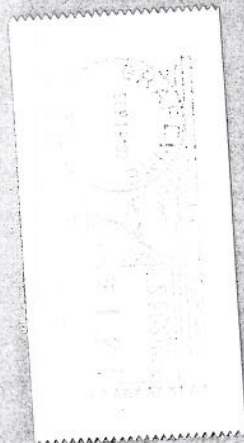


File Weisberg
DAVID B. PERRY
4501 Ainsworth Circle
Grapevine, Texas 76051

FIRST CLASS



HAROLD WEISBERG
7627 OLD RECEIVER ROAD
FREDERICK, MARYLAND 21702

1-160th

No. QR-10500

Joe H. West

§

IN THE DISTRICT COURT OF

VS.

§

DALLAS COUNTY, TEXAS

Dr. Jeffrey J. Barnard in his official capacity as a Dallas County Medical Examiner

§

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

In support of this original petition, plaintiff, Joe H. West, states:

- 1. He is a Texas resident, and a credible person.
- 2. Defendant, Dr. Jeffrey J. Barnard, is a party to this action in his official capacity as Chief Medical Examiner of Dallas County, Texas.

Applicable Law

- 1. This is an action to compel defendant to perform a statutory duty to conduct an inquest into the death of President John F. Kennedy that occurred in Dallas County on November 22, 1963.
- 2. The law applicable to this action is set out in Tex. Code Crim. P. Ann. art. 49.25 (Vernon 1979) (referred to as former article 49.25).¹ A copy of the applicable law is attached as exhibit A, and incorporated here as if fully set forth.
- 3. Under applicable state law set out in former article 49.25, the Dallas County Medical Examiner's Office has a statutory duty to conduct an inquest into the circumstances surrounding President Kennedy's death. In performing this duty, the

¹ Formerly codified in Tex. Code Crim. P. Ann. art. 989a (Vernon 1925), amended by, and current version codified in, Tex. Code Crim. P. Ann. art. 49.25 (Vernon Supp. 1992).

Dallas County Medical Examiner's Office has the authority to perform an autopsy. When a body upon which an inquest should have been held has been interred, the Dallas County Medical Examiner's Office has the authority to cause the body to be disinterred for the purpose of holding an inquest.

4. Under applicable federal law set out in 38 C.F.R. Part 1, & 1.621 (1991), the federal authorities are required to give effect to an order from a State instrumentality of competent jurisdiction directing a disinterment.

Factual Allegations

1. President Kennedy was assassinated in Dallas County, Texas, on November 22, 1963, under circumstances leading to the suspicion he met his death by unlawful means, triggering the Dallas County Medical Examiner's statutory duty to hold an inquest.

2. Within approximately one hour of President Kennedy's death and before the Dallas County Medical Examiner's Office could fulfill its statutory duty to hold an inquest, the federal authorities took President Kennedy's body from this jurisdiction in violation of Texas Law. At the time of President Kennedy's death, no federal law existed that made criminal the assassination of a United States President, and no other federal law existed that authorized the federal authorities to remove the President's body from this jurisdiction. Under state law then in effect, the State of Texas had jurisdiction to conduct an investigation into President Kennedy's assassination.

3. President Kennedy's body is now interred in Arlington National Cemetery.

4. The Warren Commission, a federal factfinding body established by President

Johnson shortly after the assassination, found that President Kennedy was killed by a lone assassin, a Texas resident, who fired three shots from above and behind President Kennedy with a high-powered rifle from the Texas School Book Depository Building (TSBD).

5. The Warren Commission's findings are contrary to the overwhelming weight of the medical testimony from medical personnel, who saw and treated President Kennedy within minutes after he was shot. The overwhelming weight of their testimony is persuasive evidence that President Kennedy was struck by at least one bullet from the front. Their statements, marshalled by the House Select Committee on Assassinations (HSCA), were as follows:

- (a) Dr. Gene Akin: "...back of the right occipitalparietal portion of his head was shattered with brain substance protruding." HSCA, Vol. VI, p. 41.
- (b) Dr. Charles Baxter: "...a large gaping wound in the back of the skull...literally the right side of his head had been blown off." Saturday Evening Post, 12/14/63.
- (c) Ms. Diana Bowron, nurse: "There was a gaping wound in the back of his head". HSCA, Vol. VI, p. 56.
- (d) Dr. Kemp Clark: "A bullet had gone in and out of the back of his head causing external lacerations and loss of brain tissue." HSCA, Vol. XIX, p. 170.
- (e) Dr. Ronald Coy Jones: "...what appeared to be an exit wound in the posterior portion of the skull." New York Times, 11/23/63
- (f) Dr. Robert McClelland: "As I took the position at the head of the table...I was in such a position that I could very closely examine the head wound, and I noted that the right posterior portion of the skull had been

blasted. It had been shattered, apparently, by the force of the shot so that the parietal bone was protruded up through the scalp and seemed to be fractured almost along its posterior half, as well as some of the occipital bone being fractured in its lateral half, and this sprung open the bones that I mentioned in such a way that you could actually look down into the skull cavity itself and see that probably a third or so, at least, of the brain tissue, posterior cerebral tissue and some of the cerebellar tissue had been blasted out". HSCA, Vol. VI, p. 65.

