

5/24/69

Dear John,

Dick has sent me copies of his 5/19 letter to you and his 5/21 memo. To say that I concur is to say nothing, for his perception and knowledge in these matters so greatly exceed mine. I would, however, like to add some emphasis for other reasons and to suggest a context, especially because I agree with Dick's (also non-legal) opinion on what can help your case.

Frazier testified that there should have been markings on the head of the cartridges. He knew they had to be there. He covered himself in two ways: he told the Commission this and he equivocated in the rest of what he said, not saying that absolutely there were no such markings, but that he did not note any. This is culpable, given his competence, his function, his experience as an expert and a witness and the nature of the inquiry.

In anything you do with him, I strongly recommend reference to his New Orleans testimony (or was it Khaneyfelt's?), where the testimony is that he/the FBI did not seek any solutions, any answers to any problems, did not inquire into what had to be inquired into, for he/they restricted himself/themself to responding to instructions, nothing else. This testimony was in response to a cross-examination question on had he looked for other possible sources of the shooting.

Frazier's evidence cannot be trusted, I think you should claim, because of this and because he consistently failed to present the required ballistics and related evidence, as with the presence of residues on 399 and the fragments and the failure to test those residues to discover their nature and origin (WHITEWASH). His evidence also should not be trusted because he was willing to give what he had to know was incompetent hence deceptive testimony, as with the spectrographic analysis of the same bullet and fragments (same source), where he testified merely that they were lead, which was not less than a wilful deception, given his same background and position.

I think you should go after Frazier/the FBI directly and as hard as possible, with heavy use of the available N.O. testimony. It is appropriate in any request for any of the evidence on the shots, I think necessary, and a direct attack on the integrity of the evidence and those presenting and interpreting it is needed to destroy the material presented against you by the government. Without it there is too good a chance the judge will assume the FBI is to be trusted, hence you need not have the evidence because you have their word, I think it is also vital to make it impossible for the judge to have an out if he is disposed to rule against you or is friendly and well-disposed to the government. Federal judges have much to do with the FBI.

I do plan to deal with this and similar things in handling the frameup in AGENT OSWALD, which need not influence you at all. However, this will make me even more interested in anything you may do with it. I hope you do, and with success.

Sincerely,

Harold Weisberg

21 May 69

Harold -

We have not yet had
a good chance to study
the stuff we got in Washington,
so I'll write you about that
later.

Dick

COPY FOR WEISBERG

19 May 1969

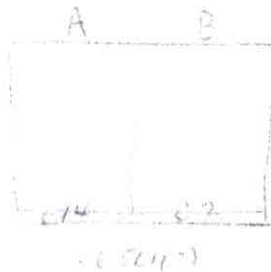
Dr John Nichols
Kansas City, Kansas

Dear John:

I am back from the States and have much to say.
Enclosed are some pictures we got at the Archives. I shall be getting a few others, and will send copies when I get them. The numbers at the top of each will explain what the pictures show.

First let me give you something that may be an important aid in your case to get the evidence from the Archives. Frazier made an important error which you can exploit to good advantage. I don't wish to imply that the error results from ~~his~~ illicit intent, but it is the type of error that justifies your appeal for the evidence itself, since the error throws the published record into ~~an~~ an unresolvable confusion that can only be resolved by direct re-examination of the evidence. Here it is: I don't have the Hearings in hand and can't refer to everything by number, but I remember much and you can fill in the rest):

Turn to the exhibits that show the microscopic markings on the primers of the rifle cases; they begin at about CE 559. Among them are two exhibits on facing pages (bottom of the pages) that look like this:



*any magnifications
for reference in
the hearing (class)*

According to Frazier:

- C14 is a test cartridge case
- C7 is CE 544
- ~~CE~~ C38 is CE 545

He testified that all of his composite pictures show the test case on the left and the suspect case on the right, but that is not true, as we can easily prove with these two exhibits (perhaps also of the other composites that he put in evidence, but I can't be sure-- it is uncertainty of this type that gives you justification for demanding the evidence, so that you can set the record straight)

Now, here is the true situation, which you can easily check: B and D are different magnifications of the same picture-- not merely different pictures of the same case, but the very same picture, with D blown up larger. You can check it simply by comparing them-- they are identical in absolutely every respect, and impossible circumstance if they were pictures of ~~the same~~ different cases, or even if it were different pictures of the same case. If you want an illustrative presentation, for submission to the court that is

handling your case, then I suggest that you photograph the exhibits as they appear in the volume, and blow them up ~~in~~ so ~~exact~~ that they are exactly the same size. If you do that, please make a copy for me. There is no denying that both B and D were made from the same negatives.

