

## ASSASSINATION INQUIRY COMMITTEE

NEWSLETTER

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## KEEP THE FAITH

The two telephone interviews in this issue, one with Art Kevin in New Orleans and the other with Bernard Fensterwald in Washington, indicate that things look bleak in Garrison's case- not as bleak as the TV and press reports would have us believe, but bleak nevertheless. Even KPFK (Pacifica Radio) is predicting that Clay Shaw will be acquitted. To be sure, Garrison has already achieved a victory in bringing the Warren Report under legal cross-examination, but even in this regard one can't help wondering why he appears reluctant to ask for the Archive evidence now that he has won a court order calling for its release.

We could give you some of the testimony from the New Orleans Times-Picayune showing how the cross-examination of defense witnesses is going rather well; but we have no cold, hard facts to give you that would convince you that Garrison is going to succeed in convicting Clay Shaw. The only note of optimism we can raise is based purely on faith. A special issue of Win magazine (February 1, 1969) devoted to the case includes a rather interesting bit of advice from Garrison: "Play your story low until really late. Try to sneak the story through unnoticed, or they will stop it." Remember, the trial isn't over yet.

Prescott S. Nichols

## EXCLUSIVE INTERVIEW WITH ART KEVIN FROM NEW ORLEANS, FEBRUARY 23, 1969

(Parenthetical inserts are those of the AIC editors)

AIC: We want to start off with a quote which ran in the LA Free Press two days ago by Art Kunkin, who's covering the trial in New Orleans. Quoting Art: "Reliable sources indicate that Garrison has many more witnesses who cannot only link Ferrie, Oswald and Shaw in attempts to recruit gunmen for Dealey Plaza, but who can tie Jack Ruby to the three. However, they will on cross-examination have to testify that they are underworld characters with numerous arrests. Garrison and his staff think that is an unnecessary risk because, as they say, the case against Shaw is tight enough." Then Kunkin added, "I know if I were sitting on that jury, I would be troubled." Based on this, we have two questions: (1) Have you heard of any such evidence which has not already been presented in court? (2) If you were a juror, would you be troubled also?

KEVIN: Okay. Answering the first question, yes. I have, again based on reliable sources, heard about a number of witnesses who could be considered surprise witnesses, witnesses who could tie Shaw to Dallas and allegedly to Jack Ruby, to Lee Oswald and to David W. Ferrie. I also have heard the same evaluation, that these witnesses will not be put on the stand because of the fact that they are considered people from the sub rosa culture, or the underworld, if you will, and whose credibility would therefor be destroyed on the stand.

If I were a juror, yes, I would be very troubled. I would be troubled on two main points. Number one, the case against Shaw itself, while it may be legally binding just strictly from a legal point of view considering the Louisiana conspiracy law, there is something more than that- there is a morality involved, if you will, certainly if you're a juror sitting on a case of this importance to the nation and to the world because of what it portends. I think you have to give moral consideration to your decision as well. If I were a juror, I think my feeling would be that the case against Shaw as it's developed seems to be nothing more than a "circumstantial case," a case of circumstantial evidence. Shaw has not been firmly bound morally, in my mind and I think in the minds of many jurors and many who are in the audience in court every day, has not been firmly bound as the man who here in New Orleans in September or late August of 1963 hatched a plot with Ferrie and Oswald to kill President Kennedy.

AIC: Concerning the tie between Shaw and Clay Bertrand, are you convinced that they're one and the same?

KEVIN: I think that's a very questionable aspect too because hereagain, aside from Perry Russo, all you have is a hostess from an airline firm who says she remembers Shaw coming in one day in 1963 with another man, whom she could not identify, and remembers Shaw signing a guestbook. Although we haven't seen it, the guestbook has been introduced as evidence. My question is, either the defense or the prosecution should have also introduced this guestbook with a hand writing analysis. If Shaw signed it as "Clay Bertrand", it seems to me that hand writing analysis is the firmest way of tying it down. But it has not been done.

