

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT J. GRODEN

Plaintiff,

-v-

RANDOM HOUSE, INC.,
THE NEW YORK TIMES COMPANY, INC.,
and GERALD POSNER

Docket No.
94 CIV 1074 (JSM)

AFFIDAVIT OF
HAROLD WEISBERG

Defendants.
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STATE OF MARYLAND }
 }ss.:
COUNTY OF FREDERICK }

HAROLD WEISBERG, having been duly sworn, hereby deposes and says:

1. I am over the age of 18 and reside at 7627 Old Receiver Road, Frederick, Maryland. I make this affidavit in opposition to the defendants' motion to dismiss.

2. I have been a newspaper reporter; an investigative reporter; an OSS intelligence analyst under General William ("Wild Bill") Donovan; and a United States Senate investigator.

3. In 1965, I wrote the first analytical critique of the Warren Report, "Whitewash: The Report on the Warren Report." At that point in our history, no commercial publisher dared to challenge the government's official findings in the assassination of President Kennedy, and I was forced to publish the first edition of the book myself. Dell Publishing, which had rejected it three times, decided in 1966 to reprint it after I made a success of the original self-published edition. Dell's first printing was 250,000 copies. It reprinted three more times.

4. I also wrote and published five other volumes on the Kennedy case and one on the Martin Luther King assassination: "Whitewash II: The FBI-Secret Service Coverup" (also reprinted by Dell); "Photographic Whitewash: Suppressed Kennedy Assassination Pictures"; "Oswald in New Orleans: Case for Conspiracy with the CIA" (also commercially published); "Whitewash IV: JFK Top Secret Assassination Transcript"; "Post Mortem: JFK Assassination Coverup Smashed"; and "Frame-Up" (recently reprinted by Carroll & Graf Publishers as "Martin Luther King: The Assassination"). An anthology of extracts from my "Whitewash" series and "Post Mortem" was also recently published by Carroll & Graf under the title "Selections from Whitewash," to make my earlier work accessible to new readers.

5. After the Freedom of Information Act (FOIA) was enacted in 1966, I began using it to bring to light suppressed assassination records. As the result of thirteen FOIA lawsuits I obtained about a quarter of a million previously withheld pages of government records on the Kennedy assassination, mostly those of the FBI, and including those relating to the assassination of Martin Luther King, Jr., a total of about a third of a million pages. In the congressional debates over the 1974 amendments to the FOIA, Senator Edward Kennedy saw to it that the legislative history would explicitly reflect that one of my suits was the basis for amending the investigatory files exemption of the Act that opened FBI, CIA, and similar files to public access (Congressional Record, May 30, 1974, page S9336).

6. The documents I obtained fill over ^{40 of my} 60 standard four-drawer filing cabinets ^{these 40 are} in my basement, I have personally read ^{most} all of them, in addition to the published works of the Warren Commission, the Rockefeller Commission, the House of Representatives Select Committee on Assassinations. All of them I make available to anyone writing in the field.

7. Gerald Posner and his wife Trisha were here. As he noted in his acknowledgments I "allowed him full run of my basement, filled with file cabinets..." (page 504.) He makes no reference to his getting copies of whichever of my records I got only after years of the most difficult and costly lawsuits under the Freedom of Information Act. This omission is explained by a careful reading of his notes. In them he pretends he got those records by his own work. As a result, for all his self-described herculean effort and all the knowledge he wants the reader to believe he has, he cannot even explain and he does not explain the meanings of the file numbers or why for some references there is no file identification. In at least one instance that I noticed without looking for them, he is so ignorant of the FBI's main assassination file number at its Dallas office he misread the poor copy I got from the FBI and gave his readers an impossible number for those desiring to check him out or to learn more.

8. In early April, my seventh book concerning the assassination, "Case Open: The Omissions, Distortions and Falsifications of Case Closed," was published by Carroll & Graf. It is an abridged version of a much longer manuscript that I have left for use by future historians.

An Orientation to Gerald Posner's "Case Closed"

9. Random House says on its dust jacket for Posner's book: "After thirty years, Case Closed finally succeeds where hundreds of other books and investigations have failed -- it resolves the greatest murder mystery of our time, the assassination of JFK." This is patently false. The book resolves nothing. More than thirty years after the assassination, no one can say conclusively who killed President Kennedy, except that in my opinion it was impossible for Lee Harvey Oswald to have committed this crime. Rather, *Case Closed* is a work of the most thoroughgoing, intended, professional dishonesty.

10. Random House singles out as new "startling details from his (Oswald's) classified KGB file" as it does in referring to some of the book's Oswald content as "told for the first time by the KGB agent who handled his case." This is not true. That former KGB agent did not "handle" Oswald's case. He knew about it and for a short period of time after the assassination had and read the "case" file when it was retrieved from Minsk for that agent, Yuri Nosenko, who then was based in Moscow.

11. Random House also prints several endorsements of *Case Closed* on its dust jacket. These only illustrate the hazard to those of prominence who know nothing at all about a subject yet are unstinting in their praises of the work of any author when the personal and professional integrity of the endorsers is the captive of the personal and professional integrity of the author. The endorsers are limited to what they read in the book and what they read in the book is what the author wants there. They have

no way of knowing whether the author includes all that is relevant or even if he is truthful.

12. Posner boasts of his 200 interviews. In fact, as I will illustrate presently, he uses them to circumvent the established facts his book cannot survive.

13. He actually claims to have read all of the Commission's twenty-six volumes, but in fact he had so little knowledge of them, he cited them as used by others and said of them other things that are not true. Anyone familiar with the Warren Commission testimony of which Posner makes only infrequent mention knows that Posner gives it his own interpretations, and to which he naturally gives the meaning he wants it to have rather than what the witnesses are known to have actually meant.

