

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

George W. Hickey, Jr.,
Plaintiff,

v.

Howard C.H. Donahue,
Defendant.

Case No. 108/268/95CV3513

DEFENDANT'S MEMORANDUM IN
SUPPORT OF HIS MOTION TO DISMISS

Defendant Howard C.H. Donahue respectfully submits this Memorandum of Points and Authorities in support of his Motion to Dismiss.

INTRODUCTION AND SUMMARY

In this action, plaintiff George W. Hickey, Jr., a retired Secret Service Agent, alleges that the defendant defamed him during the course of a televised discussion of the assassination of President John F. Kennedy. Complaint ¶¶ 1, 3. The discussion, which was broadcast on Baltimore Television station WBAQ's "The Bottom Line" on April 22, 1994 (the "Broadcast"), id., presented different theories of

the assassination, including that of the defendant.¹ Although plaintiff erroneously alleges that the defendant accused him during the Broadcast of "criminal acts," id. ¶ 4, plaintiff's purported defamation claim is in fact grounded in three specific statements made by the defendant during the broadcast.² They are, as quoted in the Complaint:

- a. "The fatal shot that killed President Kennedy was fired in an horrendous accident by a Secret Service bodyguard from an AR-15."
- b. "It is my opinion that when George Hickey reached down under the seat besides [sic] him and grabbed this gun and tried to stand up, Greer -- the driver of the car -- slowed down slightly causing him to fall forward and the gun went off."
- c. "He [Hickey] heard the first shot, and there is a photograph of him turning around and looking at the Texas School Book Depository. At that time he leaned over from the seat, grabbed the gun, and he started bringing it up and he started to stand up on the seat. . . . As he stood up . . . he pushed off the safety and as he stood up . . . Greer slowed

Greer was not driving that car

It was on the floor!

It was on the back of the seat

¹ As the Complaint acknowledges, the defendant's theory of the assassination is set forth in detail in the book "Mortal Error," which was originally published in January 1992. Complaint ¶ 8.

² Although the Complaint purports to assert additional claims of invasion of privacy (false light) and intentional infliction of emotional distress, those claims are subsidiary to plaintiff's defamation claim and cannot stand, as a matter of established law, unless plaintiff can prove all of the elements of defamation. See pp. 19-22, infra.

down, he fell forward and the gun went off."

did it?
I think
not

Id. ¶ 5.

As the transcript makes plain (copy attached as Ex. 1),³ neither these nor any other of the defendant's statements during the Broadcast either state or imply that plaintiff was involved in any criminal, wrongful or even negligent conduct. Rather, the defendant consistently expressed his view that plaintiff, in the performance of his duties, was involved in a terrible and unforeseeable accident that led to a bullet inadvertently striking the President after he was initially shot. See, e.g., Transcript at 3 ("the gun accidently discharged and the

Don't know
copy of
transcript
JTK

³ Although the Complaint alleges that the Broadcast is defamatory, plaintiffs' pleading includes neither a videotape nor a transcript of it. Accordingly, in order to permit the Court to determine whether the Broadcast can reasonably be held to convey a defamatory meaning as a matter of law, the defendant has submitted a transcript for the Court's review. Because the Broadcast itself is specifically referenced in the complaint and constitutes the basis for the plaintiff's claims, the transcript is not a "matter[] outside the pleading" and thus may be considered by the Court in adjudicating this motion to dismiss. See, e.g., Suarez Corp. v. CBS Inc., 21 Media L. Rep. (BNA) 1435, 1438 n.2 (N.D. Ohio Feb. 19, 1993) (copy attached as Ex. 2) (court considered copies of transcript and videotape in deciding motion to dismiss), aff'd in part, rev'd in part, 23 F.3d 408 (6th Cir. 1994). If, however, the Court determines that the transcript is a "matter[] outside the pleading," it still may consider the transcript merely by treating the motion "as one for summary judgment" to be "disposed of as provided in Rule 2-501." Md. Rule 2-322(c). See also Crowley v. Fox Broadcasting Co., 851 F. Supp. 700, 700 n.1 (D. Md. 1994).

bullet struck Kennedy in the head . . . Kennedy would have died anyway as a result of the shot [fired by Oswald] that hit him in the back of the neck and exited his throat").

full

almost all are

As explained more fully below, plaintiff's defamation claim necessarily fails for at least two reasons. First, none of the statements made by the defendant is provably false. As a matter of both Maryland and federal constitutional law, "if a statement is not provable as false . . . then it cannot form the basis of a [defamation] suit." Henry v. National Ass'n of Air Traffic Specialists, Inc., 836 F. Supp. 1204, 1214 (D. Md. 1993) (citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 19-20 (1990)), aff'd, 34 F.3d 1066 (4th Cir. 1994). In two recent decisions that are directly on point, courts have held that statements grounded in the competing theories of the Kennedy assassination "have resisted objective verification for more than three decades," see Lane v. Random House, Inc., 23 Media L. Rep. (BNA) 1385, 1391 (D.D.C. Jan. 26, 1995) (copy attached as Ex. 3); see also Groden v. Random House, Inc., 22 Media L. Rep. (BNA) 2257, 2262 (S.D.N.Y. 1994), aff'd, 61 F.3d 1045 (2d Cir. 1995) (copy attached as Ex. 4), and such statements accordingly do not give rise, as a matter of law, to a defamation claim.

Take. They fact is. They as names by not

Second, even assuming arguendo that the statements at issue were provably false, they are not defamatory as a

matter of law. See Batson v. Shiflett, 325 Md. 684, 722-23, 602 A.2d 1191, 1210 (1992) (a statement is not defamatory unless it "tends to expose a person to public scorn, hatred, contempt or ridicule"). Although the defendant's statements during the Broadcast may be "offensive" to plaintiff, they cannot be reasonably understood to communicate a defamatory meaning. See Crowley, 851 F. Supp. at 703-04. For this reason also, plaintiff's Complaint fails to state an actionable claim of defamation.

That established, plaintiff's subsidiary claims collapse as well. Under Maryland law, a "false light" claim will not lie where the plaintiff is unable to prevail on a defamation claim. Id. at 704. Moreover, the Maryland Court of Appeals has never upheld a claim of intentional infliction of emotional distress in a defamation case and, as a matter of constitutional law, such a claim is not actionable in the absence of a viable defamation claim. See Batson, 325 Md. at 733-34, 602 A.2d at 1216; Hustler Magazine v. Falwell, 485 U.S. 46, 56 (1988). Accordingly, because plaintiff has alleged no facts stating any cognizable claim, the Complaint must be dismissed in its entirety.

*not
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in Md. it is
an intent
of false
charge*

ARGUMENT

I. Plaintiff Has Failed to Plead a Cognizable Claim of Defamation.

A. As a Matter of Both Maryland and Federal Constitutional Law, Statements That Are Not Verifiably False Cannot Give Rise to a Defamation Claim.

Under Maryland law, a plaintiff alleging defamation bears the burden of proving that:

- X
X
- (1) the defendant made a defamatory statement to a third person;
 - (2) the statement was false;
 - (3) the defendant was legally at fault in making the statement; and
 - (4) the plaintiff thereby suffered harm.