6. The Warren Commission's findings are also inconsistent with the testimony and statements given by many eyewitnesses to the assassination whose testimony was either ignored or not taken by the Commission and indicated shots were fired from the front and right of the president.

These witnesses included Dallas Police Chief Jess Curry, Sheriff Bill Decker, Secret Service Agent Forrest Sorrels, who were riding in the car in front of John F. Kennedy's limousine. Just seconds after the shots were fired Police Chief Curry spoke the following on his police radio (as simultaneously recorded on a Dictabelt at police headquarters):

"...Get men on top of the underpass, see what happened up there, go up to the overpass. Have Parkland stand by." WC, Vol. 17, p. 461.

Then Sheriff Bill Decker took the radio and said:

"Notify station five to move all men available out of my department back into the railroad yards and try to determine what happened and hold everything secure until homicide and other investigators can get in there." WC, Vol. 17, p. 461.

Secret Service Agent Forrest Sorrels later testified, "I looked toward the top of the terrace to my right as the sound of the shots seemed to come from that direction." WC

21:548.

In addition, the following forty-one individuals testified:

- (a) Mr. Danny Garcia Arce - shots came from railroad yards. 6:363, 364; 22:634; 24:199.
- (b) Mrs. Donald Sam Baker (nee Virgie Rackley) - shots came from railroad yards; not possible to have come from TSBD. CD5:66.
- (c) Mrs. A.G. (Jane) Berry - thought shots came from west of her position. CD5:42.
- (d) Mr. O.V. Campbell - thought shots came from railroad yard to the west of the TSBD. 24:326; CD5:336.
- (e) Mrs. Charles Thomas (Avery) Davis - thought shots came from Triple Underpass. 22:642, 643; CD7:23, TAGI:451.
- (f) Mrs. John T. (Elsie) Dorman - she was on the fourth floor of TSBD and thought shots came from Records Building. CD5:34.
- (g) Mr. and Mrs. Jack Fransen - thought shots came from area adjacent to TSBD. 22:840; 24:525.
- (h) Mr. Buell Wesley Frazier - thought shots came from railroad overpass. CD5:318.
- (i) Ms. Dorothy Ann Garner - thought shots came from west of TSBD (she was on 4th floor of TSBD). 22:648.
- (j) Mr. Bobby W. Hargis - believes shot comes from right front (grassy knoll area) - from overpass. 6:293; Chief Jesse Curry's book, p. 30.
- (k) Mrs. John (Peggy Joyce) Hawkins - shots came from railroad yards adjacent to TSBD. CD897:35, 36.
- (l) Mrs. Jean Lollis Hill - thought shots were coming from the knoll, just west of the TSBD. CD897:43, 44.

- (m) Postal Inspector Harry D. Holmes - thought shots came from crowd. 7:291; CD2; 5:30.
- (n) Mrs. Yola D. Hopson - did not think the sound (of the shots) came from the TSBD. 22:653; 24:521.
- (o) Mr. Emmett Joseph Hudson - shots came from behind and above him; from rear, high. (He was standing on steps leading up the grassy knoll) 24:213.
- (p) Mrs. George Andrew (Dolores Arlene) Kounas -thought shots came from the west. 22:659, 846.
- (q) Secret Service Agent Paul E. Landis, Jr. - first shot came from behind and over right shoulder; second shot came from right front and hit the President's head. 18:758.
- (r) Mr. Billy Nolan Lovelady - thought shots came from the knoll or across the street. 6:338; 22:662; 24:214.
- (s) Ms. Judith L. McCully - from right side of Arcade Building. TAGI:465.
- (t) Mr. Austin Lawrence Miller - shots came from his left (he was standing on the Triple Underpass). 6:225; 19:485; 24:217.
- (u) Mr. A.J. Millican - shots came from the pergola. 19:486.
- (v) Mr. Joe R. Molina - shots came from west side (he was on steps of TSBD). 7:219; 24:326.
- (w) Mr. Thomas J. Murphy - shots came from spot just west of TSBD. 22:835; CD897:12.
- (x) Mrs. P.E. (Jean) Newman - shots came from her right (west). She was standing halfway from TSBD to Stemmons Freeway sign. 19:489; 22:843; 24:218.
- (y) Mr. William E. Newman, Jr. - shots came from "garden" directly behind Newman (he was standing at east end of pergola). 19:490; 22:842; 24:219; NEW ORLEANS

STATES ITEM, Feb. 17, 1969.