Oswald's propensity for violence

14. Basic to Posner's book is his claim that Oswald was a born assassin, waiting for his moment in history, for his time to assassinate. His sole claimed source is Dr. Renatus Hartogs, the psychiatrist who examined Oswald as an unhappy, delinquent little boy. (Who was this shrink? One who was found in court to have used his women patients for free sex.) But in the very Warren Commission testimony Posner cites, on the page Posner skipped, Hartogs swore to the exact opposite! I have attached a copy of page 221 of Volume 8 of the Warren Commission hearings showing what Posner omits. Thus, Posner's major thesis is based upon misrepresentation. Here is what the Warren Report concluded about allegations that Oswald had been diagnosed as potentially violent: "Contrary to reports that appeared after the assassina-

tion, the psychiatric examination did not indicate that Lee Oswald was a potential assassin, potentially dangerous, that 'his outlook on life had strongly paranoid overtones,' or that he should be institutionalized." (WCR 379) The Report was referring to Hartog's 1953 report on Oswald, which failed to mention potential violence, or assaultive or homicidal potential. Hartogs conceded in his testimony that, if he had found such traits he would have mentioned them in his report, yet Posner ignores that concession, rationalizing without any supporting evidence that Hartogs left the "violence" potential out of his 1953 evaluation so Oswald would not be institutionalized.

Oswald's marksmanship

15. In his apologist's role, Posner adopts the new math of the unofficial apologists, the strange but major-media accepted notion that the Warren Commission could have been wrong in just about everything it did and by some mystery or magic was right in its conclusions nonetheless. The apologists always have some such convenient self-deception they -- thanks to the major media -- always got away with. Such as when it was proven that the world's best shots could not duplicate the shooting attributed to Oswald they said that Oswald just got lucky that one time. This is an area of one of Posner's most blatant dishonesties, where he says Oswald was a superb marksman, when the Marines officially evaluated him as a "rather poor shot." No wonder! On his last testing Oswald scored one point over the minimum score required of all in the military, and he was then aided in passing only by his fellow Marines who scored misses as well as hits as the tes-

timony of former Marine Nelson Delgado makes laughingly clear (8H228ff).

16. Posner says that Oswald had a rifle in Russia and became proficient in its use. What Soviet defector Nosenko (whom the CIA made available to Posner) told the FBI is that with a shotgun Oswald was so poor a shot that when he went hunting his friends gave him game to take home because he never once hit an animal. Nosenko repeated essentially this same story on an ABC News 20/20 broadcast the week Posner's book was released.

17. But Posner uses an employee named Robert Piziali of Failure Analysis, discussed below, to say that in the Marines, Oswald was "proficient with an M-1 rifle at distances up to 200 yards without the benefit of a telescopic sight." The Mannlicher-Carcano can hardly be compared to the semiautomatic M-1.

18. Posner suppressed the fact that the best shots the National Rifle Association could provide, all holding the very highest rating, of "master," could not duplicate the shooting attributed to Oswald -- and that under greatly improved conditions. One of those several improvements was shooting at a stationary, not at a moving target.

19. Under "Bolt Action," Posner presents on page 474 his four sketches of it to illustrate how bolt-action works on a rifle. It has this caption for its explanation: "The bolt action can easily be executed in a fraction of a second." From my own experience, as well as from the official testing, "easily" is not true. The action is stiff and it sometimes hangs. Since the ri-

file was not designed for the use of the misguided scope with which it was poorly fitted, before the bolt action could be operated at all a shooter had to remove his eye from the scope to prevent from being struck by the bolt as it is withdrawn. Indeed, each and every one of the Warren Commission's "masters" found the bolt action difficult, not "easy" to use, and, together with that rifle's mule kick, they all missed on their second shot with it. They had to adjust to the difficulty of that bolt action in firing, and that is, remember, with the country's very best experts.

Oswald's movements

20. On page 475, under "The Sniper's Nest," Posner refers to "a slight crease where the rifle ... rested when firing." Naturally he needed to cite no evidence in his caption, which is fortunate, because there is no such evidence.

21. One thing certain is that the police began moving those boxes around before any pictures of them were taken. Even then this shifting of boxes continued! To the degree that the Commission actually published at least four different and contradictory official versions of how those boxes allegedly were when the police got there when ~~in~~ fact, from pictures taken from the outside, all four were wrong!

22. There are four references to Oswald's fingerprints on this page: three as found on boxes and one on that magical paper bag: "Left index finger and right palm prints on paper bag." This says and proves nothing about how Oswald allegedly carried that rifle inside that bag when he came to work that morning.

The location of the three remaining prints, placed on carefully sketched boxes depicted in location without any evidence -- if not in contradiction to the official evidence -- to suggest a sniper's nest and boxes arranged to provide a gun rest, also involves magical boxes. It is important to point out that those were the very cartons of boxed books with which Oswald was assigned to work, the cartons from which he removed books to fill the orders he was paid to fill. What would have been significant is if he had left no fingerprints at all on any of them after spending that very morning filling orders from them as he had done for several preceding weeks, too! The sketch depicts at least three of these cardboard cartons. The largest (and with them loaded with books the heaviest) of these cartons that Oswald allegedly stacked for his sniper's nest and firing support has not a single print on it! The one he allegedly lifted into place as his gun rest, filled with heavy books, remember, which on the top of its left rear as he allegedly faced it, has his "left palm print" in the corner, exactly where not specified. He is supposed to have lifted that box into place with only one hand on top of the box when he lifted it? There is not another print anywhere on it. Then there is an additional box for which he had no use at all, drawn in well behind where he is depicted crouching, rifle to the shoulder. It has only a "right palm print" on a corner only. He must have somehow levitated that one-handedly to put it in the place where it served no purpose for him.

23. None of the Depository employees who were questioned saw the alleged sniper's lair, let alone anyone constructing it, before the assassination.

24. There is no basis in fact for Posner's argument that Oswald was on that sixth floor at the time of the assassination or for his speculation about the time of Oswald's departure from it.

