

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOHN NICHOLS

Plaintiff

vs.

THE UNITED STATES OF AMERICA;
ARCHIVIST OF THE UNITED STATES,
JAMES B. RHOADS, THE GENERAL
SERVICES ADMINISTRATION, AND
SECRETARY OF THE NAVY, JOHN H.
CHAFEE

Defendants

No. T-4761

COMPLAINT

The plaintiff, for his cause of action against the United States of America, alleges and states as follows:

1. Jurisdiction is vested in this court under the provisions of 5 U. S. C. Sections 551 - 552, and more particularly under the provisions of the Federal Public Records Law, Public Law 89 - 487, 80 Statutes 250 (1966); venue is granted to this court under the provisions of 28 U. S. C. Section 1391 (e) (4).

2. Plaintiff is a physician duly licensed by the Kansas State Board of Healing Arts; he is further certified by the American Board of Pathology, and has had previous experience in the assessing of gun - shot wounds and X - ray interpretation thereof.

3. Due to his general interest in scientific matters, more particularly pathology and allied areas of research, and in an effort to resolve conflicting opinions, conclusions, and uncertainties concerning the death of the late President John F. Kennedy, the plaintiff has, on numerous occasions, unsuccessfully attempted to obtain certain information by examination of certain items held by

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CHARLES W. CAHILL, Clerk
By _____ Deputy

the Archivist of the United States, and has attempted to obtain certain information from and by examination of certain items held under the custody of the Secretary of the Navy. All such items and all said information being directly related to the assassination of the late President Kennedy.

4. Following the death of the late President and as an intergral part of his autopsy, whole body X-ray films were taken and were interpreted during the autopsy by the radiologist of the United States Navy Hospital in Bethesda, Maryland, hereinafter referred to as the Bethesda Hospital. In addition, gross photographs of the body were taken as both black-white negatives and color transparencies. The explicit purpose of these X-ray examinations was to assist the pathologists in the conduct of the autopsy, especially with respect to recognition of broken bones or bullet fragments. The purpose of the gross photographs, in turn, was to afford a degree of exactitude pertaining to the results, findings, and conclusions drawn from the autopsy, as well as to provide a permanent record from which any subsequent doubts might be resolved. All such measures adopted, as aforesaid, were employed for the sake of providing accurate and permanent records for future reference. Mr. Robert F. Kennedy, brother of the late President, presumably assumed control of the X-ray films and photographs aforementioned despite the fact that these X-ray films and photographs were and remain the property of the United States Government. These X-ray films and photographs, together with articles of the late President's clothing worn at the time of assassination, were transferred by an unstated person, under circumstances not divulged, to the National Archives, allegedly under the aegis of an unpublished

memorandum dated April 26, 1965. The Archivist refuses to divulge the contents or to make said memorandum available to the plaintiff. Eighteen months later on October 29, 1966, the Honorable Lawson B. Knott, Jr., Administrator of the General Services Administration, entered into a spurious agreement with Mr. Burke Marshall, Esq., Executor of the estate of the late President Kennedy, whereby the items of clothing, X-ray films, and gross photographs aforesaid, were suppressed by the terms of said agreement, all allegedly under color of authority deriving from 44 U.S.C. Section 397 (e)(1).

5. As stated in paragraph numbered three (3), the plaintiff has made numerous requests to the Archivist of the United States to obtain certain information of a professional nature from examination of certain items. All said items have been considered by a commission appointed by the President of the United States, hereinafter referred to as the Warren Commission, and all said items have been assigned appropriate exhibit numbers for purposes of ready identification. It is the contention of this plaintiff that the specific Warren Commission exhibits, hereinafter referred to in numerical order, are relevant to a project of professional research being conducted by the plaintiff as set out in paragraph numbered three (3). The said exhibits, excepting the X-ray films, photographs, and items of clothing (CE393, CE394, and CE395), set out below and identified in this paragraph, were transferred by the Warren Commission at time of disbandment, to the custody of the Archivist of the United States to be made available for scholarly study and research, the promotion of study and research being one of the functions of the National Archives. All requests by the plaintiff

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to gain access to and to make appropriate professional and scientific study of said exhibits has been denied by the Archivist. Exhibits desired by the plaintiff for examination, inspection, and study are listed in numbered order:

(a) CE 139 is the 6.5 mm Mannlicher - Carcano rifle, Serial C 2766, model 91/38 with "sling" and telescopic sight, formerly the property of the late Mr. Lee Harvey Oswald, now ex post facto "nationalized" by Act of Congress, with which Mr. Oswald is alleged to have fired three well - aimed shots at the late President, all within a span of 5.6 seconds. The plaintiff desires to fire, in this weapon, his own ammunition, identical with that alleged to have been fired by Mr. Oswald, some with small dents as in CE 141, CE 543, CE 544, and CE 545, from the clip CE 575, to determine whether this weapon will blast out small dents in the ammunition, as do all other such weapons; to determine whether the weapon can be fired as fast as required by Warren Commission findings; and further to determine whether the rifle, C 2766, ejects the clip CE 575 onto the floor when the last round is seated in the chamber as occurs with all similar weapons of the same type and manufacture.

dents

(b) CE 141 is the live 6.5 mm round manufactured by the Western Cartridge Company and found in the chamber of Mr. Oswald's rifle C 2766 mentioned in subparagraph (a) above. The plaintiff desires to submit this cartridge to neutron activation analysis in order to compare the

to what end?

the composition and ratios of the trace metals with the composition and ratios of trace metals to be found by neutron activation analysis of Commission Exhibits 393, 394, 395, 399, 543, 544, 545, 573, 842, and 843, all mentioned below. It is to be noted specifically that neutron activation analysis does not harm, damage, or alter the object being studied which remains intact without change. The cartridge will not be discharged nor chambered in the weapon C 2766 or in any other weapon.

(c) CE 393 is the coat worn by the late President at the moment of assassination. The plaintiff desires to study this garment by neutron activation analysis to determine whether any trace metals have rubbed off the bullet CE 399 as it allegedly passed through the fabric, and if so, to further determine whether these trace metals are of the same composition and ratios as trace metals to be found in CE 399. If said trace metal compositions and ratios are different, then bullet CE 399 could not have passed through the late President's coat, indicated as a requirement by the Warren Commission.

(d) CE 394 is the shirt the late President was wearing at the moment of assassination. The plaintiff desires to examine the shirt in the same manner as he desires to examine the coat, CE 393, mentioned in subparagraph (c) above, to determine if a bullet with the same trace metal composition and ratios, as in CE 399, penetrated the fabric.

No

(f) CE 399 is the remarkable 6.5 mm bullet found on the floor of Parkland Memorial Hospital in Dallas Texas on November 22, 1963, where the late President and Governor John B. Connally, of Texas, received medical treatment. Proper identification is lacking, but the Warren Commission has decided that this bullet traversed the late President's neck without striking any bones, and decided further that it emerged to strike Governor Connally in the back at the level of the fifth rib, traversing his right chest, emerging to strike his right wrist, injure his left thigh, only to fall out to become entangled in his clothing, and later drop onto the floor of the Parkland Hospital. The plaintiff seeks to establish the trace metal composition and ratios of this missile by neutron activation analysis, for comparison with the trace metal composition and ratios of other exhibits, notably CE 842 which are fragments surgically removed from Governor Connally's right wrist. If the trace metal composition and ratios of CE 399 and CE 842 are identical, then CE 399 may possibly have inflicted both the neck wound of the late President and the several wounds of Governor Connally as indicated and required by the Warren Commission Report. If, however, the trace metal composition and ratios of these two exhibits are different, then the late President and the Governor of necessity were struck by different bullets. If this latter finding prevails, the

conclusions of the Warren Commission, promulgating the "one bullet" theory will be untenable in a most conclusive fashion; and a second person, in addition to Mr. Oswald, must have participated in the assassination. The plaintiff, as a matter of course, further desires to examine by neutron activation analysis any unused portion of CE 399 previously removed for spectrographic analysis, the results of which examination have been denied to the plaintiff. The plaintiff, in addition, desires to examine by neutron activation analysis any other parts of CE 399 which may have been separated by any means whatsoever.

(g) CE 543, CE 544, and CE 545 are empty 6.5 mm cartridge cases manufactured by the Western Cartridge Company and found on the floor of the ^{Oswald} sniper's nest, attributed to Mr. Oswald, located on the sixth floor of the Texas School Book Depository in Dallas, Texas. The plaintiff, in addition, desires to submit these items to neutron activation analysis in order to determine if the trace metal composition and ratios are identical, and to determine whether or not said composition and ratios are the same as in CE 141 (referred to in subparagraph (b)), thereby confirming or refuting whether these exhibits were manufactured in the same lot.