- (z) Mrs. William V. (Roberta) Parker - first shot came from pergola. 22:667; CD205:504; CD735:9.
- (aa) Mr. J.C. Price - assumed shots came from Triple Underpass. CD5:65.
- (bb) Mr. Frank E. Reilly - shots came from trees at west end of pergola on north side of Elm. (He was standing on Triple Underpass) 6:230; CD205:29.
- (cc) Mrs. A.L. Rowland - shots came from railroad yard. 6:177; 19:493; 24:224; 26:169.
- (dd) Mr. W.H. (Bill) Shelley - shots came from west. (he was on TSBD steps) 6:327; 7:390; 22:673; 24:226.
- (ee) Police Officer Edgar Leon Smith, Jr. - shots came from railroad tracks or grassy knoll area. 7:565, 568; 22:604.
- (ff) Police Officer Joe Marshall Smith - thought shots came from Elm Street extension, bushes of the overpass. 7:351; 22:600.
- (gg) Mr. James Thomas Tague - shots came from bushes at pergola. 7:554.
- (hh) Mr. Roy S. Truly - shots came from west of TSBD. 7:219; CD5:322,324.
- (ii) Deputy Sheriff Harry Weatherford - shots came from railroad yards. 19:502.
- (jj) County Surveyor Robert M. West - shots came from northwest quadrant of Dealey Plaza. DALLAS MORNING NEWS, Feb. 14, 1969.
- (kk) Mrs. Lupe (Lucy) Whitaker - shots came from east of TSBD. TAGI:470.
- (ll) Mr. Otis Neville Williams - shots came from direction of the "triple underpass." 22:683.

- (mm) Mr. Steven F. Wilson - shots came from west end of building or pergola; not from above. (He was on 3rd Floor of TSBD).22:684; 24:535; CD 735:9.
- (nn) Ms. Mary Elizabeth Woodward - possibly came from overpass. 24:520; CD7:19.
- (oo) Mr. Abraham Zapruder - shots came from in back of him as he stood on retaining wall. 7:571.

7. The House Select Committee on Assassinations concluded in Vol. VII, p.17, "The autopsy was not complete, however, according to established medicolegal standards. A combination of strong Kennedy family desires to finish the autopsy quickly, a military environment that hindered independent action, a lack of experience in forensic pathology among the prosecutors, and a lack of established jurisdictional and procedural guidelines all contributed to the pathologists' failure to take certain measures essential to the completion of a thorough medicolegal autopsy and to competently perform the autopsy". The House Select Committee on Assassinations then concluded in Vol. VII, p. 180, (493) "As noted earlier, the panel unanimously concludes that the autopsy was faulty for a number of important reasons, some of which contributed to the speculation and controversy concerning the medical evidence".

8. As part of its case against the alleged assassin, the Warren Commission also found that shortly after the assassination, three spent 6.5 millimeter shells were found under the window from which the alleged assassin allegedly fired at the President. However, a document, dated November 26, 1963, which was prepared by the Dallas Police Department and signed by both the Dallas Police Department and the Federal Bureau of Investigation, indicates that only two spent 6.5 millimeter shells were found

under the window. A copy of this document is attached as Exhibit B, and incorporated here as if fully set forth.

9. Also, a paraffin test of the alleged assassin's face shortly after the assassination supports the conclusion that he could not have fired a rifle when the Commission claimed he did. A copy of the document showing the results of the paraffin test is attached as Exhibit C, and incorporated here in as if fully set forth.

10. The HSCA Report dated March 29, 1979, concluded on page 1, "Scientific acoustical evidence establishes a high probability that two gunmen fired at President John F. Kennedy. Other scientific evidence does not preclude the possibility of two gunmen firing at the President. ...The committee believes, on the basis of the evidence available to it, that President John F. Kennedy was probably assassinated as a result of a conspiracy. The committee is unable to identify the other gunman or the extent of the conspiracy." A copy of this document is attached as Exhibit "D", and incorporated here as if fully set forth.