Rosenburg v. Helinski, 328 Md. 664, 675, 616 A.2d 866, 871 (1992) (citing inter alia Jacron Sales Co. v. Sindorf, 376 Md. 580, 350 A.2d 688 (1976)), cert. denied, 113 S. Ct. 3041 (1993); accord Crowley v. Fox Broadcasting Co., 851 F. Supp. 700, 702 (D. Md. 1994) (applying Maryland law) (same).

In this case, even if plaintiff could establish that the statements at issue were somehow "defamatory" -- and, as demonstrated below, they plainly are not, see pp. 15-19 infra -- it is clear that plaintiff cannot, under the controlling Maryland law, carry his burden of proving them false. See Jacron Sales Co., 276 Md. at 597, 350 A.2d at 698 ("truth is no longer an affirmative defense to be established by the defendant, but instead the burden of

proving [the] falsity [of the alleged defamatory statement] rests upon the plaintiff"); Rosenburg, 328 Md. at 675, 616 A.2d at 871 ("[t]o recover for defamation, plaintiff must ordinarily establish that the [alleged defamatory] statement was false").⁴ Moreover, as the Supreme Court held in Milkovich v. Lorain Journal Co., 497 U.S. 1, 22 (1990), an allegedly defamatory publication is actionable, as a matter of constitutional law, only if it is "'an articulation of an objectively verifiable event.'" (Citation omitted). Accord Crowley, 851 F. Supp. at 703 n.4 ("a statement is not actionable unless it asserts a provably false fact or factual connotation") (quoting Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1093 (4th Cir. 1993)); Henry v. National Ass'n of Air Traffic Specialists, Inc., 836 F. Supp. 1204, 1214 (D. Md. 1993) ("if a statement is not provable as false . . . then it cannot form the basis of a libel suit"), aff'd, 34 F.3d 1066 (4th Cir. 1994); Auvil v. CBS "60 Minutes", No. 93-35963, 1995 U.S. App. LEXIS 27658, at *15 (9th Cir. Oct. 2, 1995) (copy attached as Ex. 5))

⁴ In Jacron Sales Co., which was decided well before the Supreme Court's decisions in Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986) and Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990), the Maryland Court of Appeals emphasized that, as a matter of Maryland law, a plaintiff bears this burden in every defamation case, "[w]holly apart from any possible Supreme Court holding [to this effect] in the future based on constitutional grounds." 276 Md. at 592, 350 A.2d at 695.

But to make
more the
credibility
must be
proved

(product disparagement claim was deficient as a matter of law where plaintiffs were "[unable] to prove that statements made during the broadcast were false").⁵

In Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986), the Supreme Court explained the constitutional underpinning of this critical requirement:

[T]he need to encourage debate on public issues that concerned the Court in the governmental-restriction cases is of concern in a similar manner in this case involving a private suit for damages: placement by state law of the burden of proving truth upon media defendants who publish speech of public concern deters such speech because of the fear that liability will unjustifiably result. Because such a "chilling" effect would be antithetical to the First Amendment's protection of true speech on matters of public concern, we believe that a private-figure plaintiff must bear the burden of showing that the speech at issue is false before recovering damages for defamation from a media defendant. To do otherwise could "only result in a deterrence of speech which the Constitution makes free."

Id. at 777 (citations omitted). See also Gertz v. Robert Welch, Inc., 418 U.S. 323, 341 (1974) ("[t]he First Amendment requires that we protect some falsehood in order

⁵ See also Lapkoff v. Wilks, No. HAR91-559, 1991 WL 214278, at *3 (D. Md. Oct. 9, 1991) (copy attached as Ex. 6) ("[a] statement must be provable as false before liability for defamation can be imposed"), aff'd, 969 F.2d 78 (4th Cir. 1992); Moldea v. New York Times Co., 22 F.3d 310, 316-17 (D.C. Cir.) ("we must determine as a threshold matter whether . . . [an alleged defamatory statement] is verifiable -- that is, whether a plaintiff can prove that it is false"), cert. denied, 115 S. Ct. 202 (1994).

plaintiff, and the statement "Guilty of Misleading the American Public." In reaching the issue of whether, under the rule of Milkovich, "the statement . . . could be reasonably interpreted as stating or implying provable facts about plaintiff's work," the court held:

The proliferation of theories about the Kennedy assassination is proof that there is no universally accepted factual answer to the question, "Who killed President Kennedy?"

* * *

The Court rejects plaintiff's assertion that each statement in the Advertisement is capable of objective verification. While this may be true hypothetically, the known evidence concerning the Kennedy assassination and the extensive debate over the Warren Commission's findings demonstrate that the actual facts will never be verifiable to everybody's satisfaction. Thus, the statements in the Advertisement are merely statements of Posner's argument or opinion about the assassination, just as the quotations from the various conspiracy theorists also used in the Advertisement represent statements of their competing arguments. . . . Therefore, summary judgment in favor of defendants on the false advertising claim is granted.

Id. at 2262 (emphasis added).

Similarly, in Lane v. Random House, Inc., 23 Media L. Rep. (BNA) 1385 (D.D.C. Jan. 26, 1995) (copy attached as Ex. 3), author Mark Lane, another of the conspiracy theorists who was pictured in the advertisement at issue in Groden, alleged that the advertisement defamed him by "suggest[ing] that he has been intellectually dishonest with

*In this case
there is no
evidence that
Posner would not*

*Donner does
not allege a
theory of
statements which
says is a fact*

the American people." Id. at 1386. According to Lane, "the falsity of the charge [that his theory of the assassination misled the public] was objectively determinable and likely to be believed as factual." Id. at 1390.

In a carefully reasoned opinion, Judge Lamberth initially cautioned that "[t]here is a very real risk in sanctioning recovery for libel under these circumstances. Debate about one of our important historical events could be stifled by threats of costly litigation." Id. Moreover, because "defamation is inextricably linked with First Amendment concerns," the court deemed it "essential" to address these concerns through "summary procedures." Id. Otherwise, "[t]he threat of being put to the defense of a lawsuit . . . may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself.'" Id. (quoting Washington Post Co. v. Keoch, 365 F.2d 965, 968 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967)) (alteration in original).

In rejecting Lane's contention that "the falsity of the charge was objectively determinable," the court noted that "[t]he precepts governing the interrelationship between defamation and First Amendment jurisprudence [are] set forth in Milkovich. . . . To be defamatory, a statement must be 'objectively verifiable' as true or false." Id. at 1391

(citing Milkovich, 497 U.S. at 21). The court's application of this principle bears quoting at length:

[The statement] "Guilty of Misleading the American Public" . . . cannot be proven true or false. . . . Gerald Posner's evaluation in Case Closed is that Lane misled the public. That evaluation cannot be objectively verified without resolving thirty years of controversy surrounding the Kennedy assassination. To the extent that Posner's opinion rests on underlying facts, those facts are lodged in his and Lane's books. Events discussed in the two books have resisted objective verification for more than three decades. Readers may believe one book, the other, or neither; but there is no indication that Lane's theories have acquired the imprimatur of received wisdom.

