

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : Carl W. Belcher, Chief  
General Crimes Section  
Criminal Division

DATE: June 7, 1968

FROM : Laurence S. McWhorter

SUBJECT: New Orleans District Attorney Jim Garrison;  
possible contempt of U. S. District Court.  
18 U.S.C.A. 401; F.R.C.P. T. 18, rule 42

129-11  
**FILE**

The subject is under a temporary restraining order issued by U. S. District Judge Frederick Heebe in New Orleans, Louisiana, May 28, 1968. The order prohibits "any further prosecution" of Clay L. Shaw by Garrison until the merits of Shaw's petition can be considered. There is a possibility that Garrison may disregard the temporary restraining order and proceed with the state prosecution.

The question is to determine the type of contempt and the procedure to be followed in such a case.

In every contempt there necessarily is an affront to the dignity and a defiance of the power of the court. The dominating object of the prosecution and the party chiefly interested therein therefore becomes the distinguishing factor between civil and criminal contempt. If the chief purpose of the proceeding for contempt is to enforce the rights and administer the remedies to which the court has adjudged a private party to be entitled, and if the private party is the one chiefly interested in it, the proceeding is for a civil contempt. But if the chief object of the prosecution is by punishment of the offender to preserve the power and vindicate the dignity of the court, and if the party chiefly interested in the prosecution is the government or the public, the proceeding is for a criminal contempt. Merchant's Stock Co. v. Board of Trade, 187 Fed. 398 (Mo. 1911)

#### Title 18, Section 401 - Power of Court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as . . . .

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Parties must abide by the mandate of a restraining order until set aside by orderly judicial process. Smotherman v. United States, 186 F. 2d 676 (C.A.N.M. 1951)

If Garrison disregards the temporary restraining order, Shaw can make application for a show cause order in civil contempt as the one chiefly interested. However, if Garrison willfully violates the court order it would seem that the public and the court's interests would also be harmed, and the proceeding could also be for criminal contempt.

Under Rule 42(a), F.R.C.P., the judge can punish summarily for contempt committed in the actual presence of the court. However, any contempt by Garrison will probably take place out of the court and fall under Rule 42(b).

Under Rule 42(b) the criminal contempt shall be prosecuted on notice and hearing. The notice can be given:

1. orally in open court by the judge in the presence of the defendant;
2. on application of the U. S. Attorney by an order to show cause or an order of arrest;
3. on application of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest.

If Shaw's attorney prosecutes the contempt proceeding for Shaw, a private party, the action will necessarily be a proceeding for civil contempt, unless the court directs him to prosecute criminally in behalf of the court. National Popsicle Corp. v. Kroll, 104 F. 2d 259 (C.C.A. N.Y. 1939)

ROUTING SLIP

TO:	NAME	DIVISION	BUILDING	ROOM
1.	<del>Mr. Tolson</del>			<del>2107</del>
2.	Mr. Felt			
3.	Mr. Block			2116
4.				

- SIGNATURE
- APPROVAL
- SEE ME
- RECOMMENDATION
- ANSWER OR ACKNOWLEDGE ON OR BEFORE \_\_\_\_\_
- PREPARE REPLY FOR THE SIGNATURE OF \_\_\_\_\_
- COMMENT
- NECESSARY ACTION
- NOTE AND RETURN
- CALL ME
- PER CONVERSATION
- AS-REQUESTED
- NOTE AND FILE
- YOUR INFORMATION

REMARKS

USA La Cour spoke  
 AG -  
 I understand we are  
 to continue to not become involved  
 including possible criminal  
 contempt  
 (but La Cour will suggest  
 to State Judge Haggerty that the State  
 trial - not start in violation of Fed Ct order  
 and be Fed Judge Keebe that

FROM:	NAME	BUILDING & ROOM	EXT.	DATE
	The Contempt, if any, not be referred to the USA			

6/17  
 [Signature]

to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, ~~and~~ those persons in active concert or participation with them who receive actual notice of the writ by personal service or otherwise."

In interpreting this Rule's effect on the power of a court to hold a party who violates its injunction in contempt, the case of Rich v. United States, 219 F. 2d 134 (1st Cir. 1956), cert. denied, 352 U.S. 1004 (1957), should be considered. This case held that one who knowingly aids, abets, assists, or acts in active concert with a person who has been enjoined, in violating an injunction, subjects himself to civil as well as criminal proceedings for contempt, even though he was not named or served with process in the suit in which the injunction was issued, or was even served with a copy of the injunction. Other cases on this point can be found under Note 11, to Rule 65, in the U. S. Code Annotated.

As was noted under Rule 42, Federal Rules of Criminal Procedure, notice of a hearing on an order to show cause can be given in one of three ways: (1) orally by the judge in open court in the presence of the defendant; or (2) an application of the United States Attorney; or (3) an application of an attorney appointed by the court for that purpose.

With respect to the appointment by the court of a private attorney to prosecute a criminal contempt case, please note the following case: McCann v. New York Stock Exchange, 80 F. 2d 211 (2d Cir.), cert. denied, 299 U.S. 603 (1935), wherein Judge Learned Hand noted that a judge may prefer to use the attorney of a party who will ordinarily be his only means of information when the contempt is not in his presence. Another case on this point is United States ex rel. Brown v. Lederer, 140 F. 2d 136 (7th Cir.), cert. denied, 322 U.S. 734 (1944), wherein the court, in noting that it was not only permissible but entirely appropriate that the court should appoint counsel to take charge of proceedings instituted to enforce its order, stated that "the court is not required to select counsel from the staff of the United States Attorney" (140 F. 2d at 138). See also Western Fruit Growers v. Ostrif, 136 F. 2d 98 (9th Cir. 1943).

Louis C. LaCour  
United States Attorney  
New Orleans, Louisiana

June 7, 1968

Carl W. Schaber, Chief  
General Crimes Section  
Criminal Division

cc: [unclear]

Contempt Power of Federal Courts

In connection with the possibility that District Attorney Jim Garrison may violate the Federal District Court's temporary restraining order, a question has arisen as to the power of the Federal courts to punish persons who violate their orders for contempt of court where those persons were not parties to the original order. It has generally been held that "persons who, though strangers to litigation, knowingly and willfully interfere with, or otherwise violate or aid and abet in the violation of, the judicial functions, court orders, or decrees, are subject to the courts power to punish for contempt. . . ." (17 Am. Jur. 2d, "Contempt," Section 11, p. 17). While it does not appear that this question has ever been directly considered by a Federal court, a number of Federal cases have, however, affirmed this authority. For example, in Baltimore Transit Co. v. Flynn, 70 F. Supp. 382 (D. Md. 1943) the court said that "one who knowingly assists a defendant in violating an injunction subjects himself to civil as well as criminal proceedings for contempt" (50 F. Supp. at 386). Other cases which can be cited for this proposition are Garrison v. United States, 163 Fed. 16 (7th Cir. 1908); McCourtney v. United States, 291 Fed. 497 (8th Cir.), cert. denied, 263 U.S. 714 (1923). Another case which touched on this problem was Bessette v. W. B. Conkey Co., 194 U.S. 324 (1904).

It should be noted, however, that Rule 65(d), Federal Rules of Civil Procedure, provides that:

"Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference

Typed: 6/24/68  
FMV:RCN:ehd  
129-11

July 1, 1968

[Redacted]

Dear [Redacted] *TC*

Vice President Humphrey has asked me to reply to your letter of May 29, 1968 which you and your associates addressed to him concerning the assassination of President Kennedy.

The authors who have criticized the conclusions of the Warren Commission do not claim to have any significant new evidence, so far as we are aware. Rather, their criticisms and demands for a new inquiry are based upon different conclusions they have drawn from parts of the same body of evidence that was examined by the Commission. The Commission made a thorough inquiry and detailed analysis of the facts concerning the assassination. The evidence amply supports the basic conclusions of the Commission. In these circumstances, we see no basis for a new inquiry.

Your confidence in writing to the Vice President is appreciated.

Sincerely,

FRED M. VINSON, Jr.  
Assistant Attorney General

Records  
Chrono  
Nalley  
Mr. William B. Welsh, Adm. Asst. to the Vice President

INSPECTED AND MAILED  
COMMUNICATIONS SEC.  
JUL 1 1968 44

*Rec'd  
6/24  
MCH  
6/25*

*104  
6/27  
FNV  
6/27*



OFFICE OF THE VICE PRESIDENT

WASHINGTON

20510

June 7, 1968

RECEIVED  
JUN 17 1968  
CRIMINAL DIVISION

MEMORANDUM


FOR: Department of Justice  
Washington, D. C. 20530

FROM: William B. Welsh  
Administrative Assistant to  
The Vice President

The Vice President would appreciate your consideration of the enclosed inquiry.

Please reply directly to the writer with a copy to this office, returning the original correspondence. Please note in your reply that the matter has been referred to you by the Vice President.

LETTER FROM:

*enc*  *7C*  
 *7C*

12-9-11  
DEPARTMENT OF JUSTICE | R |  
11 JUN 17 1968  
R.A.O.  
CRIMINAL-GEN. CRIME SEC.

[REDACTED]

7c

May 29, 1968

RECEIVED

Sirs:

JUN 4 AM 11 34

You are, each one, candidate for the highest office in the land. As such, you must have searched your soul. It is to be presumed. For why else would you offer yourself for an ill paid, overworked, mind searing and danger ridden position. There is a deep motive for your search and an abiding faith in your ability to fulfill, not only the obligations, but the demand for inspiration inherent in the Presidency. You have, with all of your intelligence, considered what you are within the context of what the Presidency is...otherwise, you are a charleton.

Sirs, we warn you...so long as the murder of John F. Kennedy remains unsolved, it is open season on the Head of State in this country. The Warren Commission attempts to deceive us. By its agency it tries to persuade an end to inquiry. It would that we abandon our law and our fellow citizen. It would establish impunity for the attempted assassination of any President. This, if not the intention of the Commissioners, is the effect of the Commission.

For the least man that lies dead by the hand of another there is no limitation of inquiry. Only for that man who died, basely murdered, in the office you seek, does this Government join in the efforts of his assassins to hide the body of the crime: to secure it in darkness: to keep it from the searching light of genuine concern. There is no statute of limitations on murder. By our law Lee Oswald, though dead, could be tried for the crime of which he stands accused.

As citizens, with no small credentials, we charge you that you keep the faith with us, with all of us, with yourself as potential man in the office, by calling now for the continued investigation of the murder of John Kennedy and the repudiation of the Warren Commission. There is no precedent in law for such a Commission... therefore it has no standing.

The issue of his death does not lie quietly in Arlington.

We solicit your reply. Your continued silence will speak its volume of unconcern.

As we live,

[REDACTED]

7c

[REDACTED]

7c

7c

enc.



cc: Lyndon Baines Johnson  
Senator Eugene McCarthy  
Vice President Hubert Humphrey  
Justice Earl Warren  
Richard Nixon  
Nelson Rockefeller  
Senator Robert Kennedy  
Governor Ronald Reagan  
George Wallace

Mark Lane  
Jim Garrison  
Josiah Thompson  
Walter Cronkite  
Penn Jones  
Sylvia Meagher  
James Shepley

June 7, 1968

Ervin L. Weial, Jr.  
Assistant Attorney General  
Civil Division

T/6/7/68

FNV:CMB:pen  
129-11 A. A. C

Fred M. Vinson, Jr.  
Assistant Attorney General  
Criminal Division

Assassination of President John F. Kennedy

Supplementing my memorandum of May 31, 1968, I am forwarding a copy of the temporary restraining order issued by United States District Court Judge Heebe on May 28, 1968, and a copy of a memorandum dated June 4, 1968, signed Jim Garrison, instructing his staff not to cooperate with the United States District Court.

For your information, we are informed that pursuant to the June 4, 1968 memorandum three members of the staff of Jim Garrison have refused to give a deposition as ordered by the United States District Court. This refusal will be brought to the attention of the United States District Court on Monday, June 10, 1968, and counsel for Clay Shaw may seek either civil or criminal contempt under 18 U.S.C. §§ 401, 402.

Attachments

Records ✓  
Chrono  
Mr. Belcher (2)

This memo also sent to:  
Frank M. Wozencraft  
Assistant Attorney General  
Office of Legal Counsel

EWK  
MVK  
6/7

ellc  
6/7

Typed: 6/12/68  
FMV:RCM:ehd  
129-11

June 18, 1968

Honorable Robert Taft, Jr.  
House of Representatives  
Washington, D. C.

Dear Congressman:

This is in response to your communication of June 6, 1968 transmitting a letter from [REDACTED] concerning the assassination of President Kennedy. 7C

The authors who have criticized the conclusions of the Warren Commission do not claim to have any significant new evidence, so far as we are aware. Rather, their criticisms and demands for a new inquiry are based upon different conclusions they have drawn from parts of the same body of evidence that was examined by the Commission. The Commission made a thorough inquiry and detailed analysis of the facts concerning the assassination. The evidence amply supports the basic conclusions of the Commission. In these circumstances, we see no basis for a new inquiry.

With respect to the New Orleans matter, we can only point out that Mr. Garrison has not discussed his proceedings with Federal authorities. It would not be proper for us to comment on the evidence in a case pending before a state court.

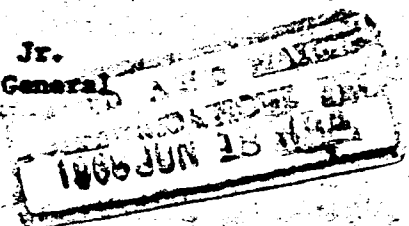
We have no information that the death of any person subsequent to the events of the week end of the assassination, whether that person was a "witness" to some aspect of those events or not, was connected in any way with the assassination.

As always, it is a pleasure to be of assistance.

