Cumm Rec ##8

Supplementary Memorandum on Destruction and Non-Destruction of Records by the FBI 2/15/81

In my previous memorandum I provided confirmation of my affidavits in C.A.75-226 in which I stated that law and regulations prohibit the destruction of any records or evidence in the JFK assassination investigation. The attachments to that memo are copies of records provided by the FBI only after being ordered to do so by the Court.

The volume of those records, in excess of 6,000 pages, reflects the fact that when the FBI offered the opportunity to examine them at the FBI it knew very well that neither you nor I could make an adequate examination at the FBI. The apparent purpose of the FBI's proposal was stonewalling.

The samples of ballistics evidence tested are within the definition of "records" included in my previous memo.

Those discovery records, as I then noted, are incomplete.

They do not, for example, include the complete history of the disappearance of the samples SA John F. Gallagher submitted to neutron activation analysis (NAA). They do include an internal record suggesting that the tested samples were destroyed as allegedly radioactive waste. My previous memo states that there was no dangerous radioactivity involved in those small specimens and radioactivity is not an accurate or truthful explanation of their alleged disappearance.

No records reflecting any seafch for those specimens was provided. Neither was any record reflecting the propriety or impropriety of any such destruction. The FBI was remarkably indifferent to this alleged destruction of evidence, according to the incomplete discovery records.

I disputed the allegation that there was any dangerous radioactivity, stated that only small specimens are required for NAAs, and that the radioactivity decays rapidly, suggesting that there is another reason for the disappearance of those specimens.

After I sent you this previous memo Mark Allen provided copies of pertinent records he obtained from the National Archives. These records confirm my memorandum with respect to the size of NAA specimens and the fact that there is no dangerous radioactivity. They

confirm what I stated with regard to the curbstone, that the FBI had scraped off all of the material that could be used in NAA, from an area of 3/4 of an inch by an inch, although only a much smaller specimen is required. And they confirm, in detail, allegations in several of my long affidavits in this case.

Gallagher testified untruthfully on deposition. I believe there is no reasonable doubt that while he professed to the world's worst memory, his untruthfulness was deliberate.

One illustration of this is his claim that he was ordered not to examine the unfired bullet found in the rifle in order to preserve it. I provided what is known among shooters as a "pulled" bullet. This was to show that the bullet could be pulled from the shell, a minute sample removed from the core, and the bullet thereafter placed back in the shell, with no visible damage and no interference with any other test that might be desire in the future. This is precisely what Dr. Vincent Guinn did for the House Select Committee on Assassinations (HSCA), as his report and the records of the Archives state.

You may remember that when the President was assassinated the Atomic Energy Commission offered Dr. Guinn as the outstanding expert on the use of NAA in criminalistics, a field in which he was a pioneer; and that the FBI refused to accept him, opting instead for those who were without his criminalistics expertise.

When HSCA wrote the Archives on 8/26/77 about the pending tests for HSCA by Dr. Guinn (attached as A) it stated that the samples to be tested were minute, about 15 milligrams;that the specimens Gallagher had used could be used again; that it had not been able to locate those specimens; and that when its ballistics panel of experts had examined the curbstone it found it would "be unable to scrape a sufficient quantity of lead residue without contaminating the sample with pieces of concrete."

In this regard I remind you that when I asked you to ask each of the FBI SAs we deposed to testify to the condition and appearance of that portion of the curbstone all refused. Visual examination makes it apparent that this particular spot is of a different texture and color and that neither an impact nor traces of lead or any other

substance is visible.

This is the one spectrographic plate the FBI alleges it destroyed to save space, that space being the thickness of a thin piece of photographic film. The FBI provided no affidavit, no proof of search, and I provided an affidavit stating that any such destruction would violate FBI regulations. At that time I knew that the FBI prohibited every destruction of an existing record to correct factual error in it, that it required instead an amendment to the existing record. Since then this discovery material establishes that any such destruction is strictly prohibited.