* * *

[T]he "truth" [about the Kennedy assassination] has remained camouflaged since 1963, notwithstanding protracted analysis and debate. In Milkovich terms, if the underlying facts are not "objectively verifiable," the opinion based upon those facts is not actionable. 497 U.S. at 21. In White [v. Fraternal Order of Police], 909 F.2d 512 (D.C. Cir. 1990)] terms, "[a]ssertions of opinion on a matter of public concern . . . receive full constitutional protection if they do not contain a provably false factual connotation." 909 F.2d at 522 [(alteration in original)]. The challenged Random House statement has no provably false connotation, nor does it imply provable facts.

* * *

The contested statement in the Random House advertisement reflects differing interpretations of the murky facts surrounding the Kennedy assassination. By "expressing a point of view only . . . the challenged language is immune from liability." [(alteration in original)]

not relevant
This not about the assassination, it is about the Kennedy assassination. It is not about the Kennedy assassination. It is about the Kennedy assassination. It is not about the Kennedy assassination. It is about the Kennedy assassination.

Id. at 1391-92 (some citations omitted) (emphasis added).

True
False

The well-reasoned decisions in Groden and Lane are wholly dispositive in the instant case. As in those cases, the statements at issue here reflect "competing arguments" about the Kennedy assassination, Groden, 22 Media L. Rep. at 2262;⁶ posit the answer to a question that has "no universally accepted factual answer," id., and that has "resisted objective verification for more than three decades," Lane, 23 Media L. Rep. at 1391; do not state or imply "provably false" facts in positing that answer, id. at 1392; and, "by 'expressing a point of view only,'" are fully "immune from liability." Id. (citation omitted). It follows that these statements are facially insufficient to state a cognizable claim of defamation. Milkovich, 497 U.S. at 19-20 ("a statement on matters of public concern must be provable as false before there can be liability under state defamation law"); Jacron Sales Co., 276 Md. at 595, 597, 350

True
False

⁶ In this case, if the Court were to endeavor to resolve those "competing arguments," it would necessarily have to do so based on such abstruse elements of proof as a "trajectory analysis" of the bullet that struck the President's head, see Plaintiff's First Expert Reports ¶ 4, at 2; a "reconstruction of the shooting scene" on the day of the assassination, see id. ¶¶ 5-6, at 2-3; an analysis of "gunshot residue . . . [and] firearms and toolmark identification," see id. ¶¶ 5-6, at 2-3; and a precise medical analysis of the "gunshot wound to the [President's] cranium," see id. ¶ 6, at 3 -- i.e., the very elements of proof that "have resisted objective verification for more than three decades." Lane, 23 Media L. Rep. at 1391.

A.2d at 696, 698 (plaintiff bears the burden of proving falsity in every defamation action).

C. Even Assuming Arguendo That the Statements at Issue Were Provably False, They Are Not "Defamatory" -- and Thus Not Actionable -- Under Maryland Law.

In Maryland, as in virtually every jurisdiction in the United States, the Court must determine, as a threshold matter of law, whether the publication at issue is reasonably capable of conveying a defamatory meaning. See Batson v. Shiflett, 325 Md. 684, 722, 602 A.2d 1191, 1210 (1992). Indeed, because the complaint in a defamation action places the allegedly defamatory publication before the court at the pleading stage, judges routinely make this threshold determination upon the filing of a motion to dismiss. See, e.g., Chapin v. Knight-Ridder, Inc., 993 F.2d 1087 (4th Cir. 1993) (affirming dismissal of defamation action where statements at issue were not defamatory); Phillips, 58 Md. App. at 36, 472 A.2d at 101 ("the issue of defamation was appropriately raised by demurrer"); Seymour v. A.S. Abell Co., 557 F. Supp. 951, 954 (D. Md. 1983) (noting the importance of summary procedures in defamation actions); see generally Robert D. Sack & Sandra S. Baron, Libel, Slander, and Related Problems 112-13 (2d ed. 1994).

Under Maryland law, a statement is not "defamatory" unless it "tends to expose a person to public scorn, hatred,

DP
TW

contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." Batson, 325 Md. at 722-23, 602 A.2d at 1210. In sharp contrast, "'[m]erely offensive or unpleasant statements are not defamatory.'" Crowley, 851 F. Supp. at 702 (quoting Chapin, 993 F.2d at 1092).

In determining whether the Broadcast is capable of conveying a defamatory meaning, the Court must view it "in the sense in which it would be understood by the average viewer.'" Crowley, 851 F. Supp. at 703 (quoting Southern Air Transp. Inc. v. American Broadcasting Cos., 877 F.2d 1010, 1015 (D.C. Cir. 1989)). Moreover, in determining whether the Broadcast is capable of conveying a defamatory meaning, the Court must consider whether a reasonable person would understand that the Broadcast "intends or endorses" the defamatory inference alleged in the Complaint. Chapin, 993 F.2d at 1093; see also Crowley, 851 F. Supp. at 702 ("'[t]he usual test applied to determine the meaning of a defamatory utterance is whether it was reasonably understood by the recipient of the communication to have been intended in the defamatory sense'") (emphasis in original) (quoting White v. Fraternal Order of Police, 909 F.2d 512, 519 (D.C. Cir. 1990) (quoting F. Harper & F. James, The Law of Torts § 5.4 (1986)); Restatement (Second) of Torts § 563 (1977) ("The meaning of a communication is that which the recipient

correctly, or mistakenly but reasonably, understands that it was intended to express.") (emphasis added).

Here, nothing in the Broadcast can reasonably be held to be "defamatory" within the meaning of these precedents. Contrary to plaintiff's allegation, see Complaint ¶ 4, the defendant manifestly did not accuse him of any crime or potentially criminal acts. Compare A.S. Abell Co. v. Barnes, 258 Md. 56, 70-71, 265 A.2d 207, 216 (1970) (statement falsely imputing to plaintiff "the commission of a crime subjecting her to prosecution and punishment" was defamatory), cert. denied, 403 U.S. 921 (1971), with Thuma, 340 F. Supp. at 871 (where statement referring to a shooting as a "cold-blooded murder" was intended only to convey speaker's opinion that shooting was unnecessary, and not as an accusation of "premeditated murder," it would not give rise to an actionable claim of libel). Moreover, the statements at issue do not charge the plaintiff with any wrongful, shameful or even negligent conduct; indeed, they do not disparage him in any way.⁷ Rather, they assert no

⁷ Even assuming arguendo that the defendant's statements during the Broadcast could be construed as somehow charging plaintiff with wrongful or professionally negligent conduct in connection with the Kennedy assassination, the law is clear that "a statement charging another with a single dereliction in connection with his or her trade, occupation or profession does not necessarily charge that party with general incompetence, ignorance or lack of skill and is not deemed actionable unless special

(continued...)

more than that, as a result of "an horrendous accident," the gun carried by plaintiff inadvertently "went off," releasing "[t]he fatal shot that killed President Kennedy." Complaint ¶ 5. Although such an assertion may well be "offensive" or "unpleasant" to the plaintiff, it does not rise to the level of a "defamatory statement" as defined in Batson, 325 Md. at 722-23, 602 A.2d at 1210, and is accordingly "[in]capable of carrying the defamatory meaning urged by plaintiff[]." Crowley, 851 F. Supp. at 703-04.

