLAS (89-43)

DATE: 11/25/63

FROM: SA MILTON L. NEWSOM

SUBJECT: ASSASSINATION OF PRESIDENT KENNEDY

Mr. WALTER BENT, Sales Service Manager, Eastman Kodak Company, Processing Service Division, 3131 Manor Way, and Mr. CHARLES BRONSON, Chief Engineer, Zarel Manufacturing Company, 9230 Denton Drive, were contacted by SAS MILTON L. NEWSOM and EMORY E. HORTON on 11/25/63.

Films taken by Mr. BRONSON at the time of the President's assassination including 35 mm. color slides which were taken with a Leica Camera, and 8 mm. Kodachrome film were reviewed. These films failed to show the building from which the shots were fired. Film did depict the President's car at the precise time shots were fired; however, the pictures were not sufficiently clear for identification purposes.

One of the 35 mm. color slides depicted a female wearing a brown coat taking pictures from an angle, which would have, undoubtedly, included the Texas School Book Depository Building in the background of her pictures. Her pictures evidently were taken just as the President was shot. Approximately five other individuals in the crowd were taking pictures at the time.

Arrangements have been made with Mr. WALTER BENT whereby each package of film received for processing by that company, will be returned to the owner of the film with a slip of paper attached requesting the individual to notify the local FBI Office in the event pictures in the package reflect the scene when the President was assassinated. Mr. BENT advised this company does the processing for all the southwestern states. An airtel is being furnished southwest offices notifying them of the above arrangements in the event they receive calls of this type.

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