(h) CE 573 is a bullet recovered from the wall of the home of Major General Edwin A. Walker, located in Dallas, Texas. The Warren Commission saw fit to

include this bullet, CE 573, in its exhibits and to include in its report the allegation that Mr. Oswald fired a shot at General Walker on the night of April 10, 1963. The plaintiff wants to submit this bullet, CE 573, to neutron activation analysis in order to learn if the trace metal content and ratios are the same or different from CE 399. Spectrographic analyses, withheld from this plaintiff, of CE 573 and CE 399 are reported by the Federal Bureau of Investigation to indicate a different metal content in these two missiles so described.

(i) CE 575 is the clip, presumably from the magazine of Mr. Oswald's rifle C 2766. This clip was not found on the floor of the ^{sniper's} nest located in the Texas School Book Depository. It is first mentioned on page 555 of the Warren Commission Report which appeared in September, 1964. However, the entire twenty six volumes of supporting data are devoid of any account of the discovery of this clip assigned Commission Exhibit number 575. The plaintiff wishes to determine whether this clip is ejected onto the floor by Mr. Oswald's rifle C 2766 when the last round is seated in the chamber, as such clips are so ejected from all other Mannlicher - Carcano rifles of the same make and model.

(j) CE 842 consists of two or three metal fragments (the exact number being uncertain) surgically removed from the right wrist of Governor Connally. Said fragments are presumed by the Warren Commission to have broken

away from the bullet CE399 as it passed through the Governor's right radius bone. The plaintiff desires to submit these metal fragments to neutron activation analysis. As stated in subparagraph (f) above, if the trace metal composition and ratios of CE 842 and CE399 are different, it would be impossible for the same bullet (CE399) to have struck both the late President in the neck, as postulated, and then to have struck the Governor in the right wrist, all as concluded by the Warren Commission.

(k) CE 843 consists of fragments of metal removed from the brain of the late President at autopsy. The plaintiff wants to submit these fragments to neutron activation analysis in order to determine whether the trace metal composition and ratios are the same as, or different from, other ammunition attributed to Mr. Oswald.

(l) CE 856 is a mutilated bullet recovered by United States Army personnel after firing through a cadaver's wrist in an attempt to reproduce Governor Connally's wrist wound. The weight of this missile is not mentioned in the Warren Commission testimony, and the Archivist of the United States has refused to permit the plaintiff to weigh CE 856. The plaintiff, in his own experiments, has, after firing through a recently amputated wrist, obtained a bullet with a deformity almost identical with that obtained by the Army personnel.

Therefore, the plaintiff desires to weigh CE 856 on an analytical balance for comparison with his own bullet which did not lose weight despite being grossly deformed.

6. In addition to the Warren Commission Exhibits specifically listed above in paragraph numbered five (5, a - 1) inclusive, the Archivist of the United States has in his custody certain X - ray films and gross photographs, both as black - white and color transparencies, made of the late President at autopsy. As stated in paragraph numbered three (3), this plaintiff has made numerous requests to the Archivist to examine and inspect said items. The plaintiff requests to examine with his own four man expert panel, with counsel, said photographs and X - ray films. Such examinations could effectively be conducted at the plaintiff's option in (a) the Archives Building in Washington, D. C., (b) at an appropriate federal facility in Topeka, Kansas, or (c) within the facilities of the University of Kansas at the option of the plaintiff. All examinations with respect thereto would be carried out in exactly the same manner, conditions, and extent, as similar examinations of exactly the same X - ray films and photographs were conducted by a panel of experts assembled by Attorney General Ramsey Clark on February 26 - 27, 1968.

Attorney General Clark's expert review panel found many new items which conflict with the findings of the original prosecutors at autopsy and at their own private review in January 1967, of the X - ray films and photographs. To cite three critical examples, this panel of experts discovered a metal tract in the

soft tissues of the neck, a bullet hole in the top of the skull, and an unidentified foreign object in the base of the brain of the late President Kennedy. The alleged bullet hole of entry in the neck was not located with precision.

