

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,
Route 8
Frederick, Md. 21701,
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Plaintiff,
:
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v.
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:
U.S. DEPARTMENT OF JUSTICE,
10th & Constitution, N. W.
Washington, D. C. 20530,
:
:
U.S. ENERGY RESEARCH AND DEVELOP-
MENT ADMINISTRATION,
Germantown, Md.,
:
:
Defendants
:
:
.....

Civil Action No. 77-10228

C O M P L A I N T

[Freedom of Information Act, 5 U.S.C. 552]

1. Plaintiff brings this action under the Freedom of Information Act, 5 U.S.C. 552, as amended by Public Law 93-502, 88 Stat. 1561 [93 Cong., 2nd Sess.].

2. Plaintiff is HAROLD WEISBERG, an author residing at Route 8, Frederick, Maryland.

3. Defendants are the UNITED STATES DEPARTMENT OF JUSTICE 10th & Constitution, N. W., Washington, D. C. 20530, and the UNITED STATES ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, Germantown, Maryland. The United States Energy Research and Development Administration (ERDA) was formerly the Atomic Energy Commission.

4. For the past nine years plaintiff has been trying to obtain the results of certain spectrographic analyses which were

made by the FBI for the Warren Commission as part of the investigation into the assassination of President John F. Kennedy. In 1970, plaintiff brought suit under the Freedom of Information Act, a case which he lost when the Court of Appeals for the District of Columbia sitting en banc reversed the decision of a Court of Appeals panel. [Weisberg v. Department of Justice, 489 F. 2d 1195 (1973)]

5. However, Congress subsequently amended the Freedom of Information Act by passing Public Law 93-502 and overriding the President's veto of it. The legislative history of this law shows that Congress specifically intended to reverse the holding of the Court of Appeals in Weisberg and the line of cases which followed that precedent.

6. In view of this, plaintiff wrote the Deputy Attorney General on November 27, 1974, once again requesting the disclosure of the spectrographic analyses, and adding to that a request for other scientific tests conducted for the Warren Commission.

7. Plaintiff's letter to the Deputy Attorney General was referred to the Director of the FBI, Mr. Clarence Kelley, who replied on December 19, 1974, that " . . . we are attempting to identify and locate the documents in which you have expressed an interest, and will communicate with you concerning this in the near future." [See Plaintiff's Exhibit A]

8. No further communication having been received by January 15, 1975, plaintiff on that date appealed the de facto denial of his request to the Acting Attorney General of the United States, Mr. Laurence Silberman. [See Plaintiff's Exhibit B] There has been no response to this appeal.

9. Plaintiff believes that the release of the documents he seeks to obtain from the Department of Justice is very much in the

public interest; his attached affidavit [Plaintiff's Exhibit C] states the reasons why. Specifically, plaintiff's decade-long study of the evidence leads him to believe that the spectrographic analyses will disprove the official theory of the assassination. He believes also that this evidence is being suppressed by the Department of Justice because its disclosure will reveal that the FBI deceived Warren Commission members and the American public as to what the results of the spectrographic analyses do in fact show [See affidavit of Harold Weisberg, Plaintiff's Exhibit C, paragraph 18]

10. On September 19, 1974 a request was made that the Atomic Energy Commission disclose any tests which it had performed for the Warren Commission or any person or agency acting for it in connection with the investigation into President Kennedy's assassination. [See Plaintiff's Exhibit D]

11. The Atomic Energy Commission acknowledged that it had performed certain tests for the Warren Commission. However, the AEC denied that it prepared any reports on the results of those tests. In addition, the AEC also asserted that "no other tests such as you described were performed by AEC or at any AEC facility [See Plaintiff's Exhibit E]

12. Notwithstanding AEC's denials, Warren Commission records seem to indicate otherwise. Thus, during the Warren Commission Executive Session held on January 27, 1964, the Commission's General Counsel, Mr. J. Lee Rankin, stated:

Now, the bullet fragments are now, part of them are now, with the Atomic Energy Commission, who are trying to determine by a new method, a process they have, of whether they can relate them to various guns and the different parts, the fragments, whether they are a part of one of the bullets that was broken and came out in part through the neck, and just what particular assembly of bullet they were part of.

They have had it for the better part of two and a-half weeks and we ought to get an answer.

So the basic problem, what kind of a wound it is in the front of the neck is of great importance to the investigation.