That is only part of what you can tell the judge. There is something equally important-- and equally certain. A shows the base not of a test case (as Frazier said), but of a suspect case; we can even say which case: it is CE 544, and there is no doubt about it. As I recall, this is what A looks like:



Note especially the marks that I have encircled and numbered #1, #2 and #3. Now look at the photo that I sent you showing the bases of the three cartridge cases. CE 544 has exactly these marks (it is the middle of the three). Here is a sketch showing CE 544 in the position depicted in the photo that I sent, and dotted circles showing the marks that correspond to the case as depicted in A:



There is absolutely no doubt about it. A, which Frazier said shows a test case, in fact shows an evidence case. Innocently or not, he has ~~intentionally~~ given false information and left the record in an unintelligible state. We cannot now trust ~~like~~ any of the photo comparisons that he put in evidence. It is possible that B and D are photos of a test case, and that A (definitely) and C are photos of the suspect cases, but the point of importance to your suit is that we do not know, and cannot know what situation prevails. The published record is simply gobbledy-gook as far as private researchers are concerned.

If you present this in your suit, only blatant chicanery can keep them from giving you at least the cases. ~~xx~~ With proper arguments (which I will not suggest here, for they are better worked out by your lawyer) you can also use it to cast doubt on the integrity of evidence that concerns the other material that you want. It could be just the crow-bar that you need to pry loose the other stuff that you want.

I think this is an important piece of material for you and I strongly urge you to use it in you suit. We have Frazier cold on this. I am not yet willing to suggest culpable intent, for I cannot think of what might have motivated the error, but there is no doubt that the evidence is in error and that the error is serious-- very serious. It casts doubt directly on the integrity of Frazier's comparison photos and indirectly on all of the evidence that Frazier introduced.

I don't regard this ~~xx~~ information as my "property" so you may use it in any way you wish and will not cause me offense as long as you use it honestly. I may get out a memo on it, but have no intent to publish except perhaps in conjunction with other things that I may write. Presently I can explain the "what", but am still trying to figure out the "why". The "why" may be evident if we can look at the cases under a microscope, but right now there is nothing to say. In any case, this can be of immediate use to you, so if you wish, use it. The most I will do in the near future is get out a memo for friends, and I may not even bother with that ~~xxx~~ for a while. Besides, it is of minimal importance to me, and perhaps of great importance to you.

For presentation in your suit, I suggest that you make comparative photos of picture A and my picture of the base of CE 544. The photographer who took the picture has the negative; if you want a picture done in a different size, please tell me, and I will have him send you one (or some; specify). If you do that, tell me what size is best for you. Better than that, you can get a negative from the Archives; we had to give them negatives of what we took.

I hope you can use this material and that it does you good in your suit. I would like to repay you in kind for the ~~interest~~ interest and help that you have given me.

Good luck, no matter what you do.

In light of other things we found out in the States, I ask you to scrap what I sent you about the cartridge cases. Not that I have given up inquiry or lost interest, but it is going to require important revision, and my once solid confidence has been seriously shaken. It is best that there be no risk of the stuff getting out, for much of it is wrong or at least based on unverified premises. When I re-do the material, I will send you copies, but the material must not go out in the form that I have it. I still think something important will develop from study of the cartridge cases, but it will have to develop along different lines from the ones I suggested.

It appears that the cartridge cases have fired bullets. There are still some very important anomalies that have to be explained, and I shall continue pursuing methods of explaining them, but we have got to scrap the notion that the cases never fired bullets.

I tend to think that the cases are very important, but perhaps not for the reason that we suppose. We have to be right both in the assertion and in the evidence upon which the assertion rests-- it would be disastrous to be right for the wrong reason.

I am satisfied that there is an innocent explanation for the case mouth dent-- innocent and natural. It was a deception that we were both able to produce mouth dents by chambering empty cases, for the same dent occurs on ejection of fired cases. I was not able to test this properly because the ejector on the rifle that I used is faulty. Here is what happens: when the bolt is drawn back with normal force in rapid firing (vigorous, but normal), the ejector strikes the case and casts it to the right. By the same action, the ejector imparts a spin to the case, so that it whirls out like a tiny propeller. On its first whirl, the mouth of the case swings around and bumps the back of the receiver, on the right side. The clearly is what happens, for the case mouth leaves a trace of brass on the ~~back~~ back of the receiver at the spot where it bumps. We ran into a gun expert at a rifle range in Maryland, and he dented the case mouth on his first try. I did it many times subsequently with far less vigorous force than he used. The marks were easy to produce with Harold's rifle.