7. Notwithstanding said requests by the plaintiff, as indicated in paragraphs numbered five (5) and six (6), the Archivist of the United States has denied all requests as made. Following denials of said requests, the plaintiff, pursuant to those provisions of 41 CFR 105 - 60.404., pertaining to appeals within United States Government Agencies of such denials, did submit, on March 18, 1970, an appeal of all such denials, except for CE 843 as indicated in subparagraph (k) of paragraph five (5), to the Director of Information, Washington, D. C., who is the proper official, within the body of federal regulations to consider cases on appeal relevant to Central Office matters. The Director of Information after 65 days, responded to this appeal under date of May 21, 1970, by a denial of all requests as submitted by the plaintiff prior to that date. On May 20, 1970, the plaintiff submitted an appeal to the Director of Information relative to the Archivist's denial for permission to examine CE 843, as mentioned in subparagraph (k) of paragraph five (5). On May 28, 1970, the Assistant Administrator for Administration, acting on behalf of the General Services Administration, denied said appeal on the ground that the request of the plaintiff herein goes beyond the scope of the so-called Freedom of Information Act, 5 U.S.C. Section 552. Pursuant to provisions of 41 CFR 105 - 60.405, the plaintiff now seeks relief in this court on the basis that he has exhausted all available administrative remedies

relevant to the examination of said items as set out in particular in paragraph five (5, a - 1) inclusive and in paragraph numbered six (6).

8. In addition to items requested as stated in paragraphs three (3) to seven (7) inclusive, there are other items, which should properly be within the custody of the United States Department of the Navy, which plaintiff desires to examine. Said three items are specifically listed as follows:

(a) "A grey - brown rectangular structure measuring approximately 13 x 20 mm." This structure was seen in photographs of the base of the brain of the late President Kennedy and could not be further identified by the expert review panel assembled by Attorney General Clark for this purpose. Said object was not seen by prosecutors and the curiosity seekers present at autopsy. Nor was it seen by the original prosecutors at their private review of the X - ray films and photographs held during January 1967. Plaintiff desires to examine this object in the laboratories of the University of Kansas by appropriate means to include optical, photographic, manual, physical, chemical, histological, pathological, and possibly as well, neutron activation analysis. The plaintiff considers said unidentified object, aforementioned, may well be part of an explosive missile of a type heretofore not considered.

(b) Histological preparations of the margins of the bullet holes in the skin of the neck of the late President

Kennedy, which are an integral part of this Bethesda autopsy 63 - 272. Plaintiff desires to study these preparations with his own microscope to determine whether these are holes of entry or exit, each of which has characteristic microscopic features.

(c) The written diagnosis and/or findings made by the Bethesda Hospital radiologist from his study of the X-ray films taken at the autopsy of the late President. These diagnoses and/or findings are required by Navy regulations to be written on SF 519 and/or SF 519 A and to be attached to the late President's permanent clinical chart as well as written into the autopsy protocol. A duplicate of this radiological report is also, by Naval regulations, required to be stored in the files of the radiology department of the Bethesda Hospital. Said radiological report will be easily identified inasmuch as it was dated November 22, 1963, will bear the name of the late President, will bear autopsy number 63 - 272, will bear the serial number of the late President's clinical chart, and will likewise include the signature of the radiologist making the diagnosis or interpretation of the X-ray findings. The plaintiff desires a copy of this report to determine whether the Bethesda Hospital radiologist's findings and interpretations agree or conflict with those of the expert panel assembled by Attorney General Ramsey Clark.

It should be indicated that the plaintiff desires to examine only the newly found 13 x 20 mm unidentified object and does not desire to examine the preserved brain of the late President Kennedy. The plaintiff further desires to examine only the microscopic preparations of the bullet holes in the skin of the neck. To examine or study other organs and/or tissues, or to request examination of same, might well be considered to be a direct invasion of privacy.