25. It is not much of a digression to briefly address at this point Posner's dishonest account of the Buell Wesley Frazier and Linnie Mae Randle testimony regarding the paper bag that Oswald carried to work that morning. Frazier was a co-worker, Randle his sister. Theirs is the only eyewitness testimony available regarding what Oswald is said to have carried into the building. (See generally 2H225-250) Their descriptions of the bag, its size, and how Oswald carried it were crucial to the issue whether it was the means by which Oswald brought the alleged murder weapon to the building. The disassembled Mannlicher-Carcano was 35 inches long. After the assassination, a 38-inch long bag or package constructed from wrapping paper and tape identified with the Book Depository, was found on the sixth floor. Posner writes: "He held one end of the brown-paper-wrapped object tucked under his armpit, and the other end did not quite touch the ground." (page 224) However, Posner has merged two different snatches of testimony by both Mrs. Randle and Mr. Frazier, describing two separate instances of Oswald's carrying the bag, into one description that completely misleads the reader. Mrs. Randle testified that, when Oswald arrived at her

home that morning, he was holding the bag in his right hand, with his right hand positioned at the top, "and it almost touched the ground as he carried it." Mr. Frazier testified that, after he drove Oswald to the Depository, and Oswald left the car, he sat running his engine and watched as Oswald carried the bag at his side, with one end tucked under his right armpit, and the other end "cupped in his hand."

26. Next, Posner states that, "Both Randle and Frazier said it [the 38-inch long exhibit they were presented with] looked like the same one Oswald carried that morning." (page 225n) This is completely false. Frazier testified unambiguously that it did not, that the bag he saw that morning was "right as you get out of the grocery store" and "roughly about two feet long," not the homemade affair of wrapping paper pieced together with shipping tape that he was shown first by the Dallas police, then by the Commission. Randle, too, testified that the bag she saw was much shorter than the exhibit in evidence. But Posner attempts to cast doubt on their testimony by quoting from a statement made by Frazier twenty-five years after the assassination, which he alleges inconsistent with Frazier's original testimony: "Frazier later admitted the package could have been longer than he originally thought: 'I only glanced at it ... hardly paid any attention to it. He had the package parallel to his body, and it's true it could have extended beyond his body and I wouldn't have noticed it.'" (page 225n) Here again, however, Posner lies. There was no inconsistency. When Frazier testified to the Warren Commission he said that, because he was walking behind Oswald as

they approached the Depository, he could not see whether the package extended beyond Oswald's body, but it could have extended "widthwise, not lengthwise."

27. Posner was untruthful again in saying that the fibers recovered from the bag were positively connected to the blanket in the garage of the Paine residence in which that rifle had allegedly been wrapped. (Page 225) Almost fifty pages later, on page 272, he concedes that the fibers "were too common to be linked exclusively to that blanket." An FBI laboratory expert, Paul M. Stombaugh, was unable to render an opinion that the fibers had come from the blanket. (WCR 137)

28. The Warren Commission assumed conclusorily that Oswald "took paper and tape from the book wrapping bench of the Depository and fashioned a bag large enough to carry the disassembled rifle," (WCR 137) although Frazier, who drove Oswald to the Paine home in Irving on Thursday evening saw no such package. (2H242) FBI expert James Cadigan reported no markings or scratches or abrasions on the bag that could be associated with the rifle. (4H97) Cadigan also established that the tape had been run through the tape-dispensing machine. The custodian of the paper and tape at the Depository, Troy Eugene West, never left that wrapping table, not even for lunch, in the regular course of his employment. He never saw Oswald come near the machine, let alone take any paper or tape. Furthermore, West testified that it was impossible to remove tape from the dispensing machine without wetting it, which means it would have to have been used immediately. West's testimony is at 6H356-63, with the bit about wet-

ting on 361. We know that Posner read West's testimony, because he cites it in a completely different context at the top of page 541 of his reference notes, but nowhere in his book includes West's testimony about the tape machine.

29. Because Oswald worked where the bag was reported to have been found, the presence of his fingerprints was totally meaningless. After all the handling of the bag attributed to Oswald, first in making it, then in packing it, then taking it to Frazier's car, putting it down in the car, picking it up and carrying it toward the building for two blocks, and then, at least by inference, through the building, and while removing and assembling a rifle that Marina testified he kept oiled and cleaned, how is it to be explained that he left only two prints, and that even those were not discovered by the Dallas police, but only later by the FBI? And no traces of oil! Posner does not explain.

30. Even if Oswald did somehow get that disassembled rifle into that building, it then would have to be assembled and a skilled FBI expert, which Oswald was not, required six minutes to assemble the two parts of the rifle with a dime, this being used in the test because there is no indication of Oswald's access to a screwdriver. In turn this meant that to be in that window in time to shoot, Oswald had to have been at that window before 12:24. To this must be added the time required for him to get there from wherever he was. Nobody planning any assassination and knowing anything at all about the rifle to be used could allow as little time as the best time the FBI expert could make to

get that rifle reassembled. This means that Oswald had to have gotten to that window even earlier. There were, in fact, five fewer minutes for any planning of the assassination from that window or by Oswald because the motorcade was due there at 12:25, five minutes earlier than it arrived. It was running five minutes late. That no assassin could plan on. At the very latest, then, Oswald would have had to have been positioned within the barricade of boxes at the alleged sniper's window no later than 12:19 pm. Using both official source material, one could easily postulate that Oswald did not. An Oswald co-worker, Bonnie Ray Williams, testified to the Warren Commission that he was eating his brown-bagged lunch at one of the sixth-floor windows and did not leave the area until 12:20. (3H173ff.) He did not see Oswald and left the floor because "it was so quiet." (3H178.) Another Depository employee who knew Oswald, Mrs. R.E. (Carolyn) Arnold saw him in the second floor lunchroom at 12:15 or later. Posner tries to discredit her through interviews with two women who accompanied her to the street to witness the motorcade, but those women did not accompany Arnold into the lunchroom. As she exited the building to watch the motorcade, Arnold thought she caught sight of Oswald again, but on the first floor. The time may have been as late as 12:25 pm. In one of my books, I disclosed evidence of alteration of one of Arnold's statements to the FBI with respect to the timing of what she saw.

Oswald's "escape"

31. Posner writes: "After firing the final shot, he slipped through the narrow gap he had created between the cartons of

books. He hurried diagonally across the sixth floor, toward the rear staircase. Next to the stairs, Oswald dropped the rifle into an opening between several large boxes. It hid the gun from view unless someone stood almost directly over the boxes and peered down." (Page 264) Later, when Posner gets to the finding of the rifle, about which he had already conditioned his reader's mind, he lets slip the fact that it was "hidden." This is in the part of a single paragraph (on page 271) that he devotes, knowingly inadequately and incompletely, to the finding of the rifle. He knows that Oswald could not just have "dropped" the rifle (page 264) while allegedly rushing to escape and by "dropping" it also have "hidden" it as he lets slip out seven pages later.

