

b) A covering statement of January 16, 1969 by Burke Marshall, as spokesman of the executors of John F. Kennedy.

c) An affidavit of five pages, signed by James B. Rhoads, and dated January 16, 1969.

d) A letter of seven pages, signed by Burke Marshall, on behalf of the Executors of the Estate of John F. Kennedy, and dated October 29, 1966, and hereafter referred to as the "Letter Agreement of 1966."

H/ e) A memorandum of five pages, signed by Dr. James J. James, Dr. J. Thornton Boswell, and Dr. Pierre A. Finck, dated January 26, 1967, and hereafter referred to as the "Supplementary Report of 1967."

f) A letter of one page from Dr. J. Thornton Boswell to Attorney General Ramsey Clark, dated January 26, 1968.

g) A memorandum of sixteen pages, signed by Dr. William H. Carnes, Dr. Russell S. Fisher, Dr. Russell H. Morgan, and Dr. Alan R. Moritz, dated individually from March 28, 1968 to April 9, 1968, and hereinafter referred to as the "1968 Panel Review."

In his original request, the District Attorney of Orleans Parish alleged that the "aforescribed photographs and x-rays are necessary and material to the prosecution of the above-entitled cause" and that he "has substantial evidence indicating that the aforescribed photographs and x-rays will reveal that John F. Kennedy was struck by bullets fired from at least two directions."

At the hearing on January 17, the Court ruled that the District Attorney's prima facie showing of need for the photographs and X-rays had been overcome by the Government's pleading of January 16, 1969. In the Court's words, "the ball had been returned to the District Attorney's court." The Court gave the District Attorney two weeks in which to produce some of his substantial evidence that shots came from more than one direction.

This reply will provide such evidence and also make certain additional replies to the Government's pleading of January 16, 1969.

PART I

SUBSTANTIAL EVIDENCE THAT JOHN F. KENNEDY WAS
STRUCK WITH BULLETS FROM AT LEAST TWO
DIFFERENT DIRECTIONS

For the sake of accuracy, it ~~should~~ be denoted "direction" in the sense it is used in the present context refers both to the horizontal and vertical planes. In the same way that two bullets entering the President's body from street level at angles of 20° and 60° from the front would be considered coming from two "directions," two bullets entering the President's body from directly behind but from angles of 20° and 60° downward from the horizontal plane would be considered coming from two different "directions."

- (1) Statement by Dr. Robert N. McClelland,
Assistant Professor of Surgery, Parkland
Hospital, Dallas, Texas.

At pages 11 and 12 of Volume XVII of the Warren Commission Hearings, a diligent reader will find a very dim reproduction of a hand written account of President Kennedy's admission and treatment at Parkland Hospital. The account was written on November 22, 1963, by the senior surgeon who actually attended President Kennedy, i.e., Dr. Robert N. McClelland. The penultimate sentence is of particular interest:

"The cause of death was due to massive head and brain injury from a gunshot wound of the left temple." (Emphasis added)

The whole of Dr. McClelland's report is reproduced as Appendix A to this reply pleading.

(2) Statement by Dr. Robert Forman.

Dr. Robert Forman is Chairman of the Department of Sociology and Anthropology, Wisconsin State University, Oshkosh, Wisconsin. Dr. Forman has supplied the District Attorney of Orleans Parish with a scientific monograph entitled "The First Shot: A New Line of Evidence; Challenging the Warren Report." With Dr. Forman's permission, this monograph is reproduced in its entirety (with accompanying photographs) as Appendix B to this reply pleading.

Upon reading the monograph, the Court will see that Dr. Forman's training and knowledge as a distinguished anthropologist, gives him a whole new insight into the problem of the direction of the missiles; he concentrates upon the lateral as well as vertical angles of the shots in relation to the bone structure of the human body.