The only other evidence against Shaw seems to be the people from Clinton and Jackson, Louisiana, who allege that Oswald, Ferrie and Shaw came up to Clinton, probably in late August or early September, 1963, while Oswald was trying to register to vote; the end result of it being that he was going to apply for a job at the Louisiana State Hospital. But, again, these people, while they are what I called earlier in my report "four-star witnesses", cannot agree on the time this alleged meeting took place, and then the witnesses have been able to identify one and/or two of the people in the car, but never all three. So this makes me wonder. Part of the defense rebuttal already has been to present Shaw's former boss from the International Trade Mart, who said that in August, September and October of 1963 the Trade Mart was involved in a financing program, and Shaw was only absent from work one day, September 25, 1963. Even then, he was reached by his secretary in his hometown of Hammond, Louisiana. But the indication from Lloyd Bobb, President of the Trade Mart, is that Shaw was so incredibly busy with this financing program that they were in constant touch with each other. This would negate the idea of a trip to Clinton, but for one day, September 25, 1963; and even then, if Shaw was reachable by phone, I would say there's a question.

So that aspect of the case, the earlier part of the case, which seemed so strong, I think already is in the borderline area.

AIC: Why wasn't Governor Connally called as a witness by the State?

KEVIN: Again, I will have to quote "reliable sources" at this juncture because of the judicial restraining order that prohibits us from talking to any of the defense or State staffs or to any of the witnesses involved. Reliable sources indicate that the Connallys were not called by the State because the State had a "kick in the pants" when they put Lyndal Shaneyfelt, the FBI man, on the stand. Shaneyfelt ended up supporting the Warren Commission and supporting his own conclusions in the case, and was of more help to the defense than he was to the State. The State then decided, as I understand it, to forget these people who are supporters of the Warren Commission; and let these people be called by the defense if they wanted to. This way they can attack them better from the court room floor, rather than having to impugn their own witnesses.

AIC: What prompted the State to feel that Shaneyfelt would give evidence contradicting the Warren Report conclusions?

KEVIN: I think frankly it was a bad dream on the part of many in the (D.A.'s) Office, who tended to assume that they had the government and many of those who participated in the (Warren Commission) analysis of the JFK assassination by the neck and were about to really drop them in the fire. And I think they thought they were going to have an easier time with Shaneyfelt, and suddenly Shaneyfelt ended up being a better defense witness than State's witness. So the obvious assumption there was: "Well, let's just not call these people because they're going to end up hurting our case."

AIC: How about Mark Lane? Why wasn't he called by Garrison?

KEVIN: Mark is still possibly going to be a rebuttal witness for the State. It was my idea with several other people here that Mark should have been in the court room, especially for Shaneyfelt, Frazier and some of the other key defense people, who were testifying in regard to the assassination itself. Mark has a living, running

continuing knowledge of the case, as do other experts such as Harold Weisberg-- people who have lived with the case for the past five years. The Garrison office is obviously a very sensitive office to this case. They've studied it carefully. But they haven't lived with it for five years, as critics such as Lane and Weisberg have. Somebody should have been here of that caliber to help these people (the D.A.'s Staff) with this kind of interrogation. It was quite obvious that Asst. DA Alvin Oser, or even Asst. DA Jim Alcock, who are tremendously important, good prosecutors, didn't know enough substantially about the people they were questioning to elicit what they wanted, which was basically to discredit those people. I think a critic, such as Lane or Weisberg, could have done it.

AIC: Is Lane in New Orleans but not at the trial?

KEVIN: He is here but cannot attend the daily sessions because chances are he'll be called as a rebuttal witness.

AIC: If he is called, and you mentioned the upcoming rebuttal, how much new evidence can be introduced by the State? For instance, what about the Archives evidence now in contention? If that evidence is released to Dr. Wecht or to the prosecution, can that be introduced for the first time?