The explanation of the alleged disappearance of this plate, like the explanation of the alleged disappearances of the NAA specimens, simply can't be truthful.

Dr. Guinn wrote the HSCA on August 19, 1977, setting forth what he would do in his testing. (Attached as B). He stated that NAA "is nondestructive" and that the size of the specimens can be as small as "a few milligrams." He stated that the removal of so small a sample does no damage insofar as microscopic comparisons are concerned. He also stated that rather than being dangerous radioactive waste the samples Gallagher used "would be quite suitable for re-analysis." He would submit the specimens to radiactivity twice, the first time for only 40 seconds, the second for an hour, and that "The induced radioactivity level of each activated sample is quite low and soon declines to a negligible level, so the activated samples can be returned to the Archives quite safely." This gives the lie to the Gallager conjecture about their alleged disappearance because they were destroyed as radioactive waste and it reflects the fact that in generating the record I obtained on discovery the FBI knew it was generating an untruthful record.

The materials to be tested were taken to California by the Archives and the Federal Protective Service. The Archives' reports on this are attached as C.

On December 28 Ms Trudy Peterson filed a memo for the record in which she states that the Archives had weighed the bullet that allegedly inflicted all seven non-fatal injuries on President Kennedy and Governor Connally and was unscratched by this career,

Commission Exhibit 399. She gives the weight on each of two weighings. Please note that when I asked the Archives for the weight it refused to provided it.

Under date of 10/25/77 James Gear, Director of the Archives Preservation Services Division, provided his report on the NAA testing by Dr. Guinn.

He states that Dr. Guinnn also found that there "was not sufficient residue on the curbstone to remove for testing without contamination from the stone itself." (Dr. Guinn actually testified that all the residue was removed.)

Gear confirmed that the small samples did not exist so new samples were taken, he describes how, and with regard to the bullet 399 he states exactly what I attested to in the affidavit to which I attached the pulled bullet.

Rather than the radioactivity being at all dangerous, he states that the day after the Guinn NAA testing. "all materials were returned to the National Archives building."

The whole operation was photographed. Photos 30 through 50 are all of the pulling and rejoining of the bullet and shell.

It thus is apparent that the FBI's allegations with regard to the alleged destruction of the samples Gallagher tested are not accurate and truthful and do not explain their alleged disappearance. It likewise is apparent that Gallagher's deposition testimony with regard to his and the FBI's failure to perform tests on the unfired bullet are not accurate and truthful and that my allegations with regard to both are correct.

In this regard I remind you that Dr. Guinn, when he testified before HSCA, was careful to state that the specimens submitted to him for testing did not match the official descriptions of those smaller exhibits.

There is no accounting of the relatively large sample SA Frazier removed from the base of 399. Its size is visible in the photographs I provided with my affidavits. This does suggest that what Guinn tested could have come from the unaccounted material from the base and thus would have tested as identical with it. On deposition Frazier testified that the bullet was weighed on receipt only, when it weighed 158.6 grains. In fact the FBI weighed it after the samples were taken. HSCA says that it now weighs 0.9 grains less, and this small weight represents what Frazier removed and another piece that fell

of after the bullet was transferred to the Archives.

The FBI's unsworn claims that the Gallagher samples and the curbstone spectrographic plate were routinely [redacted] destroyed can't be believed and at the very least are in violation of law and regulations. No records of any such destruction are provided and it is clear that all destructions, if any, must be approved and recorded.

Going along with this, when some spectrographic plates were finally provided, most lacked identification with their specimen numbers. The FBI has refused to provide these identifications, saying that it would require doing research.

Where these plates were dated, the dates disprove the FBI's initial representations, that all spectrographic results were incorporated in its 11/23/63 report to Dallas Police Chief Jesse Curry. Some of these plates are dated after 11/23/63 and all tests I can prove were conducted by the FBI are not included in the plates provided.