In brief, here is Dr. Forman's thesis of bullets from more than one direction:

w/s/

a) The warren Report says that there were three shots, all fired from one gun, by one person (Oswald), from one location (6th floor, Southeast corner, of the Book Depository) within a period of 6 seconds.

b) As to the shots, the Warren Report says that (i) one missed completely, (ii) another inflicted the fatal head wound of the President, and (iii) one shot went thru the President's neck, then went through Governor Connally's chest and wrist and entered his thigh. This latter bullet has been labeled as Commission Exhibit 399 and frequently referred to as the "Magic Bullet."

c) If the Magic Bullet could not have done all ascribed to it by the Commission there would have to be a fourth shot from Oswald's gun within the 6 seconds or a second assassin. It is generally conceded that a fourth shot from Oswald's gun would be an impossibility within the time limit. Hence, the Magic Bullet is crucial. Could it have done what was required of it?

d) According to the original autopsy, the Warren Commission Report, and all other known authorities, the missile which went thru President Kennedy's neck did not strike bone.

e) A bullet from directly behind and exiting below the Adams apple would shatter the neck vertebrae.

f) Examining the human skeleton, for a shot to enter the neck from "behind" and exit from the area of the Adams apple, it must enter at a sideward angle of 30° - 45°. In other words, the Magic Bullet entered at a considerable lateral angle. Yet, had it been fired from Oswald's alleged position it would have entered at a considerably less angle from behind.

g) The "neck shot", having struck President Kennedy on a course toward his left and downward and having struck no bone, could not possibly have hit Governor Connally, especially in the right arm pit. Depending on its exact vertical and horizontal angles, it would either have hit Mrs. Connally, the driver of the car, or no one.

h) Hence, the "Magic Bullet" theory is impossible from an anatomical standpoint; hence, there must have been at least a fourth shot; and hence, there must have been at least a second assassin.

Dr. Forman's monograph, as noted above, is included as Appendix B to this pleading. Further, Dr. Forman has consented to make himself available at the Court's convenience for direct and cross examination.

(3) Dr. Cyril M. Wecht is Research Professor of Law and Director of the Institute of Forensic Sciences, Duquesne University School of Law, and Chief Forensic Pathologist,

Allegheny County Coroner's office. In February, 1967, he was elected Secretary of the Pathology and Biology Section of the American Academy of Forensic Sciences. He is also Director of the Pittsburgh Institute of Legal Medicine.

Dr. Wecht, who is both a practicing doctor and practicing lawyer, has long been interested in the assassination of President John F. Kennedy. In mid-1967 he published a "Critique of President Kennedy's Autopsy" (printed in Six Seconds in Dallas by Professor Josiah Thompson, Bernard Geis Associates & Random House, at pp. 278-284). Dr. Wecht's Critique is reproduced in full as Appendix C to this reply pleading.

Following are a few highlights of the Critique:

"The official conclusion of the military pathologists that a bullet entered the back of the President's neck and emerged from his throat, along with the 'single bullet theory' which it spawned, is brought into question by four different clusters of evidence:

- (1) The location of the back wound....
- (2) Size of the throat wound.....
- (3) Lack of metal traces on the President's tie and shirt front....
- (4) The Zapruder film.....

"In February 1966 I gave a talk to the American Academy of Forensic Sciences which covered many of the points touched on in this paper. At that time, in spite of omissions and deficiencies already apparent in the official autopsy report, I nevertheless concluded my talk by saying that I agreed with the essential findings of the Warren Commission. Some eighteen months later, I must now say that I wish I had not written that final paragraph. For no longer can I agree with the essential findings of either the Warren Report or the autopsy on which it was based."

Dr. Wecht is still of the same opinion and has expressed a willingness to come and so testify before this Court at its convenience. As noted above, Dr. Wecht's

Critique is reproduced in its entirety as Appendix C to this
reply pleading.

PART II

REPLY TO MAJOR CONTENTIONS IN GOVERNMENT'S

PLEADING OF JANUARY 16, 1969

In order to understand more fully the magnitude of the following contention, the Court's attention is called to Appendix D of this reply which contains a brief chronological account of the autopsy photographs and X-rays from November 22, 1963, to date.

- (1) Introduction by the Government in its pleadings of the Letter Agreement of October 29, 1966, would appear to be an attempt to convince the Court that the said photographs and X-rays came within 44 USC 397; whereas, in fact, the photographs and X-rays may have been transferred to the Archives some eighteen months earlier and may never have been either the property of or in the custody of the executors of John F. Kennedy.