We believe it must be related in some way to the three sheets (sic) from the rear

[See Plaintiff's Exhibit F, a page of the January 27 transcript as reprinted in Whitewash IV: Top Secret JFK Assassination Transcripts. Plaintiff therefore joins ERDA, the AEC's successor, to this suit to discover whether it did perform the tests on bullet fragments which the Commission's General Counsel thought it was going to.

13. Having exhausted his administrative remedies, plaintiff now brings suit for records which he alleges must be made available under the terms of the Freedom of Information Act. Plaintiff notes that the Freedom of Information Act provides that the District Court shall determine the matter de novo, and that the burden is on the defendant to justify its refusal to disclose the requested documents.

WHEREFORE, plaintiff prays this honorable Court for the following relief: that the defendants be compelled to disclose the records which plaintiff has requested of them; that the Court award plaintiff reasonable attorneys fees for the bringing of this action on his behalf; and that the Court issue a written finding that the circumstances surrounding the withholding of these documents from plaintiff raise questions as to whether agency personnel acted arbitrarily and capriciously with respect to such withholding.

JAMES HIRAM LESAR
1231 Fourth Street, S.W.
Washington, D. C. 20024

PLAINTIFF'S EXHIBIT A

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

December 19, 1974

Mr. Harold Weisberg
Coq d'Or Press
Route 8
Frederick, Maryland 21701

Dear Mr. Weisberg:

This is to acknowledge your letter addressed to the Deputy Attorney General, Department of Justice, which was referred to this Bureau and received on December 6th.

For your information, we are presently awaiting guidelines and instructions from the Department of Justice regarding the implementation of the recently amended Freedom of Information Act, which becomes effective February 19, 1975. In the meantime, we are attempting to identify and locate the documents in which you have expressed an interest, and will communicate with you concerning this in the near future.

Sincerely yours,

Clarence M. Kelley
Clarence M. Kelley
Director

PLAINTIFF'S EXHIBIT B

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, N.W.
WASHINGTON, D. C. 20024
TELEPHONE (202) 434-0223

January 15, 1975

The Honorable Laurence Silberman
Acting Attorney General
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. Silberman:

I am writing on behalf of a client, Mr. Harold Weisberg, of Frederick, Maryland.

For nine years Mr. Weisberg has been trying to obtain the results of certain spectrographic analyses which were made for the Warren Commission as part of the investigation into the assassination of President John F. Kennedy. Mr. Weisberg's original efforts to force the disclosure of these spectrographic analyses culminated in a suit brought under the Freedom of Information Act. Ultimately, after a special en banc hearing at which the United States Court of Appeals for the District of Columbia reversed the decision of the Court of Appeals panel, Mr. Weisberg lost the suit. [See Weisberg v. U.S. Department of Justice, 489 F. 2d 1195 (1973)]

As you know, Congress has since amended the Freedom of Information Act. During the floor debate on May 30, 1974, Senator Philip Hart proposed an amendment to the "investigatory files" exemption which the Department of Justice had invoked to thwart Mr. Weisberg's access to the spectrographic analyses. An exchange between Senator Hart and Senator Edward Kennedy made it clear that this amendment was intended to override the decision of the Court of Appeals in Weisberg. Thus, the enactment of the recently amended Freedom of Information Act constitutes a congressional mandate for the disclosure of the records Mr. Weisberg seeks.

On December 6, 1974, Mr. Weisberg wrote a letter to the Deputy Attorney General requesting the disclosure of certain spectrographic and neutron activation and other tests performed in connection with the Warren Commission's investigation. The Deputy Attorney General referred this letter to Mr. Clarence Kelley, the Director of the Federal Bureau of Investigation. I am enclosing a copy of Mr. Kelley's December 19, 1974 reply to Mr. Weisberg. I call your attention to its concluding sentence, which states: "In the meantime, we are attempting to identify and locate the documents in which you have expressed an interest, and will communicate with you concerning this in the near future."

In response to this, I wish to point out that an FBI Agent has stated under oath that he "examined" the spectrographic records. In

view of this, it is evident that there is no problem at all in either identifying or locating these records, and any alleged problem is obviously only a pretext for evading and stalling legal action by Mr. Weisberg. This conclusion is further supported by the fact that there has been no further communication from Mr. Kelley, despite his assurances that there would be.

Under these circumstances, I have advised Mr. Weisberg that he has no alternative but to treat Mr. Kelley's letter as a denial of his request for these records. In turn, Mr. Weisberg has asked me to appeal that denial for him. This letter constitutes Mr. Weisberg's appeal from Mr. Kelley's denial of his request for disclosure of the records specified in his December 6, 1974 letter to the Deputy Attorney General.

