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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SIRHAN BISHARA SIRHAN, **Petitioner,** **vs.** **GEORGE GALAZA, WARDEN, et al.,** **Respondents**	)	**NO. CV-00-5686-CAS (AJW)** **OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS (28 U.S.C. section 2254)** **Hon. Andrew J. Wistrich United States Magistrate Judge**

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SIRHAN BISHARA SIRHAN, PRISONER in the California State Prison at Corcoran, California, Petitioner, makes this opposition to Respondent's Motion to Dismiss pursuant to 28 U.S.C. § 2444, and admits, denies, and alleges as follows:

1.Petitioner hereby incorporates by reference all of the allegations, admissions, and denials contained within

his petition for habeas relief filed in this court on May 25, 2000.

2. The petition is timely under 28 U.S.C. 2244.

3. The petition is not procedurally barred because the state law procedure which purportedly bars the petition was, at the time it was applied to Petitioner, neither adequate to support the state court judgment nor independent of federal law.

4. The petition does not contain exhausted claims because they were all fairly presented to the state supreme court.

5. Any alleged procedural default and failure to exhaust state remedies is excused because Petitioner is “actually innocent” of the crimes for which he has been convicted.

6. The prosecution deprived Petitioner of his constitutional right to due process and effective assistance of counsel by suppressing evidence, failing to disclose evidence, failing to turn over evidence, altering evidence, and destroying evidence. Petitioner further alleges that the evidence is insufficient for conviction.

7. Petitioner was denied his right to effective assistance of counsel because counsel, acting out of a conflict of interest, improperly conceded the authenticity of the state’s evidence and failed to explore alternative trial strategies.

8. Petitioner has continually asserted that he had no memory of the events and that his admissions was based on forming an opinion based solely upon the fact that others, including his attorneys, repeatedly told Petitioner that he was responsible for the assassination.

9. Except as herein alleged, Petitioner denies each and every allegation in the answer. Specifically, Petitioner denies that claims are procedurally defaulted and that he failed to exhaust state remedies.

10. Petitioner alleges that his confinement is improper, illegal, and in violation of the Constitution and laws of the United States.

11. Petitioner denies that his claims are barred by Rule 9(a) of the Rules following 28 U.S.C. § 2254 and the doctrine of laches.

12. The petition is not successive.

13. It appears the petition is subject to the provisions of the Antiterrorism and Effective Death Penalty Act of 1996.

14. Petitioner denies that his petition is based on "fantastical conspiracy theories" and alleges that it is based on violations of his due process rights and right to effective assistance of counsel.

15. This Opposition to the Motion to Dismiss is based on the attached and incorporated exhibits and memorandum of points and authorities, and the records and files in this case.

Dated: October 28, 2010.

Respectfully submitted,

WILLIAM F. PEPPER

LAURIE D. DUSEK

Attorneys for the Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

On April 17, 1969, a jury in the Los Angeles County Superior Court convicted Petitioner of the 1968 first-degree murder (Cal. Penal Code § 187), of Senator Robert F. Kennedy and fixed the penalty at death; it also found Petitioner guilty of assaulting Paul Schrade, Irwin Stroll, William Weisel, Elizabeth Evans and Ira Goldstein with a deadly weapon and with intent to commit murder (Cal. Penal Code § 217); prison sentences were imposed on the latter convictions. People v. Sirhan, 7 Cal. 3d 710, 716-17, 102 Cal. Rptr. 385 (1972); Clerk's Transcript ["CT" 315-23, 344-45.) On automatic appeal, the California Supreme Court affirmed all Petitioner's convictions, but modified the judgment to impose life imprisonment, based on that court's prior invalidation of the death penalty. Sirhan, 7 Cal. 3d at 717, 755.

On February 13, 1975, the California Supreme Court summarily denied Petitioner's first petition for a writ of habeas corpus, filed on January 13, 1975, in which he claimed, inter alia, that the prosecution suppressed evidence that an unknown "second gunman" fired the bullet that killed Senator Kennedy. That same year, the Los Angeles Superior Court, the Honorable Robert A. Wenke presiding, conducted discovery proceedings to permit a panel of seven firearms experts to re-examine ballistics evidence from the trial (L.A.S.C. Case No. A233421 [hereinafter, the "1975 Reinvestigation"]). (RE A.3/) The resulting Comprehensive Joint Report of The Firearms Examiners found no evidence that a second gun had been fired. (RE B, ¶ 1.)

On April 21, 1997, Petitioner filed a habeas corpus petition in the Los Angeles County Superior Court ("LASC"). On April 30, 1997, the court denied the petition on the merits. In its order, the court noted that Petitioner had offered to plead guilty to first-degree murder in exchange for a sentence of life in prison, and that at trial, Petitioner admitted shooting Senator Kennedy. (Order, A233421, April 30, 1997.) Petitioner has continually asserted that he has no memory of the events and that his admission was based on forming an opinion based solely upon what others around him told him.

On May 1, 1997, Petitioner filed a habeas corpus petition in the California Court of Appeal in case number B111657. On June 17, 1997, the Court of Appeal denied the petition. The court ruled that Petitioner did not sufficiently justify his delay in filing the petition; Petitioner was estopped[1] from claiming someone else killed Senator Kennedy after testifying at trial that he himself did; there was no violation of Petitioner's constitutional rights; and there was no basis for doubting the correctness of the verdict. (Order, B111657, at 2-8.) On June 20, 1997, Petitioner filed a habeas corpus petition in the California Supreme Court in case number S062258. On May 24, 2000, the state high court denied the petition as untimely and alternatively denied it on the merits.[2] Petitioner filed the instant Petition on May 25, 2000.

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[1] Petitioner objects to any assertion that he is estopped from denying his guilt because Petitioner has consistently stated that he has no memory of the events and that his admission was based on forming an opinion based solely upon what others around him told him. Moreover, any so-called admission, as Petitioner will show, is solely the product of a denial of Petitioner's constitutional rights.

[2] Petitioner notes that no consideration of the merits could have occurred where there is an alleged procedural default.

ARGUMENT

I.

THE PETITION NEED NOT BE DISMISSED AS UNTIMELY BECAUSE THE PREDICATE STATE COURT DECISION UPON WHICH RESPONDENT ARGUES THAT PETITION IS NOT TIMELY DID NOT REST ON ADEQUATE OR INDEPENDENT STATE GROUNDS AND IS THEREFORE SUBJECT TO REVIEW IN FEDERAL COURT

As an initial matter, it should be noted that Respondent has already pled that the petition was timely filed under §2244(d) (Resp. Answer 2:9-10), and this entire avenue of argument is therefore foreclosed.

Assuming, however, this matter has not been foreclosed to the Respondent, it still does not follow that the petition was untimely. Respondent's argument that the statute of limitations has not been tolled is dependent upon an assertion that the petition was not "properly" filed in state court because the state court ruled the petition untimely. (Resp. Motion to Dismiss 5.). According to Respondent, this court is barred from reviewing the decisions of the California courts with respect to the timeliness of the state petitions because the question of timeliness is an adequate and independent state ground federal courts cannot review. (Resp. Motion to Dismiss 6.). It is certainly true that federal courts cannot review the judgments of state courts if those judgments rest upon adequate and independent state grounds. E.g., Michigan v. Long, 463 U.S. 1032, 1039 n.4 (1983). At the time of its application to Petitioner, however, California's timeliness rule was neither adequate nor independent.