According to the Government's pleading (page 2), "Dr. James B. Rhoads has custody of the materials requested in his official capacity as Archivist of the United States, pursuant to a letter agreement entered into by the legal representative of the Executors of the estate of John F. Kennedy and the Administrator of General Services on October 29, 1966."

And Dr. Rhoads affidavit of January 16, 1969 (at page 1) says: "Said photographs and X-rays were transferred to the custody of the United States of America by the executors of the estate of the late President John F. Kennedy by letter agreement dated October 29, 1966, executed by Burke Marshall on behalf of the executors of the estate of John F. Kennedy, and by

Lawson B. Knott, Jr., Administrator of General Services."

However, at page 5 of the Report of the 1968 Panel Review, which was made a part of the Government's own pleadings, in reference to "Inventory of Material Examined; Black and White colored prints and transparencies" the following curious and unexplained sentence is found:

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"All of the above were listed in a memorandum of transfer, located in the National Archives, and dated April 26, 1966."

Presumably, this transfer was from the Secret Service; the question is to whom? To Robert F. Kennedy? To the "executors of John F. Kennedy?" To the National Archives itself? If to either of the former, under what authority was the transfer made, as the photographs and X-rays were part of the Bethesda Naval Hospital autopsy and, under Navy Regulations, were to be retained by the Navy in its permanent files. If the transfer were to the Archives, the letter of October 29, 1966, would, at best, appear to be misleading, and, in any event, irrelevant as to 44 U.S.C. 397.

This raises another interesting and relevant question: if the photographs and X-rays were in the custody of the Secret Service from November 22, 1963 until April 25, 1965, why was Chief Justice Warren and the Commission absolutely denied access to them, especially in view of Executive Order 11130 and S.J. Res. 137, 88th Cong., which required the Secret Service (along with all Government Agencies) to give to the Commission any and all documents and other information in their possession.

It is also interesting to note that the agent of the Kennedy family, Burke Marshall, was apparently not informed of the 1968 Panel Review until after it had been completed; at some subsequent date, the results were "described" to him. (See Statement of Burke Marshall of January 16, 1969). Did he, in fact, see it before he told the members of the family of its existence and proposed public release?

- (2) The 1968 Panel Review does not, as alleged in the Government's pleadings, confirm the original autopsy findings, but, on the contrary, provides new and more serious questions as to the number of missile wounds and the directions from which the missiles came.

a) Crucial ambiguities in the original autopsy.

There have been several ambiguous points re the X-rays taken at the autopsy.

Were they taken of the whole body? According to the 1968 Panel Review (pages 2 and 3), "The Autopsy Report stated that X-rays had been made of the entire body of the deceased. The Panel's inventory disclosed X-ray films of the entire body except for the lower arms, wrists and hands and the lower legs, ankles and feet." Were X-rays taken of the entire body and, if so, why were they not shown in their entirety to the 1968 Review Panel?

When and by whom were the X-rays developed? At the beginning of his testimony, Commander Nunes observed that the photographs and X-rays were exposed in the morgue of the Naval Medical Center on this night November 22, and they were not

developed, neither the X-rays nor the photographs" (Hearings, Vol. 2, p. 351). This tends to be confirmed by the fact that the autopsy doctors did not see and/or report the metallic fragments in the neck which were subsequently reported by the 1968 Panel Review. However, later in his testimony (Hearings, Vol 2, pp. 364, 372) Dr. Humes speaks as if the X-rays had been developed and were used in the course of the autopsy. Still later (Page 1 of his Supplementary Review of 1967), Dr. Humes says that the X-rays were examined that same evening. What X-rays? Of the whole body? The "main" parts of the body? He also adds, "All X-rays and photographic plates were delivered that evening to Secret Service personnel." Plates? How about undeveloped films? To whom were they delivered? On whose orders or authority? Was an inventory made at that time? Was there a receipt?

All of these questions remain unanswered to this day.