Sincerely,

FRED M. VINSON, Jr.  
Assistant Attorney General

Records ✓  
Chrono  
Nalley  
Mr. Vinson  
Deputy AG



ROBERT TAFT, JR.  
1ST DISTRICT, OHIO

COMMITTEE:  
FOREIGN AFFAIRS

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515

DISTRICT OFFICE:  
754 U.S. POST OFFICE AND COURT HOUSE  
CINCINNATI, OHIO 45202  
TELEPHONE: 684-3285

H. H. WESTBAY  
ADMINISTRATIVE ASSISTANT

June 6, 1968

MEMO TO: DEPARTMENT OF JUSTICE  
FROM: MISS SYDNEY DINE (CONGRESSMAN TAFT' S OFFICE)  
1315 LONGWORTH BUILDING  
RE: ENCLOSED LETTER

ANY FURTHER COMMENTS WOULD BE APPRECIATED

RECEIVED  
JUN 10 1968  
CONGRES. MAIL

RECEIVED  
JUN 10 1968  
CRIMINAL DIVISION

129-11

DEPARTMENT OF JUSTICE	R
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	C
11 JUN 7 1968	O
<i>Carroll</i>	R
H.A.O.	D
CRIMINAL-GEN. CRIME SEC.	

[REDACTED]

7C

7C

JUN 3 1968

JUNE 3, 1968

THE HONORABLE ROBERT TAFT, JR.  
HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.  
20515

ROBERT TAFT, JR.

DEAR MR. TAFT:

THANK YOU FOR YOUR LETTER AND YOUR EFFORTS TO OBTAIN INFORMATION REGARDING THE KENNEDY ASSASSINATION.

AT RISK OF SOUNDING AS THOUGH I AM TRYING TO IMPUGN THE INTEGRITY OF THE DEPARTMENT OF JUSTICE, I WOULD HARDLY HAVE EXPECTED THEM TO DO ANYTHING BUT AGREE WITH THE FINDINGS OF THE WARREN REPORT.

THERE STILL, HOWEVER, REMAIN IN MY MIND, SOME DOUBTS AS TO VALIDITY OF THE REPORT. FOR EXAMPLE, WE HEAR FROM THE NEWS SOURCES THAT A NUMBER OF MR. JAMES GARRISON'S KEY WITNESSES TO THE PROSECUTION OF CLAY SHAW, HAVE RATHER MYSTERIOUSLY DISAPPEARED FROM THE SCENE - EVEN MET WITH FOUL PLAY. IF MR. GARRISON'S ALLEGATIONS THAT THE FEDERAL GOVERNMENT THROUGH THE C.I.A. OR F.B.I. IS DEEPLY INVOLVED IN THIS ENTIRE AFFAIR ARE NOT TRUE, WHY ISN'T THE GOVERNMENT DENYING THEM? IF THEY ARE TRUE, WHY ISN'T THE INVESTIGATION BEING REOPENED. I FIND THE GOVERNMENT CHARGE OF SENSATIONALISM AGAINST MR. GARRISON, OF SMALL CONSOLATION.

I WILL NEVER UNDERSTAND WHY THE INVESTIGATION BY THE WARREN COMMISSION OVERLOOKED CLAY SHAW, AND A GRAND JURY IN NEW ORLEANS RETURNED A TRUE BILL AGAINST HIM. THERE OBVIOUSLY HAD TO BE SOME EVIDENCE LINKING HIM WITH CONSPIRACY IN THE PLOT. THIS WOULD NOT BE TO EVEN GUESS AS TO HIS ACTUAL GUILT... HE MAY WELL BE INNOCENT. HOWEVER, HE WAS INDICTED BY GARRISON, AND OVERLOOKED BY THE DEPARTMENT OF JUSTICE. WE ARE FURTHER ASSURED THAT HE WILL BE BROUGHT TO TRIAL THIS FALL.

YOU MUST ADMIT THAT THIS ELEMENT IS MOST CONFUSING. WHAT WILL THE DEPARTMENT OF JUSTICE DO IF SHAW IS FOUND GUILTY? WHAT WILL THEY DO IF OTHERS, AS PROMISED BY GARRISON, ARE BROUGHT TO TRIAL AND ALSO CONVICTED? WHY WOULD THEY BE UNWILLING TO COOPERATE IN THIS AFFAIR AND FOLLOW IT THROUGH TO CONCLUSION, THEREBY RESTORING THE PUBLIC FAITH? I HAVE YET TO TALK WITH A SINGLE PERSON WHO AGREES WITH THE FINDINGS OF THE WARREN REPORT AND WHO DOES NOT HAVE SOME QUESTION ABOUT FURTHER INVOLVEMENTS THAT IMPLICATE A BROADER EXPERIENCE. I SUPPOSE MOST PEOPLE JUST DON'T TAKE THE TIME TO WRITE A LETTER.

AGAIN, THANK YOU FOR YOUR INTEREST.

SINCERELY,

[REDACTED]

7C

Typed: 6/6/68  
FMV:RAH:ehd  
129-11

[Redacted]

June 11, 1968

7c

Dear [Redacted]

7c

Senator Mondale has asked me to respond to your letter of May 24, 1968 concerning the assassination of President Kennedy.

This Department feels that the Report of the President's Commission on the Assassination of President Kennedy summarizes the results of an exceedingly painstaking and thorough examination of the evidence and I am sure you will find it of interest. The Report is available in most public libraries and may be purchased directly from the Superintendent of Documents, United States Government Printing Office, Washington, D. C. 20401, at a price of \$2.50 for the paperback edition and \$3.25 for the hardcover version.

Undoubtedly you are aware that President Johnson in his news conference on November 4, 1966 said: "I know of no evidence that would in any way cause any reasonable person to have a doubt about the Warren Commission. But if there is any evidence and it is brought forth, I am sure that the Commission and the appropriate authorities will take action that may be justified".

The authors who have criticized the conclusions of the Warren Commission do not claim to have any significant new evidence, so far as we are aware. Rather, their criticisms and demands for a new inquiry are based upon different conclusions they have drawn from parts of the same body of evidence that was examined by the Commission. The Commission made a thorough inquiry and detailed analysis of the facts concerning the assassination. The evidence amply supports the basic conclusions of the Commission. In these circumstances, we see no basis for a new inquiry.

The interest which prompted you to share your views with your Senator is appreciated.

Records/  
Chrono  
Hennagin  
Mr. Vinson  
Deputy AG  
Senator Walter F. Mondale

Sincerely,

WALD M. VIDSON, Jr.  
Assistant Attorney General

RECEIVED AND MAILED  
COMMUNICATIONS SEC.  
JUN 11 1968 Q

RAH  
6/7

[Handwritten signature]

124

[Handwritten initials]  
6/6

PLEASE EXPEDITE  
THIS MAIL SHOULD BE  
ANSWERED WITHIN 48 HOURS  
Receipt was acknowledged 6-5-68  
Correspondence Section  
Records Administration Office  
Administrative Division

DATE: ~~MMY~~ June 3, 1968

**United States Senate**

RE:

[REDACTED]

7c

Respectfully referred to

Congressional Liaison  
Department of Justice  
Washington, D. C.

.....  
For your consideration of the attached  
letter, and for a report.

XXTo be forwarded directly to the  
constituent, with a copy to me  
for my information and records.

      To me, in duplicate to accompany  
return of enclosure.

      As requested below.

Additional comments:

129-11  
DEPARTMENT OF JUSTICE  
71 JUN 5 1968  
CRIMINAL-GEN. CRIME SEC.  
REC. M. H.

Please refer response to attention of

      Gary Avery      , of my staff,  
on the outside of the envelope only.

Thank you.

WALTER F. MONTAGUE  
U.S. SENATOR

sp

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RECEIVED

JUN 6 1968

CRIMINAL DIVISION

REC'D MAY 29 1968

RECEIVED

May 24, 1968

CRIMINAL DIVISION

The Honorable  
Walter F. Mondale  
United States Senate  
Washington, D. C. 25

Sir:

After reading Mark Lane's volume entitled RUSH TO JUDGMENT, and listening to the Harold Weisberg lectures recently presented at the University of Minnesota regarding the "Kennedy Assassination," I strongly feel there is a definite need for an investigation of the validity of the Warren Report and a greater need for this issue to be brought to court.

Because I am still an idealistic American, and because you, Sir, are my representative to Congress, I sincerely believe it is my duty to expose you to information contradictory to the Warren Report, and your duty to grant me the following request:

Read the enclosed first two chapters of RUSH TO JUDGMENT,

and then tell me, "Is Ignorance Bliss?"

Respectfully yours,

7C

7C

7C [redacted] sp enclosure



## President's Commission on the Assassination of President Kennedy

Chief Justice Earl Warren, Chairman  
Senator Richard B. Russell  
Senator John Sherman Cooper  
Representative Hale Boggs  
Representative Gerald R. Ford  
Mr Allen W. Dulles  
Mr John J. McCloy

J. Lee Rankin, General Counsel

Established by President Lyndon B. Johnson  
November 29, 1963

*Report of the President's Commission on the Assassination of President John F. Kennedy (Warren Commission Report)*

888 pages Published September 27, 1964

*Hearings Before the President's Commission on the Assassination of President Kennedy*

26 volumes—Testimony and Exhibits

Published November 23, 1964

### INTRODUCTION

THE assassination of President Kennedy during a visit to Dallas, Texas, on November 22, 1963, sent a shock through the whole world. The known policies of the President, and the known politics of many in the city of Dallas, had made some of his friends doubt the prudence of his visit, which was, in some sense, a gesture of defiance or at least of confidence. The tragic result naturally provoked a flood of rumours and speculation; and this speculation was multiplied beyond control when, only two days later, on November 24, the alleged assassin, Lee Harvey Oswald—who had stoutly denied the charge—was shot dead in front of the television cameras by an intruder into the jealously guarded Dallas gaol. This intruder was Jack Ruby, the proprietor of a Dallas club, an intimate of the Dallas police.

The record of the Dallas police in those two days had indeed been remarkable. It had failed to prevent the assassination. It had failed to protect the suspect. In the general indignation caused by this double failure, the new President, Mr Lyndon B. Johnson, procured an order transferring the investigation from the State to the Federal Government, and set up a special commission of investigation. This commission was a lay body consisting of Senators, Congressmen and administrators from both parties, assisted by professional attorneys. Its chairman was the most respected figure in the American judiciary, the Chief Justice of the United States, Earl Warren.

The Warren Commission started its work by receiving, on December 9, 1963, a five-volume report from the FBI, followed by all the supporting evidence on which that report was based. On this basis it worked out its programme and on February 3, 1964 it began its hearings. In the course of the next seven months it held 51 sessions. Directly or indirectly, it examined thousands of documents and took the testimony of 552 witnesses. The Commissioners, being mainly active politicians or administrators, were naturally somewhat irregular in their attendance. Mr John J. McCloy, for instance, attended only 14 of the 51 sessions, and Senator Russell of Oregon, who was Chairman of the Committee on the Assassinations, attended only three of them. The Chairman, however, was not alone in his work. The other Commissioners, and the staff of the Commission, were all men of high ability and high integrity. The Commission's work was done in a most efficient and thorough manner. It is a pleasure to have the Commission's report published in this form. It is a most valuable contribution to the history of the United States.

## ACKNOWLEDGMENTS

I gratefully acknowledge the advice, encouragement and assistance of many men and women.

Bertrand Russell, Professor Arnold Toynbee and Professor Hugh Trevor-Roper were kind enough to read the manuscript and make suggestions.

Among the many amateur investigators who journeyed to Dallas to gather information were Mrs Shirley Martin and her family, Professor Henry Grattan, Marvin Garson, Mr and Mrs Vincent Salandria, Harold Feldman, Mr and Mrs George Nash, Barbara Bridges, Roy Douglas, Margo Hamilton, Emile de Antonio, Ruth Fortel and Anne-Lise Lane.

Stewart Galanor and Marlene Behrends served as researchers; their contribution was exceptional.

Much of the early investigation and research was stimulated by the Citizens' Committee of Inquiry in the United States and sister committees in Great Britain and Denmark. I am thankful to all those who participated in and supported the work—in particular, Deirdre Griswold in New York and Ralph Schoenman in London.

I am deeply indebted to Benjamin Sonnenberg, Jr, whose numerous and invaluable suggestions have found their way into this volume.

This was not an easy book to publish in the year 1966. I am grateful to my publisher and especially to Arthur A. Cohen.

M. L.

## 10 INTRODUCTION

assistant counsel and staff, who were divided into six panels to work on particular aspects of the case. By mid-September 1964 the last depositions were being received, and on September 24, thanks to a truly remarkable burst of speed, the Commission presented its conclusions to the President in a long report, since known as 'The Warren Report'.

How did the Commission carry out its investigation? It is important to note that, by its original terms of reference, the Commission had no independent machinery for finding facts. Its function was to pass independent judgment on facts collected for it and witnesses proposed to it. Of course, one fact might suggest another, one witness lead to another, and the Commission had power to summon whom it would, and to pursue any matter to its conclusion by further examination. But for the initial selection of witnesses and collection of evidence it was inevitably dependent on the existing agencies—that is, on the FBI, the Secret Service and the police. This limitation of the Commission's powers is perfectly understandable, but it remained a serious limitation. It was perhaps particularly serious because, by the time the Commission effectively took over from the FBI, the FBI had already reached its own conclusions, and the enormous mass of evidence which it had collected, and which formed the basis of those conclusions, must have had some effect on the thinking of the Commission.