In their answer, Respondents relied upon Bennett v. Mueller, 273 F.3d 895 (9th Cir. 2001)[3]to argue that "for decisions postdating In re Robbins, California's timeliness bar is not interwoven with federal law and is an independent procedural ground for barring federal habeas relief." (Resp. Suppl. Mem. of Points and Authorities 2:22-24.). This excerpt and citation to Mueller is misplaced because the applicable decision does not postdate Robbins. The California Supreme Court denied petitioner's habeas claims on May 24, 2000, while Robbins was decided in 1998. Certainly the California Supreme Court's order of 2000 postdates its 1998 decision in Robbins. The Supreme Court's 2000 decision, however, is not the applicable measuring point. The entirety of the dismissal order stated: "Petition for writ of habeas corpus DENIED on the merits and as untimely." (Order, S062258.). The United States Supreme Court, however, has held that "[w]here there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground." Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991). The California Supreme Court's order is an "unexplained order...rejecting the same claim" as the lower court had because of how cursory it was(i.e., an "unexplained order upholding the judgment") and is therefore "presumed to have rested upon the same ground." Id. at 803. Based on the United States Supreme Court's holding in Nunnemaker, then, the controlling opinion in this case is that of California Court of Appeals for the Second Appellate District,

[3] Respondent cites the case as Bennett v. Mueller, __ F.3d __, 2001 WL 1511977 (9th Cir. Nov. 29, 2001) because the full standard citation was not available at the time of the answer.

Division Five, dated June 17, 1997, because it, and not the California Supreme Court's opinion of May 24, 2000, is the "last reasoned opinion" on the claim.[4]

The appellate division's discussion of timeliness, the only ground for procedural default asserted in the opinion, is not sufficiently "independent" of federal law to prohibit this court from reaching the merits of Petitioner's federal claims. A state procedural rule is sufficiently "independent" of federal law when the former is not "interwoven" with the latter. Michigan v. Long, 463 U.S. at 1040-41. A state law judgment is "interwoven" with federal law when "the State has made application of the procedural bar depend on an antecedent ruling on federal law," Ake v. Oklahoma, 470 U.S. 68, 75 (1985).

An examination of California's timeliness rule as it existed when Petitioner allegedly defaulted demonstrates that in concluding Petitioner had violated that rule, the California courts necessarily reached a determination with respect to federal law. In dismissing the petition as untimely, the appellate court chiefly relied upon the California Supreme Court's decision in In re Clark, 5 Cal. 4th 750 (1993), for its timeliness holding. Clark held that unless a petitioner can demonstrate one of (1) a lack of substantial delay in bringing a habeas petition; (2) good cause for any delay; or, (3) one of four exceptions to the application of the timeliness rule, a habeas petitioner

[4] Even if the 2000 opinion of the California Supreme Court is deemed to be the proper one for determining the independence and adequacy of the state grounds, it still cannot be considered to have postdated Robbins because the adequacy and independence of a state procedure are determined from the time of Petitioner's alleged default. Lambright v. Stewart, 241 F.3d 1201, 1203 (9th Cir. 2001). The last possible date Petitioner could be deemed to have been in default is June 20, 1997, when a petition for a writ of habeas corpus was filed in California Supreme Court. This pre-dates the Robbins decision in 1998.

will be time-barred from bringing his or her claims. Id. at 782-87. One of the four exceptions to California's timeliness bar, under Clark, is the existence of "constitutional error rendering a trial so fundamentally unfair that no reasonable judge or jury would have convicted the petitioner." Id. at 797-98.[5]

In 1998, the California Supreme Court had an opportunity to review the extent to which these exceptions depended upon the application of federal law:

> [I]n applying [the nonharmless constitutional error exception] and finding it inapplicable we shall, in this case and *in the future*, *adopt* the following approach as our standard practice: We need not and will not decide whether the alleged error actually constitutes a federal constitutional violation. Instead, we shall assume, for the purpose of addressing the procedural issue, that a federal constitutional error is stated, and we shall find the exception inapposite if, based upon our application of state law, it cannot be said that the asserted error "led to a trial that was so fundamentally unfair that absent the error no reason-able judge or jury would have convicted the petitioner." In re Robbins, 18 Cal. 4th 770, 811-12 (1998) (emphasis added).

That the California Supreme Court decided in Robbins it would "*adopt*" the approach of relying solely upon state law to adjudicate the Clark exceptions "*in the future*" suggests that prior to Robbins determination of these questions depended in part upon the application of federal law.

[5] The other three exceptions are (1) actual innocence; (2) imposition of the death penalty where the sentencing authority had been so misled that absent the error or omission no reasonable or judge or jury would have imposed a death sentence; and, (3) the statute under which petitioner was convicted and/or sentenced is invalid. Clark, 5 Cal. 4th at 797-98.

Picking up on this language of future application in Robbins, the Ninth Circuit has already explicitly held that prior to Robbins, a California State Court that dismissed or denied a habeas petition for untimeliness necessarily relied upon federal law in adjudicating the Clark factors. Specifically, the Ninth Circuit has stated that the Robbins court "recognized that, when reviewing state habeas petitions for the untimeliness ground embodied in *Clark*, California courts previously considered the federal constitutional merits of the petitions in determining whether the petitions qualified for an exception to the rule of procedural default." Bennett v. Mueller, 322 F.3d 573, 581 (9th Cir. 2003) (internal citations omitted). Petitioner alleged several grounds for habeas relief, including (1) ineffective assistance of counsel; (2) violation of the Brady rule that prosecutors must disclose exculpatory evidence; and, (3) violation of Petitioner's due process rights through the admission of perjured testimony. (Pet. for Writ of Habeas Corpus June 20, 1997.) Thus, due to "*Robbins*'s acknowledgment that the constitutional error exception encompassed consideration by the court of the merits of federal constitutional questions," Park v. California, 202 F.3d 1146, 1153 (2000), the appellate court "necessarily made an antecedent ruling on federal law before," Id., in dismissing Petitioner's federal habeas claims. Respondent all but conceded that for decisions prior to Robbins, California's timeliness rule is not independent of federal law in writing "The court further held that, for decisions postdating *In re Robbins*, California's timeliness bar is not interwoven with federal law and is an independent procedural ground barring

federal habeas relief." (Resp. Suppl. Mem. of Points and Authorities 2:20-24.)