Additionally, the original autopsy was filled with ambiguous phrases, such as "wound presumably of entry" and "wound presumably of exit." At one point, the autopsy says, "As far as can be ascertained this missile struck no bony structures in its path through the body." (Emphasis added). If X-rays were taken, developed and seen, how can this ambiguity remain? If this "Magic Bullet" had struck bone, it would have fractured the bone, shattered itself, caused an enlarged exit wound, and, in all likelihood, have changed course.

b) Ambiguity left after the 1967 Supplementary Review by the Autopsy doctors.

Although the X-rays and photographs had been examined by Drs. Humes and Boswell on November 1, 1966, they were requested by the Attorney General to re-examine them to see if they were "consistent with the autopsy report." (1967 Review, page 1). This review took place on January 20, 1967. Instead of clearing up the ambiguities, it added certain new ones. For example, at page 4, the doctors say that there is "no evidence of a bullet or a major portion of a bullet in the body." Were there minor portions? How minor? Where? How many?

And, although the Review speaks in detail of the size of the entrance wound of the neck (page 3) there is no mention whatever of the size of the exit wound of the neck!

c) Ambiguities left by the 1968 Panel Review

It should be noted that the four eminent pathologists who conducted the 1968 Review were necessarily operating under a number of serious handicaps:

- They were, of course, unable to examine the body upon which the autopsy had been made.
- They were, admittedly, unfamiliar with a most complex matter involving wounds to two individuals.
- They were not supplied with full body X-rays.
- They were supplied with only part of the extant X-rays and photographs as inventories on October 29, 1965 (Compare p. 5. of the 1968 Panel Review with Inventory in Appendix B of Burke Marshall's letter of October 29, 1965).

- They were unable in the two days at their disposal to examine more than a very small fraction of material available in the 27 Volumes of Report Hearings, and Exhibits.
- Two crucial X-rays, #1 and #2 of the cranial cavity, that they were shown were damaged somewhat. (See page 12 of the Panel Review).

Under all of these handicaps it is not surprising that the 1968 Panel failed to clarify the ambiguous points then present. Nor is it too surprising that they, in fact, brought to light certain new mysteries which tend to undermine the original autopsy and the Warren Commission Report.

Here are a few:

Page 8 - "In the central portion of the canal's base there can be seen a gray brown rectangular structure measuring approximately 13 x 20 mm. Its identity cannot be established by the Panel. "What is this sizeable (3/4 x 1/2 inch) unidentified mass in the President's skull?"

Page 10 - "Distributed through the right cerebral hemisphere are numerous small, irregular metallic fragments, most of which are less than 1 mm. in maximum dimension." (Emphasis added). How many larger than 1 mm? How large?

Page 13 - "On film #13, a small round opaque structure, a little more than 1 mm. in diameter, is visible just to the right of the midline at the level of the first sacral segment of the spine. Its smooth characteristics are not similar to those of the projectile fragments seen in the X-rays of the skull and neck."

Page 13 - The Panel reports the hole in the back of the President's coat almost an inch higher than the hole as reported by the FBI.

There are several significant ambiguities in the Report of the 1968 Panel Review. For example:

Page 15 - The absence of metallic fragments in the left cerebral hemisphere or below the level of the frontal fossa on the right side together with the absence of any holes in the skull to the left of the midline or in its base and the absence of any penetrating injury of the left hemisphere eliminate with reasonable certainty the possibility of a projectile having passed through the head in any direction other than from back to front as described in preceding sections of this report. (Emphasis added).

Page 16 - Although the precise path of the bullet could undoubtedly have been demonstrated by complete dissection of the soft tissue between the two cutaneous wounds, there is no reason to believe that the information disclosed thereby would alter significantly the conclusions expressed in this report. (Emphasis added).

The "Summary" of the 1968 Panel Review is worth quoting in toto because it is very carefully hedged about with more ambiguities:

Summary 7

Examination of the clothing and of the photographs and X-rays taken at autopsy reveal that President Kennedy was struck by two bullets fired from above and behind him, one of which traversed the base of the neck on the right side without striking bone and the other of which entered the skull from behind and exploded its right side.

The photographs and X-rays discussed herein support the above-quoted portions of the original Autopsy Report and the above-quoted medical conclusions of the Warren Commission Report. (P. 16, Emphasis added).