What were the conclusions with which the FBI ended and the Commission, in a sense, started? They are clear enough from the evidence which Mr J. Edgar Hoover, the head of the FBI, gave to the Commission when he appeared before it on May 14, 1964. Mr Hoover was nothing if not explicit. The conclusions of the FBI, he said, were final. They were: 'No. 1: that Oswald shot the President. No. 2: that he was not connected with any conspiracy of any kind, nature or description.' There was no 'scintilla of evidence' of any conspiracy. The only unresolved question was whether Oswald had actually aimed at the President or at Governor Connally; but even that was hardly in doubt: 'I personally,' declared Mr Hoover, 'believe it was the President. in view of the twisted mentality the man had.' Of course, Mr Hoover admitted, there would always be some extremists who would not yield to such reasoning; but the Commission must not be misled by them. He pointed out that the Commission had no power to subpoena witnesses or to compel the production of documents. He had no doubt that the Commission would do its best to get the truth out of the evidence which it had available. He pointed out that the Commission had no power to subpoena witnesses or to compel the production of documents. He had no doubt that the Commission would do its best to get the truth out of the evidence which it had available.

But of course there is also evidence which did not come before the Commission: evidence which the Commission did not think worth hearing, or which the 'existing agencies' did not think worth bringing to its notice, or which the witnesses concerned were afraid to offer or the agencies concerned did not wish to transmit. Such evidence is necessarily rather less effective than the evidence actually submitted to the Commission. It has not been tested in the same way; it is unsworn; and the characters of the witnesses have not been so clearly brought out. Nevertheless, it cannot be rejected out of hand. The mere fact that the Commission heard a witness does not necessarily make his evidence more credible than that of a witness who has not been heard, and indeed much of the testimony which was heard was of very little value. Mr Lane has therefore quite rightly not confined himself to re-examining the evidence which was taken (though not always exploited) by the Warren Commission, rich and fascinating though that evidence is. He has gone beyond it. He and the organisation which supported him, the Citizens' Committee of Inquiry, have followed up newspaper clues, investigated private or independent reports, examined witnesses whom the Commission did not examine, pursued trails beyond the point at which the Commission stopped. Such amateur detective-work is always a little suspect, and readers will no doubt preserve a critical attitude in reading it. All that Mr Lane would ask is that they should be no less critical when reading the Commission's evidence. Often it will seem that the amateur methods are not all on one side.

When we have read the Report, and Mr Lane's critique of it, what is the impression that is left on us? I think it is clear. We are shown that, in the Report, a whole series of conclusions are based on carefully selected evidence and that the full body of evidence, to say the least, does not point necessarily to those conclusions. The writers of the Report have selected such evidence as may seem to sustain their conclusion. They have chosen to ignore a great deal of evidence which does not support but even traverses that conclusion. And in the collection and examination of evidence they have shown a remarkable preference for certain kinds of evidence, certain types of witnesses. The pattern which they have extracted from the evidence is certainly a pattern which can be made to emerge from it; but it does not emerge naturally, or from all the evidence: it has been coaxed and forced by a process which, had there been an advocate on the other side, might well have been totally discredited before judgment could be given. The worst

sum'. For these reasons Marguerite Oswald must not be heeded. On the contrary, Marina Oswald, Oswald's widow, was 'a far more reliable person': she believed that her husband was guilty. Mr Hoover did not mention that she had made ten times as much money by insisting on Oswald's guilt as her mother-in-law had made by protesting his innocence. He preferred to rely on a knock-out proof of Marguerite Oswald's unreliability: 'the first indication of her emotional instability', he said, 'was the retaining of a lawyer that anyone would not have retained if they really were serious in trying to get down to the facts'.\* This lawyer was the author of this book, Mr Mark Lane.

Mr Lane so annoyed Mr Hoover because, even at that time, he had ventured to suppose that Oswald might be innocent. He believed that before any tribunal which was, inevitably, judging a man's guilt or innocence, that man had the right to legal counsel; and he was disturbed by the fact that the Warren Commission, by its very structure, seemed likely to presume Oswald's guilt. He noted that although the Commission had set up panels to investigate why Oswald had shot the President, no panel had been set up to determine whether he had shot him. The fact seemed to be taken for granted. He therefore resolved, if possible, to represent Oswald's interests before the tribunal. However, the tribunal did not see eye-to-eye with him on this nice legal point, and his services were not admitted. The interests of Oswald, it was announced, would be adequately protected; and the tribunal appointed, as their protector, Mr Walter Craig, the President of the American Bar Association, who was invited to participate in the inquiry 'fully and without limitation', being allowed to cross-examine, to recall witnesses, and to make proposals. Mr Craig certainly gave the Commission much less trouble than Mr Lane would have done. According to the official record, he only attended two out of the 51 sessions of the Commission, and none of the separate hearings, and he only opened his mouth at one of the two. His interventions at that session were not on behalf of Oswald.

So the Commission went to work and the case of Oswald, in Mr Lane's view, went by default. But Mr Lane went to work too. The Commission worked faster than he did—it had, after all, larger resources—and its report was published on September 27, 1964. First in the field, it received the prize. The applause was almost universal. To dissent was heresy, and journalists—many of whom seem only to have read the convenient

\* *Hearings Before the President's Commission on the Assassination of President Kennedy*, V, 99-105.

and this 'objective' evidence had to be adjusted afterwards to fit subsequent revelations. It is the duty of an 'independent' commission to be very critical of 'expert' evidence, especially if the expert body is under any suspicion of being interested in a particular conclusion. The Warren Commission, it is clear again and again, was insufficiently critical of expert evidence submitted by 'the existing agencies' on which it was so dependent. It did not press for explanations which might embarrass them. It did not test police statements. It politely accepted convenient evasions. This being so, it cannot complain if critics profess lack of confidence even in expert testimony.

Thus we come to the crux of the matter. It is a question of confidence. We have to admit that we lack confidence in the evidence submitted to the Commission and the Commission's handling of it. This is undoubtedly a serious admission, and once we have made it, we are faced by a further question. If we think that the Commission may have been deceived, or may have deceived itself, how do we explain such deception? Do we suppose that the 'existing agencies', or the Commission itself, deliberately sought to reach a certain conclusion, at the expense of the facts? Do we think—not to put too fine a point on it—that they, or it, were dishonest?

That would be the simple answer, and some people would no doubt accept it. They would declare that the assassination of the President, since the official explanation does not convince us, must have been the result of a conspiracy, and that the Warren Report was a 'whitewash job'. Others, unable to go to such lengths, come to an opposite conclusion. If there is no alternative but to believe either that the findings of the Report are true or that the Chief Justice of the United States and a commission of respectable public figures and professional lawyers are all engaged in a conspiracy to cover up a crime, then moderate, rational men will naturally (and in my opinion rightly) prefer to believe the former proposition. Their answer to Mr Lane would be that, even if he has proved everything, he has proved too much.

However, I do not believe that this is a proper dilemma. Between complete acceptance of a questionable argument and the assumption that such an argument is a fraudulent fabrication, there is a wide range of possibilities. It is possible to believe that the Commission's findings are true, but that they are not the result of a conspiracy to cover up a crime, but are the result of a conspiracy to uncover a crime. When a man, or

was seeking to arrest Oswald as the murderer of the President. But allowing this to be so, how was it that, in all Dallas, the police, in the person of Patrolman Tippit, contrived, almost at once, to pounce on one man and one man only, and that man, according to their subsequent insistence, the real murderer? According to the 'Summary and Conclusions', the attempted arrest was made in consequence of a description broadcast by the police, and this description in turn was based 'primarily' on the observation of one Howard L. Brennan, who is said to have seen Oswald, through the sixth-floor window of the Dallas Book Depository, from the street. 'Primarily' implies that Brennan's observation was the principal among several positive sources. But when we turn from the Summary to the full Report to discover these other sources, we find that they have disappeared, and that the identification of Oswald rested not 'primarily' but 'most probably' on Brennan's evidence.\* Thus there is no evidence of connexion, only probability. However, in the Report, this probability is supported by the statement that Brennan, having seen Oswald in a police lineup, made a 'certain identification', 'a positive identification' of him as the man he had seen fire the shots.† But, when we look closer into the Report, and still more when we trace this episode still further back to the 'Hearings', we discover that this is a very misleading version of the facts. For there Brennan, whose description of Oswald, as seen momentarily through a window six storeys up, is alleged to have enabled the police to pick him out of the whole city of Dallas, himself failed to identify Oswald in the police line-up—in spite of the fact that he had by then seen Oswald on television. Only afterwards, when Oswald was dead, did Brennan say that, as a matter of fact, though he had failed to pick him out in the line-up, he could have done so had he wished, had he not been afraid of 'communist' reprisals.‡ This is the evidence which, in the Report, is transformed into a 'positive', 'certain' identification, and which, in turn, transforms Brennan into a 'primary' source in the Summary.

The plain fact is that there is no evidence at all to explain how or why the Dallas police instantly pounced on Oswald, and until some adequate explanation is given, no one can be blamed for supposing that the Dallas police were acting in a suspicious manner.

\* *The Warren Report*, p. 105.

† *The Warren Report*, p. 105.

‡ *The Warren Report*, p. 105.

that can be said of Mr Lane is that he is the necessary advocate; and who can deny that his advocacy might have prevailed? After all, even one of the lawyers employed by the Commission afterwards published an essay arguing that no court could legally have found Oswald guilty on such evidence; and although part of her argument was a purely technical argument that the testimony of Marina Oswald, though it might be true, could not in law be admitted against her husband, the reader of Mr Lane's book may well conclude that there are other than purely technical arguments for rejecting Marina Oswald's testimony.\*

Of course there are arguments to put on the other side. It is easy to see what those arguments would be. If the champions of the Report were to lay aside the uncritical panegyrics and uncritical abuse in which they have too often indulged, they might well make certain admissions. They might admit that many, even most, of the onlookers thought that the firing had come from the front, not from behind. They might admit that all the Parkland doctors (the only doctors to see them before they were distorted by surgery) thought that the wounds had been inflicted from the front. They might admit that no one saw Oswald with the gun, or with a parcel that could contain the gun, or at the sixth-floor window, or in any compromising posture. They might admit that it seems unlikely, even impossible that such a man, with such a gun, could have shot so well. But even after all these admissions they would persist. Subjective evidence, they would say, must yield to objective evidence, fallible human observation to the certainties of scientific fact. The laboratories of the FBI have proved that those bullets came from that revolver, that rifle, those shreds from those clothes . . . In the face of these technically established facts, other doubts must yield. Shots are often confused with their echo. Doctors can err. Such marksmanship may surprise, but it cannot be impossible: there is no arguing with matter of fact.

However, even this argument is not convincing. The line between subjective and objective evidence is not quite so easy to draw. For who interprets the objective evidence? Even experts can err, especially when they think that they know the answer in advance. This very case provides some interesting examples of changed 'proof' in such matters as finger-prints. Technical officers made public statements about technical facts,

\* *The American Bar Association Journal*, Jan. 1965, V. 51, pp. 39-43. 'A Lawyer's Notes on the Warren Commission's Report', by Alfredda Scobey.

they are inevitably engaged in a process of simplification. We cannot complain that they seem eager to extract a clear pattern out of an amorphous mass of testimony. That is their business. But it is very easy to see the pattern for which one is looking too soon; and once it has been seen, it is even easier to read the evidence as sustaining that pattern: to emphasize such evidence as seems to support it and to overlook or extenuate or explain away such evidence as might undermine it. There is no dishonesty in this, no indecency in suggesting it. It is a well-known psychological fact, and the most reputable scholars fall into the error. The more reputable they are, the more ready they are to admit it, the more careful to guard against it. They discipline themselves. But it is unreasonable for us to rely entirely on their self-discipline. The best guarantee against the emergence of a false pattern which will then dominate the evidence is public criticism. Ideally public criticism should take place before judgment, lest the judges be convinced by unilateral advocacy. If that is not done, if the verdict is given before the advocates of one side have been subjected to the best arguments that can be opposed to them, there is no alternative to public criticism after judgment. If the Warren Commission had allowed Mr Lane to contest their evidence before judgment, there would have been no need of his book.

Thus I do not suppose that the Commission itself was consciously working towards a preconceived answer. I assume that all its members were conscientiously looking for the truth. Where a sinister interpretation can be placed upon their method of examination and of argument, I prefer always to look for an innocent interpretation. Such an interpretation can generally be found. Nevertheless, I believe with Mr Lane that their examination was defective and their argument unsound: defective because they overlooked inconvenient evidence; unsound because they applied different standards to the evidence which they accepted. They insensibly and progressively emphasized the evidence which seemed to support the conclusion of Oswald's sole guilt, and they insensibly and progressively attenuated the evidence which pointed away from it. And they did this, I believe, essentially because the material was presented to them in a certain order, and in a certain way, and under a certain set of circumstances.

It is not, I believe, that the pattern they saw was a pattern which had already been

'Summary and Conclusions' which were printed before the text and published separately by the *New York Times*—vied with each other in their praise. Mr Louis Nizer, who wrote a panegyric preface to the Report (portentously described as an 'analysis' of it), asserted confidently that the issue was now closed and only 'neurotics' clinging to 'pride or a more sordid interest' would refuse to submit. He thus repeated the assertion of Mr Hoover, just as the Report endorsed the conclusions of the FBI. The Commission, he concluded, had rendered an 'incalculable service' in 'effectuating domestic tranquillity and overcoming foreign skepticism. This is its contribution to history.'

But what about its contribution to historical truth? For ultimately the Warren Report must be judged not by its success as a tranquilliser but by the validity of its argument. I must confess that, when I first read the Report, I found myself unable to join the cry of triumph. It seemed to me that there were grave defects in it. Moreover, when one pressed the weak parts of the Report, they seemed even weaker. I ventured to draw attention to these weaknesses. I am afraid that, by doing so, I did not increase my popularity.