In their answer to the petition for a writ of habeas corpus in this court, Respondent relied heavily on Bargas v. Burns, 179 F.3d 1207 (9th Cir. 1999), to argue that "[t]the state procedural default in Bargas is independent of federal law in precisely the same way that Robbins establishes California's untimeliness bar as independent of federal law." (Resp. Answer 14:6-8.) Respondent's reliance on Bargas is misplaced because the court in Bargas did not confront California's timeliness rule. Rather, at issue was a *Nevada* rule of procedural default. Thus Bargas, because it dealt with Nevada's procedural default rules, is not authoritative precedent in determining if California's timeliness rules are independent of federal law. The precedential value of Bargas to this case is therefore determined by how closely the procedural default rule at issue in Bargas resembles California's timeliness rule. The Bargas court described Nevada's procedural default rule as follows: "In order to find procedural default, a court need only consider whether a claim was raised or could have been raised in a prior petition and whether the petitioner demonstrated cause and prejudice for failing to raise that claim." Id., at 1214. There are no exceptions to the Nevada procedural default rule that was at issue in Bargas other that "demonstrated cause and prejudice." California's timeliness rule does require a similar inquiry into cause, but also adds the additional element of the four Clark exceptions. One of the Clark exceptions, "constitutional error rendering a trial so fundamentally unfair that no reasonable judge or jury would have convicted the petitioner," was at the time of

Petitioner's alleged default dependent upon an antecedent judgment on federal. Moreover, there was no similar exception to the Nevada rule at issue in Bargas. The relevance of Bargas to this proceeding is confined to the undisputed and obvious proposition that where a state court's procedural default ruling is not interwoven with federal law, then that state court procedural rule and state court ruling may be considered "independent" state grounds for denying a habeas petition.

In sum, because both the California Supreme Court and the Ninth Circuit have held and acknowledged that application of California's timeliness requirement was dependent upon federal law prior to Robbins in 1998, the appellate court's dismissal of Petitioner's claims for lack of timeliness in 1997 is sufficiently "interwoven" with federal law such that it is not an "independent" state law procedural basis for barring further habeas review in this court. That no state court specifically discussed the Clark exceptions in dismissing petitioner's habeas claims is irrelevant because in dismissing federal constitutional claims prior to Robbins, a California State habeas court necessarily decided the federal issues underlying the Clark exceptions. See Robbins, 18 Cal. 4th 815 n.34 ("[W]hen in our orders we impose the bar of untimeliness, this signifies that we...have determined that the petitioner has failed to establish the absence of substantial delay or good cause for delay, *and* that none of the four exceptions set out in *Clark* apply." (Emphasis in the original) (internal citations omitted); see also, Park, 202 F.3d at 1152 ("The California Supreme Court recently stated that prior to 1998 it necessarily addressed fundamental

constitutional claims when applying the *Dixon*[6] rule. Therefore, if 'fundamental constitutional rights' include federal-law issues, the denial of Park's petition citing to Dixon was not independent of federal law and does not preclude federal habeas review.") (Internal citations omitted).

Not only was California's timeliness rule not independent of federal law at the time of Petitioner's alleged default, it also was not adequate to support such a judgment. In order to be considered "adequate," state procedural default rules must be both (1) firmly established and (2) consistently applied. E.g., Poland v. Stewart, 169 F.3d 573, 577 (9th Cir.1999). State procedural default rules may be inconsistently applied when they either "(1) have been selectively applied to bar the claims of certain litigants ... [or] (2)...are so unsettled due to ambiguous or changing state authority that applying them to bar a litigant's claim is unfair." E.g., Mueller, 322 F.3d at 583 (citing Morales v. Calderon, 85 F.3d 1387, 1392 (9th Cir.1996)).

The burden of proof on the adequate and independent state grounds issue unfolds in three distinct phases. First, because an adequate and independent state procedural bar is an affirmative defense, the initial burden is on

[6] The Dixon rule is similar to the timeliness rule in that both are procedural requirements that habeas petitioners must meet before a California court reaches the merits of a claim. Specifically, Dixon requires that a claim be presented for direct appellate review before it can be attacked collaterally through a habeas petition. In re Dixon, 41 Cal.2d 756, 264 P.2d 513 (1953). The Dixon rule, however, is sufficiently analogous to the timeliness rule in that (1) both function as procedural requirements that habeas petitioners must satisfy before a state habeas court will collaterally review the merits of a petitioner's claims; and, (2) both are subject to the same "fundamental constitutional error" exception. See Generally, Park, 202 F.3d at 1151-52, 1152 n.3.

"the state [to] adequately [plead] the existence of an independent and adequate state procedural ground as an affirmative defense." Mueller, 322 F.3d at 586. Second, once the state has so adequately pled, "the burden to place that defense in issue shifts to the petitioner. The petitioner may satisfy this burden by asserting specific factual allegations that demonstrate the in-adequacy of the state procedure, including citation to authority demonstrating inconsistent application of the rule." Id. Third and finally, once the petitioner discharges its burden of proof on the adequate and independent state grounds issue, "the ultimate burden is the state's." Id. In the specific context of California's untimeliness rule, this burden-of-proof analysis differs slightly because the Ninth Circuit has previously held that California's untimeliness rule is not an adequate and independent state procedural ground in Morales v. Calderon, 85 F.3d 1387 (9th Cir. 1996). The Ninth Circuit held in King v. Lamarque, 464 F.3d 963 (9th Cir. 2006), that "because we held in *Morales* that the California timeliness rule was insufficiently clear, the government must show...that the rule has since been clarified...and that the clarified rule has since been consistently applied." Lamarque, 464 F.3d at 967.[7]

[7] The Lamarque court primarily characterized this modification of the burden of proof as a lessening of the petitioner's burden at the second stage rather than an increase to the respondent's initial burden. Lamarque, 464 F.3d at 967 ("The question then arises: Is simply contesting the adequacy of a state rule sufficient to meet the petitioner's burden under *Bennett* if we have previously found the rule to be too ambiguous to bar federal review during the applicable time period? We hold it is....[W]here we have already made a determination regarding the adequacy of the state procedural rule, the petitioner's method of placing the defense in issue must be modified."). Cases postdating Lamarque, however, have described this modification to the burden of proof as being on the respondent rather than the petitioner.

Respondent has failed to discharge its burden to show that California's untimeliness rule "has since been clarified...and...since been consistently applied" since the Ninth Circuit decided Morales in 1996. Respondent cites exactly one post-Morales California Supreme Court Case on timeliness, In re Robbins, 18 Cal. 4th 770 (1998). The citation to Robbins, however, is insufficient to discharge the respondent's initial burden to show that California's "substantial delay" standard has been clarified post-Morales. Respondents' citation to Robbins merely establishes (1) that a timeliness rule exists in California, and (2) that the California Supreme Court has applied the timeliness rule whenever it determines there has been a "substantial delay." Respondents' citation to Robbins, and the Robbins opinion itself, nowhere explains what constitutes a "substantial delay." The citation to Robbins, without any other California authority to supply standards for determining what constitutes a "substantial delay," does not discharge respondent's burden because "[a] procedural rule can be neither well-established nor consistently applied if it is not 'clear and certain.'" Townsend v. Knowles, 562 F.3d 1200, 1207 (9th Cir. 2009) (citing King v. Lamarque, 464 F.3d 963, 965 (9th

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See Townsend v. Knowles, 562 F.3d 1200, 1208 (9th Cir. 2009) ("Because the government offers no evidence that California operated under clear standards for determining what constituted "substantial delay" in 2001, it failed to meet its burden of proving that California's timeliness bar was sufficiently clear and certain to be an adequate state bar."). Because a petitioner's burden of proof is so minimal and easy to discharge, the end result is almost inevitably simply an increased burden on the government. As such, the modification of Lamarque is discussed here as increasing respondent's burden of proof. Regardless, the outcome is the same because petitioner here contests the adequacy of California's timeliness rule, thus shifting the burden of proof back to the government to make a heightened showing. Thus, whether the Lamarque modification applies to respondent's initial burden or petitioner's secondary one, petitioner has discharged its burden of proof and it is now incumbent upon the respondent to rebut.