32. Oswald's escape has to be accounted for for it to have been possible within the time permitted by the official evidence. Posner presents graphics on this on pages 480 and 481. This visual does reflect what has to have happened, that Oswald handled that rifle, at two additional points; when he left his supposed shooting point and when he neared where he allegedly cast it aside. Each drawing shows what he had to do; that he held the rifle. He had to have left prints when he fired the rifle, he had to have left other prints when he held it differently on leaving that window, and he had to have held it still differently in getting rid of it, leaving still other prints. Yet there were no fingerprints on that rifle consistent with this handling and, as the drawings reflect, he had to have had contact with parts of the rifle capable of accepting fingerprints.

33. Oswald's "assumed route" as it is reflected in the visual that Posner used is a straight diagonal from the southeastern to the northwesternmost corners of that building. This was assumed because it was necessary to make the assumption to reduce even by only seconds the time that imagined escape took. But it was a well-known and absolute physical impossibility. That floor was part of the warehouse. As existing pictures show there were stacks of books all over it and some of those stacks were higher than a man.

34. It is apparent from photographs of the rifle in position where it was later found that the rifle was not merely cast aside while in flight. It was very carefully placed inside a square barricade of stacked boxes -- from none of which any fingerprint was lifted -- set carefully on the floor in a position from which it could not have been jarred over by accident, on the extreme rear tip of the butt and the extreme forward end of the muzzle. It also was carefully covered, with both cardboard and paper, and as Constable Seymour Weitzman testified, it was even more covered over when it was first seen than later, when the pictures were taken.

35. As there is no accounting for how that barricade of cartons was surmounted twice without a single fingerprint being detected, there also is no accounting for the time required for that careful hiding of the rifle, not by the Commission, not by the FBI, not by Failure Analysis, and not by Posner.

36. This is Posner's entire account of the finding of the rifle: "Ten minutes after the shells were found, Deputy Sheriff

Eugene Boone and Deputy Constable Seymour Weitzman were near the northwest corner of the sixth floor when they spotted the rifle, hidden between boxes only three feet from the rear stairwell. No one touched it until Lt. Day arrived. Day could immediately estimate the chances for recovery of prints, and it was poor. 'I looked down between the boxes and saw the rifle had a well-worn leather strap. I knew there could be no fingerprints on that strap, so I picked the gun up by that. The stock was pretty porous and weather-worn, so there was little chance of any prints there. Before pulling the bolt, an alive round fell out. There were no more shells in the magazine.' 27" (page 271.) (His source note is his own "Interview with Carl Day," page 546. Posner knows so little about the facts and the rifle that the live round, which was chambered, could not fall out before "pulling the bolt." It was the pulling of the bolt that withdrew the live round from the chamber.)

37. This, as will be apparent, strongly suggests that at least some of Posner's boasted-of two hundred interviews had the purpose of giving him a source for knowingly deceptive, misleading, and just plain false writing with which he builds his phony case. Lieutenant Day did testify before the Commission (4H249ff) and he also filed an affidavit for the record (7H401). All that Posner attributes to him through his interview was in the Commission's record. Thus no Day interview was required for Posner to obtain the information he already had in the Commission's volumes. By relying on his interview with Day, however, Posner eliminated any need to cite Day's testimony (4H257-8), which

makes it clear that Day had no first-hand knowledge whether the rifle had been disturbed before his arrival. By citing the testimony of Homicide Captain Will Fritz, and that of Luke Mooney, another deputy sheriff (neither of whom had firsthand information) for the above paragraph's account of what Weitzman and Boone found, Posner also avoided directing his readers' attentions to both Weitzman's deposition (7H 105-9) and Boone's testimony (3H291ff). Weitzman wasn't even called to Washington by the Warren Commission, for an obvious reason. He deposed that the rifle "was covered with boxes. It was well protected . . . I would say eight or nine of us stumbled over that gun a couple of times." By not citing this testimony, by carefully hiding what he claims to have meticulously indexed himself, Posner hides the truth that the rifle he said was merely "dropped" casually was in fact hidden so completely that when Weitzman was shown three photographs taken by the police of the rifle at its found location, he said, "it was more hidden than there." (7H108) Weitzman's testimony about the care and success with which the rifle was hidden and about the searchers stumbling over it without finding it is important in any time reconstruction. With the almost total absence of fingerprints on a rifle that took and held prints and the absence of prints on the clip and shells that would take prints, this shows the care and time taken by the alleged user of the weapon.

38. These Posner "oversights" are indispensable because of when Oswald was seen after the assassination on the second floor and because in all reconstructions it is necessary to have him

outside the building by 12:33. With all the deliberateness of all the so-called reconstructions it still was not possible to get Oswald to and into that second-floor lunchroom before he would have been seen outside of it by the building manager, Roy Truly, who was rushing up those stairs ahead of police officer Marrion Baker. Oswald was inside that lunchroom -- the door to which had an automatic closer -- and with a Coke in his hand when Baker saw him through the small window in the door. Oswald has to have time to get inside that employees' room, the automatic door closure has to have closed the door slowly, and then Oswald has to have had time to go to the Coke machine all before Baker saw him. The Commission could not make it work out, even with incredible shortcuts, and it again merely concluded contrary to all its own evidence, that the impossible was possible. Posner winds up almost two pages on this matter (264-65) with a footnote in which he claims that Officer Baker, as well as a Secret Service agent, walked through Oswald's escape route and were not out of breath when they reached the spot where Baker had stopped Oswald. (With Baker's gun in his belly, Oswald, having allegedly just killed the President, was "calm and collected." (3H252)) But neither man accounted for wiping the rifle clean nor reproducing the careful hiding of the rifle.