As the Crowley court admonished, "'[c]ourts must be vigilant not to allow an implied defamatory meaning to be manufactured from words not reasonably capable of sustaining such meaning.'" Id. at 703 (quoting White, 909 F.2d at 519). Here, as in Crowley, there is nothing in the Broadcast that, as understood by "the average viewer," Southern Air Transport, 877 F.2d at 1015, "[would hold] plaintiff up to scorn or ridicule." See Burrasacano v.

⁷ (...continued)
damages are pleaded and shown." Bowes v. Magna Concepts, Inc., 561 N.Y.S.2d 16, 17 (N.Y. App. Div. 1990) (relying on "single instance" rule in reversing trial court's denial of motion to dismiss defamation claim) (citations omitted). Accord Craig v. Moore, 4 Media L. Rep. (BNA) 1402, 1405 (Fla. Cir. Ct. 1978) (copy attached as Ex. 8) ("[n]or is it libelous to charge an individual with a single mistake . . . on a single occasion"); see generally Robert D. Sack & Sandra S. Baron, Libel, Slander, and Related Problems 110-12 (2d ed. 1994) (the single instance rule is "well accepted" in the majority of jurisdictions that have had occasion to address it).

Levi, 452 F. Supp. 1066, 1072 (D. Md. 1978), aff'd, 612 F.2d 1306 (4th Cir. 1979). Nor is there anything in the Broadcast that could be reasonably understood as "intending to defame [the plaintiff]." Crowley, 851 F. Supp. at 703. Accordingly, plaintiff has failed to allege a defamatory publication under Maryland law, and his defamation claim is plainly deficient on this ground also.

II. Plaintiff's Remaining Causes of Action Fail to State a Claim Upon Which Relief Can Be Granted.

In addition to alleging defamation, the Complaint purports to assert two additional causes of action: "intentional infliction of emotional distress" and "invasion of privacy: false light." Like the defamation count, however, neither cause of action states a claim upon which relief can be granted.

A. Intentional Infliction Of Emotional Distress.

To establish a cause of action for intentional infliction of emotional distress, four elements must be proven:

- (1) the conduct must be intentional or reckless;
- (2) the conduct must be extreme and outrageous;
- (3) there must be a causal connection between the wrongful conduct and the emotional distress; and
- (4) the emotional distress must be severe.

*Intentional
Invasion
of Privacy*

Batson, 325 Md. at 732, 602 A.2d at 1216.

The Maryland courts have repeatedly held that "recovery [for this tort must] be meted out sparingly," Batson, 325 Md. at 732, 602 A.2d at 1216, and only for "opprobrious behavior that includes truly outrageous conduct," Kentucky Chicken Co. v. Weathersby, 326 Md. 663, 670, 607 A.2d 8, 11 (1992). Indeed, the Maryland Court of Appeals has never upheld a claim for intentional infliction of emotional distress based on allegations of defamation. See Batson, 325 Md. at 734, 602 A.2d at 1216 (discussing the only three cases in which the Maryland Court of Appeals upheld a claim for intentional infliction of emotional distress); Crowley, 851 F. Supp. at 704 (Court of Appeals has upheld such a claim "only in three cases involving 'truly egregious acts'") (quoting Batson, 325 Md. at 734, 602 A.2d at 1216)).

In Batson, for example, the plaintiff successfully proved at trial that the defendant had defamed him by purposefully and falsely accusing him of embezzling union funds. Although the Maryland Court of Appeals upheld the defamation claim, it nevertheless held that the plaintiff's intentional infliction of emotional distress claim must fail because it "in no way satisfies our exacting standard for 'extreme and outrageous conduct.'" Batson, 325 Md. at 735, 602 A.2d at 1217. It follows a fortiori that where, as in

this case, there is no actionable claim of defamation, a subsidiary claim of intentional infliction of emotional distress necessarily fails. See Crowley, 851 F. Supp. at 704.

Moreover, to afford "breathing space" for the exercise of those freedoms guaranteed by the First Amendment, constitutional jurisprudence requires that a plaintiff not recover damages for intentional infliction of emotional distress unless he can prove all of the elements of a cause of action for defamation. See Hustler Magazine v. Falwell, 485 U.S. 46, 56 (1988). As the late Judge Gerhard Gesell noted in dismissing a similar claim, courts must not permit the "intentional infliction" tort to serve as a vehicle for "end-running other requirements of defamation law." Foretich v. Advance Magazine Publishers, Inc., 765 F. Supp. 1099, 1104-05 (D.D.C. 1991). As Judge Gesell recognized, "[i]t would subvert defamation law to permit a cause of action for emotional distress based on a statement held as a matter of law to be not defamatory of the plaintiff." Id. at 1106.

Clearly, therefore, the Complaint's failure to survive a motion to dismiss its defamation claim sounds the death knell for its "intentional infliction" count as well. Neither cause of action states a claim upon which relief can be granted.

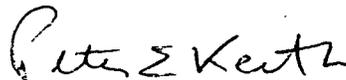
B. False Light Invasion of Privacy.

"In Maryland, a claim for false light invasion of privacy may not stand unless the claim also meets the standards for defamation." Crowley, 851 F. Supp. at 704 (citing Phillips, 58 Md. App. at 36 n.1, 472 A.2d at 101 n.1) ("[u]nder Maryland law, '[r]egardless of whether a [complaint] is styled as a defamation action or an invasion of privacy action, the same considerations and legal standards apply'"); AIDS Counseling & Testing Ctrs. v. Group W Television, Inc., 903 F.2d 1000, 1004 n.1 (4th Cir. 1990) ("in light of the coincidence of the elements of defamation and false light invasion of privacy, we do not reach the question of the cognizability of the false-light claim")). Accordingly, because plaintiff's Complaint fails to state a cognizable claim of defamation, his false light claim is necessarily deficient under Maryland law. Crowley, 851 F. Supp. at 704.

CONCLUSION

For the foregoing reasons, plaintiff's Complaint fails to state any claims upon which relief can be granted and should be dismissed.

Respectfully submitted,



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Videotape transcription of
"Bottom Line" Show
Hosted by: Kweisi Mfume

Guests on the show:

Howard C.H. Donahue

Gus Russo

Robert Artwhol, M.D.

1 MR. MFUME: Today on the Bottom Line
2 we'll meet a firearms expert who says he has
3 evidence that John F. Kennedy was accidentally
4 killed by one of his own bodyguards and a doctor
5 who, after studying the Kennedy autopsy report,
6 firmly believes that Oswald killed the president.

7 Later on the show, we'll talk to James
8 Earl Ray's former attorney, who still believes that
9 Ray is innocent, and a lead investigator in the
10 Martin Luther King assassination who concluded that
11 Ray, in fact, is the man who killed Dr. Martin
12 Luther King, Jr.

13 Mr. Donahue, who do you believe fired the
14 fatal shot that killed President Kennedy?

*with a
Merry*
15 MR. DONAHUE: The fatal shot that killed
16 President Kennedy was fired in a horrendous
17 accident by a Secret Service bodyguard from an
18 AR-15. He was seated on top of the left rear seat
19 in back of the follow-up car and it was a shear
20 accident, he tried to pick up the AR-15 and
21 attempted to defend the president, he fell down and

1 the gun accidentally discharged and the bullet
2 struck Kennedy in the head.