11. Dr. Charles V. Wetli is the Deputy Chief Medical Examiner of Metropolitan Dade County, Florida and Dr. Donald T. Reay, a Board Certified Forensic Pathologist and Chief Medical Examiner in Seattle, Washington, are eminent forensic pathologists who are qualified under the Rules of Evidence to form scientific opinion and conclusions after examination of a dead body as to the character of the gunshots which caused the death of same.

In particular, they are capable of examining the body of one whose death was caused by gunshot and determining the direction, with relation to the body, from which

the shot was fired, whether wounds caused by the gunshot are entrance or exit wounds, and in certain instances, whether a dead body has been tampered with subsequent to the gunshot wound in an attempt to alter the results of autopsy. The scientists are of the opinion that it would be invaluable to have the x-rays and autopsy photographs to establish direction of gunshot or shots with relation to the body that would in turn establish whether President Kennedy's death was the result of an act of one gunman or of more than one gunman. This would either prove or disprove the conclusion of the Warren Commission Report that the President's assassination was the act of a single individual. Copies of their affidavits are attached as Exhibits E and F and incorporated here as if fully set forth.

If all shots came from a single direction, then the results of an autopsy would be consistent with the Warren Commission's conclusion. If not, then more than one individual was involved in the assassination and the responsibility falls upon law enforcement to ferret out others responsible for this atrocity. Without speculating as to the reasons for the Justice Department's failure to act in this matter, Plaintiff insists that it is imperative that the one thing that can be done to settle the controversy about whether or not there was a conspiracy to kill the President, that is; exhumation and examination of the President's body, be done forthwith. If it is determined that a single gunman could have fired the shot or shots that killed the President, then the long-existing controversy that has divided this Country and undermined the integrity of our Government's institutions will be put to rest. If, on the other hand, exhumation and examination show that the President was shot and killed by more than one gunmen, then

adherence to the Warren Commission's conclusion can no longer excuse failure on the part of law enforcement, Federal and State, to identify by relentless investigation, and to punish, where possible, those responsible for this outrageous crime.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests the following relief:

1. an order requiring defendant to conduct an inquest into the death of President Kennedy under the laws of the State of Texas;
2. an order directing that President Kennedy's body be disinterred and reautopsied under the laws of the State of Texas;
3. costs and attorney's fees; and
4. such other and further relief to which plaintiff shows he is entitled.

Respectfully Submitted,



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EXHIBIT "A"

Art. 49.25 CODE OF CRIMINAL PROCEDURE

Part 1

Art. 49.25. [1989a] Medical examiners

Office authorized

Section 1. Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than 500,000 and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

Multi-county district; joint office

Sec. 1-a. (a) The commissioners courts of two or more counties may enter into an agreement to create a medical examiners district and to jointly operate and maintain the office of medical examiner of the district. The district must include the entire area of all counties involved. The counties within the district must, when taken together, form a continuous area.

(b) There may be only one medical examiner in a medical examiners district, although he may employ, within the district, necessary staff personnel. When a county becomes a part of a medical examiners district, the effect is the same within the county as if the office of medical examiner had been established in that county alone. The district medical examiner has all the powers and duties within the district that a medical examiner who serves in a single county has within that county.

(c) The commissioners court of any county which has become a part of a medical examiners district may withdraw the county from the district, but twelve months' notice of withdrawal must be given to the commissioners courts of all other counties in the district.

Appointments and qualifications

Sec. 2. The commissioners court shall appoint the medical examiner, who shall serve at the pleasure of the commissioners court. No person shall be appointed medical examiner unless he is a physician licensed by the State Board of Medical Examiners. To the greatest extent possible, the medical examiner shall be appointed from persons having training and experience in pathology, toxicology, histology and other medico-legal sciences. The medical examiner shall devote so much of his time and energy as is necessary in the performance of the duties conferred by this Article.

Assistants

Sec. 3. The medical examiner may, subject to the approval of the commissioners court, employ such deputy examiners, scientific experts, trained technicians, officers and employees as may be necessary to the proper performance of the duties imposed by this Article upon the medical examiner.

Salaries

Sec. 4. The commissioners court shall establish and pay the salaries and compensations of the medical examiner and his staff.

Offices

Sec. 5. The commissioners court shall provide the medical examiner and his staff with adequate office space and shall provide laboratory facilities or make arrangements for the use of existing laboratory facilities in the county, if so requested by the medical examiner.