Cir.2006)). A citation to California authority that merely demonstrates the existence of the timeliness rule does not render the rule sufficiently "clear and certain" because, as the Ninth Circuit reasoned in rejecting the state's similar argument in Lamarque, "There are no standards for determining what period of time or factors constitute 'substantial delay'....There are also no standards for determining what factors justify any particular length of delay. The rule's ambiguity is not clarified by the California Supreme Court's application of the timeliness bar, in part because the court usually rejects cases without explanation, only citing *Clark* and *Robbins*, as it did here." Lamarque, 464 F.3d at 966. Furthermore, frequent application of the rule is similarly insufficient to demonstrate it is an adequate state procedural bar to federal habeas review because, as the Ninth Circuit wrote in holding that the government had failed to carry its initial burden on the adequacy of California's timeliness rule: "Frequent application of a vague standard in dispositions that offer no guidance...does not serve to clarify that standard." Knowles, 562 F.3d at 1208 (citing Lamarque, 464 F.3d at 966).[8]

[8] Respondent does cite three other California cases in addition to Robbins for the proposition that California's untimeliness rule is clear and consistently applied so as to render it an adequate state procedural bar. The cases are In re Harris, 5 Cal. 4th 813 (1993); In re Clark, 5 Cal. 4th 750 (1993); and In re Swain, 34 Cal. 2d 300 (1949). These cases are completely irrelevant, as the Ninth Circuit ruled in 1996 that, at that time, California's substantial delay doctrine was not an adequate state procedural ground. Morales v. Calderon, 85 F.3d 1387 (9th Cir. 1996). Thus respondent can discharge its initial burden only by citing post-1996 California authority. Cf. Ranieri v. Terhune, 366 F.Supp.2d 934, 942 (C.D. California, 2005) (holding government could satisfy its burden of showing that California's timeliness rule is adequate by citing "to post- *Clark* cases which identify California's timeliness standards.").

As additional support for its argument that California's timeliness rule is an adequate state procedural bar, Respondent cites Deere v. Calderon, 890 F.Supp. 893 (C.D. Cal. 1995), for the proposition that "after the California Supreme Court's 1993 decisions in In re Clark and In re Harris, the California Supreme Court has applied the timeliness procedural bar with consistency in death penalty habeas corpus cases." (Resp. Answer 8:22-25.). In Mueller, however, the Ninth Circuit held that it was error for a federal district court reviewing a state prisoner's habeas petition to rely upon Deere for the proposition that the California Supreme Court has consistently applied the timeliness rule such that it constitutes an adequate state procedural bar because doing so does not conform to the three-step burden analysis the Ninth Circuit found appropriate for this issue. Mueller, 322 F.3d at 583-584.

In a last grasp to demonstrate the adequacy of California's timeliness rule, respondent relies upon petitioner's alleged delay in filing this habeas petition. Specifically, respondent suggests that because the California Supreme Court decided Clark and In re Harris, 5 Cal. 4th 813 (1993), 24 four years after petitioner's conviction and 21 years after his final state appeal was denied, then California's timeliness rule is adequate. It is adequate, respondent argues, because "[p]petitioner therefore had ample notice about California's requirement for a timely habeas petition." (Resp. Answer 9:22-24). Despite respondent's confident assertions to the contrary, it is entirely unclear if these allegations are even sufficient to establish a violation of California's timeliness rule, let alone that the rule is sufficiently

clear so as to be an adequate state procedural bar. It is unclear that these allegations would establish a substantial delay because the California Supreme Court has never sufficiently delineated the standards for what constitutes a substantial delay. Petitioner's case demonstrates this point extraordinarily well: although the appellate court cited California authority to demonstrate the existence of the timeliness rule and the exceptions to it, not one California case was cited to demonstrate that Petitioner's alleged "delay" violated the timeliness rule. As a result of the appellate court's inability to rely upon California authority to determine how long is too long, it cited no fewer than seven federal cases to make its point. In re Sirhan Bishara Sirhan, No. B111657, slip op. at 2 (Cal. Ct. App., Second Appellate District, Division Five, June 17, 1997).

Even if Respondents' aforementioned allegations actually are sufficient to establish that Petitioner failed to conform to California's timeliness rules, the ambiguity inherent in California's substantial delay rule deprives all of the California state courts, Respondent, Petitioner, and this court of any standard by which we can make that determination. This case is actually an excellent example of what the Ninth Circuit had in mind when it held that the "rule's ambiguity is not clarified by the California Supreme Court's application of the timeliness bar, in part because the court usually rejects cases without explanation, only citing *Clark* and *Robbins*, as it did here." Lamarque, 464 F.3d at 966. When the California Supreme Court dismissed Petitioner's claims, the only explanation it gave was that the claims were "untimely." (Order, S062258.). It provided no explanation of *why*

Petitioner's claims were untimely, and application of California's timeliness rule to petitioner cannot therefore serve to demonstrate that the rule is sufficiently clear to render it an adequate state procedural bar.

There are two importance consequences that derive from the preceding analysis. First, the judgment of the California courts that Petitioner's state petitions were untimely is subject to review in this court because the timeliness rule was not an adequate state procedural ground, and nor was it independent because it was dependent upon the antecedent ruling with respect to federal law. Second, and somewhat ironically, the end result of the application of the adequate and independent state grounds doctrine to this case requires that the court reach the merits of Petitioner's constitutional claims before making a determination with respect to the statute of limitations that 28 U.S.C. § 2244(d) imposes upon state prisoners seeking habeas relief in federal court. The court must reach the merits in order to answer the statute of limitations question because in this particular case the tolling provision, specifically that the time during which a petition is properly filed in state court tolls AEDPA's one year statute of limitations, is itself dependent upon the merits of Petitioner's claim. That is because in California, at the time of Petitioner's alleged default, when a California court decided a habeas petition was untimely it necessarily decided that none of its exceptions applied, including nonharmless federal constitutional error. Should this court find nonharmless constitutional error, then it would be forced to conclude that the petition was in fact timely under California law, as nonharmless constitutional error is an exception to the

timeliness standard. Moreover, since a finding of nonharmless constitutional error would necessitate a finding of timeliness under California law, so too would it under AEDPA's statutory tolling provisions because no longer could it be said that the petition was not "properly" filed with the state court due to a lack of timeliness.

II.