What most dismayed me, on reading the Report, was not the minor inconsistencies which can be found in it: those are to be expected in any work depending on a variety of human testimony, and it would be wrong to make too much of them. It was the evidence, rather, of a subtle but discernible process: the process whereby a pattern was made to emerge out of the evidence, and having emerged, seemed to subordinate the evidence to it. In order to be aware of this process, it is not enough to read the Report (although a reading of the Report is enough to sow the original doubt): one must turn to the 26 volumes of 'Hearings' which were published shortly after the Report and which I was able to procure and read in America. I found it fascinating reading. But it was also disquieting reading. To follow the same question through the three successive levels of 'Hearings', 'Report' and 'Summary and Conclusions' is to see, sometimes, a quiet transformation of evidence.

Let me take a concrete instance. One of the most important questions in this whole problem is, on what evidence did the Dallas police suspect Oswald? Oswald was arrested in a cinema for the alleged murder of a Dallas policeman, Patrolman Tippit: it was only later that he was identified as the man wanted for the murder of the President. But why then did Patrolman Tippit encounter Oswald? We are led to suppose that Tippit

hypothesis is admitted, almost all the evidence accepted by the Commission can be reinterpreted in a different way.

Other instances of this process could be given. It is fascinating, for instance, to watch the quiet transformation of the medical evidence. In the 'Summary and Conclusions' there is no hint that there was any difference of opinion among the doctors as to whether the President was shot from the front or from behind. In the Report, all the statements and conclusions suggesting that the shots came from behind are given prominence, since this is the conclusion reached. It is only in the 'Hearings' that we see the process by which this conclusion was reached: doctor after doctor at first insisting that the shots came from the front and then gradually, under pressure, with reservations and on conditions—sometimes impossible conditions—yielding to the insistence of the Commission that possibly they might have come from the rear. On this subject at least Mr J. Edgar Hoover spoke clearly: he admitted to the Commission that the doctors at the Parkland Hospital at first thought that the shots had come from the front.

I mention these instances because it was they which first caught my attention when I read the evidence. But the same process could be illustrated again and again, as readers of this book can see. The way in which Jack Ruby is quietly detached from Oswald and his interesting relations with the Dallas police are attenuated is a particularly good example. But there are plenty of others. This all shows how important it is not to take the Report on trust, how essential it will be for future historians to go behind the Report to the evidence. This has not been done by those who have publicly defended the Report. They have assumed, too lightly as it seems to me, that the Report is a faithful summary of the evidence. Even Lord Devlin, the ablest and apparently most critical defender of the Report (and I am aware that to differ from Lord Devlin in such a matter is as bold as to differ from Mr Warren), does not go beyond the Report. I have no doubt that Lord Devlin has seen the 26 volumes of 'Hearings', but the fact remains that his long article makes no apparent use of them, and his summing-up is a summing-up of the Report, not of the evidence.\* If, as I believe, there are parallel processes at work between these successive

\* Lord Devlin's article was published and reprinted in the *Quarterly Magazine*, London, and in the *New Statesman* (March 12, 1965).

doubt. When we re-examine the evidence free from the pressures to which the Commission was subjected, we are astonished at its easy solution of so many intractable problems. Even on the fairest construction, and making the most liberal allowances for the natural confusion of human testimony, there are many points, and those of crucial importance, on which the uncertainties of the evidence crowned themselves assured in the Report. Mr Lane is unquestionably right to bring us back from the Report to the evidence.

It is enough here to mention the principal questions. Whence were the shots fired? What put the police on the trail of Oswald? In what circumstances was Tippit shot? How certain is Oswald's connexion with the rifle, the rifle with the shots? In spite of all the material presented to the Commission, these problems are still mysteries. And yet are they necessary mysteries? If the available witnesses, including the police witnesses, had been more critically examined, more insistently pressed, or if the additional witnesses named by Mr Lane had been summoned, who can be sure that the truth, or a new clue leading to the truth, might not have been revealed? Deputy Sheriff Craig gave an important and perhaps illuminating piece of evidence immediately after the assassination. If his evidence had been confirmed, the whole official story would have been suspect from the start. Why was his evidence cut short and dismissed by the police, at that early stage, on the grounds that it 'didn't fit with what we knew to be true'—i.e. with the immediate police version of Oswald's movements? What indeed were Oswald's movements, both before and after the assassination? Mr Lane gives reason to suppose that the official version of his movements after the assassination is quite incorrect. Even Lord Devlin expresses his amazement at the indifference of the Commission to his movements and contacts before it. The Commission solemnly took evidence about the 'fishbone delusion' of Ruby's mother but evidently did not seek to establish Oswald's activities in the week before the assassination. 'This', as Lord Devlin remarks, 'is rather surprising.' And what about Ruby? How did he gain access to that closely guarded police-station? However he did it, it was undeniably either by the negligence or by the connivance of the police, and yet no policeman individually, nor any responsible spokesman of the police, would admit to either. And was the murder of Oswald by Ruby premeditated or not? The relevant testimony, both direct and indirect, shows that it was. I believe that this evidence is inescapably

\* Hearings, IV, 245.

On November 22 Lee Bowers, Jr, had the best view of the zone behind the fence. He was a railroad towerman for the Union Terminal Company.<sup>18</sup> From his 14-foot tower behind the fence he could scan the area.<sup>19</sup> Bowers told counsel for the Commission that at approximately ten o'clock in the morning traffic into the area between the tower and Elm Street had been 'cut off' by the police, 'so that anyone moving around could actually be observed'.<sup>20</sup>

He said he did observe three automobiles enter the area in the half hour preceding the assassination.<sup>21</sup> The first vehicle 'proceeded in front of the School Depository down across 2 or 3 tracks and circled the area in front of the tower, and to the west of the tower, and, as if he was searching for a way out, or was checking the area, and then proceeded back through the only way he could, the same outlet he came into'.<sup>22</sup> This car was a 1959 Oldsmobile, a blue and white station wagon, with an out-of-state license.<sup>23</sup> It bore a Goldwater-for-President sticker<sup>24</sup> and, therefore, presumably was not a local or federal police car.

The second automobile, a '1957 black Ford', was driven by a man who held what appeared to be a microphone to his mouth.<sup>25</sup> This car 'did probe a little further into the area than the first car' and 'after 3 or 4 minutes cruising around the area it departed the same way' the first car had left.<sup>26</sup>

The third car, a Chevrolet, entered the area just 'seven or nine minutes before the shooting'.<sup>27</sup> It bore a Goldwater campaign sticker identical to that displayed on the first car and had 'the same type' of out-of-state license as the Oldsmobile.<sup>28</sup> In addition, Bowers said, the third car was covered 'up to the windows' with the same kind of red mud he had noticed on the first car.<sup>29</sup> He testified that the driver of the third car 'spent a little more time in the area. He tried—he circled the area and probed one spot right at the tower in an attempt to get in and was forced to back out some considerable distance, and slowly cruised down back towards the front of the School Depository Building'.<sup>30</sup> Bowers added, 'The last I saw of him he was pausing just about in—just above the assassination site'.<sup>31</sup>

Bowers also testified that he saw two men standing near the fence just before the shots were fired.<sup>32</sup> He said one was 'middle-aged' and 'fairly heavy-set'.<sup>33</sup> The other was 'about middle-twenties in either a plaid shirt or plaid coat or jacket'.<sup>34</sup> His description of the two men behind the fence was not unlike Miss Mercer's description of the two men she observed, one of whom removed the 'gun case' from the truck and took it behind

## Part One THREE MURDERS

*'Consider your verdict,' the King said to the jury.  
'Not yet, not yet!' the Rabbit hastily interrupted.  
'There's a great deal to come before that!'  
'Call the first witness,' said the King; and the  
White Rabbit blew three blasts on the trumpet, and  
called out 'First witness!'*

ALICE'S ADVENTURES IN WONDERLAND

### 1 Prologue

EARLY in the day on November 22, 1963, a young woman in a rented Valiant drove past the Texas School Book Depository on the corner of Elm and Houston Streets in Dallas.<sup>1</sup> The seven-story structure is the last building one passes on the way out of town. On its roof was a big Hertz Rent-a-Car sign flashing the time and temperature to those below in Dealey Plaza.

As Julia Ann Mercer, a 23-year-old Dallas resident, steered the car west on Elm Street toward the triple underpass just ahead, she saw a 'truck parked on the right hand side of the road'.<sup>2</sup> The truck was partly on the curb just at the base of a grassy knoll. On the plateau above the slope there was a fence that connected the railroad overpass with a pergola made of concrete. Around the fence were bushes and half a dozen trees. The pergola was about halfway between the Book Depository to the east and the overpass to the west. (See map section at end of text.)

In a short time that little area would command the attention of thousands of people. There were many cars parked half a mile away. There were many more cars on the highway. It had been a busy day. The Texas School Book Depository was a busy place. The Texas School Book Depository was a busy place. The Texas School Book Depository was a busy place.

Price said that the man fleeing from the assassination scene 'had something in his hand'.<sup>49</sup>

Although he had signed an affidavit giving important information, Price was not questioned by the Commission or by counsel,<sup>50</sup> and no reference to his observations appears in the Report, not even his name.<sup>51</sup>

On March 27, 1966, I interviewed Price on the roof of the Terminal Annex Building.<sup>52</sup> During our filmed and tape-recorded conversation, he furnished a full description of the man he had seen on November 22: 'I paid particular attention to him. He had on khaki trousers, a white shirt, and I think—I'm pretty sure that his hair was sandy and long. A man appearing about 145 pounds in weight and not too tall. I'd say five-six or seven. He was bareheaded, and he was running very fast, which gave me the suspicion that he was doing the shooting, but I could be mistaken'.<sup>53</sup> The man 'was carrying something in his right hand,' Price added, which 'could have been a gun'.<sup>54</sup>

Lane: And where did you see the man run?

Price: Over behind that wooden fence past the cars and over behind the Texas Depository Building.<sup>55</sup>

S. M. Holland, an employee of the Union Terminal Company for 25 years, was asked by police officers on the morning of November 22 to identify those railroad employees who wanted to watch the Presidential motorcade from the bridge which spanned Elm Street.<sup>56</sup> At 11.45 a.m. Holland went to the overpass and began to identify the railroad workers.<sup>57</sup> He was still on the bridge when the motorcade moved west on Elm Street, heading directly toward him.<sup>58</sup> Suddenly shots rang out. Holland immediately looked to his left, toward the wooden fence, the bushes and the trees, 'And a puff of smoke came out about 6 or 8 feet above the ground right out from under those trees'.<sup>59</sup> He said he heard four shots and had 'no doubt about seeing that puff of smoke come out from under those trees'.<sup>60</sup>

Holland realized that an attempted assassination was taking place as he watched.<sup>61</sup> He believed an assassin or assassins were behind the wooden fence. 'Well, immediately after the shots was fired,' he said, 'I run around the end of this overpass, behind the fence to see if I could see anyone up there behind the fence'.<sup>62</sup> He said that by the time I got there there were 12 or 15 policemen and plainclothesmen, and we looked for empty streets around there for quite a while. I had seen a man standing around the fence, and I had seen a man standing down on a spot. He was 2 feet by 2 feet, looked to be

pick-up with a Texas license plate.<sup>5</sup> On the driver's side, in black, were the words 'Air Conditioning'.<sup>6</sup> Along the back of the truck were 'what appeared to be tool boxes'.<sup>7</sup>

Miss Mercer saw a heavy-set middle-aged man in a green jacket 'slouched over the wheel' of the truck while the other man 'reached over the tailgate and took out from the truck what appeared to be a gun case'.<sup>8</sup> The case was about eight inches wide at its broadest and tapered down to a width of about four inches or five inches.<sup>9</sup> It was brown in color, had a handle and was about three and a half to four feet long.<sup>10</sup> The man then 'proceeded to walk away from the truck and as he did, the small end of the case caught in the grass or sidewalk and he reached down to free it. He then proceeded to walk across the grass and up the grassy hill which forms part of the overpass'.<sup>11</sup>

Miss Mercer was able to give a rather detailed description of that man. He was 'a white male, who appeared to be in his late 20's or early 30's and he was wearing a grey jacket, brown pants and plaid shirt'.<sup>12</sup> She said she thought she could identify both men if she were ever to see them again.<sup>13</sup>

This little vignette evidently did not escape police scrutiny, for during the entire incident there were three policemen 'standing talking near a motorcycle on the bridge' just ahead of Miss Mercer and the truck.<sup>14</sup> Thus, a truck was parked illegally and blocked traffic while a man carried what appeared to be a rifle case up a grassy slope in the presence of Dallas police officers. At that very spot later that same day, the President was shot and killed.

Miss Mercer signed an affidavit for the Dallas Sheriff's office on November 22, describing the incident in detail, and it was published in the volumes of evidence by the Warren Commission.<sup>15</sup> Yet the Commission did not call her as a witness.<sup>16</sup> Neither was she questioned by a Commission investigator, nor did any reference to the event appear in the Commission Report, not even her name.<sup>17</sup> The Commission did not try to identify the three police officers so as to question them or to locate the truck which Miss Mercer had described.