KEVIN: Strangely enough, it's a changing thing. The understanding I had was that wait until rebuttal time! The State is really going to come in there and clobber them! The latest word now is that the rebuttal is going to be miniscule. The rapidity with which the State's case was rested caught everybody by surprise. Nobody expected that they would rest that quickly. The fact of the matter is that the State has still been pursuing a number of witnesses and angles in the whole investigation. That, from my point of view, should have been tackled and readied a long time ago.

AIC: We were very surprised here that Judge Haggerty refused to allow Police Officer Habighorst's testimony to be included. Can you explain this to us?

KEVIN: Obviously, this is a very key element that almost caused a mistrial and almost caused a directed verdict: The mistrial sought by the State because of the judges' comments, and the directed verdict (of not guilty) sought by the defense as soon as the State rested. I think that Judge Haggerty probably used bad judgement-- as a layman I would say this, that the judge should not have made the comment about Habighorst in front of the court, even though the jury was absent, because it did make national headlines-- the press and spectators were there. However, the whole incident around Habighorst has got to be questionable. I think that the judge actually at that point in the trial, strangely enough, probably showed more perception than he has indicated he had all along. The question of Shaw having actually admitted to (being) "Clay Bertrand" at the time of his booking on March 1, 1967, is highly suspect. I think the judge correctly said that if it happened, as the State contends it did, then it was a violation of the spirit of Miranda and of the Escobedo rulings. I think the judge's decision, as improper as his comment on Habighorst's veracity may have been, I think the judge's decision probably was good enough so that it saved the whole case from being reversed on appeal.

AIC: Will the defense have Clay Shaw take the stand?

KEVIN: They say they will. That should be the most exciting thing that they've got to look forward to! I think Connally, Fritz, Dr. Finck and those who are yet to appear (for the defense) are not going to change their assumptions as they have stated them. I don't think the State is going to rattle them. I compare this to what happened with Shancyfelt, Frazier and Marina (Oswald Porter) so far. I think Shaw's testimony is going to be interesting; that's going to be fascinating!

AIC: Today's LA Times describes the testimony of Robert Frazier, the FBI ballistics expert. Frazier termed it "a rather easy shot", referring to the Warren Commission contention that all shots were fired by one person. How did the State react to this in cross-examination? Also, how well did his "sonic-boom" theory go over in court?

KEVIN: I think his "sonic-boom" theory went over quite well. However, I think that his contention of the "easy shot" did not go over as well because of the State's crossexamination. Oser was more primed for Frazier. For example, Frazier did admit from the stand that never did the FBI duplicate in detail the so-called eas-

y shot that he referred to in his direct examination. Frazier admitted that the FBI never could achieve the rapid fire- 3 shots in 5.6 seconds- that is attributed to Oswald. Nor did the FBI ever shoot from the same distances that Oswald would have had to shoot from, from the sixth floor of the School Book Depository Bldg. Further, the FBI tests were only on static targets in an indoor FBI firing range and at an outdoor firing range in Quantico, Virginia. They were never done from heights, which is necessary, of course. Oswald's height (according to the Warren Commission) was something like 60 or 65 feet above the ground; his angulation distance from the Presidential limousine was 265 feet. Frazier said that the test they ran involved distances of 45, 75 and 300 feet, but never 265 feet; never at a height, and never at an angle, and never at a moving target. So I think the State brought this out very well and really negated that earlier statement about it being an "easy shot." If it were so easy, why didn't the FBI do it? I think that question remained with the jury.

AIC: What about the testimony of Marina Oswald and Ruth Paine? How compelling was their testimony?