THIS COURT HAS SUBJECT-MATTER JURISDICTION OVER PETITIONER'S CLAIMS BECAUSE THE PETITIONER'S ALLEGATIONS OF CONSTITUTIONAL ERROR ARE COGNIZABLE ON HABEAS REVIEW UNDER THE "ACTUAL INNOCENCE" STANDARD

Respondent argues that "Petitioner's claims are so farfetched that they merit summary dismissal." (Resp. Motion to Dismiss 12:15-16). Respondent's argument suffers from two major flaws: First, Respondent applies the wrong standard of review. According to Respondent, Petitioner's "claims are so farfetched that they merit summary dismissal" based on the evidence adduced at trial. (Resp. Motion to Dismiss 12:15-16). Respondent again references the evidence presented at trial as the proper standard of review in arguing that "[t]he instant Petition fits this description, particularly in light of the trial record." (Resp. Motion to Dismiss 13:5-6.). The Supreme Court has specifically held that where actual innocence is alleged, habeas courts are required to go beyond the trial record:

> In assessing the adequacy of petitioner's showing, therefore, the district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on 'actual innocence' allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial….The habeas court must make its de-

> termination concerning the petitioner's innocence ‘in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial.’ Schlup v. Delo, 513 U.S. 298, 327-38 (1995).

Because Petitioner asserts here actual innocence, reliance solely upon evidence introduced at trial is an inappropriate baseline. Instead, the court should “make its de-termination concerning the petitioner's innocence ‘in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial.’”

The second flaw in Respondent’s argument is that Respondent offers little, if any, analysis as to why “Petitioner’s claims are so farfetched that the merit summary dismissal.” Other than merely listing Petitioner’s labels and ascribing labels such as “patently incredible” and “patently frivolous or false,” Respondent advances two chief arguments with respect to why “Petitioner’s claims are so farfetched that the merit summary dismissal.” First, Respondent reiterates the trial evidence, specifically citing “eyewitness accounts of the shooting, ballistics evidence, incriminating writings by the Petitioner, and Petitioner’s own admissions that he shot Senator Kennedy.” (Resp. Motion to Dismiss 13: 5-8.). This argument has two problems. First, it repeats Respondents’ first error of looking to trial evidence as the appropriate standard. Second, Petitioner’s allegations are not inconsistent with these pieces of evidence. With

respect to the eyewitness accounts, Petitioner has never, and does not now, deny that he fired his weapon at the Ambassador Hotel that evening. Second, with respect to the ballistics evidence, Petitioner is currently alleging that its admission into evidence was the product of several constitutional violations, in particular ineffective assistance, the offering of perjured testimony, and Brady violations. To argue that Petitioner's claims are frivolous because the ballistics evidence proves it is to assume the very point in issue. So too with Petitioner's admission at trial: Petitioner is currently alleging that his admissions were the result of ineffective assistance and Brady violations. Thus, the argument that Petitioner's admission disproves the merits of his claims is bootstrapping, to say the least.

Finally, Respondent's arguments with respect to the hypnosis defense simply do not represent that defense properly. Respondent first characterizes the hypnosis defense as suggesting a series of "astounding coincidences," (Resp. Motion to Dismiss 13: 8.). Then, Respondent dismisses Petitioner's allegations explaining those "coincidences," in particular the hypnosis defense, by saying simply "it is not the place of the federal courts to entertain such fantastic allegations, or to provide a platform for those who wish to rewrite history by conspiracy mongering." Respondent cites no authority for this argument, and provides no analysis for its conclusions. Presuming, as the Petitioner respectfully submits is the case, that there is sufficient evidence to

support the claim[9]-and Respondent nowhere points out where or how the evidence is insufficient-then it is precisely "the place of the federal courts to entertain such fantastic allegations." Only where, as here, there is sufficient evidence supporting the claim, the allegations are not so fantastic after all.

III.

PETITIONER HAS SUFFICIETLY ALLEGED ACTUAL INNOCENCE BECAUSE THE NEW EVIDENCE AND CONSTITUTIONAL ERRORS ESTABLISH IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD CONVICT HIM

Even if a state prisoner has procedurally defaulted his federal habeas claims in state court, a federal habeas court will review the merits of those claims if that petitioner can demonstrate either cause and prejudice, E.g., Murray v. Carrier, 477 U.S. 478, 485 (1986) (citing Wainwright v. Sykes, 433 U.S. 72, 87 (1977)), or if petitioner can demonstrate a "fundamental miscarriage of justice." Schlup v. Delo, 513 U.S. 298, 314-15 (1995). Petitioner respectfully submits that any alleged procedural default is excused because enforcing the rule against procedural default would result in a "fundamental miscarriage of justice" insofar as petitioner is actually innocent of the crime for which he has been convicted.

In order to meet the "fundamental miscarriage of justice" standard that allows a habeas petitioner to overcome any alleged procedural default, a habeas

[9] Here, for example, there is eyewitness accounts placing Petitioner with others on the night of the crime; an eyewitness report that a woman told him on the morning before the shooting that she was part of a conspiracy to assassinate Senator Kennedy; and the expert testimony of Dr. Diamond attesting to and explaining the fact of hypnosis and programming.

petitioner must demonstrate "[new] evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." Schlup, 513 U.S. at 316. There are thus three requirements that petitioner must meet in order to qualify for the "fundamental miscarriage of justice" exception to the procedural default prong: (1) new evidence of innocence; (2) nonharmless constitutional error; and, (3) that the new evidence and nonharmless constitutional error, when viewed together, undermine a court's confidence in the verdict at trial such that "'a constitutional violation has probably resulted in the conviction of one who is actually innocent." Id., 513 U.S. at 327 (quoting Murray v. Carrier, 477 U.S. at 496 (1986). In explaining the interaction between new evidence of innocence and nonharmless constitutional error, the Supreme Court explained:

> [A] court's assumptions about the validity of the proceedings that resulted in conviction are fundamentally different…[where] conviction had been error free. In such a case, when a petitioner has been "tried before a jury of his peers, with the full panoply of protections that our Constitution affords criminal defendants," it is appropriate to apply an "'extraordinarily high'" standard of review.
>
> [But where a habeas petitioner] accompanies his claim of innocence with an assertion of constitutional error at trial…. [Petitioner's] conviction may not be entitled to the same degree of respect as one…that is the product of an error free trial. Id., 513 U.S. at 315-16 (internal citations omitted).

Thus the reason for requiring both a showing of new evidence and nonharmless constitutional error is, as the Supreme Court explained, the reduced confidence that is warranted when nonharmless constitutional error interacts with new evidence of innocence.

Petitioner has alleged several nonharmless constitutional violations. Petitioner here focuses on two specifically: (1) the state's failure to disclose exculpatory ballistics and autopsy evidence, a violation of Petitioner's due process rights under Brady v. Maryland, 373 U.S. 83 (1963); and, (2) violation of petitioner's Sixth Amendment right to ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984).