I believe that you should be aware that Mr. Weisberg has made very serious charges about the reason why the Department of Justice has gone to extraordinary lengths to keep these records from being made public. In connection with his previous suit, Mr. Weisberg executed an affidavit stating:

From evidence in my possession I believe that the release of the results of the spectrographic analyses would reveal that the FBI deceived the Warren Commission members as to what these analyses do in fact show. Contrary to the assertions contained in the Williams affidavit, I believe the real reason the Department of Justice continues to withhold these analyses is that they would prove that the FBI engaged in deception of Warren Commission members and the American public.

Congress has now mandated the disclosure of these records. If, after that mandate, the Department of Justice still continues to suppress them, then there is no alternative to the conclusions stated by Mr. Weisberg in his affidavit. In light of this, I would hope that the Department will make these documents promptly available, without putting Mr. Weisberg to the expense of yet another lawsuit.

Finally, I wish to remind you that Mr. Weisberg has also requested the disclosure of two items of court evidence in the Watergate case. Mr. Weisberg appealed the Special Prosecutor's denial of these requests more than a year ago. To date he has re-

ceived no acknowledgement of his appeal. I am renewing Mr. Weisberg's appeal of the Special Prosecutor's denial and requesting that you either affirm or reverse that denial immediately. If I do not hear from you within ten days, I will treat your silence as a denial of Mr. Weisberg's appeal and proceed to file suit for these documents.

Sincerely yours,

Jim Icsar
Jim Icsar

AFFIDAVIT OF HAROLD WEISSBERG

1. I am an author. I presently reside at Route 9, Frederick, Maryland.
2. For the past eleven years I have devoted myself to an intensive study of political assassinations. I am author of five printed books on the investigation into President Kennedy's assassination: Whitewash: The Report on the Warren Report; Whitewash: The FBI-Secret Service Coverage; Photographic Whitewash: Suppression of Kennedy Assassination Pictures; OSMA in New Orleans: Case for Conspiracy with the CIA; and Whitewash IV: Top Secret FBI Assassination Transcript. I have also written one book on the assassination of Dr. Martin Luther King, Jr.: Frank Me: The Martin Luther King-James Earl Ray Case.
3. In the 1930's I was an investigator for and editor of record of a subcommittee of the Senate Labor Committee. After Pearl Harbor I served in the OSS, where my primary responsibility was as an intelligence analyst. I have also worked with the FBI and several divisions of the Department of Justice in connection with my work for the Senate Labor Committee or through my work.
4. The Federal Bureau of Investigation served as the Warren Commission's principal investigative arm. As part of the Commission's investigation into the assassination of President Kennedy the FBI spectrographically analyzed certain crucial items of evidence.
5. Although all of the papers of the Warren Commission are supposed to be kept in the National Archives, these spectrograph analyses are not. When I learned that the spectrograph records are kept instead by the FBI, I wrote former FBI Director J. Edgar Hoover and requested that he make these documents public. (A copy of my 1973 letter to Mr. Hoover is attached hereto)

6. Mr. Hoover never responded to my request. Subsequently in 1979, I tried to obtain these analyses through a suit filed under the Freedom of Information Act. Robinson v. U.S. Department of Justice, Civil Action No. 83-170, United States District Court for the District of Columbia. Ultimately I was denied the spectrographic analyses when the United States Court of Appeals sitting en banc, reversed the decision of a Court of Appeals panel [Weisberg v. Department of Justice, 499 F. 2d 1195 (1973)].

7. The official account of President Kennedy's assassination alleges that he was shot by Lee Harvey Oswald alone. According to this version, Oswald fired three nearly perfect shots in approximately 5.3 seconds, hitting the President twice and Governor Connally once but inflicting no wounds in three parts of Connally's body.