KEVIN: I think Marina Oswald was a good witness for the State and a good witness for the defense. When the defense had her in direct examination, her most important remarks concerned Perry Russo's contention that the young man he met as "Leon" Oswald, whom he alleges was Lee Harvey- Russo says he was a beatnik<sup>4</sup> looking type who was be-whiskered. Marina said her husband always looked neat and clean and shaved every day, and went to work every day and was at home every night. This would negate Russo's contention that the Oswald he knew was a roommate of Ferrie. However, when Marina came under examination by Asst. DA Jim Alcock, the story that developed then was that she really knew essentially very little about her husband. Yes, he missed shaving now and again, but he never looked be-whiskered. So the contention of what Oswald looked like with a beard, if he really ever had one, was knocked down to some degree. Marina also admitted that her husband went out to work at a coffee company, but she didn't know the name or address of the company, and never even, in fact, had a telephone number to reach Oswald in case of an emergency. She further said that she really never knew the guy to any great degree. They seemed to be nothing more than sexual partners, and that was about the sum and substance of it. So I think she worked well for both sides.

Mrs. Paine worked well for the defense because in her direct examination, the most relevant thing she said was how Oswald got the job at the School Book Depository. She said she called the Depository and talked to Roy Truly, without Oswald's knowledge. When Oswald was home that evening, she and Marina told Oswald that they had called the place, and that he should call there the next day about a job. Oswald did, went to Dallas, saw Truly, got the job, and he started the day after. So as Ruth Paine explained it, Oswald's getting the job was a very simple thing, done without his knowledge, and couldn't have been part of a grand conspiracy.

AIC: Prior to her testimony, had the State made any claims that it (the means by which Oswald got the job) was otherwise?

KEVIN: No, in fact they didn't touch on that at all. Ruth came over as a very believable and a very charming witness.

AIC: Was Mrs. Paine questioned concerning Roger Craig's contention that Oswald stated that her station wagon had been used in the get-away?

KEVIN: Yes, the defense also tried to elicit from her something about that, and the prosecution did also. As it turned out, Ruth Paine testified that she owned a Chevrolet station wagon, which did not have a grill on the top at the time she owned it; and she said on the day of the assassination, the car was parked in her driveway. It remained there. She didn't lend it to anybody. The theory that her station wagon might have been the Craig vehicle which was seen really didn't hold up under examination by both sides.

AIC: Do you think that Garrison, himself, will cross-examine Shaw?

KEVIN: I don't know for sure, but I think he would be missing a good bet if he doesn't, because Garrison is devastating in court. He really is hot in court, and I'm sorry to say he's only examined two witnesses so far. They were both State's witnesses: Mrs. Newman from Dallas and Richard Randolph Carr from Dallas. Both examinations were done superbly well. In fact, they were done so well that both examinations had no objections at all from the questioning point of view by the defense, who object vigorously to just about anything that's done by anyone in that court room.

AIC: Do you have any comments about Garrison's role thus far, particularly his relative absence from the picture?

KEVIN: I tend to think there's a lot more to it than appears obvious at this time; in fact I'm certain of it. I think that events took place just before this trial- internal events in the office- which have resulted in what has unfolded so far during the trial. I don't think Garrison meant to be away from the trial as much as he has been. And I think that there is an internal situation that developed before, which has maintained itself throughout the trial. It's been of detriment to the State's case. (finis)

SUMMARY OF JUDICIAL PROCEEDINGS ON THE DISTRICT OF COLUMBIA INVOLVING THE RELEASE OF SECRET JFK AUTOPSY EVIDENCE

On January 31, Jim Garrison filed additional pleadings in a District of Columbia court in a renewed effort to get the photographs and X-rays taken at the autopsy of President John F. Kennedy. On January 17, Judge Charles Halleck told Garrison he would not order release of the materials until there had been a showing that, as Garrison alleged, "there is substantial evidence that shots came from more than one direction."

To prove his point, Garrison entered statements by three qualified scientific experts: Dr. Robert McClelland, senior surgeon attending President Kennedy, stating that "the cause of death was due to massive head and brain injury from gunshot wound of the left temple" (whereas the Warren Report specifies the right side.)