The so-called gun case may have been empty, but a man carrying the case toward the bushes above the President's route was possibly observed and yet unchallenged by the Dallas police. Great security precautions had been taken to protect the President in hostile Dallas; here was an apparent violation. If the case was empty, it was still negligent of the Commission not to investigate. And perhaps the case was not empty.

somebody had been standing there for a long period'.<sup>64</sup> He said there was 'mud up on the bumper' of the station wagon 'in two spots'.<sup>65</sup>

Q. As if someone had cleaned his foot, or—

Holland: Well, as if someone had cleaned their foot, or stood up on the bumper to see over the fence.<sup>66</sup>

Another railroad employee, James L. Simmons, also ran behind the wooden fence immediately after the shots were fired.<sup>67</sup> He said he saw 'footprints in mud around the fence, and there were footprints on the wooden two-by-four railing on the fence'.<sup>68</sup> Simmons said he also saw mud footprints 'on a car bumper there, as if someone had stood up there looking over the fence'.<sup>69</sup>

Holland noted that the area behind the fence was used as a parking lot by the Dallas Sheriff's office.<sup>70</sup> Moments after making this remark, he was excused as a witness.<sup>71</sup> Although counsel did not inquire how long it had taken him to reach the area behind the fence or whether he thought that a man might have been able to escape from there unobserved by him,<sup>72</sup> the Commission cited Holland's testimony in support of its contention that there was 'no suspicious activity'<sup>73</sup> in the area behind the fence following the assassination: 'Holland, for example, immediately after the shots, ran off the overpass to see if there was anyone behind the picket fence on the north side of Elm Street, but he did not see anyone among the parked cars'.<sup>74</sup>

When I conducted a filmed and tape-recorded interview with Holland, he told me that the Commission had misused his testimony: 'I can't understand that statement, that it would have been impossible for anyone to be over there behind the fence, because it certainly was possible'.<sup>75</sup> He said it took him a minimum of two minutes to reach the area behind the fence.<sup>76</sup> On November 22, he stated, the parking lot was a 'sea of cars'—there 'wasn't an inch in there that wasn't automobiles, and I couldn't see up in that corner'.<sup>77</sup> Holland told me that he had to climb over the cars to reach the area behind the fence: 'They were parked bumper to bumper. We were jumping bumpers and over the hoods'.<sup>78</sup>

'They could have got away easily before I got there,' he concluded.<sup>79</sup>

Seymour Weitzman, a deputy constable, was among the first of the police to reach the fence from behind which shots had evidently been fired. (One of the most efficient Dallas law officers, Weitzman later recovered a portion of the President's skull from the south side of Elm Street.<sup>80</sup> Later still, he discov-

the fence. The two men were 'within 10 or 15 feet of each other', Bowers said, and they were facing the Presidential motorcade as it approached.<sup>35</sup> Neither man was dressed as a railroad employee or police officer: 'These men were the only two strangers in the area. The others were workers whom I knew'.<sup>36</sup>

When the shots rang out, Bowers said, the two men were still there.<sup>37</sup> He told Commission counsel that 'something occurred in this particular spot which was out of the ordinary, which attracted my eye for some reason, which I could not identify'.<sup>38</sup>

Q. You couldn't describe it?

Bowers: Nothing that I could pinpoint as having happened that—<sup>39</sup>

Before Bowers could conclude this most important sentence, the Commission lawyer interrupted with an unrelated question.<sup>40</sup> A little later Bowers was excused as a witness, leaving unexplained what it was in the area behind the fence that caught his eye at the moment the President was shot.<sup>41</sup>

In a subsequent interview with me which was filmed and tape-recorded, however, Bowers offered more detailed information on this important point.<sup>42</sup>

Bowers: At the time of the shooting, in the vicinity of where the two men I have described were, there was a flash of light or, as far as I am concerned, something I could not identify, but there was something which occurred which caught my eye in this immediate area on the embankment. Now, what this was, I could not state at that time and at this time I could not identify it, other than there was some unusual occurrence—a flash of light or smoke or something which caused me to feel like something out of the ordinary had occurred there.

Lane: In reading your testimony, Mr. Bowers, it appears that just as you were about to make that statement, you were interrupted in the middle of the sentence by the Commission counsel, who then went into another area.

Bowers: Well, that's correct. I mean, I was simply trying to answer his questions, and he seemed to be satisfied with the answer to that one and did not care for me to elaborate.<sup>43</sup>

Across the plaza, watching the motorcade from the roof of the Terminal Annex Building, was J. C. Price.<sup>44</sup> In an affidavit which he gave to the Dallas Sheriff's office 30 minutes after the assassination, Price said he heard a volley of shots.<sup>45</sup> His eye

ble. The positive testimony of Wanda Helmick,\* the flight of Larry Crafard,† the timing of Ruby's entry, the evidence of Sergeant Dean‡ all point to that conclusion. And yet when Sergeant Dean gave his evidence to the Commission's lawyer, Mr Griffin, what happened? Mr Griffin suddenly stopped the recording and privately put pressure on Dean to change his evidence. He accused him of perjury and promised him immunity if he would change his story. Dean declined to change and afterwards insisted on revealing, for the record, the pressure to which he had been subjected: otherwise we would never have known about it. § Ruby's intimate, corrupt connection with the police was sufficiently revealed by numerous witnesses, whose evidence Mr Lane presents. It was denied or softened out of recognition by the Commission. Ruby's movements and contacts before the assassination, like those of Oswald, were unexplored. Today Ruby is the only man who might still, at first hand, reveal the truth, but his requests to give evidence outside the state of Texas were refused, and he remains, to this day, in the custody of his old intimates, the Dallas police.

While all these doubts remain, who can say that the case is closed? In a sense it is still *sub judice*. The Report of the Warren Commission is an advocate's summing-up. The fact that the advocate believes his own version is not relevant: advocates often do. Before judgment can be given, the advocate of the other side must also be heard. That advocate is Mr Lane. He too believes in his brief. Thanks to that belief, he too may err in detail. But at least he has the right, which in America has often been denied to him, to a fair hearing. When both sides have been heard, and not before, posterity may judge.

Hugh Trevor-Roper



It is also important to note that almost half of those who did not agree with the majority were in the motorcade.<sup>14</sup> Their testimony must be evaluated carefully since the vehicles were moving, making it difficult to ascertain the origin of the sounds. Furthermore, almost all of the dissenting motorcade witnesses—13 out of 15—were Government officials, their wives or aides, or local or federal police.<sup>15</sup> I do not wish to suggest that their testimony should be dismissed, but it should be cautiously assessed because of the obvious possibility that it might be colored.

Even among the minority of 32 who did not agree that the shots came from around the knoll, there are some whose testimony is absolutely inconsistent with the Commission's conclusion that all of the shots originated at the southeast corner window of the sixth floor of the Book Depository. For example, witnesses on the fifth floor of the building stated that when the shots were fired, they thought at first that the cause of the sound was a motorcycle or automobile backfire.<sup>16</sup> Obviously, although they may now state that the shots came from above, their first impression was that the shots came from below.

The testimony of others among the minority is only relatively less inconsistent. One Commission witness stated that he saw flame emitted from a rifle in the southeast corner window of the Book Depository sixth floor when the shots were fired.<sup>17</sup> According to the FBI, he could not possibly have seen a flame caused by the rifle Lee Harvey Oswald was said to have used, for that agency tested the rifle and categorically stated that when the weapon was discharged in daylight, no flame could be seen.<sup>18</sup> Of course another rifle may have been fired, whether by Oswald or by someone else, but we are speaking here of an inconsistency in the Commission's case. Another eyewitness who said the shots came from the Book Depository, Howard L. Brennan, admitted to the Commission that he had deliberately lied to the police about his observations on November 22.<sup>19</sup>

Most people suffer a degree of nervous strain when they testify in court. Generally speaking, they try to please the Court. The Chief Justice of the United States presided over this Commission, it was appointed by the President of the United States and its members were august and influential men. It is reasonable to assume that before such a body, the wish of the witness to please, conscious or unconscious, was enhanced. It is not surprising to find that there was frequently a marked desire to conform to the Government's version. One witness actually testified that he had 'heard one more [shot] than than was

ered a rifle.<sup>81</sup> He had been at the corner of Main and Houston Streets, approximately one block southeast of the knoll, when the Presidential limousine passed by.<sup>82</sup> Moments later, as the automobile neared the grassy slope, he heard shots and raced toward the hill.<sup>83</sup> Weitzman testified that he ran up the knoll and climbed over the fence at the top.<sup>84</sup>

He described the confusion behind the fence, with other law enforcement officers arriving,<sup>85</sup> and he testified that he had encountered a very important witness there—a railroad employee: 'I asked a yardman if he had seen or heard anything during the passing of the President. He said he thought he saw somebody throw something through a bush.'<sup>86</sup> Weitzman added that he asked the yardman where he thought the noise came from and the yardman 'pointed out the wall section where there was a bunch of shrubbery'.<sup>87</sup>

The Commission would appear to have been informed about a most important eyewitness to the event—a railroad employee who thought the shots came from the area behind the fence and who thought he saw a man throw something into the bushes when the President's car had passed. However, just after Weitzman gave that information, Commission counsel said, 'I think that's all', and Weitzman was dismissed.<sup>88</sup> He was not asked for the name or description of the employee.<sup>89</sup> He was not asked if he looked into the bushes or if he found anything there.<sup>90</sup> Nothing in the 26 volumes of evidence or in the Report indicates that the Commission or its investigators made any effort to locate or identify the railroad employee.

## 2 • Where the Shots Came From

*No credible evidence suggests that the shots were fired from the railroad bridge over the Triple Underpass, the nearby railroad yards or any place other than the Texas School Book Depository Building.*

—WARREN COMMISSION REPORT<sup>4</sup>

*In contrast to the testimony of the witnesses who heard and observed shots fired from the Depository, the Commission's investigation has disclosed no credible evidence that any shots were fired from anywhere else.*

—WARREN COMMISSION REPORT<sup>5</sup>

To conclude that 'no credible evidence suggests' that shots came from any place other than the Book Depository is to ignore the

sine,<sup>70</sup> lends support to the possibility that shots were fired from the front and right, the general direction of the grassy knoll: 'I had got splattered with blood—I was just a little back and left of—just a little bit back and left of Mrs Kennedy'.<sup>71</sup> Four and a half months after the assassination, this Dallas police officer was to say that he 'had a feeling' that the shots 'might have been from the Texas Book Depository',<sup>72</sup> but his immediate response to the shots perhaps speaks more eloquently than his subsequent recollection, for he turned his back to the Depository and raced to the knoll: 'I ran up to this kind of a little wall, brick wall up there to see if I could get a better look on the bridge, and, of course, I was looking all around that place by that time'.<sup>73</sup>

A Dallas deputy sheriff, Harry Weatherford, thought that the shots emanated from the railroad yards behind the wooden fence.<sup>74</sup> He filed a statement for his office on November 23 in which he said, 'I heard a loud report which I thought was a railroad torpedo, as it sounded as if it came from the railroad yard'.<sup>75</sup> He recognized the remaining reports as rifle shots and 'by this time I was running towards the railroad yards where the sound seemed to come from'.<sup>76</sup> Another deputy, J. L. Oxford, said that when he heard the shots, he ran across Dealey Plaza toward the knoll: 'When we got there, everyone was looking toward the railroad yards. We jumped the picket fence which runs along Elm Street and on over into the railroad yards. When we got over there, there was a man who told us that he had seen smoke up in the corner of the fence'.<sup>77</sup> This man was not further identified by Oxford, and neither Oxford nor Weatherford was questioned by the Commission or by counsel.<sup>78</sup>

Forrest V. Sorrels, the agent in charge of the Dallas office of the Secret Service,<sup>79</sup> was riding in an automobile approximately five car lengths ahead of the Presidential limousine.<sup>80</sup> When the shots were fired, Sorrels immediately looked up at the knoll on his right because 'the noise from the shots sounded like they may have come from the terrace there'.<sup>81</sup> He testified that 'the report seemed to be loud, that it sounded like to me—in other words, it was a loud report'.<sup>82</sup> Sorrels also testified that 'the report seemed to be loud, that it sounded like to me—in other words, it was a loud report'.<sup>83</sup>

Another witness, a Dallas police officer, testified that 'the report seemed to be loud, that it sounded like to me—in other words, it was a loud report'.<sup>84</sup>

among the witnesses closest to the grassy knoll, said that he thought that the shots came from the Book Depository,<sup>85</sup> while 11 of them indicated either explicitly or implicitly that the fenced-in area above the knoll was where they thought the sniper was.<sup>84</sup>

Many rifles emit a small amount of smoke when discharged.<sup>85</sup> The presence of trees and bushes on the knoll, grouped around the fence, virtually precluded the possibility that a spectator not on the overpass could have observed smoke if a sniper fired from behind the fence. Most of the railroad workers standing on the overpass turned to their left—toward the knoll—when the shots were fired. Thus, of all those in Dealey Plaza when the assassination occurred, they appear to have been in a unique position to observe smoke on the knoll. Seven of them said that they did see smoke above the bushes and under the trees.<sup>86</sup>

S. M. Holland told counsel for the Commission that when the shots were fired 'a puff of smoke came out about 6 or 8 feet above the ground right out from under those trees. And at just about this location from where I was standing you could see that puff of smoke'.<sup>87</sup> In an affidavit signed on the day of the assassination, Holland said, 'I looked over toward the arcade and trees and saw a puff of smoke come from the trees'.<sup>88</sup> He added that 'the puff of smoke I saw definitely came from behind the arcade through the trees'.<sup>89</sup>

Six other men on the overpass saw smoke in the same area.<sup>40\*</sup> Austin L. Miller stated in an affidavit on November 22, 'I saw something which I thought was smoke or steam coming from a group of trees north of Elm off the railroad tracks'.<sup>44</sup> He was questioned for the first time by counsel for the Commission four and a half months after the assassination.<sup>45</sup> The interview was a brief one; it lasted but a few minutes.<sup>46</sup> Counsel did not ask about the smoke, and Miller was dismissed before he could mention the crucial observation contained in his affidavit.<sup>47</sup>

In filmed interviews, both James L. Simmons<sup>48</sup> and Richard C. Dodd<sup>49</sup> told me that they had seen smoke near the bushes and trees at the corner of the wooden fence.<sup>50</sup> Simmons said the sound of the shots 'came from the left and in front of us.

