

Dr. King's murder. But in light of this committee's investigation, it is required that keeping open files. It would seem only appropriate for the Department of Justice to perform the scientific studies recommended herewith in order to analyze the committee's record. The Department could assess the wisdom of taking additional steps that might move one or both of these cases toward final resolution. The choice is not between a full-scale reopening of both investigations and doing nothing, since there are in each case limited areas that I have identified for further exploration. What the committee found that I did not know before should be applied to a reconsideration by the Justice Department of its original investigations. Whatever the Department decides is the preferable course of action, it should report the Judiciary Committee, so that its determination may be reviewed by an appropriate congressional body.

#### IV. SEPARATE REMARKS, VIEWS AND DISSENT OF MEMBERS OF THE COMMITTEE

##### SEPARATE REMARKS OF HON. CHRISTOPHER J. DODD DISSENTING FROM THE FINAL REPORT OF THE SELECT COMMITTEE ON ASSASSINATIONS

I voted against the adoption of the "Summary of Findings and Recommendations" by the Select Committee on Assassinations; I did so because I could not agree with the committee's first finding which reads,

Lee Harvey Oswald fired three shots at President John F. Kennedy. The second and third shots he fired struck the President. The third shot he fired killed the President.

On December 29, 1978, I was called upon to decide whether Oswald fired three shots from the Texas School Book Depository. The acoustic evidence showed that the second shot was fired approximately 1.66 seconds after the first shot.<sup>1</sup> The committee had two pieces of evidence available to it that indicated how fast Oswald might have fired his rifle. First, there was a test conducted by the FBI in 1964, using Oswald's rifle, which was a bolt-action rifle manufactured by Mannlicher-Carcano. The results showed that this rifle could not be aimed and fired using the telescopic sights in less than 2.25-2.3 seconds.<sup>2</sup> Second, two committee staff members conducted a preliminary test in September, using a Mannlicher-Carcano similar to Oswald's. The results of this test showed that, using the open iron sights, the fastest that the rifle could be fired was somewhere between 1.65 and 1.75 seconds.<sup>3</sup>

On the basis of these tests, I could not conclude that Oswald fired both the first and second shots. The FBI test did not show that it was possible for Oswald to have aimed and fired in 1.66 seconds, and the committee's test was only preliminary.<sup>4</sup> I dissented.

It was the committee's original plan to conduct a final test before voting on the report, and in expressing my concern over this issue in the weeks prior to the vote, I repeatedly requested that a final test be done. Unfortunately, it was not possible to bring together all of the elements required for the final test before the December vote.

<sup>1</sup> The fact that the timing was established by acoustical evidence is discussed below. In addition, it should be noted that originally, the experts stated that the time between the first two shots was slightly under 1.6 seconds. II JFK 63, 74 (Barger 1.57 or 1.6). This was the timing that the experts have further refined their figures by adjusting for the speed at which the sounds were recorded. The experts now believe that the time between the first two shots was approximately 1.66 seconds. V JFK 724 (Baker memorandum). I use the adjusted figure in these separate remarks.

<sup>2</sup> 3 H. 407 (Frazier 2.3); 5 H. 153 (2.25).  
<sup>3</sup> There is no direct evidence which would prove how Oswald aimed the rifle. The committee's firearms panel report (II JFK 483 (Jantz))  
<sup>4</sup> Professor G. Kober, the committee's chief counsel, stated that the test was "preliminary" when he described it to the committee in public session. II JFK 109-106 (Bilney).

On March 29, 1979, a final test was conducted. In this test a Mannlicher-Carcano was repeatedly fired using the open iron sights. This test was conducted by four expert marksmen from the District of Columbia Police Department and two "Mannlicher-Carcano" committee staff members.<sup>8</sup> None of the expert marksmen were able to aim and fire two consecutive shots within 1.66 seconds. The committee staff members were able to fire two consecutive shots in less than 1.66 seconds by "point" aiming, that is, not aiming through the telescopic or iron sights. These results have not allayed my concern over this issue. When I consider all the available evidence on this problem, I find myself no more near a solution than I was on December 29.

The available evidence, as I see it, presents three options. If the acoustical evidence on this issue is valid, then two shots were fired within 1.66 seconds of one another.<sup>9</sup> This leads to the first two options: either one person fired both shots in 1.66 seconds; or one person fired the first shot, and 1.66 seconds later another person fired the second shot. The third option is that the shots were spaced more than 1.66 seconds apart, allowing ample time for one person to have fired both shots. This third option necessitates a conclusion that the acoustical evidence is invalid on this point. I will discuss these three options in turn.

*Option one.—Oswald fired the first two shots within 1.66 seconds of one another.*—To believe that this option is correct, one must accept that Oswald was more proficient with a rifle than any of the committee's four expert marksmen or that, like the committee staff members who participated in the test, Oswald "point" aimed and did not take the time necessary to line up his target in the iron sights or the telescopic sight on his rifle. Despite the fact that Oswald may have been more familiar with a Mannlicher-Carcano than any of the committee's expert marksmen, his record as a rifleman makes it hard for me to accept that he was able to fire faster than the experts and still hit both. President Kennedy and Governor Connally.