A. The State's Failure to Disclose Exculpatory Ballistics and Autopsy Evidence Violated Petitioner's Right to Due Process Under *Brady*

In Brady, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady, 373 U.S. at 87. Even in the absence of a request for disclosure of evidence, the prosecution still violates the Brady rule when it fails to disclose material, exculpatory evidence. Kyles v. Whitley, 514 U.S. 419, 433 (1995) (citing U.S. v. Bagley, 473 U.S. 667, 682 (1985)). Evidence is material when "'there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" Id.[10] Petitioner

[10] The "materiality" standard for Brady violations is the same as the "prejudice" standard for ineffective assistance of counsel claims. See Strickland, 466 U.S. at 694 ("[T]he appropriate test for prejudice finds its roots in the test for materiality of exculpatory information

has alleged innumerable Brady violations, and here focuses on three pieces of evidence that the state failed to disclose: First, the state failed to disclose a bullet recovered from Senator Kennedy's neck during the autopsy; second, the state had evidence of bullets at the scene that it did not disclose to defense counsel; and third, the state violated Brady in delaying its disclosure of the autopsy report.

The first Brady violation derives from the state's failure to disclose a bullet recovered from Senator Kennedy's neck. According to the autopsy report, Dr. Noguchi extracted a bullet from Senator Kennedy's neck, marked the base of the bullet "TN 31" "for future identification," and turned the bullet over to Sergeant Jordan of the LAPD. (Exh. 1, Mediocolegal Investigation on the Death of Senator Robert F. Kennedy, Thomas T. Noguchi, M.D., 24.) In his testimony before the Grand Jury, Dr. Noguchi is shown a bullet for identification, states that it is the bullet he recovered from Senator Kennedy's neck, and specifically mentions that it bears the "TN 31" mark he placed on it. (Petition for a Writ of Habeas Corpus, 28, May 25, 2000.) At Petitioner's trial, People's Exhibit 47 was offered and received into evidence as the bullet

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not disclosed to the defense by the prosecution.... The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."). Moreover, because "the reviewing court may consider directly any adverse effect that the prosecutor's failure to [disclose] might have had on the preparation or presentation of he defendant's case," U.S. v. Bagley, 473 U.S. 667, 683 (1985),and because a court "consider[s] the cumulative prejudicial effect of multiple trial errors in determining whether relief is warranted," Phillips v. Woodford, 267 F.3d 966, 985 (9th Cir. 2001) (citing Mak v. Blodgett, 970 F.2d 614, 622 (9th Cir.1992) (per curiam) (collecting cases)), the issue of "materiality" for the Brady violations and "prejudice" for the ineffective assistance of counsel claim are considered together § III(C), *infra*.

recovered from Senator Kennedy's neck. De Wayne Wolfer, a criminalist with the LAPD, testified that he had achieved a ballistics "match" between a bullet Wolfer test-fired from Petitioner's revolver and People's 47, the bullet recovered from Senator Kennedy's neck. Id. at 27.

Dr. Noguchi was never shown People's 47 at trial. In 1974, Dr. Noguchi appeared before the county Board of Supervisors and is shown a bullet. He identified it as the one that he removed from Senator Kennedy's neck and again states that it bears the "TN 31" mark on the base of the bullet. Id. at 29. In 1975, Superior Court Judge Robert A. Wenke appointed a panel of seven experts to review Wolfer's conclusions.[11] Id. As a condition of the panel investigation, the court required Wolfer to certify that the bullets to be placed before him in court were the ones he examined in 1968. One of the experts, Patrick Garland, examines the bullet Wolfer certified as the Kennedy neck bullet, and observes that the base of the bullet is mark "DN" "TN" on the base, not "TN 31." Id. at 29-30.

Thus on at least three separate occasions-the autopsy report, his grand jury testimony, and his appearance before the County Board of Supervisors in 1974-Dr. Noguchi identified the bullet he extracted from Senator Kennedy's neck by reference to the "TN 31" mark he put on the base of the bullet. Conversely, De Wayne Wolfer was never asked to

[11] The seven experts were: (1) Stanton O. Berg, Independent Examiner, Minneapolis, MN; (2) Alfred A Biasotti, California Department of Justice Laboratory, Sacramento, CA; (3) Lowell W. Bradford, Forensic Scientist, San Jose, CA; (4) Cortlandt Cunningham, FBI Laboratory, Washington, D.C.; (5) Patrick V. Garland, Tidewater Regional Laboratory, Norfolk, VA; (6) Charles V. Morton, Forensic Scientist, Oakland, CA; and, (7) Ralph F. Turner, Forensic Scientist, East Lansing, MI. (Book, 78).

describe the bullet he examined at trial,[12] and when he was asked to identify the bullet as the one he "matched" to Petitioner's gun in 1975, the bullet bore the markings "DN" "TN." Wolfer was the only witness to be shown People's 47 at trial, (Petition for a Writ of Habeas Corpus, 28, May 25, 2000.) Wolfer would later confirm before the 1975 panel that the bullet he identified at trial as having been removed from Senator Kennedy's neck and as matching a test-fired bullet from Petitioner's weapon bore the markings "TN" "DN." Yet, Dr. Noguchi has consistently stated that the bullet he extracted from Senator Kennedy's neck was marked "TN 31." In addition, pursuant to a court order, the bullet Dr. Noguchi extracted from Senator Kennedy's neck be photographed with a Balliscan camera belonging the County Coroner's Office. (Petition for a Writ of Habeas Corpus, 29-30, May 25, 2000.) According to both Professor Herbert Leon MacDonnell and criminalist William Harper, this photograph revealed a one cannelure bullet. By contrast, all seven panelists that examined the bullet Wolfer presented as the Kennedy neck bullet in 1975 unanimously agreed it was a two cannelure bullet. Id. at 33. The only reasonable inference is that the bullet thus disclosed to the defense as the Kennedy neck bullet and introduced at trial as People's 47 was a one cannelure bullet marked "DN" "TN," yet the Dr. Noguchi's autopsy report, testimony before the grand jury, and appearance before the county board of supervisors demonstrates that the Kennedy neck bullet was marked "TN 31." Moreover, Professor MacDonnell's and criminalist Harper's examination

[12] The prosecution was able to dispense with the necessity of having Wolfer and/or Noguchi identify and describe the bullet because the defense stipulated to its authenticity. Petition, 28.

of a photograph of the Kennedy neck bullet demonstrates it was a one cannelure bullet. Since the two cannelure, “DN” “TN” bullet was introduced at trial, the only reasonable inference is that the one cannelure “TN 31” bullet was never disclosed to the defense in violation of Brady.