Death investigations

Sec. 6. Any medical examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

1. When a person shall die within twenty-four hours after admission to a hospital or institution or in prison or in jail;
2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses;
3. When the body of a human being is found, and the circumstances of his death are unknown;
4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means;
5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide;
6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; and
7. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physi-

Art. 49.25 CODE OF CRIMINAL PROCEDURE

Part 1

cians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the medical examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the medical examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the medical examiner or authorized deputy shall take charge of the body and all property found with it.

Organ transplant donors; notice; inquests and autopsies

Sec. 6a. (a) When death occurs to an individual designated a prospective organ donor for transplantation by a licensed physician under circumstances requiring the medical examiner of the county in which death occurred, or his duly authorized deputy, to hold an inquest, the medical examiner, or a member of his staff will be so notified by the administrative head of the facility in which the transplantation is to be performed.

(b) When notified pursuant to Subsection (a) of this Section, the medical examiner or his duly authorized deputy shall immediately go to the transplant facility, perform an inquest on the deceased prospective organ donor, and determine if an autopsy is required.

(c) If an autopsy is required, the medical examiner or his duly authorized deputy will examine the organ to be transplanted in its whole state and will examine any other clinical evidence on the condition of the organ.

(d) The organ to be transplanted will then be released to the transplant team for removal and transplantation.

(e) Thereafter, the remainder of the body will be removed to some convenient and suitable area designated by the administrative head of the transplant facility for completion of the autopsy.

Reports of death

Sec. 7. Any police officer, superintendent of institution, physician, or private citizen who shall become aware of a death under any of the circumstances set out in Section 6 of this Article, shall immediately report such death to the office of the medical examiner or to the city or county police departments; any such report to a city or county po-

lice department shall be immediately transmitted to the office of medical examiner.

Removal of bodies

Sec. 8. When any death under circumstances set out in Section 6 shall have occurred, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the medical examiner or authorized deputy, except for the purpose of preserving such body from loss or destruction or maintaining the flow of traffic on a highway, railroad or airport.

Autopsy

Sec. 9. If the cause of death shall be determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall file a report thereof setting forth specifically the cause of death with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney, of the county in which the death occurred. If in the opinion of the medical examiner an autopsy is necessary, or if such is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be immediately performed by the medical examiner or a duly authorized deputy. In those cases where a complete autopsy is deemed unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited autopsy involving the taking of blood samples or any other samples of body fluids, tissues or organs, in order to ascertain the cause of death or whether a crime has been committed. In the case of a body of a human being whose identity is unknown, the medical examiner may authorize such investigative and laboratory tests and processes as are required to determine its identity as well as the cause of death. In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon completion of the autopsy, the medical examiner shall file a report setting forth the findings in detail with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.

Disinterments and cremations

Sec. 10. When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be

performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77,¹ Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

¹ Repealed.

Waiting period between death and cremation

Sec. 10a. The body of a deceased person shall not be cremated within forty-eight hours after the time of death as indicated on the regular death certificate, unless the death certificate indicates death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or unless the time requirement is waived in writing by the county medical examiner or, in counties not having a county medical examiner, a justice of the peace.

Records

Sec. 11. The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Transfer of duties of justice of peace

Sec. 12. When the commissioners court of any county shall establish the office of medical examiner, all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests shall vest in the office of the medical examiner. Any subsequent General Law pertaining to the duties of justices of the peace in

death investigations and inquests shall apply to the medical examiner in such counties as to the extent not inconsistent with this Article, and all laws or parts of laws otherwise in conflict herewith are hereby declared to be inapplicable to this Article.

Penalty

Sec. 13. Any person in violation of any provision of this Article, upon conviction, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than thirty days or both such fine and imprisonment.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1969, 61st Leg., p. 1033, ch. 336, § 1, eff. May 27, 1969; Acts 1969, 61st Leg., p. 1619, ch. 500, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 1165, ch. 270, § 1, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 1826, ch. 562, § 1, eff. Sept. 1, 1975.

Historical Note

Amendments:

Section 1. Acts 1969, 61st Leg., p. 1619, ch. 500, § 1, deleted "in all counties having a population of not less than 120,000" after "medical examiner" and substituted "any county" for "such counties".

Section 1-a. Acts 1969, 61st Leg., p. 1033, ch. 336, § 1 added this section.

Section 5. Acts 1969, 61st Leg., p. 1619, ch. 500, § 1, added "if so requested by the medical examiner".

Section 6a. Acts 1969, 61st Leg., p. 1033, ch. 336, § 1, added this section.

Section 10a. Acts 1975, 64th Leg., p. 1826, ch. 562, § 1, added this section.

Section 12. Acts 1969, 61st Leg., p. 1619, ch. 500, § 1, substituted "of" for "for" after "commissioners court" and deleted "having

a population of one hundred twenty thousand or more, according to the last preceding Federal Census" after "county".