It is even more difficult for me to believe that, having missed with his first shot, as the committee finds, he did not take the time necessary to properly aim his second shot. This becomes almost impossible to believe in that Oswald, by merely pointing the rifle from 165 feet, would have had to hit a target that was moving at 11 miles an hour.<sup>10</sup> It should be noted that the second shot referred to here struck both President Kennedy and Governor Connally. This is the foundation of the single-bullet theory.

There is circumstantial evidence, however, that tends to indicate that Oswald did fire all three shots. Three cartridge cases were found on the sixth floor of the Texas School Book Depository, and ballistics evidence establishes that all three came from Oswald's rifle. In that there is no evidence to suggest that more than three shots came from the

<sup>8</sup>The two committee staff members who participated in this test were the name and members who conducted the preliminary test, Deputy Chief Counsel Gary Cornwall and Chief Counsel G. Robert Blakes.

<sup>9</sup>I readily concede that this analysis is "finely tuned." We are considering differences in tenths of a second. We are using data, moreover, that, while it may be subjected to high scientific analysis, was not initially gathered by precision instruments. Nevertheless, these are the facts we have to work with.

<sup>10</sup>The test firings in March of this year, as well as the preliminary firings in 1978, were aimed at stationary targets.

Texas School Book Depository, the cartridge cases support the theory that Oswald fired both the first and second shots.

The cartridge cases are not, however, conclusive proof that Oswald fired both of the first two shots. The ballistics evidence merely shows that the cartridge cases were fired in Oswald's rifle at some point in time; there is no way to tell when they were in the rifle or when the bullets that they encased were fired. In other words, one of the cartridge cases could have been fired from a bullet fired from Oswald's rifle a week or a month earlier. That cartridge case could then have been ejected from the rifle before firing on November 22, 1963, or in some other way dropped on the floor.

At first glance, it seems easier to believe that the three cartridge cases mean that Oswald fired all three shots than to believe the "ejection" theory. Nevertheless, as this requires me to accept that Oswald fired within 1.66 seconds, the "ejection" theory appears more likely than it does at first glance.

*Option two.—An unidentified person fired the first shot, and Oswald fired the second shot 1.66 seconds later.*<sup>11</sup>—There is one major problem with this option; there is no other evidence of a second gunman in the Texas School Book Depository, which, according to the acoustical evidence, was the origin of both of the first two shots. This brings me to the first two of my recommendations for further study.

First, a detailed photographic analysis should be made of the Bronson film to determine whether it shows more than one figure in the sixth floor windows of the Texas School Book Depository.<sup>12</sup>

Second, further mathematical calculations should be performed on the data developed by the acoustical experts to determine more precisely the location from which each of the first two shots was fired. The acoustical experts testified that they were able to pinpoint within a few feet the location of the gunman on the grassy knoll. They did so by a series of geometric computations based on the original data developed in the reenactment of the shooting. This more complete analysis was only undertaken for the third shot in a sequence of four. If a similarly fine-tuned analysis were conducted for the first two shots, it might be determined whether or not they both came from the same window.

*Option three.—Oswald fired both the first two shots and took longer than 1.66 seconds between the shots, giving himself adequate time to properly aim.*—On its face, this option seems very attractive; however, it means that the acoustical evidence is invalid, at least on this issue.

The acoustical testimony before the committee is most renowned for the portion of it that indicates that a second gunman fired at the President from the grassy knoll. The validity of this evidence has been widely debated in the short time since it was first presented to the committee and the public, and I suspect that it will remain the subject of debate for years to come.

The acoustical evidence came in two phases. The first time Dr. Barger testified, he indicated the time sequence between the shots but did not state any firm conclusion about the existence of a shot from the

<sup>11</sup>I identify Oswald as firing the second shot, rather than the first, because the second shot appears to be the one that hit the President and Governor Connally, and that bullet matches Oswald's gun. Of course, the unidentified person could have been using Oswald's gun and Oswald his, but that is in the realm of pure speculation.

<sup>12</sup>The committee so recommends, III, IV, A.

Grassy knoll.<sup>10</sup> The reaction of the committee and the public was one of frustration with the indefinite conclusions with regard to existence of a shot from the Grassy knoll, but the nature of the evidence itself and the expertise of the witness were generally accepted. I do not recall any challenges at the time to the "arcane" science.

The second phase of the acoustics testimony was received quite differently. This time, Barger, Weiss, and Aschenauer all testified that there was a 95-percent probability that a shot was fired from the Grassy Knoll.<sup>11</sup> This time the reaction of the public and committee members was much more skeptical. And rightly so, since this conclusion had much greater significance.