The cause of the dents on the case shoulder is still unresolved. In numerous ejections I was not able to reproduce them, but I don't completely rule out that possibility. Something happened that tended to confirm my suspicion that they were caused in ~~chambering~~ chambering a bullet round, and I still think that is how it happened (after experience with the case mouth dent, I tend to be more cautious about what I say with certainty). In chambering bullet cartridges, we produced scrapes on the case shoulders-- very often. None went into a dent, but the scrapes are evident. I think slightly tighter extractor or slightly different distances in relative position of parts of the action might make the scrapes go to dents, but I can't be sure yet. This needs much more experimenting.

The problem is the conflict between apparently positive indications on both sides-- that the cases did and did not fire bullets. Without a rubber mold of the chamber it is not possible to determine whether it is significant that the shoulders do not show machine marks. I cannot imagine that that gun was machined so smoothly in the chamber when it was machined so coarsely elsewhere. It is one of the worst pieces of shooting equipment that I have ever seen-- really, even I was amazed to see what a nasty piece it is. I regarded my rifle and Harold's as dangerous junk, but C2766 is far worse than anything I have seen. I got a good look at certain parts, and it is evident that the thing is worn out not only from bad tooling, but from excessive and abusive use-- far more use than even Frazier gave it. My rifle is in pretty good condition-- as old as it is, it does not appear to have been used, but C2766 has really had it. I just cannot imagine that the chamber ~~is~~ was so smooth as not to leave machine marks on the case shoulder. It just makes no sense.

and

Thorough ~~xxx~~ direct ~~xxx~~ examination of the microscopic markings may yield some important answers. In spite of Frazier's information that there ~~was~~ were no marks, in fact there are, or so it appeared for the quick and inadequate direct look that I had at the Archives, and so it appears from the photos-- I mean marks produced by blow-back (there are other micro marks that were produced by other means). There are alternative explanations, none of which imply Frazier's innocence. But there is no way of confirming suspicions--or dispelling them-- unless we put the cases under a microscope and consult them directly. Photographs are not very useful, for they give a very limited amount of information.

The microscopic marks on the primers cause confusion, too. The primers are flat, as you would expect from firing bulletted cases, but the firing pin impressions show no cratering, as you would expect from cases which were fired empty. There is a considerable gap between the firing pin and the bolt face (i.e. the firing pin does not fill the firing pin hole), and the primer metal should flow back into that gap during full blowback. It's confusing as hell.

When I get and read the books that I ordered concerning firearms identification, I'll prepare a memo for you on ~~the~~ Frazier's assertion that there were no marks on the brass portion of the bases. This too might be very useful in your suit. From what I have read and seen so far, it looks as though the blow-back of high powered cartridges always marks the brass-- the more so with a bolt face like CE766's. I'll prepare such a memo in any case, but if I think you might use it, I can write with emphasis on things that will bear on your suit.

I can't promise that I will get out a memo soon, for I shall be busy with other things.

I still have much more to do and say about these cases, but I have to stop now, for it is getting late.

In time I may chip away at this thing and come up with nothing that I can use, but at least we have gotten good stuff that you can use, and Harold might treat it as a reflection of the inadequacies of Frazier's analysis. That is more his type of meat than mine; he does it splendidly, but I feel uncomfortable when I deal with uncertainties. I prefer to try to resolve them, but their mere existence can benefit you and Harold.

I feel like a kid taking the balls of a Christmas tree, but I don't mind, really, for it would have been disastrous if my original beliefs (certainty!) went public. As things stand, it's a slight embarrassment, but it could have destroyed what still may prove to be a vital issue.

I still think it is important, and will continue pursuing the cases with the same enthusiasm-- but more cautiously.