Does the word "support" mean confirm?

The "support" is strictly limited to the "above-quoted portions of the original Autopsy Report and the above-quoted medical conclusions of the Warren Commission Report." These "portions" and "medical conclusions" are herewith quoted in their entirety:

The Autopsy report also described the decedent's wounds as follows:

"The fatal missile entered the skull above and to the right of the external occipital protuberance. A portion of the projectile traversed the cranial cavity in a posterior-anterior direction (see lateral skull roentgenograms) depositing minute particles along its path. A portion of the projectile made its exit through the parietal bone on the right carrying with it portions of cerebrum, skull and scalp. The two wounds of the skull combined with the force of the missile produced extensive fragmentation of the skull, laceration of the superior sagittal sinus, and of the right cerebral hemisphere.

The other missile entered the right superior posterior thorax above the scapula and traversed the soft tissues of the supra-scapular and the supra-clavicular portions of the base of the right side of the neck. This missile produced contusions of the right apical parietal pleura and of the apical portion of the right upper lobe of the lung. The missile contused the strap muscles of the right side of the neck, damaged the trachea and made its exit through the anterior surface of the neck. As far as can be ascertained this missile struck no bony structures in its path through the body.

W/W
In addition, it is our opinion that the wound of the skull produced such extensive damage to the brain as to preclude the possibility of the deceased surviving this injury."

The medical conclusions of the Warren Commission Report (p. 19) concerning President Kennedy's wounds are as follows:

"The nature of the bullet wounds suffered by President Kennedy * * * and the location of the car at the time of the shots establish that the bullets were fired from above and behind the Presidential limousine, striking the President * * * as follows:

President Kennedy was first struck by a bullet which entered at the back of his neck and exited through the lower front portion of his neck, causing a wound which would not necessarily have been lethal. The President was struck a second time by a bullet which entered the right rear portion of his head, causing a massive and fatal wound."

In essence, what the Panel is saying is that it agrees that two missiles struck President Kennedy from some point "behind" and "above" the President.

The Panel does not say at any juncture that these were the only wounds received by the President; some of its reported evidence in fact points in the other direction.

Further, the Panel never considered Governor Connally's wounds and made no comment whatever on the central question of the validity of the "Magic Bullet Theory" from a medical viewpoint.

Further, it limited its support to only the medical conclusions contained in a highly edited passage in the Commission's Report.

As eminent scientists, the four Panel pathologists were wise to so hedge their findings.

* * * * *

The Government's pleadings taken as a whole utterly destroy the basic thesis of the Warren Commission Report (i.e., Oswald, one assassin, one rifle, three shots) by demonstrating the impossibility of the "Magic Bullet Theory" upon which the whole thesis lies.

The pleadings confirm that the neck wound (or back wound) entered from the right and on a downward course and that it did not strike bone.

To inflict all of Governor Connally's wounds, the Magic Bullet, upon exiting the President's throat would have to change course radically upward and to the right in order to strike Governor Connally in the right arm pit; then, it would have to change course radically again, downward and to the left, break a rib, ~~transit~~ transit the chest, demolish a wrist, and enter Governor Connally's thigh ... and still remain almost pristine. In addition to the lead left in Governor Connally's chest and wrist, the 1968 Panel says that some lead was left in President Kennedy's neck (p. 13). This could not be the "Magic Bullet", Commission Exhibit 399.

d) Debris from President's head goes to left, not right.

It should be noted that most of the debris caused by the shattering of the President's head flew to the left, covering Mrs. Kennedy and the motorcycle escort on the left.

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This is completely consistent with Dr. McClelland's statement of a wound on the left temple.

e) Right to Privacy.

w/

In its pleadings, the Government has contended strongly that any public use (even for purposes of a criminal trial) of the President's X-rays and photographs would be an invasion of privacy. Yet, the Warren Commission itself had no apparent hesitancy in publishing the X-rays and photographs of Governor Connally's wounds. Is a murdered President entitled to more "privacy" than a living Governor, especially when it comes to a question of determining the guilt of innocence of a person criminally charged with conspiring to commit his murder?

f) Authenticity.