\* Another person on the overpass, a Dallas police officer, testified that 'the report seemed to be loud, that it sounded like to me—in other words, it was a loud report'.<sup>84</sup>

fired'.<sup>20</sup> He had heard four shots;<sup>21</sup> the official account was that there had been only three. Even Mrs Jacqueline Kennedy told the Commission that her recollection of the event was different from the newspaper reports and that she was willing to concede that she was in error.<sup>22</sup>

The Government called most of its witnesses long after it had made plain that in its view the shots had come from the Book Depository Building alone and implied that those who rejected this thesis were irresponsible speculators. The press largely endorsed and publicized the Government's position, so that the distinction between wild conjecture and responsible dissent was obscured. Perhaps the most significant figures therefore—more significant even than the ones given above—are those attesting the immediate reactions of the witnesses to the assassination before there was any official version. Twenty-five witnesses are known to have given statements or affidavits on November 22 and November 23 about the origin of the shots. Twenty-two said they believed that the shots came from the knoll.<sup>23</sup>

Ninety-two out of 124 witnesses affirmed, either explicitly or by the direction in which they ran or looked, that the knoll, and not the Book Depository Building, was where the shots came from. Fifty-eight witnesses in all stated that the shots came from the knoll, while 34 others are known to have run toward the knoll or directed their attention there at the moment the shots rang out. The Commission and its investigative agents failed to ask 21 of these where they thought the shots came from. By the time the remaining 13 were questioned, each said he was unsure of or could not tell the direction of the shots.<sup>24</sup>

Except for Lee Bowers, who surveyed the scene from a tower behind the wooden fence, the witnesses with the best view of the fenced-in area were those standing above Elm Street on the railroad overpass. As the motorcade approached, 13 railroad employees and two Dallas policemen were on the railroad bridge;<sup>25</sup> the knoll was just to their left. Not one of the railroad men was called before the Warren Commission.<sup>26</sup> However, four were questioned by counsel for the Commission<sup>27</sup> and nine by agents of the FBI.<sup>28\*</sup> Five of them said that shots came from the knoll<sup>31</sup> and six others said that when the shots were fired their attention was immediately attracted to the knoll.<sup>32</sup> It is worth noting that not one of the 13 men, who were

\* The first such interview took place four months after the assassination, on March 17, 1964.<sup>28</sup> The FBI did not give verbatim transcripts to the Commission, merely its agents' summaries of the interviews<sup>29</sup>—which are, of course, hearsay.

Secret Service agents,<sup>35</sup> Dallas police officers<sup>36</sup> and Dallas County deputy sheriffs<sup>37</sup> posted here and there around the plaza agreed that the shots seemed to have come from the knoll. Many officers said that as soon as the shots were fired they ran directly to the knoll and behind the wooden fence and began to search the area,<sup>38</sup> some of them passing the Book Depository Building on the way. Lee Bowers testified that at least 50 law enforcement officers were engaged in searching the parking lot and the railroad yards behind the fence within minutes of the assassination;<sup>39</sup> other eye-witnesses confirmed this estimate.<sup>40</sup>

Police officers in general tend to identify with the case developed against a defendant. In this case, had any officer wanted to alter his story after the event, he would have been contradicted by the evidence of his own actions. He might be hard pressed to explain why he ran toward a hill, scaled a fence on the hill and searched the area behind the fence just after the President was shot in his presence if he really suspected that the assassin was elsewhere.

However, at least one Dallas policeman was apparently indifferent to this logic. Jesse E. Curry, the Chief of Police, was driving the lead car.<sup>41</sup> On November 23 he told reporters that he 'could tell from the sound of the three shots that they had come from the book company's building near downtown Dallas'.<sup>42</sup> Yet just after the shots were fired, with the underpass ahead and the Book Depository behind, Chief Curry said into the microphone of his radio transmitter, 'Get a man on top of that triple underpass and see what happened up there'.<sup>43</sup> Second thoughts in a case like this are less valuable than reactions and statements made on the scene, and talk as he might to reporters after the official story was set, commonsense continues to associate Chief Curry's original belief with his original words.

Sheriff J. E. Decker was riding in the rear seat of the lead car.<sup>44</sup> Immediately after Curry's call, Decker gave the order to 'move all available men out of my office into the railroad yard to try to determine what happened in there and hold everything secure until Homicide and other investigators should get there'.<sup>45</sup> Sheriff Decker's deputy still maintained a 'command post' in the area behind the wooden fence. The Commission apparently assumed that this fact

evidence of Miss Mercer, Bowers, Price, Holland, Deputy Constable Weitzman and the railroad yardman who spoke with him. Yet the statements of these six corroborate and are consistent with one another. For testimony to be so compatible, the common denominator—bar perjury—must be truth. The Commission's apparently arbitrary rejection of such testimony reflects more damagingly upon itself than upon the credibility of the witnesses, for, in fact, nearly 100 other persons believed that the shots came from the knoll.

The Commission knew the names of at least 266 witnesses present at the scene of the assassination.\* Two hundred and fifty-nine were able to testify.† Twenty-three witnesses appeared before at least one member of the Commission;<sup>6</sup> 58 additional witnesses were questioned by Commission counsel;<sup>7</sup> and 123 additional witnesses were questioned at one time or other by the Dallas police, the Dallas County Sheriff's office, the FBI or the Secret Service.<sup>8</sup> Fifty-five persons whose names were known and who were present at the scene of the assassination apparently were never interviewed by local or federal authorities.<sup>9</sup>

In the case of 68 persons called as witnesses or interviewed by the police (including the FBI and the Secret Service), the examiner forgot or neglected to ask the witness from where he thought the shots came.<sup>10</sup> Of the 90 persons who were asked this important question and who were able to give an answer,†† 58 said that shots came from the direction of the grassy knoll and not from the Book Depository Building, while 32 disagreed.<sup>13</sup> Thus, almost two-thirds of those who expressed an opinion supported the evidence given by Miss Mercer, Bowers, Price, Holland and Weitzman.

\* More than 400 people were in or around Dealey Plaza when the assassination occurred. Many were spectators, some were in the motorcade, a number were reporters and others were local or federal police assigned to protect the President. All were witnesses.

† The Commission neglected to publish a compilation of the persons known to have been present at the scene of the assassination. However, by utilizing the information contained in the 26 volumes of evidence, supplemented in 11 instances by newspaper accounts, it was possible to compile a list of 266 persons who were present in the vicinity of Dealey Plaza at the time of the assassination. This list appears as Appendix I.

†† One of the 266 witnesses was physically disabled and heard no shots;<sup>2</sup> one, a Dallas policeman on the Triple Underpass, said that a train passed between him and Dealey Plaza at the critical moment;<sup>4</sup> and five of the witnesses were children five years old or less.<sup>5</sup>

†† Two witnesses said they heard no shots<sup>11</sup> and 46 witnesses said that they could not place the origin of the shots.<sup>12</sup>

toward the wooden fence, and there was a puff of smoke that came underneath the trees on the embankment'.<sup>51</sup> Dodd said, 'The smoke came from behind the hedge on the north side of the plaza'.<sup>52</sup> Walter L. Winborn<sup>53</sup> and Thomas J. Murphy<sup>54</sup> told an independent investigator that they also had seen smoke in the trees on the knoll.<sup>55</sup> Clemon E. Johnson told FBI agents that he had observed 'white smoke'.<sup>56</sup>

Seven men on the overpass, perhaps eight, saw smoke behind the fence.<sup>57</sup> Instead of questioning them on this important point, the Commission relied upon inadequate interrogation by counsel and the hearsay reports of agents of the FBI.<sup>58</sup> Then it concluded that there was 'no credible evidence' to suggest that shots were fired from anywhere except the Book Depository sixth floor.<sup>59</sup>

Although only the railroad employees observed smoke on the knoll, many other persons scattered throughout Dealey Plaza also placed the origin of the shots there. Persons standing in front of the Book Depository itself indicated that the shots did not come from that building.<sup>60</sup> For example, Ochus V. Campbell, the Book Depository Vice President, declared, 'I heard shots being fired from a point which I thought was near the railroad tracks located over the viaduct on Elm Street'.<sup>61</sup> Campbell said that he 'had no occasion to look back at the Texas School Book Depository Building as I thought the shots had come from the west'.<sup>62</sup>

Some of those standing in front of the fence indicated the knoll and excluded the Depository as a possible source of the shots. Mary Woodward, an employee of *The Dallas Morning News*, who witnessed the event from a location in front of and just to the left of the wooden fence,<sup>63</sup> wrote that 'suddenly there was a horrible, ear-shattering noise coming from behind us and a little to the right'.<sup>64</sup> Standing closer to the fence was Abraham Zaprunder, an amateur photographer who took motion pictures of the assassination.<sup>65</sup> A Secret Service interview report stated, 'According to Mr Zaprunder, the position of the assassin was behind Mr Zaprunder'.<sup>66</sup>

Some witnesses near the Presidential limousine also identified the knoll as the source of the shot. Jean Hill, a schoolteacher,<sup>67</sup> said, 'I frankly thought they were coming from the knoll'. . . . I thought it was a puff of smoke coming from the knoll'. . . .



smoke on the knoll. One witness even smelled gunpowder behind the fence.

Patrolman J. M. Smith, who had been standing at the corner of Elm and Houston, in front of the Book Depository Building, said in a written report to Chief Curry, 'I heard the shots and thought they were coming from bushes of the overpass.'<sup>98\*</sup> Ronnie Dugger, editor of *The Texas Observer*, questioned Smith, and the officer told Dugger that he had gone directly to the area behind the fence.<sup>100</sup> After his own on-the-spot investigation, Dugger observed, 'A man standing behind the fence, further shielded by cars in the parking lot behind him, might have had a clear shot at the President as his car began the run downhill on Elm Street toward the underpass.'<sup>101</sup> Patrolman Smith ran into the area and, as he told Dugger, he 'caught the smell of gunpowder there' behind the wooden fence: 'I could tell it was in the air.'<sup>102</sup>

Senator Ralph Yarborough also smelled gunpowder.<sup>103</sup> While he awaited news of the President's condition at Parkland Hospital, he said, 'You could smell powder on our car nearly all the way here.'<sup>104</sup> Dugger observed, 'Oswald and his rifle were reportedly six stories high and perhaps 75 yards behind the President's car at the time of the shooting. Yarborough was in the third car of the motorcade, with then Vice President and Mrs Johnson. Some officials questioned here [in Dallas] could not explain why Sen. Yarborough would smell gunpowder.'<sup>105</sup>

When Smith was called before counsel for the Commission to testify, he was not asked a single question about the fact that he had smelled gunpowder behind the fence<sup>106</sup> although his statement to that effect had been quoted in the Texas publication.<sup>107</sup> Senator Yarborough was not called by the Commission as a witness, nor was he questioned by counsel.<sup>108</sup> Instead, the Commission secured from him a one-page affidavit, in which no reference was made to what he had said about smelling gunpowder.<sup>109</sup>

There is some evidence to suggest that one or more shots may have been fired from the Book Depository, as the Warren Commission maintained. It is considerably less compelling than the evidence suggesting that shots came from behind the fence. To contend, however, that shots came from the knoll is not to say that no shots were fired from elsewhere. But it is impossible to contend at one and the same time that some shots came from the fence and that a lone assassin—Oswald—fired

\* There are no bushes on the overpass; the bushes are at the wooden fence adjacent to the overpass. In his testimony before counsel for the Commission, Smith explained that this is what he meant.<sup>99</sup>

from the Book Depository window. As the Commission was to remain faithful to the latter conclusion, it had first to prove that no shots came from the knoll. In attempting to do so, the Report cited evidence out of context, ignored and reshaped evidence and—which is perhaps worse—oversimplified evidence.

### 3 • The Gauze Curtain

ON June 5, 1964, Mrs Jacqueline Kennedy was questioned in an extraordinary session of the Commission, attended only by Chief Justice Warren; J. Lee Rankin, the General Counsel; and Robert F. Kennedy, then Attorney General of the United States.<sup>1</sup> Although Mrs Kennedy was closest to the President when the bullets struck<sup>2</sup> and held her husband in her arms as the limousine raced to the hospital, his head on her lap,<sup>3</sup> she was not asked one question about her husband's injuries.<sup>4</sup> The Commission declined to ask the relevant questions in spite of the fact that no one had the chance to observe the President's wounds so closely or for so long a time as did Mrs Kennedy, with the exception of several physicians and Secret Service agents. It is not that she was reluctant to speak; she voluntarily gave information about those terrible wounds.<sup>5</sup> However, in place of her testimony, at this point in the transcript the Commission inserted the phrase, '[Reference to wounds deleted]'.<sup>6</sup> Her words, the Commission assured, are on record in the National Archives;<sup>7</sup> future historians can examine them after 75 years have elapsed.<sup>8</sup>

We shall have to discuss the wounds in detail as best we can. This subject, while unpleasant, is intrinsic to the truth about the assassination; the nature of the wounds will tell much about the source of the shots.

The doctors who examined the President in Dallas on November 22 observed two wounds: a small wound in his throat and a massive wound in the rear portion of his skull.<sup>9</sup> First we shall consider the throat wound.

The President was facing toward the knoll in front of him and to his right at the time of the first shot.<sup>10</sup> If the bullet that struck his throat came from the knoll, then the wound must have been an entrance wound. If the bullet came from the Book Depository, behind the limousine, then it must have been

Typed: 6/12/68  
FMV:RCN:ehd  
129-11

June 19, 1968

Honorable Walter F. Mondale  
United States Senate  
Washington, D. C.

Dear Senator:

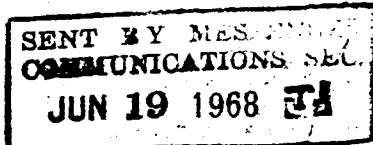
This is in response to your communication of May 29, 1968 transmitting a letter from [REDACTED] concerning the assassination of President Kennedy. 7C

The authors who have criticized the conclusions of the Warren Commission do not claim to have any significant new evidence, so far as we are aware. Rather, their criticisms and demands for a new inquiry are based upon different conclusions they have drawn from parts of the same body of evidence that was examined by the Commission. The Commission made a thorough inquiry and detailed analysis of the facts concerning the assassination. The evidence amply supports the basic conclusions of the Commission. In these circumstances, we see no basis for a new inquiry.