Still,

Duke

Bernabei

Memorandum-- JFK Assassination

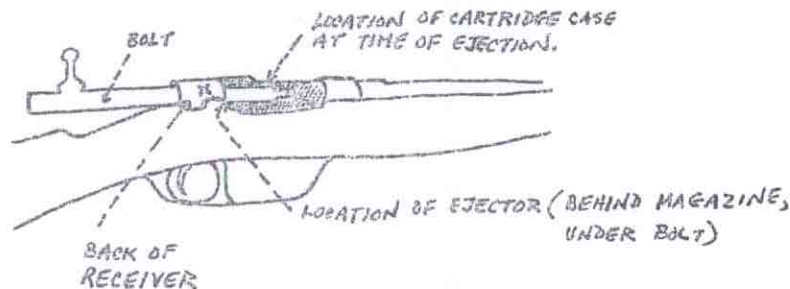
Topic: The cause of the dent on the mouth of cartridge case CE 543. (Note: This memo is written under the assumption that the reader is familiar with the topic discussed in Josiah Thompson, Six Seconds in Dallas, [Geis; 1967], pp. 143-145).

From: R. Bernabei
Dept. of Classics
Queen's Univ.
Kingston, Ontario, Canada

Date: 21 May 1969

Physical tests with a Mannlicher-Carcano rifle conclusively establish that the dent on the case mouth of CE 543 occurred in the course of normal ejection of the cartridge case from the rifle.

The following drawing depicts the location of certain parts of the rifle which enter into the discussion of how the dent occurred:



When the bolt is drawn backward with naturally vigorous force, the ejector deals a sharp blow to the base of the cartridge case and thereby casts it more or less directly to the right of the rifle and parallel to the ground. By the same action, the ejector imparts a rapid spin to the cartridge case and whirls it away from the rifle like a tiny propeller. During the first whirl, the case mouth swings around bumps the steel receiver on the right side immediately behind the magazine. The point of contact is marked "X" on the drawing.

Although results may vary from rifle to rifle, the case mouth normally strikes the receiver with sufficient force to cause a dent which in every essential respect resembles the dent on the case mouth of CE 543.

Observation of the rifle before and after case ejection provides confirmation that the dent on CE 543 was caused in the manner described above. When the case is ejected, it leaves a trace of brass at the point where it bumps the receiver.

A dent on the case mouth may be produced by one other means associated with the mechanical operation of the rifle, but the character of the dent produced in this alternative manner differs significantly from the dent on CE 543.

The alternative means is to thrust an empty cartridge case from the rifle clip into the rifle chamber. Under this condition, the case mouth strikes the steel barrel near the entrance of the chamber, and is dented there.

This alternative method often produces dents that resemble the dent on CE 543, but it always causes a slight mashing of the brass at the leading edge of the case mouth, a feature that does not occur on CE 543 or on any cases dented in the course of normal ejection. The following drawing roughly illustrates the character of the dents:



The mashing may consist of no more than a hair-line of disruption in the normally flat surface at the edge of the case mouth, but even slight mashing is significant, for CE 543 is not mashed.

The reader should be informed of a ~~peripheral~~ ^{peripheral} matter that bears significantly both on the determination of the cause of the case mouth dent and on the character of Josiah Thompson's consideration of the dent.

FBI firearms identification expert Robert A. Frazier introduced into evidence two test cartridge cases which together bear the designation CE 557. One of the two test cases (I designate it CE 557A) bears a dent on the case mouth which in all respects resembles the dent on CE 543.

Since Thompson describes in detail other minute features of the two test cases, and because he admits ~~examining the cases~~ ~~that he examined the test cases~~ (p. 145), it is clear that he observed them closely and knew that one of the test cases was dented in precisely the same manner as CE 543, the case about which he makes such an unwarranted fuss.

Thompson was obliged to consider either that the dent on CE 543 was produced by some normal means, or that Frazier had introduced an illicit exhibit. Instead, Thompson declined to mention the dent at the mouth of Frazier's cartridge case. There is not the least reference to it in Thompson's discussion, although he accurately describes other tiny features of Frazier's test cases.

It is difficult for me to understand why Thompson should attribute ~~significant~~ suspicious and important significance to the dent on CE 543, but fail to attribute the same significance to the dent on Frazier's test. I urge the readers of this memo to ponder Thompson's action, and to explain it to me if ~~they~~ they can.

I regret that I have not yet been ~~able~~ able precisely to determine the cause of the dents that occur on the case shoulders of CEs 544, 545, 141, and 557, although I have had partial (but indefinite) success by a certain means.

Physical tests failed to produce ~~such~~ shoulder dents in the course of ejection; for that and other ~~reasons~~ reasons, I am inclined to reject the possibility that the shoulder dents were caused during ejection. I welcome your suggestions, for I greatly desire to resolve this problem.

Dick Benabni

(For help and encouragement in the resolution of the question concerning the dent on CE 543, I am indebted to Dr. John Nichols and to Harold Weisberg)