The second Brady violation Petitioner focuses upon here is the state’s suppression of evidence that bullets beyond that which were disclosed to the defense were recovered at the scene. William Bailey, the first FBI agent to arrive on the scene, gave a written statement dated November 14, 1976, in which he wrote: “I...noted at least two (2) small caliber bullet holes in the center post of the two doors leading from the preparation room. There was no question...that they were bullet holes and not caused by food carts or other equipment in the preparation room.” FBI files containing a description of crime scene photos reveals that the bullets Agent Bailer observed were in fact removed. Four photographs are listed in the document, E-1 through E-4. E-1 is described as showing two circled bullet holes and the caption states “The portion of the panel missing also reportedly contained a bullet.” (Petition for a Writ of Habeas Corpus, 124-25, May 25, 2000.) Similarly, photographs E-2 and E-3 are also described as revealing two bullet holes each. In addition, LAPD Officer Butler has stated in a taped interview with journalist and author Dan Moldea that he personally observed Wolfer remove two bullets from the center divider, which required disassembling it. Corroborating this account is witness John Shirley, who wrote in 1969 that he had observed two circled bullet holes and that: “the center divider jamb was loose, and it appeared to have been removed from the framework so that bullets might be

extracted from behind. It was then replaced but not firmly affixed." Id. at 12-27. No explanation has ever been offered for what happened to the bullets that FBI photos,[13] Agent Bailey, and Officer Butler all confirm were removed from the pantry that evening. None of the bullets, photos, or wood panels recovered at the scene were ever disclosed to defense counsel.

In addition to the ballistics evidence that the state never disclosed to the defense, the state also failed to disclose the autopsy report in a timely fashion. Petitioner's trial commenced on January 7, 1969, and the jury was sworn February 5, 1969. As recently as December 23, 1968, the record affirmatively discloses that defense counsel had yet to receive a copy of the autopsy report. (Petition for a Writ of Habeas Corpus, 107-8, May 25, 2000.) There is no evidence in the record that the autopsy report was ever disclosed to the defense. Defense investigator Robert Kaiser, however, did write a memo to lead defense counsel Grant Cooper on February 22, 1969 (two days prior to the testimony of the report's author, Dr.

[13] It is irrelevant, for the Brady analysis here, that the FBI, rather than state authorities, were in possession of the records because this was a cooperative investigation between the federal and state authorities, e.g. Owen v. Secretary for Dept. of Corrections, 568 F.3d 894, 929 (11th Cir. 2009) (holding that state habeas petitioner had not sufficiently alleged a Brady violation for information in FBI possession because petitioner has not shown "that the State and the FBI had sufficiently pooled their resources such that the information in the FBI's possession could be imputed to the State."); see also Taus v. Senkowski, 293 F.Supp.2d 238, 247 (E.D.N.Y. 2003) (Were a joint investigation and prosecutorial enterprise engaged in by the F.B.I. and a district attorney's office, it might be appropriate to impute knowledge of all F.B.I. reports to a state prosecutor."), and because "a prosecutor a prosecutor has a duty to find any evidence favorable to the defendant that is known by the prosecution team, which includes their fellow attorneys and the police or FBI agents investigating the crime, that is, those acting on the government's behalf in the case against the accused," Freeman v. U.S., 284 F.Supp.2d 217, 227 (D.Mass. 2003) (citing Kyles v. Whitley, 514 U.S. 419, 437, (1995); Strickler v. Greene, 527 U.S. 263, 281 (1999)).

Noguchi), pointing out that the autopsy defined the muzzle distance as being between one and two inches. According to Kaiser's declaration, it was his routine practice to do things right away and that he would have written this memorandum either on the day he received the autopsy report or at the latest two days after receiving it. Id. at 109. It is true that "Brady does not necessarily require that the prosecution turn over exculpatory material before trial." U.S. v. Gordon, 844 F.2d 1397, 1409 (9th Cir. 1988). Brady does require, however, that disclosure "be made at a time when disclosure would be of value to the accused." U.S. v. Davenport, 753 F.2d 1460, 1462 (9th Cir.1985). As will be discussed in § III(C), *infra*, disclosure of the autopsy report at this point in the trial was of no "value to the accused" because the "delay in disclosure only requires reversal if it so prejudiced appellant's preparation or presentation of his defense that he was prevented from receiving a fair trial." U.S. v. Shelton, 588 F.2d 1242, 1247 (9th Cir.1978), cert. denied, 442 U.S. 909 (1979).

B. Petitioner Was Denied Effective Assistance of Counsel Because Counsel Failed to Investigate Other Possible Defenses Counsel, Stipulated to the Authenticity of the Ballistics the State Offered, and Because Counsel Failed to Move for a Mistrial and/or Continuance once the Autopsy Report Was Disclosed

An ineffective assistance of counsel claim has two elements: (1) that counsel's performance was constitutionally deficient; and, (2) that these deficiencies affirmatively "prejudiced" the defendant. Strickland, 466 U.S. at 687. In addressing the deficiency prong, the Supreme Court has stated that a convicted defendant "must show that counsel's representation fell

below an objective standard of reasonableness." Id., 466 U.S. at 687-88. The Court declined to adopt "[m]ore specific guidelines" because "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Id., 466 U.S. at 688-89. To complement the generality of the "objective standard of reasonableness" beneath which counsel's performance must fall in order to be considered constitutionally unreasonable, the Supreme Court stated in Strickland that "[a] convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. at 690. Petitioner has alleged a variety of specific acts or omissions of counsel that were not "the result of reasonable professional judgment," and in particular focuses upon three here: First, counsel's stipulation to the authenticity of ballistics evidence, specifically People's Exhibit 47, offered as the bullet recovered from Senator Kennedy's neck; second, trial counsel's failure to investigate other possible defenses; and third, counsel's failure to move for a mistrial and/or continuance once the autopsy report was disclosed.

On February 21, 1969, in the middle of trial, defense counsel stipulated to the authenticity of bullets yet to be introduced. (Petition for a Writ of Habeas Corpus, 28, May 25, 2000.) Specifically, defense counsel stipulated to the authenticity of what would become People's 47, which De Wayne Wolfer testified was removed from Senator Kennedy's neck during the autopsy and which Wolfer claimed to have

"matched" to a bullet test-fired from Petitioner's revolver. It may be that there is often little reason to question the authenticity of certain pieces of evidence, such as the state's ballistics evidence, and thus there may often be no error for counsel's failure to contest, or even counsel's acquiescence in the admission, of that evidence. Moreover, in this instance, defense counsel had conceded that Petitioner did in fact shoot Senator Kennedy, presumably in an effort to preserve credibility before the jury in arguing that Petitioner should have been convicted of the lesser included offenses of second degree murder or manslaughter. Id. at 109. It may therefore appear as though "counsel's decision to stipulate to certain evidence...involves a strategic choice, which is 'virtually unchallengeable' if made after thorough investigation." U.S. v. Gaskin, 364 F.3d 438, 468 (2d. Cir. 2004) (internal citations omitted). Counsel's decision to stipulate to the authenticity of the state's ballistics evidence cannot be seen as an unassailable "strategic choice" because (1) defense received no corresponding benefit for its stipulation; (2) the stipulation was not based in fact; and, (3) the decision was not made after a "thorough investigation."