Section 4 of Acts 1969, 61st Leg., p. 1619, ch. 500, repealed all laws to extent of conflict with this Act.

1965 Revision:

Inserted the third and fourth sentences of sec. 9; and deleted, towards the end of the first sentence of sec. 11, the words "and all other relevant information concerning the death."

Prior Law:

Vernon's Ann.C.C.P.1925, art. 989a.
Acts 1963, 58th Leg., p. 934, ch. 363, § 1.
Acts 1961, 57th Leg., p. 702, ch. 327, § 1.
Acts 1955, 54th Leg., p. 524, ch. 159, §§ 1 to 13.

Cross References

Destruction of worthless records by board of medical examiners, see Vernon's Ann. Civ.St. art. 5441c.
Medical examiner's authority to permit removal of corneal tissue, see Vernon's Ann. Civ.St. art. 4590-4.

Law Review Commentaries

When is the heart donor dead? 6 Houston L.Rev. 86 (1968).

Library References

Coroners §§ 1 to 7.

C.J.S. Coroners §§ 1 et seq., 38.

Notes of Decisions

Autopsy records 2
Death investigations 3
Evidence 4
Validity 1

1. Validity
Vernon's Ann.Civ.St. art. 3731a, allowing admission into evidence of memoranda made in regular course of business and this

Art. 49.23

CODE OF CRIMINAL PROCEDURE

Art. 49.23. [988] [1079] [1042] Office of death investigator

(a) The commissioners court of a county may establish an office of death investigator and employ one or more death investigators to provide assistance to those persons in the county who conduct inquests. A death investigator employed under this article is entitled to receive compensation from the county in an amount set by the commissioners court. A death investigator serves at the will of the commissioners court and on terms and conditions set by the commissioners court.

(b) To be eligible for employment as a death investigator, a person must have experience or training in investigative procedures concerning the circumstances, manner, and cause of the death of a deceased person.

(c) At the request of and under the supervision of a justice of the peace or other person conducting an inquest, a death investigator may assist the person conducting the inquest to investigate the time, place, and manner of death and lock and seal the premises of the deceased. A death investigator who assists in an inquest under this subsection shall make a complete report of the death investigator's activities, findings, and conclusions to the justice of the peace or other person conducting the inquest not later than eight hours after the death investigator completes the investigation.

Amended by Acts 1987, 70th Leg., ch. 529, § 1, eff. Sept. 1, 1987.

Historical and Statutory Notes

Section 2 of Acts 1987, 70th Leg., ch. 529,
repealed former art. 49.23. See, now, art. 49.17.

Art. 49.24. Repealed by Acts 1987, 70th Leg., ch. 529, § 2, eff. Sept. 1, 1987

SUBCHAPTER B. DUTIES PERFORMED BY MEDICAL EXAMINERS

Acts 1987, 70th Leg., ch. 529, § 3, designated art. 49.25 as Subchapter B and inserted the subchapter heading.

Art. 49.25. [989a] Medical examiners

Office authorized

Sec. 1. Subject to the provisions of this Act, the Commissioners Court of any county having a population of more than one million and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas, shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

[See main volume for text of Sections 2 to 5]

Death investigations

Sec. 6. Any medical examiner, or his duly authorized deputy, shall be authorized, and it shall be his duty, to hold inquests with or without a jury within his county, in the following cases:

[See main volume for text of subds. 1 to 5]

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Section 193.005, Health and Safety Code, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest; and

7. When a person dies who has been attended immediately preceding his death by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Section 193.004, Health and Safety Code. In case of such uncertain-

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ty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the medical examiner of the county in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the medical examiner of the county in which the death occurred.

In making such investigations and holding such inquests, the medical examiner or an authorized deputy may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the medical examiner or authorized deputy shall take charge of the body and all property found with it.

Organ Transplant Donors; Notice; Inquests

Sec. 6a. (a) When death occurs to an individual designated a prospective organ donor for transplantation by a licensed physician under circumstances requiring the medical examiner of the county in which death occurred, or the medical examiner's authorized deputy, to hold an inquest, the medical examiner, or a member of his staff will be so notified by the administrative head of the facility in which the transplantation is to be performed.

(b) When notified pursuant to Subsection (a) of this Section, the medical examiner or the medical examiner's deputy shall perform an inquest on the deceased prospective organ donor.

[See main volume for text of Sections 7 to 9]

Disinterments and cremations

Sec. 10. When a body upon which an inquest ought to have been held has been interred, the medical examiner may cause it to be disinterred for the purpose of holding such inquest.