39. There was a hallway on the second floor from which Oswald could also have entered the lunchroom without using the door through which Baker said he saw him. (3H256) This hallway, in fact, led to the first floor, as Commission Exhibit 497 (17H212) shows. It is the only way Oswald could have gotten into

the lunchroom without Truly and Baker seeing the mechanically closed door in motion. And Oswald told the police after his arrest that he had, in fact, come up to the lunchroom from the first floor. Where he had been seen by Carolyn Arnold.

40. There is not and never had been any legitimate question about this: the evidence not only did not place Oswald where he could have fired any shots from that sixth-floor window -- the evidence proves he could not have been there to do it. The actual official evidence is that Oswald did not and could not have carried a rifle into the building that morning. That the blanket in which it had allegedly been stored and the handmade paper bag in which he allegedly carried the rifle to the building did not have any oil on them from the "well-oiled" rifle. That he could not have been in that so-called "sniper's nest" at the time the shots were fired. And on this limited basis, from the actual official evidence only, could not have been that sixth-floor assassin.

41. Posner had cast Howard Brennan in the role of the best of possible, but not the only, eyewitness who allegedly identified Oswald in that window. (Pages 247-50.) He did this in violent opposition to his own stated, if not often adhered to credo that "Testimony closer to the event must be given greater weight" (page 235). Brennan viewed a lineup that afternoon, but he did not identify Oswald, even after he had already twice seen Oswald's picture on television before going to the police station. (3H147-8) Posner preferred, however, the ghosted book of

Brennan's that appeared in 1987, twenty-four years after the event.

Failure Analysis

42. Posner does not explain in his book that Failure Analysis Associates merely cooked up a showcase for the use of its technological wares in litigation for an annual meeting of the American Bar Association in San Francisco in August 1992. This was presented in the form of a two-day mock trial of Lee Harvey Oswald. FaAA provided evidence and expert witnesses for both the defense and the prosecution. The trial ended in a hung jury. Posner does not tell his readers this; indeed, he makes no mention of the ABA mock trial anywhere in his 600 pages. Drawing only from the prosecution's case, Posner's writing is carefully designed to give the impression that FaAA's work was done for him, without actually saying either that he paid for that work or that it was in fact done for him. Furthermore, he did not have that company's permission to do this. Even after his book was published, Posner left his interviewers with the clear yet erroneous impression that FaAA's work was done for him.

43. Note the double-edged misrepresentation by omission in Posner's not reporting that there was any defense against what he selected to use of what Failure Analysis presented at that "trial", or that when the credibility of the evidence he carefully selected was tested before a jury, they deadlocked. According to an account of the trial reported by USA Today on August 12, 1992, five jurors voted to acquit because, "the theory that Oswald fired a single, magical bullet (through both Kennedy

and Connally) was unbelievable; his motive for killing Kennedy was unclear; many doubts remain."

44. It's even possible that Posner's book represents nothing more than a disgruntled ex-employee's attack against his old employer because, interestingly, Oswald was represented at the ABA mock trial by the senior partners of his old firm, Cravath, Swaine & Moore. I understand that, during his short association with them, they assigned Posner the most menial chore of going over discovery evidence in the IBM antitrust litigation, a chore assigned by some of the major corporations to those who do not even have a law degree. He has since inflated his menial role into being a publicity and cover-worthy "Wall Street lawyer."

45. Of the ABA presentation, David V. Boies told the Associated Press that the prosecution "hadn't met its burden of proof." Thomas Barr, Cravath's managing partner, was quoted in The San Francisco Chronicle on August 11, 1992 as saying, "There should not be the slightest doubt of any kind as to what the facts are. And yet every single fact of any significance is open to serious doubt." Not in Posner's version. Still another of the top partners in the firm that did not need Posner's continued services or his fabled "analytical mind," Evan Chesler, said, "no one can be sure about how many shots were fired or where they came from. Despite all the evidence, the government only has circumstantial evidence to string together ... The doubts are such that in this case (the government) cannot carry its burden."

46. Remarkably, none of the major media have commented on his taking FaAA's work for the ABA mock trial and presenting it

as specially commissioned for his book. All those papers and magazines that went ape for Posner and his book, all those ecstatic reviewers and their laudatory reviews, all the electronic media virtually falling all over themselves to air him and sell his fraudulent book -- not a word about any of this truth.

47. I attach a true copy of a letter I received from Dr. Angela Meyer of Failure Analysis, explaining the nature and origin of their project. Clearly, it had a limited application and purpose. She makes it clear that ~~FAA~~ takes no position on the guilt or innocence of Oswald, although they do have a position on how Gerald Posner has confused both the public and the press. *a/*

48. Meyer's letter to me makes it clear that FaAA had less than five months to inform itself about the assassination and then prepare its computer animations. In addition to their limited main purpose, namely marketing, their resulting work reflects the limitations of time.

49. I come to the magic of those "cones" (pages 476-477) put in place by backward projection, from two of the President's wounds, neither of which is located as precisely as is required for this to be done well, accurately, or even truthfully. Is the rear wound in the neck or in the back? The official evidence places it both places: that single wound. Because it is said to have exited the front of the neck, if it is assumed that it was not deflected then there are two points that can be connected and regarded as the center line of Failure Analysis's magic "cones depicting where the bullet could have come from," cones that in-

clude that infamous window but also many other points of possible origin.

50. However, with the fatal bullet having exploded into many pieces and having blown an appreciable portion of the head out, how can any cone be responsibly projected backward when there is no second point to make a line that can be the center of the backward projection of any cone to indicate where that shot could have originated? Then there is the radical contradiction between the autopsy report, which places the entry of that shot low on the back of the head, and the report of the panel of the most eminent experts the Department of Justice could obtain to review the identical film evidence, pictures and X-rays. With this panel placing the point of entrance four inches higher up on the head, near the top, and with the curve of the head making an increased difference if there is backward projection in the form of a cone from that entry point, when it is projected backward as far as it must be, is there not a vastly different cone covering a different area? (Failure Analysis arbitrarily rejected the original, eyewitness, hands-on account by the autopsy pathologists of the location of that wound, relying instead on the findings of later photographic review panels.)