3 MR. MFUME: Now, there were 10 other
4 Secret Service agents in the car behind the
5 president's, four on the running boards and six
6 seated. Don't you think somebody would have, among
7 that 10, recognized a shot from that car that was
8 pointed and moving toward the president?

9 MR. DONAHUE: Of course, they all heard
10 it, they couldn't help it. An AR-15 has quite a
11 muzzle blast. But the thing is, why should they
12 come out and say that one of their own men did it
13 when in reality, Oswald was doing his best to kill
14 a president. It's my opinion, that Kennedy would
15 have died anyway as a result of the shot that hit
16 him in the back of the neck and exited his throat.

17 MR. MFUME: You're a ballistics expert.
18 You argue that the bullet, the third bullet that
19 hit the president that did most of the damage
20 exploded on impact and would not have been the same
21 bullet fired by Oswald, which would have had a

1 harder casing, which would have not deteriorated
2 that way; is that correct?

3 MR. DONAHUE: That's exactly right. When
4 you consider that one bullet went through two men
5 and remained almost intact, that was the famous
6 CE-399, and it was discovered on the stretcher, it
7 went through about 18 inches of tissue, bone,
8 gristle, muscle, you name it, and it was discovered
9 almost intact. It was flattened, but very nearly
10 intact.

11 The second, the bullet that hit Kennedy
12 in the head, penetrated his skull only about two
13 and a half inches and it disintegrated to such an
14 extent they had a difficult time finding an exit
15 point.

16 MR. MFUME: Now, you have a skull here in
17 which you've drawn trajectory lines from the
18 bullet. Your theory is that the bullet moved left
19 to right as opposed to right to left; is that
20 correct?

21 MR. DONAHUE: That's correct.

1 MR. MFUME: So you're saying that Oswald
2 could not have fired from the position that he was
3 in?

4 MR. DONAHUE: Correct. The thing is, the
5 fatal bullet, the one that hit Kennedy in the head,
6 struck right in the back of his head here and the
7 exit point was determined to be here. If Oswald
8 had fired that particular bullet, it would have
9 very well paralleled the midline of his skull and
10 the bullet would have exited in the facial area,
11 not the side of his skull.

12 MR. MFUME: If Oswald had fired the
13 bullet, also, is it fair to assume that because of
14 the shell itself and the harder casing, that it
15 would have remained intact?

16 MR. DONAHUE: The shell was designed to
17 remain intact on human tissue. And the bullet
18 CE-399 behaved exactly as a Carcano bullet would
19 behave. On the other hand, the bullet that hit
20 Kennedy in the skull behaved exactly like a 223 or
21 M-16 bullet was supposed to behave. It is designed

1 to break up and disintegrate on impact.

2 MR. MFUME: Mr. Donahue, why you think
3 people don't believe this theory, as many are
4 saying that it is garbage or rubbish and it is
5 scraping the bottom of the barrel?

6 MR. DONAHUE: Well, when they say
7 something like that, they all advertise to
8 everybody they know nothing about firearms,
9 bullets, bullet design, bullet behavior, the
10 difference between a high velocity thin jacketed
11 bullet and a medium velocity hard jacket heavy
12 bullet, they no nothing about it. The bullet that
13 hit Kennedy in the head left a myriad of fine,
14 dust-like particles, that's exactly how an M-16
15 bullet behaves and how it was designed.

16 MR. MFUME: So you honestly believe that
17 a member of the Secret Service riding in the car
18 that was behind the president's, the Hail Mary, or
19 the Queen Mary, fired the shot that in fact
20 ultimately killed the president?

21 MR. DONAHUE: That's correct.

1 MR. MFUME: Mr. Russo, how come you -- I
2 assume you don't believe that.

3 MR. RUSSO: You're correct, I don't
4 believe that. However, my area of knowledge in
5 this case is more on the political aspect of the
6 crime and the subsequent investigations. But I do
7 have some basic logic problems with it. For
8 instance, the incredible coincidence of this bullet
9 going off and of all things to hit in Dealey Plaza,
10 it hits the back of the president's head. I find
11 that amazingly coincidental. In addition to the
12 fact that the other part of the theory is Lee
13 Harvey Oswald missed everything, hit the sidewalk
14 and of all things his ricochet hits the back of the
15 president's head. I just have a tough time with
16 that. But that's not an area I really have spent a
17 lot of time with.

18 MR. MFUME: So you're saying it is
19 possible, but it's not probable?

20 MR. RUSSO: It's so highly improbable
21 that I can't deal with it. But I don't know the

1 technical aspects of it.

2 MR. MFUME: Did it in fact ricochet, Mr.
3 Donahue?

4 MR. DONAHUE: It certainly did. The
5 first bullet hit to the right rear of the
6 president's limousine and broke up in pieces. One
7 of the fragments that was the result of that
8 ricochet hit John F. Kennedy in the back of the
9 head. If you look at this, I don't know if you can
10 get a close-up or not, the fragment was very close
11 to the wound of entrance. Now, the wound of
12 entrance is only six millimeters in size, which
13 rules out the 6.5 Carcano. And when it exited,
14 it exploded just exactly like it was supposed to.

15 MR. MFUME: Dr. Artwhol, what do you
16 think of this, what do you make of all of this?

17 DR. ARTWHOL: Well, Howard brings up some
18 very good points. In fact, these were many of the
19 points that were raised by the ballistic experts at
20 the Edgewood Arsenal 30 years ago. They, too,
21 thought that the bullet that struck President

1 Kennedy in the head did not act like a bullet, like
2 a Mannlichercarcano bullet. They assumed that just
3 like with the neck shot in the so-called magic
4 bullet shot, that the bullet remained intact and
5 passed cleanly through the skull. But then, they
6 did the experiments. And if there is one thing
7 I've learned about wound ballistics is you can
8 explain everything, but predict nothing.

9 There have been two landmark experiments,
10 the first one was done by the folks at Edgewood
11 Arsenal in which they fired bullets through the
12 back of skulls. Much to their surprise that every
13 time, almost every time, the bullet that hit the
14 back of the skull broke up immediately upon impact
15 and burst open the skull. The problem with that
16 experiment is that they shot the bullet through the
17 base of the skull where the bone in some people is
18 a little bit thicker, but not in all people, and it
19 certainly wasn't in Kennedy.

20 Dr. John Lattimer several years later
21 actually in the '70s repeated the experiment. Just

1 this time he did the same experiment using the
2 exact same kind of bullet and rifle that Oswald
3 used from the same distance firing into the back of
4 the skull hitting at the upper -- at the upper
5 location, and lo and behold, every time that bullet
6 hit the skull, the bullet disintegrated. In fact,
7 if I can see --

8 MR. MFUME: We've got them up on the
9 screen now. They're coming up in just a moment.

10 DR. ARTWHOL: Okay. Let me just get my
11 -- will I be able to see them? Yeah. Okay.

12 What we see on the screen now is we see
13 the experimental bullets, on the top of the screen
14 are the bullet fragments that were found in the
15 limousine. There is a rear portion of the tail and
16 the separated core.