Before any body, upon which an inquest is authorized by the provisions of this Article, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Article, or a certificate that no autopsy was necessary shall be furnished by the medical examiner. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. It shall be the duty of the medical examiner to determine whether or not, from all the circumstances surrounding the death, an autopsy is necessary prior to issuing a certificate under the provisions of this section. No autopsy shall be required by the medical examiner as a prerequisite to cremation in case death is caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox. All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by such owner or operator of such crematory for a period of two years from the date of the cremation of said body.

[See main volume for text of Sections 10a to 13]

Sec. 6a amended by Acts 1989, 71st Leg., ch. 1205, § 1, eff. June 16, 1989; Sec. 1 amended by Acts 1991, 72nd Leg., ch. 597, § 58, eff. Sept. 1, 1991; Sec. 6, subds. 6, 7 amended by Acts 1991, 72nd Leg., ch. 14, § 284(66), (67), eff. Sept. 1, 1991; Sec. 10 amended by Acts 1991, 72nd Leg., ch. 14, § 284(69), eff. Sept. 1, 1991.

Administrative Code References

Department of Mental Health and Mental Retardation, client deaths, see 25 TAC § 405.274.

Removal of bodies §

2. Autopsy records

In prosecution for murder, admission of autopsy report did not deny defendant his constitutional right to confrontation and cross-examination, although medical examiner who made the report was not present at trial and was therefore unavailable for cross-examination, in absence of anything in the record to indicate that report

Notes of Decisions

Justiciable interest §

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Law Review Commentaries

Admissibility of evidence obtained by police officers from the person or through observation of the person. 17 Baylor L.Rev. 408 (1965).

Library References

Coroners §14.

C.J.S. Coroners § 13.

Art. 49.07. [972] [1062] [1025] Upon what justice may act

The justice shall act in such cases upon information given him by any credible person or upon facts within his knowledge.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Historical Note

Prior Law:

Vernon's Ann.C.C.P.1925, art. 972.
O.C. 853.

Library References

Coroners §17.
C.J.S. Coroners § 23.

Forms

Attachment for witness. Willson's Texas Criminal Forms, 8th Ed., § 72-02.

Subpoena for witnesses to appear. Willson's Texas Criminal Forms, 8th Ed., § 72.01.

Testimony taken before inquest. Willson's Texas Criminal Forms, 8th Ed., § 72.03.

Notes of Decisions

Construction and application 1
Presumptions and burden of proof 2

2. Presumptions and burden of proof

1. Construction and application

Vernon's Ann.C.C.P.1925, art. 970 (see, now, art. 49.03), contemplated that a justice, in reaching conclusion that an autopsy was necessary, should be governed by Vernon's Ann.C.C.P.1925, art. 972, and by subd. 4 of Vernon's Ann.C.C.P.1925, art. 968 (see, now, art. 49.01), authorizing any justice to hold inquests without a jury when circumstances of the death of any person were such as to lead to suspicion that the death was caused by unlawful means. Aetna Casualty & Surety Co. v. Love (1939) 133 T. 280, 121 S.W.2d 986.

The act of a justice of the peace in ordering an autopsy is an "official act," and hence whenever an autopsy is ordered the presumption attaches that the justice's act is the result of the due exercise of authority conferred by Vernon's Ann.C.C.P.1925, art. 970, in conformity with statutory regulations, but such presumption is rebuttable. Aetna Casualty & Surety Co. v. Love (1939) 133 T. 280, 121 S.W.2d 986.

Under Vernon's Ann.C.C.P.1925, art. 968, subd. 4, art. 970, and art. 972 (see, now, arts. 47.01, 47.03, and this article), a rebuttable presumption arose that in ordering an autopsy the justice acted in the exercise of sound discretion for the purpose of detecting crime. *Id.*

Art. 49.08. [973] [1063] [1026] Death in jail

The sheriff and every keeper of any prison shall inform such justice of the death of any person confined therein.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Historical Note

Prior Law:

Vernon's Ann.C.C.P.1925, art. 973.
O.C. 854.

all living immediate family members of the decedent, to include the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. *Immediate family members* are defined as surviving spouse, if not remarried, all adult children of the decedent, appointed guardian(s) of minor children, the appointed guardian of the surviving unmarried spouse or of the adult child(ren) of the decedent. When the person who initiated the interment is the remarried spouse, his or her written consent will not be required. In the absence of a surviving unmarried spouse and children, the decedent's parents will be considered *immediate family members*.