8. The evidence obtained as a result of the Warren Commission's investigation overwhelmingly contradicts the official conclusion that Oswald assassinated President Kennedy. There are some of the more salient reasons:

a. The rifle allegedly used by Oswald was a cheap, worn, Mannlicher-Carcano, a World War II surplus rifle so notoriously undependable that it is commonly known as "Lancefield's gift to humanitarian warblers."

b. Oswald's military service records show that he was not a proficient rifleman. On his last qualification test Oswald scored a "made marksman," a score which the Marine Corps officially describes as indicating "a rather poor shot." Moreover, Warren Commission witnesses testified that constant practice is necessary for a rifleman to maintain his skill and Oswald was unpracticed.

c. The official account of the assassination was the result of a proceeding which the President's Commission conducted in 1964.

shooting which the world's best rifle on this matter to an ability for the Commission.

d. The alleged order was a bolt-action rifle not designed for use with a telescopic sight or "scope." A scope had been added. This required that the shooter take the rifle away from his eye in order not to get his eye out when opening the bolt. This kind of accurate sighting and firing, which added to the impossibility of Oswald's having fired three shots in the time required by the Commission.

e. Furthermore, the scope was not mounted properly and could not be adjusted and before the Warren Commission's experts could fire it at the fourteen shooting grounds they also had to add chims.

f. No clip was found with the alleged murder weapon. Without such a clip, the rifle could not be fired except by inserting each individual bullet by hand, an awkward and time-consuming operation. Yet the rifle was found with a round in firing position. This indicates that the rifle had not been used in the assassination but was left there in haste so it could be discovered. In short, the evidence suggests that this was a plain rifle.

g. During police interrogations of him before he was killed Oswald denied that he had shot anyone. In fact, Oswald told the police about the presence of other rifles in the Texas School Depository from which the President was allegedly shot.

9. Spectrographic analysis is a well-known and non-destructive scientific procedure used to determine the exact chemical composition of substances. According to describing this technique in detail in his report, the following is a summary of the results.

10. Among the items of evidence spectrographically analyzed were:

a. A bullet, Commission Exhibit 398, which allegedly inflicted a total of seven wounds on President Kennedy and Governor Connally. [A xerox of two photographic views of this bullet is attached hereto. The notch on the nose of the bullet visible in one of these views was made when a sample was taken for spectrographic analysis.]

b. The President's clothing, including his tie;

c. The clothing of Governor Connally, first examined by FBI months after the assassination--and after it had been laundered, destroying some of its evidentiary value;

d. Bullet fragments removed from both victims--not all of which were preserved;

e. Bullet fragments recovered from the Presidential limousine after it was washed out in Dallas and flown back to Washington, some of which were not found on the first search of the car in Washington;

f. A curbstone struck by a bullet--the same curbstone on which the FBI pretended it could not locate until July, 1964.

11. Spectrographic analysis is a highly refined scientific technique capable of showing whether tested substances could or could not have a common origin. Any significant differences in spectrographic analysis of these items of evidence disproves the official solution to the assassination.

12. For example, the official theory of the assassination cannot be true unless President Kennedy and Governor Connally were both struck by the same bullet, Commission Exhibit 398. [A xerox of bullet 398 is attached hereto.]

...this virtually pristine bullet...
...back at a point 1 1/2 inches...
...his chest...
...the back near his right...
...his fifth ribs...
...right wrist causing multiple...
...embedded in his left thigh...
...later dislodged from his thigh...
...hour after the assassination...
...under the mattress of the stretcher...

13. If President Kennedy and Governor Connally were hit by separate bullets, then by the Warren Commission's own logic is the official explanation of the assassination false. The spectrographic analyses I seek confirm that the same bullet did not in fact strike both men. These analyses are, therefore crucial to the validity of the Warren Report.

14. The spectrographer who performed these tests, Ted J. X. Gallagher, was not called as a witness by the Warren Commission until September 15, 1964. The Commission's last witness, however, was not deposed until long after the official report had been written.

15. Agent Gallagher was not asked to testify about the spectrographic analyses he had performed. Instead he was asked to deprecate the standard nitrate testing which showed that Oswald had not fired a rifle.

16. The Warren Commission did question FBI ballistics expert Robert Frazier about the spectrographic analyses. He testified that he was not the spectrographer and did not perform the tests with him. He did not testify to the details of the spectrographic analyses.

17. Only paraphrases of the findings of the Warren Commission's ballistics expert, Dr. Vincent P. Starna, are available to members of the Warren Commission. The Commission's Report. These paraphrases are not only inaccurate but also misleading. Dr. Starna's report states that the bullet fragments "were similar in metallic composition." Spectrographic analysis is capable of determining that even bullet fragments which are "similar in metallic composition" are in fact different because they contain incompatible kinds or amounts of trace elements, the testimony and paraphrases are meaningless.

18. From evidence in my possession I believe that the release of the results of the spectrographic analyses would show that the FBI deceived the Warren Commission members as to what these analyses do in fact show. I believe the real reason the Department of Justice continues to withhold these analyses is that they would prove the FBI engaged in deception of Warren Commission members and the American public.