As the Court must realize by this point, the Government's pleadings of January 16, 1969, raise certain questions as to the authenticity of the documents in question. These are questions which did not appear worthy of attention prior to January 16th, but which now must be taken into account.

(a) Change of Possession: Previously it had been thought that the Secret Service, to whom the photographs and X-rays had been curiously handed on November 22, 1963, had retained them only briefly, and that they had been promptly (if irregularly) turned over to the executors of the estate of John F. Kennedy. Now we are not ~~at all~~ sure, as the only evidence of transfer between November 22, 1963, and this date is reference in the Government's pleading (1968 Panel Review, p. 5) to a "memorandum of transfer, located in the National

Archives, and dated April 26, 1965." Custody, possession, and ownership of the documents before and after this date is an unknown quantity. In other words, there is no chain of possession.

b) Missing documents. From the inventory of what was shown to the 1968 Panel (see pp. 5-6 of 1968 Panel Review) many photographs and X-rays as taken on November 22, 1968, appear to be missing. Incredible as it may seem, either there were no photographs taken of the front of the body or these photographs were ruined in the process of development or they simply were not shown to the 1968 Panel. Further, (see pages 2 and 3 of 1968 Panel Review) although X-rays of the entire body were taken, the Panel was not shown X-rays of the lower arms, hands, lower legs, or feet; in gunshot deaths this is peculiar and possibly of great significance, as bullets have a habit of traversing the body in un expected ways.

c) Radical inconsistencies. Radical inconsistencies have begun to appear between descriptions of the wounds by eye witnesses at the autopsy, by the autopsy doctors, and by the 1968 Review panelists.

For example, the "back wound" keeps moving up from the position attributed to it by autopsy witnesses, such as government agents Hill and Kellerman. Even the Review Panelists place the hole in the President's coat an inch higher than did the FBI. Measurements of a hole in a coat

should be reasonably accurate and immutable ... but not in this case,

n/ More important, is the change in the position of the head wound, according to the original autopsy (_____, p. 6) the bullet entered to the right and a "short distance" above the occipital protuberance. Yet the 1968 Review Panelists now place it at 100 mm above the occipital protuberance. This is a change of approximately four inches and the entrance wound now appears to be moved in such a way as to be nearer the top of the head than the back of the head. Could the autopsy doctors and 1968 Review Panelists have been examining the same X-rays? If so, how could their descriptions be so radically different?

Likewise, the 1968 Review Panelists describe the entrance wound in the head as ranging from 8 to 20 mm in diameter. Yet Oswald's rifle fired bullets of 6 mm. This, too, is curious as entrance wounds normally are approximately the size of the calibre of the bullet. Could this possibly have been an exit wound or an entrance wound by a bullet of larger calibre.

The above three elements of chain of possession, missing documents, and inexplicable inconsistencies do lead to the possibility that, consciously or accidentally, certain changes in this document have been made between November 22, 1963, and the present date.

If such changes have been made, the photographs and X-rays are of intensified interest. If no changes have

occurred, they are still necessary to the proper prosecution of Clay L. Shaw, because (as shown above) there is substantial evidence that the photographs and X-rays will show that John F. Kennedy was shot from more than one direction.

CONCLUSION

For the foregoing reasons, the request is renewed to compel Dr. James B. Rhoads to attend the trial of Clay L. Shaw, now in process in New Orleans, and to bring and produce all of the photographs and X-rays taken at the autopsy of President John F. Kennedy on November 22, 1963.

If the Court deems it necessary to have further hearings on this motion, it is urged that the date be set in the immediate future, as the trial in question in New Orleans is proceeding, and the said photographs and X-rays are necessary to its proper prosecution. When such hearing is set, the District Attorney of Orleans Parish is prepared to produce Dr. Robert Forman and Dr. Cyril Wecht for direct and cross examination.

It is requested that at that time the government be instructed to produce for questioning at least one of the 1967 Review Panelists, as well as Burke Marshall and the Administrator of General Services (to explain to the Court the chain of possession of the photograph and X-rays from November 22, 1963 to date).

Bernard Fensterwald, Jr.
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District Attorney, Orleans
Parish, State of Louisiana