The Warren Commission gathered a vast amount of material, much of it having only remote connection with the assassination. The bulk of the material that was before the Commission either was published in its 26-volume Hearings or is available to researchers at the National Archives. The relatively small portion which is not now available to the public consists primarily of national security intelligence or investigative reports — dealing largely with activities far removed from the assassination itself — which if disclosed might compromise confidential sources or techniques, or in some cases jeopardize the lives of individuals abroad. All of the Commission material which has not yet been released will be reviewed periodically until all of it has been made available to the public.

The photographs and X-rays taken in connection with the autopsy of President Kennedy were transferred to the National Archives by his family under restrictions which the government accepted pursuant to the statute governing the deposit of historical materials relating to former presidents. The autopsy pictures are available for official inspection by any government body having authority to investigate matters relating to the assassination. They will also be available, after a five-year period, for nonofficial inspection by experts in pathology or related areas of science, subject to restrictions suitable to the subject matter of these pictures.

Records ✓  
Chrono  
Malley  
Mr. Vinson  
Deputy AG



It should be noted that the most meaningful evidence of autopsy findings consists of the expert analysis made by the doctors who performed the autopsy; the X-rays and photographs are simply a record of what the doctors saw and evaluated. Two of the doctors who performed the autopsy of the late President and testified before the Commission have examined the X-rays and photographs in the Archives and informed the press that the pictures corroborate the findings to which they had testified.

I trust that this information will be of interest to your constituent. As always, it is a pleasure to be of assistance. Your enclosure is returned herewith.

Sincerely,

FRED M. VINSON, Jr.  
Assistant Attorney General

PLEASE EXPEDITE

THIS MAIL SHOULD BE  
ANSWERED WITHIN 48 HOURS

Receipt was acknowledged 6-4-68

Correspondence Section  
Records Administration Office  
Administrative Division

DATE: May 29, 1968

United States Senate

RE: [REDACTED] 7C  
[REDACTED] 7C

Respectfully referred to

Congressional Liaison  
Department of Justice  
Washington, D. C.

.....  
For your consideration of the attached  
letter, and for a report.

       To be forwarded directly to the  
constituent, with a copy to me  
for my information and records.

XX To me, in duplicate to accompany  
return of enclosure.

       As requested below.

Additional comments

129-11		DEPARTMENT OF JUSTICE	R
11		JUN 4 1968 D.	E
		RAO	R
		CRIMINAL-GEN. CRIME SEC.	D

Please refer response to attention of  
Gary Avery, of my staff,  
on the outside of the envelope only.

Thank you.

WALTER F. MONDALE  
U.S. SENATE

sp

9

RECEIVED  
REC'D MAY 28 1968

JUN 5 1968

CRIMINAL DIVISION

[REDACTED]

7C

May 25, 1968

Senator Walter Mondale  
United States Senate  
Washington D.C.

Dear Senator Mondale:

I recently heard Harold Weisburg speak on the Kennedy Assassination at the University of Minnesota. He pointed out many fallacies in the Warren Report which have raised grave questions in my mind.

Why were so many important witnesses ignored and their testimony not included in the Warren Report? Why does the Warren Report say President Kennedy was killed from behind when it is obvious from pictures that he was shot in the front from the direction of the grassy knoll? Why have so many important reports, pictures and information been withheld from the public? Why did the Warren Report ignore indications incriminating the Central Intelligence Agency conspiring to kill President Kennedy?

These and countless other questions remain to be answered. Therefore, I would like to see an immediate and thorough reinvestigation of the Kennedy Assassination. I hope you will look deeper into this situation and introduce legislation to reopen the investigation.

Yours very truly,

[REDACTED]

7C

Betyped: 6/20/68  
FNV/MSB:jac  
129-11

June 26, 1968

Honorable Charles E. Wilson  
House of Representatives  
Washington, D. C.

Dear Congressman:

This is in reply to your memorandum of May 29, 1968,  
concerning a letter you received from your constituents,  
[redacted]

With respect to [redacted] request that the  
National Archives be opened to the public, we can only point  
out that the Warren Commission gathered a vast amount of  
material, including that which had even a remote connection  
with the assassination. The bulk of the material that was  
before the Commission at that time was published in its 26-volume  
Archives. The relatively small portion which is not now avail-  
able to the public, a list of which is available at the  
Archives, consists primarily of national security intelligence  
or investigative reports—dating largely with activities far  
removed from the assassination itself—which if disclosed  
might compromise confidential sources or techniques. Public  
availability of other information had been delayed pending  
completion of the presentation of Jack Ruby, but this informa-  
tion has now been released. All of the Commission material  
which has not yet been released will be reviewed periodically  
until all of it has been made available to the public.

The envelope photographs and X-rays of President  
Kennedy's body were transferred to the National Archives by  
agreement to the standards governing the Government's disposal  
of materials relating to former presidents. The agreement pre-  
scribes reports approved by the Government's investigative bodies and  
material until October 29, 1971. After that date, the material  
will be available for nonofficial inspection by experts in  
pathology or related areas of science.

Records  
Chasen  
Mr. Block (2)  
Mr. Viscusi

Mr. Bottoms  
Deputy Attorney General

*Mildred Johnson*

SENT BY MESSENGER  
COMMUNICATIONS SEC.  
JUN 26 1968 2 11

With regard to the investigation being conducted by New Orleans District Attorney Jim Garrison, we can only point out that Mr. Garrison has not discussed his proceedings with Federal authorities.

Regarding [redacted] concern that the slayer of Dr. Martin Luther King, Jr. would not be captured, please note that immediately upon receiving the report of the shooting of Dr. King, the Attorney General requested a full investigation by the Federal Bureau of Investigation. The Attorney General and the Assistant to the Director of the Federal Bureau of Investigation, Carlton D. DeLoach, traveled to Memphis the morning after the shooting and personally reviewed the progress of this investigation. As a result of this intensive investigation, the man suspected of assassinating Dr. King, James Earl Ray, has now been apprehended in London, England.

We hope this report will be of assistance in replying to [redacted]. It has been our pleasure to serve you in this matter.

Sincerely,

FRED M. VISSCH, Jr.  
Assistant Attorney General



DATE: June 4, 1968

To: Harold D. Koffsky  
Room 2229 - Criminal

From: *HEH* Herbert E. Hoffman  
Chief, Legislative & Legal Section  
Office of the Deputy Attorney General

Subject: Correspondence from:  
Cong. Wiggins enc. ltr. fr [REDACTED] re  
slaying of Martin Luther King, etc.

Responsibility

- Prepare reply for signature of Deputy Attorney General and forward to Herbert E. Hoffman, Room 4117, Main Justice.
- Make an appropriate reply with a copy to Herbert E. Hoffman, Room 4117, Main Justice.

Department File No.: 129-11

Miscellaneous Information:

- Interim reply is being/has been made.
- No interim reply is being made.
- Copy of incoming correspondence attached.
- Original of incoming correspondence attached.
- Please return attachment.

*General Counsel*

*lme*

HOUSE OF REPRESENTATIVES, U.S.  
WASHINGTON, D.C.

May 28, 1968

*Respectfully referred to*

Herbert E. Hoffman, Chief  
Legislative & Legal Section  
4117 Main Justice  
Washington, D. C. 20050

Dear Sir:

Enclosed is an additional  
photocopy of letter from  
7C [redacted] which  
I hope you will find readable.

(The first page of 7C  
7C [redacted] letter is not  
relevant to the request  
made in her letter.)

*OKC  
222*

129-11	
DEPARTMENT	RECEIVED
MAY 29 1968	
DEPUTY ATTORNEY GENERAL	
LEGISLATIVE SEC.	

Very respectfully,  
CRIMINAL-GEN. CRIME SEC.

*Charles E. Wiggins*  
CHARLES E. WIGGINS

M.C., 25th District.  
California

*gl*

have a request - and it is this:

We want Congress to support  
and aid, rather than hamper<sup>58</sup>  
and deter, the efforts made  
by Jim Garrison to proceed  
with the trial of Clay Shaw  
and all further trials.

It seems strange to me that  
when President Kennedy was  
killed: within an hour, Lee  
H. Oswald was arrested. Also  
there was a complete dossier  
on him. Still the slayer  
of Dr. Martin L. King, Jr., was  
let slip by.

It makes me feel there  
is more corruption in the  
higher places (as every single  
candidate than the years

3  
has told us. but somehow  
fails to correct) than I care  
to think about.

We want the Archives  
opened and the information  
made available to proper  
people, so the American people  
may get on with the business  
of finding out who killed  
President Kennedy.

Thank You

 7C

Typed: 6/14/68

RM:MSB:lm  
129-11

6-4

Honorable Jerry L. Pettis  
House of Representatives  
Washington, D. C.

June 26, 1968

Dear Congressman:

This is in reply to your memorandum of June 4, 1968, concerning an inquiry you received from [redacted] which [redacted] raised several questions about the assassination of President Kennedy. 7c

With regard to [redacted] second for a new investigation, we can only point out that the Warren Commission gathered and considered a vast amount of material, including that gathered had even a remote connection with the assassination. It made a thorough inquiry and detailed analysis of the facts, and the evidence, as presented in the two-volume report, and the conclusions. In those circumstances, we see no basis for a new inquiry.

Concerning [redacted] question as to why the people were not informed as to what is sealed in the National Archives, please be advised that there is available at the Archives a list of those documents which are not presently available to the public. In addition, it must be remembered that the bulk of the material that was presented before the Warren Commission either was published in its 26-volume Hearings or is available to researchers at the National Archives. The relatively small portion that is not now available to the public consists primarily of national security intelligence or investigative reports--dealing largely with activities far removed from the assassination itself--which if disclosed might compromise confidential sources or techniques.

SENT BY MESSENGER  
COMMUNICATIONS SEC.  
JUN 26 1968 2 E

Records  
Chrono  
Mr. Block  
Mr. Wilson  
DAG  
[Signature]  
bpcy

WNSL  
c/r  
B/2  
E.F. [unclear]  
11/1/68

1124

Public availability of other information had been delayed pending completion of the prosecution of Jack Ruby, but this information has now been released. All of the Commission material which has not yet been released will be reviewed periodically until all of it has been made available to the public.

The above information will be of assistance in replying to [REDACTED] in the returning her letter as you requested.

Sincerely,

FRANK M. VINSOR, Jr.  
Assistant Attorney General

Enclosure

PLEASE EXPEDITE

THIS MAIL SHOULD BE

ANSWERED WITHIN 48 HOURS

Receipt was acknowledged 6-5-68

Correspondence Section  
Records Administration Office  
Administrative Division

HOUSE OF REPRESENTATIVES, U.S.  
WASHINGTON, D.C.

June 4, 1968, 196

Chief, Office of the  
Legislative Liaison  
Department of Justice  
Washington, D.C.

The attached communication is submitted for your consideration, and to ask that the request made therein be complied with, if possible.

If you will advise me of your action in this matter and have the letter returned to me with your reply, I will appreciate it.

129-11

DEPARTMENT OF JUSTICE	R
	E
	C
11 JUN 5 1968	D
<i>Ernest...</i>	R
RAO.	D
CRIMINAL-GEN. CRIME SEC.	

Very truly yours,

*[Signature]*  
M.C.  
33rd - California District

April 16, 1968

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JUN 6 1968

CRIMINAL DIVISION

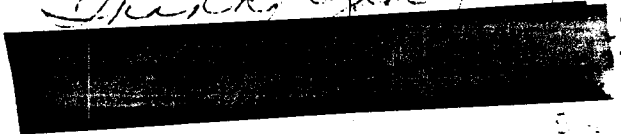
Congressman Peltis

I want to ask you  
why nothing has been  
done regarding the  
murder of President Kennedy.

Why has there not  
been another investigation?  
Why can't the people  
know what is sealed  
in the archives?

I would like the  
answers to these questions  
and know that something  
is being done.

Thank you



TC



United States Department of Justice

UNITED STATES ATTORNEY  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS, LOUISIANA 70130

June 4, 1968

129-11

Mr. Carl W. Belcher  
Chief, General Crimes Section  
Criminal Division  
Room 2113  
Department of Justice  
Washington, D. C. 20530

FILE

In Re: Clay L. Shaw v. Jim Garrison, James  
L. Alcock and Charles R. Ward

Dear Mr. Belcher:

Enclosed herewith are two copies of the Temporary  
Restraining Order by Judge Frederick J. R. Heebe in con-  
nection with the above captioned matter.

Respectfully,

LOUIS C. LACOUR  
United States Attorney

By:  
GENE S. PALMISANO  
First Assistant U.S. Attorney

GSP:cbu  
Encls.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

MAY 28 2 48 PM '68  
A. DALLAN O'BRIEN, JR.  
CLERK

7

CLAY L. SHAW

versus

JIM GARRISON individually, and as District Attorney for the Parish of Orleans, State of Louisiana, and JAMES L. ALCOCK, individually and as Executive Assistant District Attorney for the Parish of Orleans, State of Louisiana, and CHARLES R. WARD, individually, and as an Assistant District Attorney for the Parish of Orleans, State of Louisiana

CIVIL ACTION  
NO. 68-1063  
SECTION B

TEMPORARY RESTRAINING ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to 28 U.S.C. § 2284(3), that the Defendants Jim Garrison, James L. Alcock, and Charles R. Ward, and each of them and their respective assistants, associates, attorneys, employees, agents, officers and assigns be, and they are hereby, ENJOINED AND RESTRAINED from taking any further action in the prosecution of the case entitled "State of Louisiana v. Clay L. Shaw," Number 198-059 on the Docket of the Criminal District Court for the Parish of Orleans, State of Louisiana, pending the further orders of this Court.