51. Posner attempts to bolster the single-bullet theory with pictures (page 482) of the side and bottom of the official bullet on the same page with a Failure Analysis test bullet, fired at a reduced charge to duplicate the imputed reduced energy of the official magic bullet as it allegedly struck Governor Connally's wrist. Posner says that Failure Analysis's reduced

charge test bullet emerged "in even better condition than 399," the exhibit number of the original magic bullet. The Failure Analysis bullet did indeed emerge in better condition. It not only did not deposit the fragment in Connally's chest that the doctor in charge of his care testified under oath is there, and it did not have to discharge a sliver to go into Connally's thigh for those three inches, the sliver that remains there with the hole in the thigh much too small -- according to Dr. Malcolm Perry, called in to examine that wound -- to have permitted any whole bullet to enter, leave or lurk there awaiting the proper moment for its emergence onto a Parkland Hospital stretcher gurney. FaAA's test bullet also did not leave fragments in Connally's wrist, some of which were recovered, others of which were washed out in the debridement of the wound. Posner claims that Failure Analysis confirmed the single-bullet theory, but they could do so only by reducing the charge of test bullets and eliminating the earlier history of the real bullet required by the official accounts -- accounts in which that magical bullet at least had some contact with a JFK vertebra and then smashed Connally's rib for four inches -- without any effect on that bullet at all, before its imagined course through Connally's wrist, and even without its subsequent official history inside his thigh for three inches. This also eliminated the need to compare FaAA's test bullet with those tested for the Commission at the Army's Aberdeen Proving Ground. Those bullets, without any one tested for the full official account of 399's career, every single, solitary one of them was quite deformed.

The Ammunition

52. Posner discusses the House Select Committee's Neutron Activation Analysis by Dr. Vincent Guinn. (Page 341) He fails to report, however, that Guinn himself certified, covering his own ass, that the official specimens he tested were did not match their official descriptions in any way and were not the same ones tested by the FBI in 1964 (1 HSCA 561-2). Guinn even said he did not know what happened to those official specimens. But he nonetheless went ahead and tested what he had been given.

The Zapruder Film

53. Abraham Zapruder was a Dallas manufacturer of women's clothes. His place of business was on the third floor of the Dal-Tex Building. It is across Houston Street at Elm, on the northeast corner of what is called Dealey Plaza. On the other side of Houston Street at Elm is the Texas School Book Depository building (TSBD) in which Oswald worked and from which Posner says Oswald fired the three shots of the assassination, as do the official accounts of the crime.

54. Zapruder, standing atop a concrete structure to the west of the TSBD building, used a Bell & Howell eight-millimeter motion picture camera in photographing what became the most important single piece of photographic evidence of the crime and the official time clock of it. Motion pictures are really a series of individual pictures called "frames." That film of that era was only about 5/16 of an inch wide.

55. Zapruder assigned his rights to his film to Time-Life. It provided 35-millimeter color slides of some of the film's

frames to the Commission. Enlargements of some of those frames were made for the Commission by the FBI laboratory. They became Commission Exhibit (CE) 885, published by the Commission at 18H1-85). As I brought to light in the second of my works on the JFK assassination, "Whitewash II: The FBI-Secret Service Coverup" (1966), for an unexplained reason the commission failed to publish the last nine of those frames of this exhibit. As the result of my exposing this, those slides were added to the collection in the National Archives in Washington (the repository for all disclosed official assassination records) where they can be projected, reviewed, and studied.

56. Before long, bootleg copies of Zapruder's film, most of poor quality, appeared and were themselves duplicated.

57. Throughout portions of his book, Posner mentions a certain "enhancement" of the Zapruder film, implying that one was done for him. Posner does not say what copy of the film he says he had "enhanced" nor, for that matter, by whom the enhancing was done. In Posner's acknowledgements, he mentions a Dr. Michael West, but West has not enhanced the film; he merely enlarged and included portions of his bootleg copy in a video that he sells.

Posner's Missed Shot Theory

58. Posner demonstrates an unfortunate tendency not to practice what he preaches when his gospel does not fit his needs: "Testimony closer to the event must be given greater weight than changes or additions made years later, when the witness's own memory is often muddled by television programs, films, books, and discussions with others." (Page 235). As I have already touched

upon, only eleven pages earlier in his book, Posner contradicted himself by both distorting and evading the clear import of the Frazier and Randle testimony about the paper bag Oswald carried that morning. Almost an equal number of pages later, he repeated his trick with Howard Brennan. He again completely disregards this preachiness, however, in misleading the public about what he alleges is a major discovery and the foundation of his theory about the timing of the shots fired during the assassination.

59. He writes: "Beginning at (Zapruder) frame 160, was a young girl in a red skirt and white top who was running along (sic) the left side of the President's car, down Elm Street, began turning to her right. But by frame 187, less than 1.5 seconds later, the enhancement clearly shows that she has stopped, twisted completely away from the motorcade, and was staring back at the School Book Depository. That girl was ten-year-old Rosemary Willis."

60. However, Rosemary Willis was not "running along the left side of the President's car." She was not near it. The President's car was in the middle lane of the street that had three lanes painted onto it. She was to the President's car's left, but she was neither close to it nor in the street. She began on the paved sidewalk on the south side of Elm Street.

61. After setting up a strawman by saying that some people believed Phil Willis's little girl stopped running because her father called to her (he cites the author of another pro-Warren Commission book for this inaccuracy), Posner says that was not the reason: "However, when Rosemary Willis was asked why she had

stopped running with the President's car, she said, 'I stopped when I heard the shot.'"

62. At this point Posner has a note numbered "18," which cites to "David Lui, 'The Little Girl Must Have Heard,' The Dallas Times Herald, June 3, 1979, H-3." Before Posner started exploiting the JFK assassination, that newspaper went out of business. Therefore, the article would be difficult for the average reader to locate and check. The article was actually syndicated by The Los Angeles Times, and it also appeared in The Boston Globe, The Washington Star and The San Francisco Chronicle, which is not disclosed by Posner. It is this article, not any mythical enhancement of the Zapruder film, that constitutes the sole source of Posner's revelation.