When I first learned of the "new" acoustical evidence and before I heard the testimony, I was very doubtful that it would prove convincing. Nevertheless, after listening to the experts in closed session and going over the data which they presented, I found myself slowly coming to believe that they might be right. Realizing the significance of their conclusion, I determined to withhold belief until I had another chance to question them, this time in open session. I spent a great deal of time preparing myself for the next round of questioning. I decided that the most useful role I could play would be to act as attorney for the opposition. I would look for the weaknesses in their theory so that I could better judge its strengths, its accuracy. I believe that I succeeded in holding to my plan to be as tough with my questions and as difficult to convince as possible. Yet, after listening to the testimony, I was persuaded.<sup>12</sup>

I remain convinced that the preponderance of the evidence supports the finding of the committee that a gunman fired from the Grassy knoll. Yet, I believe that further study of the acoustical evidence is necessary. The acoustical evidence of a gunman on the Grassy knoll has enormous significance for our Nation. This by itself makes real the idea of a conspiracy to kill the President. The data upon which the experts base their conclusion should, therefore, be reviewed by other noted experts in this field. If further study would resolve any lingering doubts as to the conclusion, failure to pursue the answers would be inexcusable. On the issue of a President's death we should not deal in shadows of suspected truths when we might have light. In its report, the committee criticizes the Government for its failure in 1963-64 to diligently pursue the truth on the question of conspiracy: our Government should not make the same mistake today.

In addition to the need for continued study of the "Grassy knoll shot," further study of the acoustical evidence is necessary to answer the questions surrounding the first two shots. As discussed in option 3 above, the answer may be that the time sequence provided by the acoustical evidence is invalid. This possibility should be explored. Another explanation, discussed in option 2 above, is that the acoustics' time sequence is correct, and that some unidentified gunman fired the first shot while Oswald fired the second. Further work on the acoustics data, as described previously, could conceivably prove the

<sup>10</sup> NY JFK 504, 101 (85 percent 2 shots; 80-70 percent 3 shots; 50 percent 4 shots).

<sup>11</sup> NY JFK 506 (Weiss and Aschenauer's 97.5-97.9 percent, Barger's 97.5-97.9 percent) and in addition, too, that an inconsistency with the original report, given to the basic authenticity of the tape and the events it portrays by the other scientific evidence summarized in sec. I B of the committee's report.

existence of a second gunman in the Texas School Book Depository or elsewhere in the plaza.

Therefore, I recommend that a general review of the acoustical evidence and all other scientific evidence bearing on these questions, be conducted by the National Science Foundation or some other appropriate body.<sup>13</sup> Specifically, I recommend that:

1. A photographic analysis of the Bronson film be conducted.
  2. The detailed analysis that was done with regard to the third shot be done with regard to shots one, two, and four.
  3. An attempt be made to ascertain the source of the carillon bell which appears on the dictabelt.
  4. A thorough review of the tape be conducted in an effort to discover whether shots might have originated from locations other than the Grassy knoll and the Texas School Book Depository.
  5. An analysis of the various other sounds (for example, the siren) be made to test the tape's authenticity.<sup>14</sup>
- I agree with paragraph II, B, on its face which reads,
- The committee believes, on the basis of the circumstantial evidence available to it, that there is a likelihood that James Earl Ray assassinated Dr. Martin Luther King as a result of a conspiracy.

After analyzing all the evidence, particularly the testimony of James Earl Ray, his demeanor and his actions prior to the crime, I am persuaded that he did not act alone in planning the death of Dr. King. Therefore, I agree with the committee's finding in this paragraph.

I cannot, however, agree to all of the underlying commentary. Specifically, I dissent from any and all parts of the King section of the report which identify particular coconspirators. The evidence which the committee musters may suggest the outlines of a conspiracy, but, in my opinion, it falls short. After reviewing all the evidence, I am unable to say with any degree of certainty who conspired with James Earl Ray or under what plan they were acting.

#### THE COMMITTEE RECOMMENDATIONS

I offer the following comment on paragraph III, B (1) which reads,

The Judiciary Committee should consider the impact of the provisions of law dealing with third-party records, bail and speedy trial as it applies to both the investigation and prosecution of federally cognizable homicides.

#### COMMENT

The third-party record statutes were enacted to protect an individual's right to privacy in a society which requires that in a variety

<sup>13</sup> The committee so recommends, III, IV, B.

<sup>14</sup> After the committee's vote on Dec. 29, 1975, the committee received from Robert J. Godden, a photoreamable consultant to the committee, a series of photos and film frames that purport to show H. B. McCallin, the Dallas motorcycle officer. In the place where the acoustics experts said he would be, I note that after his appearance before the committee, Mr. McCallin publicly stated that his motorcycle was not the one with the struck microphone. The material provided by Mr. Godden should be analyzed as the Zapruder film has been, e.g., the frames numbered, the camera speed timed, et cetera. See V, JFK 709-721.