Dr. Robert Forman, Head of the Dept. of Anthropology, Wisconsin State Univ., demonstrating that the same "Magic Bullet" could not have inflicted the neck wound on President Kennedy and all the wounds on Governor Connally.

Dr. Cyril H. Wecht, one of the Nation's leading forensic pathologists, pointing out a series of serious flaws in the handling of the autopsy from Nov. 22, 1963, until the present, and questioning the number and direction of shots.

On January 16, 1969, one day prior to the show cause hearing, the Government filed a pleading in opposition to the request from New Orleans. On the following day, the Court ruled that the District Attorney's prima facie showing of need for the photographs and X-rays had been overcome by the Government's pleading of the day before. In the Court's words, "The ball had been returned to the District Attorney's court." The Court gave the District Attorney two weeks in which to produce some of his substantial evidence that shots came from more than one direction. Below is reprinted statements by Drs. McClelland, Forman and Wecht which were presented before Judge Halleck on January 31, by Bernard Fensterwald, Jr., Counsel Representing the District Attorney, Orleans Parish, State of Louisiana:

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

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

(1) Statement By Dr. Robert N. McClelland, Assistant Professor of Surgery, Parkland

Hospital, Dallas, Texas.

At pages 11 and 12 of Volume XVII of the Warren Commission Hearings, a diligent reader will find a very dim reproduction of a hand written account of President Kennedy's admission and treatment at Parkland Hospital. The account was written on November 22, 1963, by Dr. McClelland. The penultimate sentence is of particular interest: "The cause of death was due to massive head and brain injury from a gunshot wound of the left temple." (emphasis added)

(2) Statement by Dr. Robert Forman, Chairman of the Dept. of Sociology and Anthropology, Wisconsin State University, Oshkosh, Wisconsin. Dr. Forman has supplied the District Attorney of Orleans Parish with a scientific monograph entitled "The First Shot: A New Line Of Evidence Challenging The Warren Report." Dr. Forman's training and knowledge as a distinguished anthropologist gives him a whole new insight into the problem of the direction of the missiles; he concentrates upon the lateral as well as the vertical angles of the shots in relation to the bone structure of the human body. In brief, here is Dr. Forman's thesis of bullets from more than one direction:

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

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

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

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

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

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

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

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

(3) Statement by Dr. Cyril Wecht, Research Professor of Law and Director of the Institute of Forensic Sciences, Duquesne University School of Law, and Chief Forensic Pathologist, Allegheny County Coroner's Office. In February, 1967, he was elected Secretary of the Pathology and Biology Section of the American Academy of Forensic Sciences. He is also Director of the Pittsburgh Institute of Legal Medicine. Dr. Wecht, who is both a practicing doctor and a practicing lawyer, has long been interested in the assassination of President Kennedy. In mid-1967 he published a "Critique of President Kennedy's Autopsy" (printed in Six Seconds in Dallas, by Prof. Josiah Thompson, pps. 278-284). Following are a few highlights in the critique:

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

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

In February, 1966, I gave a talk to the American Academy of Forensic Sciences which covered many of the points touched on in this paper. At that time, in spite of omissions and deficiencies already apparent in the official autopsy report, I nevertheless concluded my talk by saying that I agreed with the essential findings of the Warren Commission. Some 18 months later, I must now say that I wish I had not written that final paragraph. For no longer can I agree with the essential findings of either the Warren Report or the autopsy on which it was based."

Submitted along with the testimony of these three doctors was a lengthy, detailed reply to the major contentions in the Government's pleading of January 16, 1969. Spatial considerations unfortunately do not allow us to reprint this reply. Suffice it to say that the material submitted by Mr. Fensterwald was persuasive enough that on February 17 Judge Charles Halleck submitted the following court order:

"ORDERED that Dr. James B. Rhoads, or his designated agent, appear in the State of Louisiana, Parish of Orleans, and there give testimony in...the trial of Clay L. Shaw, and that he take with him the photographs and X-rays taken at the autopsy of the late President John F. Kennedy, and now in the custody of the said Archivist...and it is

FURTHER ORDERED that this order is stayed until such time as the District Attorney of Orleans Parish gives the Archivist written notification of at least 48 hours in advance of his desired appearance in New Orleans to testify in the above-captioned matter."