May 23, 1966

Mr. J. Edgar Hoover, Director
Federal Bureau of Investigation
Washington, D. C.

Dear Mr. Hoover:

Enclosed is a copy of my book, WHITEWASH--THE REPORT ON THE WARREN REPORT. In it you will find quotations from your testimony and that of FBI agents that I believe require immediate unequivocal explanations and from the FBI's report to the Commission. Of the many things requiring explanation, I would like in particular to direct your attention to these three, in which it would seem no question of national security can be involved:

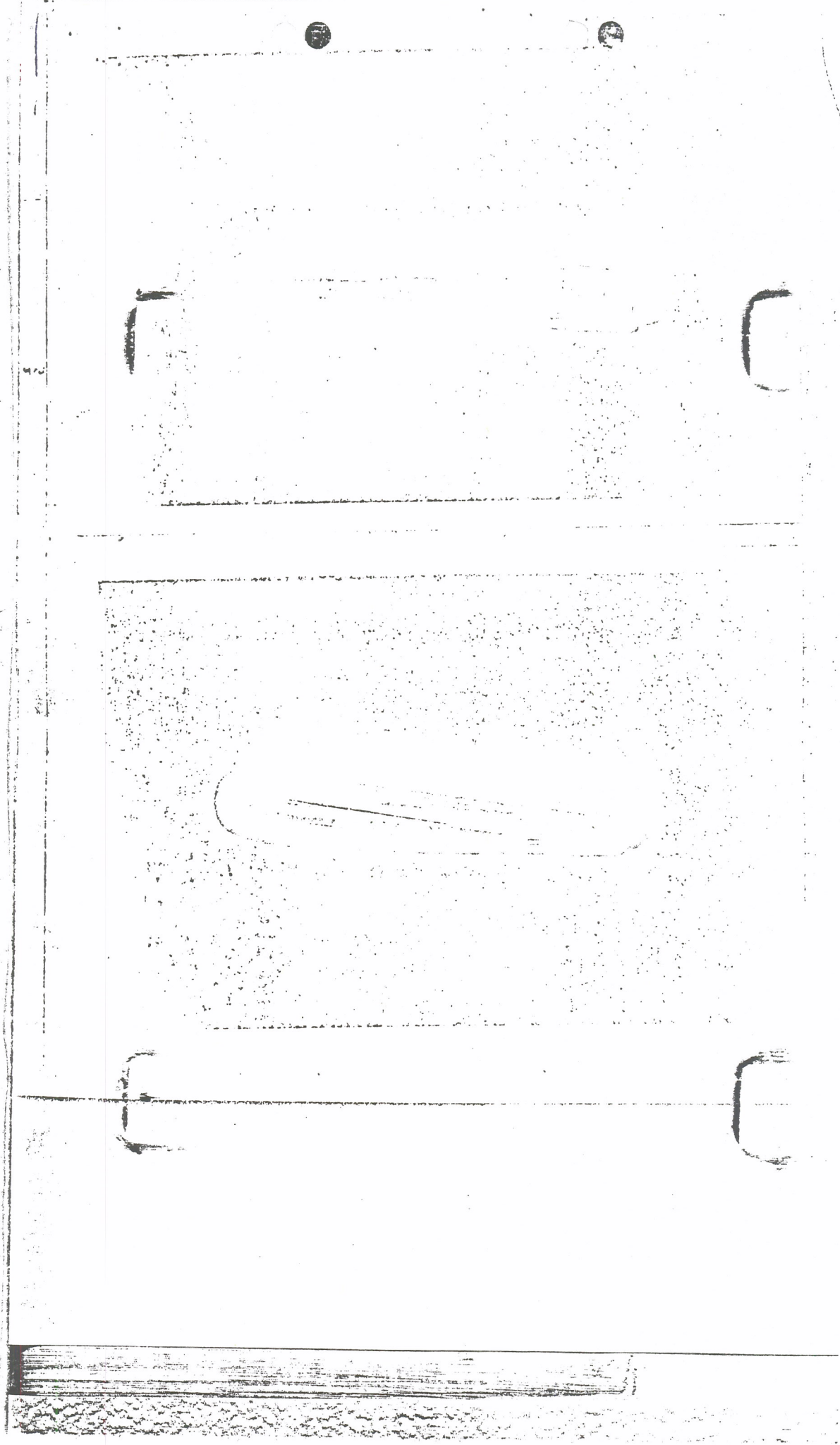
1) In your brief discussion of the assassination in the report to the Commission you say that three shots were fired, of which two hit the President and one the governor. This does not account for the bullet that hit the curbstone on Commerce Street, which you told the Commission you could not associate with the Presidential car or any of its occupants. In another part of this report, dealing with Oswald, you told the Commission that the bullet that did not kill the President struck him in the back--not the neck--and did not go through his body. Here you seem to fail to account for the well-known wound in the front of the President's neck. And thus, are there not at least five bullets, the three you accounted for and the two you did not account for? The Commission itself considered the curbstone strike a separate bullet, and the President most certainly was wounded in the front of the neck.