REASONS

The complaint herein (a 47-page document of 116 paragraphs) presents allegations of numerous deprivations of the petitioner's federal rights by the defendant District Attorneys within the context of, or connected with, the criminal prosecution pending against him in the state court for conspiracy to murder the late President Kennedy. The complaint read as a whole presents much more than a recitation of isolated wrongs, but impugns the entire prosecution against the petitioner and attempts to raise the actions of the defendants, prior to and during the present criminal proceedings, to the level of a concerted pattern of persecution of the petitioner and the wholesale and willful disregard of the petitioner's constitutional rights. The complaint

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INDEX	
ORDER	
HEARING	

MAY 29 1968

1126

states that "the petitioner requires a 'sanctuary' in this Court to grant him relief from the irreparable harm, clear and imminent, which he has suffered at the hands of the defendants herein since March 1, 1967," (Count 4 of the Complaint), during which time, "the defendants \* \* \* have \* \* \* conducted themselves and their office in such a manner as to create an atmosphere of fear and suspicion concerning the motives and actions of the Office of the District Attorney for the Parish of Orleans" (Count 88); that "the defendants, and in particular, Defendant Garrison, are conducting a reign of terror by the misuse and abuse of the powers of the public offices which they hold, by conducting an illegal, unwarranted, fraudulent and useless probe of the assassination of the late John F. Kennedy," (Count 96), that "the erstwhile Kennedy assassination probe being conducted by the defendants is indistinguishable from the case" against the petitioner (Count 97), and that "although plaintiff has been the primary victim of the machinations of the defendants through the abuse and misuse of the power of their respective offices, many others have felt the impact of their reign of terror, and the case of State vs. Shaw is now and has for sometime past been of tremendous public importance, not only to the citizens of this community, but to all citizens of the United States and to the world." (Count 98).

The thrust of these allegations raises serious questions concerning the relationship between this federal district court and the Louisiana Criminal District Court in which the prosecution against the plaintiff is lodged, and indeed between federal and state courts across the nation. Whenever a federal court stays the hand of a state official, the delicate balance of comity, so necessary and wholesome for our federal system, is likely to be disturbed. The delicacy of the comity issue is not only greatly increased, but augmented by the now-entrenched principles of equity law, see Ex parte Young, 209 U.S. 123, 161-162 (1908), when the state agency involved is a court of law and the state official an esteemed member of the state judiciary. But as delicate as the comity balance must be, the points of reference on which it rests today are in a process of continual development, along lines sketched by Dombrowski v. Pfister, 380 U.S. 479 (1964).

At this stage in the development of the law and the possible future developments indicated by the Supreme Court, we are not prepared to rule out the possibility of a remedy for this plaintiff under the state of facts he presents in his petition. And because there is a very real likelihood that the plaintiff may prevail on the merits, and because in view of the plaintiff's allegations of the unconstitutionality of various pertinent Louisiana statutes a three-judge court is required in this matter in the interest of the State of Louisiana, see Wright on Federal Courts § 50, p. 162, and it may not be possible for the hearing before that court to be held and concluded prior to the scheduled date of the trial of the plaintiff in the state court to the possible irreparable injury of the plaintiff, we grant the motion for temporary restraining order pending a speedy hearing on the motion for preliminary injunction.

The so-called "anti-injunction statute," 28 U.S.C. § 2283, is based on the obvious premise that a federal court can conceivably be authorized to stay a state proceeding in the interests (in which federal courts have a paramount interest) of the protection of federal constitutional rights. The question whether § 2283 can be accepted a step further to either (a) not prohibit the stay of a state criminal prosecution along the lines of Dombrowski, or (b) authorize such a stay, is not something which can easily be resolved in the light of comments in Dombrowski and the more recent case of Cameron v. Johnson, 36 U.S.L. Week 4319. (April 23, 1968). In Dombrowski, the court found it "unnecessary to resolve the question whether suits under 42 U.S.C. § 1983 (1958 ed.) come under the 'expressly authorized' exception to § 2283." 380 U.S. at 484 n.2. In Cameron the court upheld the denial of injunctive relief against state prosecutions by the district court, and noted

"Our per curiam [which had previously remanded the case for reconsideration] stated, 381 U.S. 741-742: 'On remand, the district court should first consider whether 28 U.S.C. § 2283 bars a federal injunction in this case, see 380 U.S. at 484, n.2. If § 2283 is not a bar, the court should then determine whether relief is proper in light of the criteria set forth in Dombrowski.' The district court held that § 2283 prohibited the court from enjoining or abating the criminal prosecutions initiated against the appellants prior to the filing of the suit on April 13, 1964, and further, that

42 U.S.C. § 1983 creates no exception to § 2283. 262 F.Supp. 873, 878. We find it unnecessary to resolve either question and intimate no view whatever upon the correctness of the holding of the district court." 36 U.S.L.Week 4320, n.3.

Given this state of the law, the real possibility of a determination in the plaintiff's favor by the three-judge court which, under the law, should be the court to determine the issue, and the irreparable harm which may accrue to the plaintiff by the initiation of his trial prior to the three-judge hearing, we think equity demands, and the proprietary interest of the federal courts authorize, whatever short delay of the state trial we now grant.

Nor do we think, apart from the issues posed by § 2283 and Ex parte Young, supra, Dombrowski v. Pfister precludes the possibility that the plaintiff may prevail. Dombrowski, in fact, has greatly enlarged the possibility of federal injunction of state criminal prosecutions. The case does contain much language which seems to limit the possibility to cases where First Amendment rights are endangered. Nonetheless, a too narrow interpretation of Dombrowski, attempting to limit its thrust solely to cases where First Amendment rights are jeopardized, would dilute the major and fundamental premise of the decision. In Dombrowski, the court referred to cases declining to enjoin state prosecutions as follows:

"In such cases it 'does not appear that the plaintiffs have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith, or that a federal court of equity by withdrawing the determination of guilt from the state courts could rightly afford petitioners any protection which they could not secure by prompt trial and appeal pursuant to this court.' Douglas v. City of Jeanette [319 U.S. 157] at 164. But the allegations in this complaint depict a situation in which defense of the state's criminal prosecution will not insure adequate vindication of constitutional rights." 380 U.S. at 485.

Plainly, the court considered an injunction against the state proceeding warranted simply because the criminal prosecution could not serve as an adequate vehicle for the protection of the rights which the prosecution itself had allegedly endangered. It does not seem to be essential to the Dombrowski holding that the court continued to find specifically that the prosecution there has the effect of impairing the plaintiffs' freedom of expression; other federal rights should be equally entitled to protection where a finding of irreparable injury,

which cannot be safeguarded within the context of the criminal proceeding, is warranted.

The pervasive allegations of the petitioner here that his prosecution by the defendants is totally without foundation, we think raise the definite reasonable possibility of a finding on the merits that his rights cannot be vindicated within the context of his state prosecution. It is true that the petitioner has not complained of the infringement, by this prosecution, of any specific federal constitutional right which is not part and parcel of the criminal proceedings in the state court.<sup>3</sup> But the petitioner certainly does complain about "illegal, unwarranted, fraudulent, and useless" actions directed, against his person and the totality of his freedom, by agents of the State of Louisiana acting in their official capacity. The compartmentalization of the totality of a person's "right to be let alone" by the state may be helpful generally in the development of a coherent body of law under the various civil rights amendments to the Constitution, but the trend is not always conducive to the adequate protection of individual liberty; the Supreme Court has strongly indicated that the "concept of liberty" is not to be tied down merely to the recitation of the conventional freedoms stratified in specific guarantees in the Bill of Rights where substantial unjust interference by the state with personal liberty is involved, see Griswold v. Connecticut, 381 U.S. 479 (1965). In short, the plaintiff's complaint raises real issues of alleged deprivations of liberty through the actions of the state, the correction of which, if proven, might well require Dombrowski relief.

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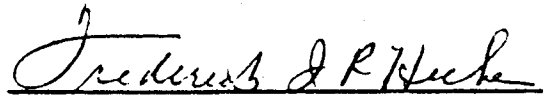
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This would follow, inter alia, not only from the fact that Congress saw a need to bolster equity considerations, cf. Ex parte Young, supra, with this general prohibition, but also from the recognized power of the federal Congress to provide for exclusive jurisdiction of federal constitutional matters in the federal courts, cf. Wright on Federal Courts, § 10, p.22.

2  
Of course, aside from the question of what constitutes an "express authorization" within the terms of § 2283 and the question of whether or not 42 U.S.C. § 1983 is such an express authorization, there seems to be a serious question whether any express authorization is necessary in view of the equitable

origins of § 2283. The leading case on the subject, apart from the sparse comments by the Supreme Court in Dombrowski and Cameron, is Baines v. City of Danville, 337 F.2d 579 (4th Cir. 1964). There, the court noted that: "Since the statute [§ 2283] was fathered by the principles of comity, it has been held that the statute should be read in the light of those principles and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury." 337 F.2d at 593. The Baines case preceded the Supreme Court's decision in Dombrowski, and the Fourth Circuit therefore had no occasion to consider whether its holding that § 2283 "is not always absolute" might be coterminous with the authority of the federal courts to enjoin prospective state criminal proceedings recognized in Dombrowski. Of particular importance to our decision here, the court in Baines stated: "Recognizing that the command of § 2283 is not always absolute, we granted a temporary injunction pending appeal of this case. \* \* \* Such an injunction was essential if the controversies were not to become moot while these appeals were being perfected, heard, and determined in this court. We concluded that it was such an extraordinary situation that issuance of a temporary injunction staying prosecutions in the state courts pending our disposition of this appeal was authorized notwithstanding § 2283." 337 F.2d at 593-594.

3

It is, of course, at the heart of the Dombrowski finding of "irreparable injury" sufficient to justify an injunction against a state proceeding, that the plaintiffs be "threatened with [some substantial] injury other than that incidental to every criminal proceeding brought lawfully and in good faith." 380 U.S. at 485.

  
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana

May 28, 1968 at 2:10 P.M

Typed: 6/26/68

JUL 1 1968

FMV:WSB:km  
129-11

[Redacted]

Dear [Redacted]

The President has asked me to reply to your recent letter, concerning the assassination of the late President John F. Kennedy.

The Warren Commission gathered and considered a vast amount of material, including that which had even a remote connection to the assassination. It made a thorough inquiry and detailed analysis of the facts, and the evidence, as presented in the one-volume Report, amply supports its conclusions.

With respect to the investigation being conducted by New Orleans District Attorney Jim Garrison, we can only point out that Mr. Garrison has not discussed his proceedings with Federal authorities. It would not be proper for us to comment on the evidence in a case pending before a state court or on the public statements of the prosecutor in that case.

Your confidence in writing to President Johnson is appreciated.

Sincerely,

**FRED M. VIBSON, Jr.**  
Assistant Attorney General

Records  
Chrono  
Mr. Block

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COMMUNICATIONS SEC.  
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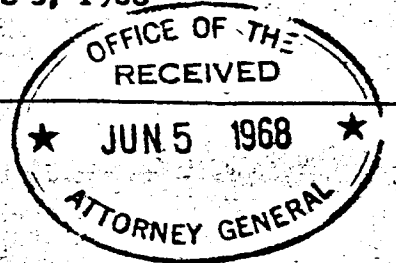


THE WHITE HOUSE OFFICE

REFERRAL

To: The Attorney General

Date: June 3, 1968



ACTION REQUESTED

- Draft reply for:
- President's signature.
- Undersigned's signature.
- Memorandum for use as enclosure to reply.
- Direct reply.
- Furnish information copy.
- Suitable acknowledgment or other appropriate handling.
- Furnish copy of reply, if any.
- For your information.
- For comment.

NOTE

Prompt action is essential.

If more than 48 hours' delay is encountered, please telephone the undersigned immediately, Code 1450.

Basic correspondence should be returned when draft reply, memorandum, or comment is requested.

REMARKS:

Also referred to State.

Description:

Letter:  Telegram:  Other:

To: The President

From: [Redacted]

Date: 5/29/68 (pm)

Subject: Requests truth re assassination of Pres. Kennedy be made known to the public; also offers comments re civil rights.

By direction of the President:

129-11

DEPARTMENT OF JUSTICE

JUN 5 1968

ATTORNEY GENERAL

Whitney Sherman

Assistant to the President

OFFICE OF LEGAL COUNSEL

CRIMINAL GEN. CRIME SEC.

CIVIL RIGHTS DIV.

*acg*

*6-6-68*

mc

(Department or Agency copy)

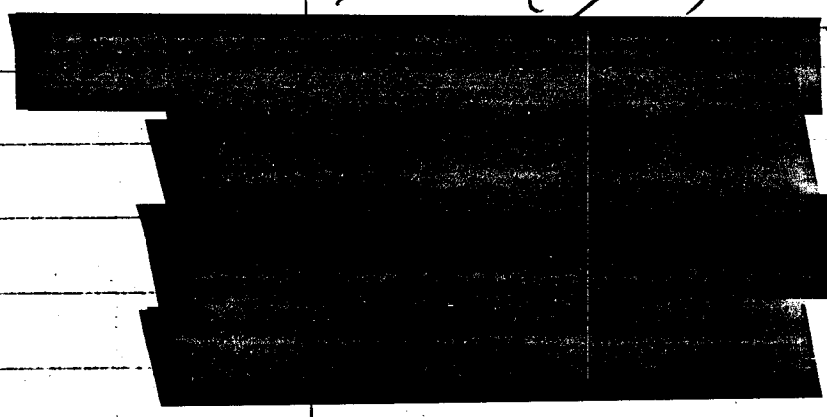
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5/29/80 gm

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This is a letter to the  
 President of the United States  
 of America. I know this  
 letter will never reach  
 the President but I would  
 still appreciate an honest  
 answer to all questions and  
 also some facts about the  
 late President's death.

Thank you,



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