17 The bottom one is one of the test results
18 from the ballistics people at Edgewood Arsenal.
19 This bullet hit the back of the skull and broke
20 up. This is the exact same kind of bullet that
21 Oswald used, fired from his rifle.

1 The third one that you see is the one
2 that Dr. Lattimer did. Again, upon hitting the
3 skull, it broke up, the rear of the jacket
4 separated, peeled back, just like the top one, and
5 these bullets are remarkably similar in
6 appearance. That is, there is a rear portion that
7 has peeled back and the bullet has separated from
8 the core.

9 So one would not predict that this would
10 happen. But as we know, that bullets behave very
11 differently. There is a very good experiment that
12 shows that if a bullet, a full metal jacket bullet
13 is fired through a plate glass at a perpendicular
14 angle, it will punch right through the glass and
15 remain intact. The same bullet, you tilt the glass
16 away from the bullet a little bit, the bullet
17 breaks apart. So you can't really predict exactly
18 what a bullet can do. But this experiment
19 certainly proves there is nothing inconsistent
20 about this bullet hitting -- the Oswald bullet
21 hitting Kennedy and breaking up in the skull.

1 MR. MFUME: Well, the performance, then,
2 of the bullet has everything to do, I guess, with
3 your theory.

4 MR. DONAHUE: The thing that Dr. Bob
5 Artwohl forgot to mention is my instructor in the
6 graduate course in forensic science at George
7 Washington was none other than Cortland
8 Cunningham. Mr. Cunningham is a man who handled
9 these bullets and took them out of the blue
10 Lincoln. And I asked him point-blank was there any
11 cranial debris on any of these fragments. By
12 cranial debris, I mean was there any blood, hair,
13 sera, brain tissue, cells or anything like that.
14 And oddly enough, he was quiet for a moment, and he
15 said, Howard, that's a good question. I sent him
16 up the blood and I never got a reply. There was no
17 blood or cranial debris on these bullets.

18 MR. MFUME: Mr. Donahue, the argument is,
19 and one that has been popularly accepted, was that
20 Lee Harvey Oswald from the sixth floor of that book
21 depository fired those three shots in a matter of

1 less than six seconds, it's been estimated, at a
'2 moving target. And then there were tests done by
3 CBS and others in 1967 that suggested that maybe
4 that could be done. Not everybody could do it, but
5 they had some volunteers and some experts firing.

6 I mean, why is it that you can't accept
7 that? Is it only the matter of the trajectory of
8 the bullet that concerns you or doesn't it make
9 sense, at least, that that theory which has been
10 looked at, analyzed over and over again is the one
11 that is popularly believed?

12 MR. DONAHUE: The thing is that you're
13 looking at the only person, me, that has ever been
14 able to fire a Carcano three times at a moving
15 target in the required length of time, and we have
16 it on tape from CBS that shows me firing off the
17 tower.

18 MR. MFUME: You got all three shots in
19 six seconds?

20 MR. DONAHUE: I certainly did, and you
21 can see that on tape.

1 MR. MFUME: At a moving target?

2 MR. DONAHUE: It shows me firing off the
3 tower and showing the bullets hitting the target.

4 MR. MFUME: Dr. Artwhol, I'm sorry,
5 you're raising your hand.

6 DR. ARTWHOL: I just wanted to interject
7 here about the timing, because there has been a
8 misconception about the timing, in my opinion.
9 That the shots were not fired in less than six
10 seconds, the shots were actually fired over a much
11 longer period of time. More like eight and a half
12 to 10 seconds. And you can -- this is clearly,
13 when you look at the Zapruder film and you listen
14 to Governor Connally's testimony and some other
15 aspects of the film, you can see that the shots
16 were more like eight and a half seconds to 10
17 seconds.

18 MR. MFUME: Mr. Russo, let's just -- I'm
19 going to come back to that. But let's depart for a
20 moment.

21 What's the political aspect of this? You

1 said that that was more where your interest was.
2 Are you talking about the conspiracy theory versus
3 something else and whether or not Fidel Castro had
4 some involvement?

5 MR. RUSSO: Correct.

6 MR. MFUME: Or whether or not this was
7 something else that we have not been able to
8 determine?

9 MR. RUSSO: Well, I think one of the
10 things that has confused researchers and writers
11 over the years is because of the extent of a
12 cover-up, there was a collapse of government, I
13 believe, after the case. There were a lot of
14 things that couldn't be brought out in 1963. I
15 think the evidence of a cover-up led a lot of
16 people to believe that the government therefore had
17 to be involved in the conspiracy to kill the
18 president. And I think the big problem for
19 historians is to separate the two, if that has to
20 be done, or if they were together, if the
21 government was involved knowingly in the attack on

1 the president.

2 I think what we're learning now with the
3 new release of documents is that so much of the
4 cover-up can be seen as separate from the actual
5 event. There were other reasons why things had to
6 be concealed.

7 MR. MFUME: When you say the collapse of
8 government, are you suggesting now that the
9 government recognized that there perhaps was a
10 conspiracy and maybe to prevent anarchy or war they
11 just all decided to cover up?

12 MR. RUSSO: Exactly. I think in the
13 statements we had just the other day from Lyndon
14 Johnson in the new tapes that were released, he was
15 worried that Cuba was behind it. I think the
16 Warren Commissioners, there was a split on the
17 Warren Commission about what was really going on
18 here. The CIA director, Alan Dulles, former
19 director, who was on the Commission, didn't tell
20 the other Warren Commissioners all the dirty
21 secrets that he could have that might have led to a

1 conspiracy. When the commissioners found out about
2 that later, they were upset about that, they felt
3 they were deceived.

4 I think members of the Kennedy family
5 believe there was more to it. But publicly they
6 couldn't take that stance.

7 MR. MFUME: When we come back, we'll pick
8 up on that point, we'll hear the words of the late
9 Lyndon Baines Johnson in his own words as he
10 described what happened and what he thinks. We'll
11 do that in just a moment when we return on the
12 Bottom Line.

13 PRESIDENT JOHNSON: They had shot our
14 president driving down there. Who would they shoot
15 next? And what would they -- what was going on in
16 Washington and when would the missiles be coming?

17 MR. MFUME: Mr. Russo, your reaction to
18 that.

19 MR. RUSSO: Well, it is fairly clear not
20 only from Lyndon Johnson but from other political
21 people who were on the scene in charge that night

1 that everybody was afraid of that. And that's not
2 uncalled for. You would expect that.

3 MR. MFUME: And these tapes were just
4 released last week. I mean, the public has never
5 seen Lyndon Baines Johnson making these statements
6 before.

7 MR. RUSSO: Right. However, documents
8 have been released over the years about Johnson
9 conversations all during the '60s where he believed
10 -- on a number of occasions, he stated that he
11 thought there was more to it than Oswald acting
12 alone. Although, I think he believed that Oswald
13 shot alone, I think he was never convinced that
14 there wasn't somebody pushing his buttons.

15 MR. MFUME: So you think Johnson thought
16 that there perhaps had to be this collapse of
17 government, this conspiracy, as you say, just to
18 prevent war or anarchy or to allow his
19 administration to go forward?