63. As though what causes a child to do anything can be determined with certainty when it is not in fact known, Posner alleges this article, written and published sixteen years after the assassination, which includes a now fifteen-year old interview he did not even conduct, as his proof that the first shot fired in the assassination was the one that missed, and that it was fired at about frame 160, not the frame 210 that is basic to the Warren Commission's official "solution."

64. Rosemary Willis was not a witness in the Warren Commission proceedings, but the other Willis daughter was, and she is not even mentioned by Posner.

65. In response to Assistant Commission Counsel Wesley Liebeler's asking Linda Kay Willis if she heard what she took to be shots, she testified under oath: "Yes, I heard one. Then

there was a little bit of time, and then there were two real fast bullets together. When the first one hit, well, the President turned from waving to the people, and he grabbed his throat, and he kind of slumped forward, and then . . ." -- and this requires close attention -- " . . . I couldn't tell where the second shot went."

66. Linda Kay Willis said it was the second shot that missed, and she was looking and listening.

67. If Posner had not suppressed this he would have had no book at all. Where was she, Linda Kay, when she saw the impact on the President? "I was right in line with the sign (Stemmons Freeway) and the car and I wasn't very far away, but I couldn't tell where the shot came from."

68. In other words, Posner finds the hearsay of a decade and a half after the assassination to be so much superior to first-person, contemporaneous eyewitness testimony that he makes no mention of all of what he says is superior testimony closer to the event. Linda Kay Willis was the 15-year-old girl eyewitness who did testify. (6H498-9) She is a nonperson in Posner's "definitive" book. It is simply not possible that this man who says he read and indexed those volumes did not know of Linda Kay's sworn testimony. His suppression of it -- of its existence -- magnifies his other dishonesties and underscores his intent to be corrupt and try to corrupt our officially corrupted history even more.

69. It is incredible that the zaniness of Posner's theory has not been challenged by all of the major media who canonize

him and his book. The idea is that Oswald missed the first shot -- the shot he had the most time to carefully prepare and aim, and when his target was closest to him -- and that the bullet's jacket separated from its core merely by striking a twig or glancing off a branch of a tree. He asks the world to accept that a little twig separated that bullet, while another round of the same ammunition broke Governor Connally's fifth rib and right radius (the heavy wrist bone) and emerged intact and unscathed.

The Curbstone Hit

70. Posner's chapter of ultimate proof about the assassination is entitled "My God, they are going to kill us all!" (Pages 321-42.) In it Posner again demonstrates one of his major purposes in all those time-consuming and costly interviews: he uses them to avoid the official proof that does not suit his preconceptions as well as what he can contrive by ignoring that available official evidence.

71. The most accessible of this official evidence is James Tague's Warren Commission testimony (7H552ff.) Tague was slightly wounded in his cheek by a spray of concrete from the curbstone on the south side of Commerce Street about twenty feet east of the triple underpass struck by that missed bullet. A Deputy Sheriff, Buddy Walthers, saw Tague's face bleeding and asked him about it. They found a mark on the curb near where Tague had been standing. According to Tague, "Quite obviously, it was a bullet, and it was very fresh." (WCR 116) Tague later testified in July 1964 that he heard three shots, and that he was struck by the second of them. (7H555-6)

72. Posner says that this spot, "was in a straight line from the sniper's nest." That, obviously, would be as true for any spots in a hundred-and-eighty degree arc from that window. Then, citing no source, Posner says that it was a bullet "fragment" that struck the curb. He then quotes Tague as saying of that missed shot, "I actually can't tell you which one. I could try to pick one, but through the years I have maintained accuracy. I don't know which one hit me." (Page 325.) This is what Posner alleges Tague told him in an interview nearly thirty years after the assassination. Posner does not mention Tague's Warren Commission testimony that he was wounded by the second shot. Tague phoned me after my latest book, "Case Open", was out to tell me Posner never interviewed him.

73. Posner alleges FBI Lab Photographic Expert Lyndal L. Shaneyfelt testified that lead on the curb came from the bullet's core (page 326), but his book gives no citation. Shaneyfelt said no such thing. Shaneyfelt's testimony described the curbstone as he found it, cut it out and took it to Washington on August 5, 1964:

The lead could have originated from the lead core of a mutilated metal-jacketed bullet such as the type of bullet loaded into the 6.5 millimeter Mannlicher-Carcano cartridges, or from some other source having the same composition.

The absence of copper precludes the possibility that the mark on the curbing section was made by an unmutated military full-metal-jacketed bullet such as the bullet from Governor Connally's stretcher.

The damage to the curbing would have been much more extensive if a rifle bullet had struck the curbing without first having struck some other object. There-

fore, this mark could not have been made by the first impact of a high-velocity rifle bullet.

75. Posner's scholarship is such that he believes and tells his readers that bullets are composed of only lead with only a "trace" of antimony. He should know better. The bullet in question is composed of 11 substances. The FBI's spectrographic examination of the curbstone as Shaneyfelt found it disclosed only two of the 11 components of the bullet, or of the nine at its core. Furthermore, FBI lab expert John Gallagher's own work sketch shows a "smear" that came from a 33-degree downward angle from the west, i.e., from the direction opposite to the TSBD and its "sniper's nest." The "smear" was spectrographically found to be essentially lead with a trace of antimony.

76. The truth is that the authorities showed no interest in examining the curbstone for many months after the assassination, and that the curbstone as purportedly tested by the FBI had already been in some mysterious way patched with cement paste sometime before Tague went to take pictures of it for his parents in May, 1964. The nick in the curb was no longer there, although fortunately it had been photographed before the patching by a news photographer named Tom Dillard. In other words, someone altered the evidence by the time Shaneyfelt examined it, and Shaneyfelt's testimony was describing the altered, not the original evidence. His testimony was a charade.

77. Posner pretends the patch doesn't exist. In two FOIA lawsuits, which included depositions of four FBI lab agents and the assistance of James Tague himself, I obtained documentary proof that the curbstone had been patched. I included a special

section on this evidence in my book *Post-Mortem*, which Posner had. During the time he and his wife were using my facilities, he had access to all the evidence I uncovered through those lawsuits. When he was here with unrestricted access to my files and unlimited use of my copier, Posner worked in the file cabinet in which I have my work on that curbstone, filed under the heading "Curbstone." That file includes the scientific report of a private expert retained by *Reader's Digest* stating that curbstone was patched with a concrete paste, and that the difference in the components of the concrete and the paste were clearly visible when he examined that part of the curbstone in the National Archives. He needed only an ordinary magnifying lens to see the differences in these components.