2) In his testimony before the Commission, FBI Agent Robert A. Frazier did not offer into evidence the spectrographic analysis of this bullet and that of the various bullet fragments. Neither did FBI Agent John F. Gallagher, the spectrographer. Agent Frazier's testimony is merely that the bullets were lead, which would seem to be considerable less information than spectrographic analysis would reveal. The custodian of this archive at the National Archives informs me this analysis is not included in his archive but is in the possession of the FBI. I call upon you to make it immediately available.

3) In his testimony before the Commission, FBI Agent Frazier said that when the whole bullet was received by the FBI, it had been wiped clean. He does not reveal any FBI interest in this unusual destruction of evidence. He also testified that the cleansing of the bullet was not complete, that foreign matter remains in the grooves in the bullet. Yet his testimony does not show any FBI interest in learning what the nature of the residue was. Did the FBI make the appropriate tests? Could the residue be associated with either the President's body or the governor's? What effort, if any, was made to learn? And if no effort was made, why not?

Sincerely yours,

Harold Weisberg



PLAINTIFF'S EXHIBIT D

September 18, 1974

Mr. Paul C. Bender, Secretary
U.S. Atomic Energy Commission
Washington, D. C. 20545

Dear Mr. Bender:

I am writing on behalf of Mr. Harold Weisberg to request copies of any tests which the Atomic Energy Commission performed for the Warren Commission or any person or agency acting for it in connection with the investigation into the assassination of President Kennedy. This request includes, but is not limited to, any spectrographic or neutron activation analyses which were made on the bullets, bullet fragments, clothing, automobile parts, medical specimens, curbstones, or any other objects.

By "copies of tests" I mean the reports on the results of any such tests, not the "raw data" on which they are based.

This request is made under the provisions of the Freedom of Information Act [5 U.S.C. 552].

Sincerely yours,

Jim Lesar



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

OCT 16 1974

James H. Lesar, Esquire
1231 Fourth Street, S.W.
Washington, D. C. 20024

Dear Mr. Lesar:

This is in response to your September 19, 1974, letter to Mr. Bender requesting copies of any tests which the Atomic Energy Commission performed for the Warren Commission or any person or agency acting for it in connection with the investigation into the assassination of President Kennedy.

The AEC's Oak Ridge National Laboratory (ORNL) did provide technical support to the Federal Bureau of Investigation in the performance of neutron activation analyses on the paraffin casts from the right hand, the left hand, and the right cheek of Lee Harvey Oswald. The results of these analyses are discussed in the testimony of FBI special agent John F. Gallagher set forth in "Hearings Before the President's Commission on the Assassination of President Kennedy," Volume XV, pages 746-52. Neither AEC nor ORNL prepared any report on the results of these analyses.

No other tests such as you described were performed by AEC or at any AEC facility.

Sincerely,

Bertram H. Schur
Associate General Counsel

Mr. Rankin. One, or something from a hole at the top of the road.

Mr. McCloy. Is it possible that the shell could have had a fragmentation.

Sen. Cooper. One doctor, as I remember, projected manual resuscitate him, that would cause the bullet to come back out of the back. Do you remember that?

Sen. Russell. Have you collected those charges against the raw material in here?

Mr. Rankin. I haven't, no way.

Mr. McCloy. Are we going to have at the examination of Marina the exhibits, for example, the bracelet and the rifle itself, because she has testified first that the rifle was not the rifle. Later she changed her testimony in that respect.

Mr. Rankin. Yes.

Mr. McCloy. Will we get the rifle and the bracelet so she will be confronted with them?

Mr. Rankin. Yes.

Her testimony about the rifle, you know she only admitted to that after pictures were found and she had destroyed the pictures that were in the photo album after the mother had suggested that to her, and they found this in one of his sacks that they found other material, other clothing.

They have better than 400 different objects of physical evidence. Some of them are not related at all. They just happened