20 MR. RUSSO: I think so. I think -- well,
21 there are statements on the record of Johnson when

1 he was talking Earl Warren into heading up the
2 Commission, he said we need someone of your stature
3 to head up this Commission to convince the public,
4 otherwise, there could be a war, 40 million lives
5 will be lost, he used those numbers in his
6 conversation with Earl Warren, he really feared
7 that this could escalate.

8 MR. MFUME: So you thought that he
9 thought for the sake of the union.

10 MR. RUSSO: Right.

11 MR. MFUME: That whatever happened, there
12 ought to be an effort to put it to rest and move
13 beyond it?

14 MR. RUSSO: Exactly, right.

15 MR. MFUME: Doctor, you had an
16 opportunity to actually see the autopsy results and
17 much of the evidence that was involved. I don't
18 know how you get to do that, but you're one of the
19 few people who have had a chance to view all that.
20 What's it like going in and looking at that?

21 DR. ARTWHOL: Well, it was really funny,

1 I walked in there and there is always an archivist
2 in the room, and I had this sense of foreboding
3 that I was going to see the forbidden materials,
4 that I was going to learn something startling. In
5 fact, I said to the archivist, I hope I don't turn
6 into stone when I look at these materials. He said
7 we don't like you to use that word around here. Of
8 course, referring to Oliver Stone and JFK.

9 But anyway, there were no true
10 surprises. There were a few surprises about the
11 quality of the photographs, because the pictures
12 that are in the books are multiple generation
13 reprints. There are some problems with the
14 photographs, but as far as their clarity is
15 concerned, they're absolutely crystal clear, except
16 for one of the views.

17 MR. MFUME: What other evidence did you
18 look at?

19 DR. ARTWHOL: I looked at the magic
20 bullet, the so-called magic bullet, which is not
21 magic at all. It is basically that bullet behaved

1 -- basically every single ballistics, wounds
2 ballistics expert that I have talked to said there
3 is nothing magic the way that bullet worked, that's
4 the the way it is supposed to work. I handled his
5 coat, his shirt, his tie. I saw the X-rays, not
6 only his but the Governor Connally's. That's about
7 it, really.

8 MR. MFUME: Mr. Donahue, you're sitting
9 here with these weapons. You're going to explain
10 to us why you think one could not have done what
11 Mr. Oswald was alleged to have done and what many
12 people believe he's done. Now, what's the
13 difference between these two weapons?

14 MR. DONAHUE: Let me get back to that.
15 This is almost self-explanatory. You see, neither
16 one of these two gentlemen own a Carcano.

17 MR. MFUME: A Carcano is --

18 MR. DONAHUE: This is the gun. Neither
19 one of them have --

20 MR. MFUME: The one you're holding?

21 MR. DONAHUE: -- ever fired a Carcano.

1 MR. MFUME: Is that true, neither of you
2 have ever fired a Carcano?

3 MR. RUSSO: I've never fired one, no.

4 MR. DONAHUE: I know he's handled one,
5 because he's handled one of mine. So then they
6 come up with the idea -- evidently neither one of
7 them heard of Murphy's law. We've seen that tragic
8 things took place in Iraq, where two of our own
9 planes shot down two others. A lot of people don't
10 know this, but half the cops killed in New York
11 City were shot either with their own gun, they shot
12 themselves or another cop shot them. It happens
13 all the time. And for an accident like that to
14 happen is not even slightly unusual.

15 MR. MFUME: So you're holding here a
16 Carcano?

17 MR. DONAHUE: Right now, if they think
18 somebody can fire --

19 MR. MFUME: This is what Lee Harvey
20 Oswald used?

21 MR. DONAHUE: Right, that many shots in

1 even eight seconds, they've never fired a Carcano.
2 This thing has a terrible action. So does the one
3 that Lee Harvey Oswald had.

4 MR. MFUME: So you load it, you bolt it,
5 you fire it.

6 MR. DONAHUE: It is hard to even open and
7 close when there is nothing in it.

8 MR. MFUME: And then you've got to aim
9 again?

10 MR. DONAHUE: Then you have to aim at a
11 target.

12 MR. MFUME: At a moving target and fire
13 again?

14 MR. DONAHUE: Exactly. And then the most
15 unusual thing about it is one of the empty shells
16 in the Texas School Book Depository had a dent in
17 the lip, and it could not have held a bullet that
18 day. So again, if you don't know anything about
19 guns, bullets or bullet trajectories, you can say
20 anything you want.

21 MR. MFUME: What is this rifle here? Is

1 this a different --

2 MR. DONAHUE: Yes. This is one of the
3 deadliest weapons ever developed, it is the AR-15,
4 and many of you know it today as our military
5 weapon, the M-16. The only difference between this
6 one and the one that George Hickey carried, this
7 does not have a full auto switch on it. It can
8 only be fired one bullet, one shot with one pull of
9 the trigger.

10 It's my opinion that when George Hickey
11 reached down on the seat beside him and grabbed
12 this gun and tried to stand up, Greer, the driver
13 of the car, slowed down slightly, causing him to
14 fall forward and the gun went off.

15 MR. MFUME: Do people know that the
16 Secret Service, those 10 men in that car behind the
17 first car, that one of them was carrying a weapon
18 like this?

19 MR. DONAHUE: Many people don't know that
20 they were carrying this type of weapon, yet I have
21 a photograph of George Hickey with a gun and I have

1 a sworn statement of Glen Bennett, the Secret
2 Service agent on the right-hand side of the car,
3 that Hickey had the gun in his hand at the time
4 Kennedy was shot.

5 MR. MFUME: Did anybody ever examine the
6 gun?

7 MR. DONAHUE: Nobody ever knew about it.
8 But unless the FBI lost their collective forensic
9 mind, they examined the gun, they knew what
10 happened. All the critical evidence, as far as the
11 jacket material is concerned, is missing. Admiral
12 Humes did edge scrapings of the fatal wounds of
13 entrance and exit, edge clipping of the fatal
14 wounds of entrance in the scalp. Now, what did
15 they do with those? Why did they take them? They
16 did tests on them to find out what type of jacket
17 there was. All that's gone. If that would have
18 supported the Warren Commission, they would have
19 allowed -- they would have been loud and clear
20 about what happened.

21 MR. MFUME: So I'm the Secret Service

1 agent, I'm in the car behind the president, I've
2 got this weapon, I guess it's on the floor
3 somewhere?

4 MR. DONAHUE: The Secret Service men
5 don't sit down on the seat, they sit up on the
6 back. The gun was on the seat between himself and
7 Glen Bennett.

8 MR. MFUME: Was the gun down like this?

9 MR. DONAHUE: I can show you almost
10 exactly how it was. If I was sitting up in the
11 back of the seat, the gun was most likely laying
12 like this between Glen Bennett and George Hickey.

13 MR. MFUME: And he heard the first shot?

14 MR. DONAHUE: He heard the first shot.
15 And there is a photograph of him turning around and
16 looking at the Texas School Book Depository. At
17 that time, he leaned over from his seat, he grabbed
18 the gun and he started to bring it up, and he
19 started to stand up on the seat, which is unstable
20 anyway. Incidentally, I tried to do that and I
21 couldn't even stand up in a car that wasn't

1 moving. As he stood up, he started -- he had the
2 gun like this and he pushed off the safety, and as
3 he stood up, I don't want to bring it up and point
4 it, he stood up, Greer slowed down, he fell forward
5 and the gun went off.