At this point the Government appealed Judge Halleck's Order to the appropriate appellate division. We were confused by all this, especially as one trial seemed to be progressing onward in New Orleans, while another related legal hassle was taking place in the appeals courts of the District of Columbia; could the former end while the latter remained ensnarled? For clarification we phoned Bernard Fensterwald in Arlington, Va.:

AIC: The last we heard, on Friday a week ago, Judge Halleck had ruled that Dr. Cyril Wecht must be allowed to see some of this evidence in the Archives, and on Monday (the deadline constructed by Halleck) the Government apparently then failed to comply with this order. Could you fill us in on this please?

FENSTERWALD: The judge said that if by 4 PM on Monday they did not permit Dr. Wecht to see the material, then he (Judge Halleck) was going to order it all to New Orleans. They did not permit Dr. Wecht as ordered, after checking with the Kennedy's, so the judge signed an order stating that the material had to go to New Orleans with the Archivist. And the Government appealed that ruling to the Court of Appeals here.

AIC: Specifically, what involvement do the Kennedy's have legally? Are they in control of this material?

FENSTERWALD: According to the Government, they are. The Government claims that the material belonged to the estate of John Kennedy, and that they (the Kennedys) gave it to the Archives under certain conditions. It is my contention that, number one, the Kennedys never had this material; and two, that pictures and X-rays of an autopsy couldn't be part of someone's estate, in any event.

AIC: Will this question be heard by the Court of Appeals possibly in time to allow presentation of the material in New Orleans?

FENSTERWALD: Well, I don't know. They rested their case down there, and we don't really know if technically the stuff is even available any longer. The new material might be admissible if the defense called Dr. Finck. It seems to me that Garrison could then call Dr. Wecht if he wants to, but of course he could have called Dr. Wecht

at any time, anyway. He chose not to, for reasons unknown to me.

AIC: Do you have any idea why Garrison would do that?

FENSTERWALD: I don't have any idea what they're doing in New Orleans...The State has got to assure Judge Halleck that they're going to call Wecht to testify before the court order has any effect. In other words, if Garrison is not going to call any pathologist, the judge here is not going to order that material to New Orleans. We can't get any information here out of New Orleans as to whether they are or they aren't. At 11 O'Clock tomorrow morning (2/24), I've got to go tell the judge something. As to what it's going to be, I don't know.

AIC: Do you anticipate that the Government will continue appealing judicial decisions such as Hallecks?

FENSTERWALD: I suppose so.

AIC: So it seems there are two problems involved. First, the Government's appeal of this thing into a higher court, which would stall things for a long while. And second, the New Orleans office itself appears to have some problems involving the case.

FENSTERWALD: (chuckling) You've got it. (finis of interview, 2/23/69)

CLOSING NOTE

We want to thank Art Kevin once again for furnishing reportorial insight into the trial. We have decided to reprint the full transcripts of the trial, as they have appeared in the New Orleans Times-Picayune, assuming a sufficient number of requests appear. If you desire such a transcript (to be sent free-of-charge), please let us know.

Contributions to support our work may be sent to: ASSASSINATION INQUIRY COMMITTEE  
4718 Saratoga Avenue, San Diego, California 92107.

Editors: Prescott S. Nichols  
Stephen Pauley, M.D.  
George Abbott, M.D. February 25, 1969

James D. White  
35 Castle Rock Drive  
Mill Valley, Ca 94941

ADDRESS CORRECTION REQUESTED

ASSASSINATION INQUIRY COMMITTEE  
4718 SARATOGA AVENUE  
SAN DIEGO, CALIFORNIA 92107