78. The one and only thing accomplished by patching that curbstone was to make it impossible to recover the metal deposits and analyze them scientifically. Doing that hid forever the traces of one of those bullets attributed to Oswald. I believe that the only intent possible was to hide forever the composition of a bullet other than the one attributed to Oswald.

Conclusion

79. This Affidavit is not a comprehensive survey of the mendacity of *Case Closed* and the publicity it received. Since a 1975 hospitalization for circulatory obstructions, my health has declined. Ill health has denied me access to my own basement and my files, so I have relied primarily on my main living quarters library and memory. I was 52 when I published my first book on the assassination. I am now 81. Nevertheless, my wife and I

gave the Posners the hospitality of our home for three days. Posner has expressed his gratitude with a book in which he knowingly misrepresents what he knows to be the truth to accomplish his dishonest and disreputable objective, which is to defame the critics of the Warren Commission, including me, and question their characters. His dirty trick is to lump all who do not agree with the official story. The notion that his book is Pulitzer Prize material is laughable, and it is a tribute to that jury that they did not award any prize in history this year.

80. I am fortunate to be able to respond, but I am also reminded of a colleague whose eloquence was stilled on January 14, 1989, before Posner arrived on the scene. He uses his assault on the late Sylvia Meagher to boast about himself and the magnitude of the work he professes to have done alone and unassisted. In the course of his attempted literary assassination of her on page 419, he is critical of her index, the only one available. In this he actually said that, "...the (Commission) volumes originally had only a name index...." Glaringly false! Only the testimony has an index, and it is a name index. But the even greater volume of pages in the appendix do not have even the "name" index this most preeminent of subject scholars says they have, and it is with them, and them alone, in his words, that the lack of any index other than Meagher's of course, makes it "almost impossible to work (in) effectively." They still have not been indexed by the government. It has made no index available.

81. Posner alleges that Meagher was "a committed leftist," but what is the real nature of his political complaints against Meagher and her writing? Such things as (his words), "she charged that large numbers of the Dallas police force were members of right-wing extremist organizations...." (page 419). Is Posner on this planet or did he just get carried away with himself and the only true belief? It is beyond question that in what Meagher said about some of the Dallas police, she neither exaggerated nor erred, and it has for all these many years been anything but secret. And when it comes to Posner's complaint that her "index reflects her bias that Oswald was innocent," how is that anymore biased than Posner's systematically pretending in his book that what tended to exculpate Oswald that Meagher did index does not exist? In his complaints against Meagher, he makes it clear, anything and everything is right for him, the gander, but nothing the gander dislikes is good for the goose.

82. The Warren Report was exhaustively footnoted to its claimed sources and it is written to convict Oswald. It does not cite to evidence that contradicted its conclusions or its interpretations of evidence. These shortcomings escape Posner's criticism, but for someone to provide a counterpart, access to other than what the Report says, that is simply terrible, according to him.

83. With pettiness and factual error, he criticized those with whose writings he disagrees. Most of his contrived criticisms lack honesty of intent and of expression.

84. One of the book reviews that the defendants neglected to provide the Court appeared in The San Francisco Chronicle, written by its book editor, Patricia Holt. Of the "mug shot" advertisement involved in this lawsuit, its headline announcing "GUILTY OF MISLEADING THE AMERICAN PUBLIC," she wrote, "The ad smacks of playing dirty and sounds a little lame. If Posner's book should be judged on its own merits, why stoop to the 'Most-Wanted' poster approach?" My answer is that his book cannot stand on its merit, and defamatory sensation-seeking was the only way that Random House could sell it.

85. With the most thoroughgoing contempt for all concepts of decency, honesty, fairness and even of normal standards of personal behavior, and with total disregard for our history and popular understanding of it as he so falsely rewrites it, Posner did more than any one person to mislead the American public. His, the grossest and most consciously dishonest and false account of the assassination, was accepted internationally and by our own negligent and uncaring media. They made him a famous hero and a fine public servant for it. Not one of those book reviewers writing about Posner and his book, not a single TV show asked me a single question about that book for all the work I have done and am known to have done in the field. The thirtieth anniversary of the event was a significant milestone and, in past years, I have been interviewed countless times by radio and television stations, and by newspapers. I believe that the ad for *Case Closed* had a great deal to do with branding all of the crit-

ics, not only those depicted, as disreputable and deserving of being shunned.

86. One of the reasons that I am and have been consulted so often by the international media is reflected in the unique credentials bestowed upon me by the Department of Justice, of which the FBI is part, in the second of my two FOIA lawsuits seeking the results of the FBI's scientific testing in the JFK case, Civil Action No. 75-226 in the United States District Court for the District of Columbia. (It was the ~~second~~^{first} of these suits that was cited as requiring the 1974 amending of the Act's investigatory files exemption referred to above.) I attach the first three pages of the Government's opposition to my motions to strike in Civil Action No. 75-226. I respectfully draw this Honorable Court's attention to the Department of Justice's statement at the bottom of the third page. It states that I am "more familiar with the events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I."

87. Moreover, in the five weeks or more that "Case Open has been on sale, as of the time I write this I have had no complaints from Posner or Random House or anyone speaking for either of them about a single word in "Case Open".

88. My body of work is about the failure of our institutions to confront the tragedy of President Kennedy's assassination. When the Posners can get the Random Houses to publish such malevolent, such dangerous trash as his mistitled *Case Closed*, when the media can fall all over itself in telling the people that such a crude lie is the truth, when this is what happens

when our government fails -- and it did happen -- then we are all
in danger with our system and in great trouble.

HAROLD WEISBERG

Sworn to and subscribed

before me this _____ day of May 1994

NOTARY PUBLIC of the State of Maryland
in and for Frederick County - Md
Commission expires May 1, 1995