6 MR. MFUME: Is that believable?

7 DR. ARTWHOL: Well, anything is
8 believable, when it comes to firearms. I'm an
9 emergency room physician, I've seen a lot of weird
10 things. It's not unbelievable. I just don't agree
11 with it.

12 A couple of things. I have never fired a
13 Mannlichercarcano, but I've talked with many
14 ballistic experts who have, John Lattimer, who has
15 written one of the definitive books on the
16 ballistics of the assassination, owns four rifles.
17 He was a firearms instructor during World War II.
18 He has no doubt in his mind from the experiments
19 that he's performed that the AR-15 bullet was not
20 responsible. In fact, he's fired AR-15s through
21 skulls and they act differently than Kennedy's

1 skull.

2 Dr. Martin Fackler, who is former head of
3 one of the main Army ballistics labs, now is the
4 current president of the International Wound
5 Ballistics Association, has written over 150
6 papers, many of them having to do with the M-16, he
7 was an Army ballistics expert. He looked at the
8 X-rays, he said there is no way the appearance of
9 those fragments on the X-rays of Kennedy are from
10 an AR-15 bullet. They look like one would expect a
11 heavy bullet fragment passing through the skull.

12 So I have -- every expert I have
13 consulted with on this, we can always -- everybody
14 can call up their own experts, but they don't find
15 any really credible evidence that the AR-15 was
16 responsible for the head shot.

17 MR. MFUME: And the only other theory is
18 the Oliver Stone theory where he suggested there
19 are in fact multiple assassins.

20 DR. ARTWHOL: Right.

21 MR. MFUME: We'll try to explore that

1 when we come back and we'll be talking with Doug
2 Russo, who has talked with Secret Service agents
3 who were there, and we'll do that in just a
4 moment.

5 Good morning, welcome back to the Bottom
6 Line, I'm Kweisi Mfume, we're talking this morning
7 in the wake of new evidence in both the
8 assassinations of President John Kennedy and Dr.
9 Martin Luther King about whether or not that
10 evidence is credible or should suggest something or
11 whether we ought to just put it on the side with
12 everything else we've found over the years. And
13 some of the things we've found over the years have
14 been developed by Oliver Stone, who says none of
15 that happened, there were multiple assassins that
16 were spread around.

17 I need the three of you to react to that,
18 because it's gotten a lot of attention and clearly
19 it's gotten a lot of credibility.

20 MR. RUSSO: It's such a huge subject,
21 it's hard to even start. A lot of that initial --

1 MR. MFUME: You worked on the movie?

2 MR. RUSSO: Not really. I tried to get
3 involved with it early on. When I met with Oliver
4 Stone, we had a difference of opinion on, for
5 instance, Jim Garrison as being the focus of his
6 movie, I thought that was too controversial to make
7 a movie around, and I told him I thought that would
8 deflect attention from the actual story, and in the
9 controversy of the assassination, everybody would
10 discuss Jim Garrison. So we differed. His script
11 was already written by the time I got involved. So
12 I was on the set for quite a bit of the making of
13 the film, but had very little input into it.

14 MR. MFUME: And very real reservations,
15 apparently?

16 MR. RUSSO: Yes, I did, yes.

17 MR. MFUME: What about the idea, doctor,
18 of multiple assassins? And then I'll get Mr.
19 Donahue to answer.

20 DR. ARTWHOL: Okay. Well, there are a
21 lot of problems with the logic in my mind. Let's

1 say you're this nefarious government and you're CIA
2 operatives and you're setting up this huge
3 conspiracy, and you're hiring all these marksmen,
4 why does it take three or more teams of marksmen
5 three volleys of shots to hit a slow moving target
6 at close range? It just doesn't compute.

7 The whole idea that a bullet can knock a
8 man backwards in the limousine is this ballistic
9 myth. It doesn't happen. When people are hit in
10 the head, they drop straight down. There are many
11 reasons, complicated reasons of all the arm
12 movements and the movement in Kennedy, but none of
13 them had to do anything with the impact of a
14 bullet.

15 Why would they set up Oswald and then let
16 him just wander around the Texas School Book
17 Depository all morning, completely unsupervised and
18 unattended. They would have no idea where Oswald
19 -- Oswald could have walked out in the middle of
20 Dealey Plaza by the time shots were fired.

21 MR. MFUME: Why would they, Mr. Donahue?

1 It's a legitimate question.

2 MR. DONAHUE: Well, Oswald was firing
3 from the Texas School Book Depository, he fired two
4 shots. Was anybody firing from any other place? I
5 made a complete photographic safari all around
6 Dealey Plaza, and if we had time or the
7 opportunity, I would be glad to show you these
8 pictures. I took pictures from every firing point,
9 because when I investigated the case, I didn't do
10 it with the idea that I was going to find anything
11 unusual. And when it suddenly came to my attention
12 that it could have possibly been an accident, I
13 tried to find out how it could not be.

14 Now, we did everything we could to find
15 out any firing place all around Dealey Plaza
16 somebody could fire. And you have to factor that
17 in with the nature of the wounds and so on. I
18 found no other place except from above and behind.

19 MR. MFUME: But could it be, in this
20 instance, unlike you being the expert on
21 ballistics, that Mr. Russo is really the expert on

1 this, and that his theory has even more
2 credibility?

3 MR. DONAHUE: People forget, this is a
4 gunshot homicide and should be studied as such. If
5 he wants to study the political aspects of it, that
6 really doesn't have anything to do with the
7 ballistic aspect.

8 DR. ARTWHOL: Let me say something about
9 Oliver Stone's movie, I walked out of that movie
10 believing 90 percent of it. I got interested in
11 this assassination watching that movie. I walked
12 out firmly convinced that my government had killed
13 John F. Kennedy, and by God --

14 MR. MFUME: But not the way Mr. Donahue
15 suggests?

16 DR. ARTWHOL: No, I thought the single
17 bullet theory was nonsense. This is a surgeon who
18 has treated gunshot wounds, I come out of there --
19 -- surgeons have very little knowledge, as I'm sure
20 Howard can attest, of gunshot wounds. We know how
21 to treat them, but we're not wound ballistics

1 experts. So I grew -- through the course of my
2 investigation, I started to go through the myths
3 and the myths and you start to realize that this
4 all, it's all nothing, it's all just -- it's not
5 there. It's all conjecture, erroneous
6 information. And of course, quoting the Warren
7 Commission is like quoting the Bible. You can find
8 something to support anything that you want. The
9 hard evidence is two shots from the rear.

10 MR. MFUME: Mr. Russo, you have spent
11 more than 25 years researching this, which is an
12 awful lot of time to spend on any one subject.

13 MR. RUSSO: That's about all I do. I do
14 other things.

15 MR. MFUME: I hope so. You look at this
16 differently, I guess, from the average layperson.
17 I mean, there had to be more than just an
18 attraction. There had to be more that sort of
19 compelled you to do this year after year after
20 year. Can you tell us what it's been like for 25
21 years hearing all sorts of theories and all sorts