9. The plaintiff has repeatedly requested permission to examine said structures referred to in paragraph numbered eight (8, a - c) inclusive. Said requests were initially directed to various officers of the Bethesda Hospital; and a more recent request was forwarded to Vice Admiral G. M. Davis, Surgeon General, United States Navy. The Surgeon General aforesaid, in turn, denied that the items as listed and requested were, in fact, in the custody of the United States Navy. Accordingly, a six - page letter of appeal under date of April 4, 1970, was sent to Admiral Davis, as required by provisions of 32 C. F. R. 701.1(k) referring to appeals within purview of 5 U. S. C. 552. Four times within this six - page letter of appeal, it was clearly stated that the said six - page letter of appeal was, in fact, the appeal to be forwarded to the Secretary of the Navy by the official making the original denial, all as required under the terms of 32 C. F. R. 701.1(k). On April 9, 1970 Admiral Davis wrote a letter addressed to the plaintiff, which letter acknowledged receipt of said six - page letter of appeal, but again denying plaintiff's requests and omitting to mention forwarding the said six - page letter of appeal dated

April 4, 1970, to the Secretary of the Navy. Whereupon, on May 7, 1970, the plaintiff wrote a two page letter of explanation to the Honorable John H. Chafee, Secretary of the Navy, and attached a copy of the six - page letter of appeal dated April 4, 1970. This eight - page instrument, addressed to the Secretary of the Navy, was, in turn, forwarded via Admiral Davis on April 4, 1970, together with a covering letter addressed to Admiral Davis, again requesting that the now eight - page instrument of appeal be forwarded to the Secretary of the Navy, all as provided in 32 C. F. R. 701.1(k). Under date of May 14, 1970, Admiral Davis addressed a letter to the plaintiff, containing only the following single sentence of advice:

"In accordance with the request contained in paragraph 4 of your letter to me pertaining to your desire to obtain certain materials relevant to the autopsy performed upon the remains of the late President John F. Kennedy, please be advised that I am this date forwarding that letter with all enclosures to the Secretary of the Navy." (sic)

Sincerely yours

G. M. Davis
Vice Admiral, MC, USN
Surgeon General

As of the date of filing this complaint, no further reply has been received, and owing to the nature of the requests made and the position of the United States Government pertaining to this matter, the requests, as filed must be considered denied.

WHEREFORE, the plaintiff prays that this honorable court issue an order to the Archivist of the United States, as follows:

1. Permitting the plaintiff to inspect, study, and examine all said items specifically referred to and listed in paragraphs numbered four (4) and five (5, a - 1) inclusive of this complaint.
2. Permitting the plaintiff, with his own four - man panel of experts and counsel, to inspect, study, and examine all said items particularized in paragraph numbered six (6) of this complaint.
3. Permitting the plaintiff to undertake professional testing procedures by neutron activation analysis, as requested in paragraph numbered five (5, a - 1) inclusive of this complaint. Such testing procedures may be carried out at the facilities of the University of Kansas, or in the alternative, at any other like facility acceptable to the plaintiff herein. In seeking such permission, the plaintiff does not demand actual custody of any items requested for testing or other purposes, and said plaintiff does agree that actual custody may well remain with the Archivist of the United States, or with any person designated by said Archivist, all to insure against the possibility of loss, damage or deterioration of any item made available for inspection, testing, study, or examination.

FURTHER, the plaintiff prays that this honorable court issue an order to the Secretary of the Navy, as follows:

1. Permitting the plaintiff to inspect, study, and examine all said items specifically referred to and listed in paragraph numbered eight (8, a - c) inclusive of this complaint.
2. Permitting the plaintiff to undertake professional testing procedures by neutron activation analysis as is requested in paragraph numbered eight (8, a) of this complaint. Such testing procedures may be carried out at the facilities of the University of Kansas, or in the alternative, at any other like facility acceptable to the plaintiff herein. In seeking such permission, the plaintiff does not demand actual custody of any items requested for testing or other purposes, and said plaintiff does agree that actual custody may well remain within the United States Secretary of the Navy, or within the custody of any person designated by said Secretary, all to insure against the possibility of loss, damage, or deterioration of any item made available for inspection, testing, study, or examination.

FURTHER, in order to realize the magnitude and extent of the errors, omissions, and contradictions contained in the Warren Report, the plaintiff prays that this honorable court may order the Archivist of the United States or some person

delegated by said Archivist, to exhibit in the courtroom, an 8mm home motion picture of the assassination of the late President Kennedy filmed by Mr. Abraham Zapruder, together with the individual frames 210 - 240 and 312 - 315. It is respectfully submitted that the court might also view frame 313 with frame 314 superimposed. The court might further better comprehend the nature of the general problem if the Archivist, or someone delegated by the Archivist, shall provide the large scale map CE 882 of Dealy Plaza in Dallas, Texas, the site of the Assassination of the late President John F. Kennedy.

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