(Authority: 38 U.S.C. 210(c); 1004)

(b) All requests for authority to disinter remains will be submitted on VA Form 40-4970, Request for Disinterment, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statements by all eligible living immediate family members of the decedent, to include the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

(3) A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.

(Authority: 38 U.S.C. 1004)

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered. The Department of Veterans Affairs or officials of the cemetery should not be made a party to the court action since this is a matter among the family members involved.

(d) [Reserved]

(e) Any disinterment that may be authorized under this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) have been approved by the Office of Management and Budget under OMB control number 2900-0365)

[43 FR 26571, June 21, 1978, as amended at 47 FR 50860, Nov. 10, 1982; 49 FR 34483, Aug. 31, 1984; 54 FR 6521, Feb. 13, 1989]

§§ 1.622—1.629 [Reserved]

§ 1.630 Headstones and markers.

(a) Types of Government headstones and markers and inscriptions will be in accordance with policies approved by the Secretary.

(b) Inscriptions on Government headstones, markers, and private monuments will be in accordance with policies and specifications of the Director, National Cemetery System. The National Cemetery section designation and grave number will be inscribed on the reverse side, near the top of the upright headstone. The section designation and grave number on flat granite markers will be inscribed on the front (face) of the stone in the upper right corner.

(c) All memorial markers furnished by the Government may be erected in private cemeteries or in national cemetery sections established for this purpose. The markers for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

§ 1.631 Eligibility for headstone or marker.

(a) An approved type of headstone or marker will be furnished at Government expense, upon request, for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there) under the provisions of § 1.620, except for those persons or classes of persons enumerated in § 1.620 (e), (f), (g) and (h).

(b) An approved type of memorial headstone or marker will be furnished at Government expense, upon request, to commemorate any veteran dying in service, and whose remains have not

EXHIBIT "E"

METROPOLITAN DADE COUNTY, FLORIDA

MEDICAL EXAMINER DEPARTMENT
NUMBER ONE ON BOB HOPE ROAD
MIAMI, FLORIDA 33138-1133
FAX (305) 545-2418
(305) 545-2400



A F F I D A V I T

"My name is Charles V. Wetli, M.D., a Board Certified Forensic Pathologist. (Curriculum vitae attached)

It is my opinion that I can examine the body of John Fitzgerald Kennedy, late President of the United States of America provided the body is intact, consistent with acceptable autopsy procedures, and probably determine the character of the gunshots which caused the death of same, that is, the direction, with relation to the body from which the shot was fired, whether wounds caused by gunshot are entrance or exit wounds and, whether the body has been tampered with subsequent to the gunshot wounds in an attempt to alter the results of autopsy. This could be best accomplished with the simultaneous examination of clothing, x-rays and autopsy photographs.

In short, it is my opinion that the results of my examination, provided the body is intact, as previously stated, will probably establish the number of shots which struck the President and the respective directions, relative to the body, from which they came, thereby establishing whether or not more than one gunman was responsible for the President's death."

Charles V. Wetli
Charles V. Wetli, M.D.

STATE OF FLORIDA
COUNTY OF Dade

Before me this day personally appeared Charles V. Wetli, M.D..

Sworn to and subscribed before me this 29th day of May,
A.D., 1992

Mary T. Funn
Notary Public

DONALD T. REAY, MD
Pathologist (AP. CP. FP)

10800 12th Ave. N.W.
Seattle, WA 98177
Telephone (206) 362-7936


EXHIBIT "F"

AFFIDAVIT

"My name is Donald T. Reay, M.D., a Board Certified Forensic Pathologist. (Curriculum Vitae attached)

It is my opinion that I can examine the body of John Fitzgerald Kennedy, late President of the United States of America provided the body is intact, and probably determine the character of the fatal gunshots to include direction, with relation to the body from which the shot was fired, whether wounds caused by gunshot are entrance or exit wounds and, whether the body has been tampered with subsequent to the gunshot wounds in an attempt to alter the results of autopsy. This could be best accomplished by simultaneous examination of clothing, original x-rays, and original autopsy photographs.

In short, it is my opinion that the results of my examination, provided the body is intact, as previously stated, will probably establish the number of shots which struck the President and the respective directions, relative to the body, from which they came, thereby establishing whether or not more than one gunman was responsible for the President's death."


Donald T. Reay, M.D.

STATE OF WASHINGTON
COUNTY OF King

Before me this day personally appeared Donald T. Reay, M.D.

Sworn to and subscribed before me this 27th day of May.


Notary Public

In and for the State of Washington
Residing in Bellevue.
My commission expires 3-15-96.