No court has specifically held that the aforementioned three factors-corresponding benefit for the defense, the state's ability to admit the evidence even in the absence of the defense's stipulation, and a thorough investigation-are requirements that defense counsel must meet so as to render effective assistance. Nevertheless, virtually every case rejecting counsel's stipulation to a piece of prosecution evidence exhibits one of these three characteristics. The notion that a stipulation is a

"strategic choice" to the extent that defendant receives some sort of corresponding benefit is demonstrated by Sanchez v. Hedgpeth, 706 F.Supp.2d 963 (C.D.Ca. 2010). In Hedgpeth, the defendant had previously been convicted of committing a lewd act with a minor, failure to register as a sex offender, and attempted robbery. Defendant Sanchez was subsequently charged with, among other things, being a felon in possession of a weapon. At trial, in an effort to keep the jury from hearing negative facts about his prior convictions, defense counsel stipulated to the fact of the prior convictions but did not reveal underlying factual bases for them. On petition for a writ of habeas corpus, Sanchez argued this constituted ineffective assistance of counsel. The court rejected this claim, reasoning that "the stipulation greatly benefitted Petitioner by keeping facts about his prior conviction from being admitted into evidence." Hedgpeth, 706 F.Supp.2d at 1004.

In contrast to Hedgpeth, Petitioner here derived no benefit from counsel's stipulation to the authenticity of the ballistics evidence, in particular People's 47. Conceding the authenticity of the ballistics evidence did not keep the jury from hearing negative facts about the petitioner, as in Hedgpeth. Nor did stipulating to the authenticity of the ballistics evidence allow the introduction of favorable evidence for the Petitioner, see e.g. Little v. Murphy, 62 F.Supp.2d 262, 276 (D.Mass. 1999) (counsel did not act unreasonably in stipulating to the admission of witness statements that both revealed prior bad acts of the defendant and impeached a prosecution witness). Lastly, this is not an instance where counsel declined to contest an obviously authentic piece of evidence in order to preserve credibility with the jury,

e.g., Gaskin, 364 F.3d at 469 ("Experienced defense attorneys routinely stipulate to undisputed facts in order to maintain credibility with the jury when challenging other aspects of the prosecution case. Castle's trial counsel cannot be deemed constitutionally ineffective for stipulating to his client's undisputed signatures on certain exhibits simply because he failed to anticipate a change in prosecution tactics with respect to a disputed signature on another exhibit."), because declining to stipulate to the authenticity of the bullets would not have compromised counsel's credibility with the jury. Declining to stipulate to the authenticity of a piece of evidence is not comparable to actively contesting it. The latter requires affirmative steps, through objections and/or presentation of rebuttal evidence. By contrast, withholding consent to an exhibit's authenticity require only that counsel stand mute.

With respect to the second factor, that the stipulation was not based in fact, the Eighth Circuit rejected a habeas petitioner's claim that counsel rendered ineffective assistance in stipulating that a letter written to a newspaper was in the defendant's and had defendant's fingerprints on it, reasoning that the stipulation

> [W]as solidly based in fact. Everything counsel stipulated to was true-including the ultimate fact, that [defendant] wrote the letter. [Defendant] himself has admitted under oath that he wrote the letter, and that he did it "of [his] own free will." The State could in fact have introduced evidence of the fingerprints, and could in fact have called the handwriting expert, and we have no doubt that it would have done so had Mr. Putzel refused to stipulate. Smith v. Armontrout, 888 F.2d 530, 536 (8th Cir. 1990) (internal citations omitted).

See also Gaskin, 364 F.3d at 469 In contrast to Armontrout, where the stipulation "was solidly based in fact," and Gaskin, where stipulation was "undisputed," the prosecution conceded that it could not authenticate the bullets it was attempting to admit. (Petition for a Writ of Habeas Corpus, 29, May 25, 2000.) Despite the concession from the state that it was unable to authenticate a key piece of evidence, defense counsel saw fit to permit the state to introduce it, anyway. Moreover, this stipulation was not made "after a thorough investigation." Rather, the defense rendered the stipulation after no investigation. When determining if counsel's acts or omissions are constitutionally unreasonable, the Supreme Court has stated that the inquiry should be guided by reference to "counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690. In removing the prosecution's burden of proving the authenticity of its ballistics evidence after the state had conceded it would be unable to do so, counsel failed to "make the adversarial process work in the particular case." Rather, where the state has conceded that it cannot authenticate a key piece of evidence, surely no reasonable defense attorney would concede the authenticity of that evidence. This is not to suggest that where contesting a piece of evidence might harm counsel's credibility with respect to a chosen trial strategy that the Constitution requires defense counsel to actively contest a piece of evidence by, for example, introducing evidence to rebut its authenticity. But nor does the Constitution permit a conviction to stand where counsel acquiesced to the

admission of a key piece of evidence despite possessing the knowledge that the prosecution could not authenticate it.

In addition to rendering constitutionally unreasonable assistance by stipulating to the authenticity of the state's ballistics evidence, counsel also was ineffective in failing to investigate alternative defenses. Defense counsel in this case conducted zero investigation into the facts surrounding it, taking at face value everything that the state asserted. For example, after reviewing the ballistics evidence prior to Petitioner's trial, criminalist William Harper concluded that there was no ballistics match between Petitioner's weapon and the bullets recovered from Senator Kennedy and victims Weisel and Goldstein Robert J. Joling and Philip Van Praag, An Open & Shut Case: How a "rush to judgment" led to failed justice in the Robert F. Kennedy Assassination viii (2008). When confronted with this evidence, lead defense counsel Grant Cooper did nothing except to continue with his trial strategy of conceding Petitioner's guilt so as to argue diminished capacity. Cooper was again confronted with evidence that the ballistics match the Wolfer and the state claimed matched Petitioner's weapon to bullets recovered from Senator Kennedy and other victims when the prosecution conceded that they could not establish the authenticity of that evidence. Not only did counsel decline to investigate this claim, but he actually made it easier on the state by stipulating to the bullets' authenticity. Yet a third example of counsel's failure to consider the alternative defense strategy that Petitioner did not fire the fatal shot is that upon belatedly receiving the autopsy report indicating that Senator Kennedy was shot from behind and that the gun that shot Senator Kennedy was no more than two

inches away, defense counsel declined to move for a continuance to investigate and possibly alter his trial strategy.

In 1972, Cooper explained his decision not to investigate as follows:

> I did not retain an independent ballistics expert to analyze the slugs... Had I any feeling that in a case of this importance, Mr. Wolfer either willfully falsified his ballistics analysis or negligently, improperly, or otherwise arrived at his conclusions, I would have hired an independent ballistics expert....Because of my firm belief that Sirhan alone fired the shots and that Mr. Wolfer was testifying correctly under oath I did not have the bullets independently analyzed. Id. at 64.

Putting aside for the moment the implausibility that this is probably the first time in the history of jurisprudence that a defense lawyer that a police officer would not negligently misrepresent evidence, the statement is entirely implausible on its face. Cooper had up to and during the trial at least three objective indicia that Wolfer had either negligently or willfully misstated his conclusions: First, there is Harper's conclusion that no match could be identified between Petitioner's weapon and bullets recovered from the victims; second, there is the state's representation that they would be unable to authenticate the bullets offered and accepted into evidence at trial; and third, there is the autopsy report, which, had Cooper read it and followed through, would have shown him not only that the bullet the state admitted as having been recovered from Senator Kennedy was not in fact so, but also that it was literally impossible for Petitioner to have shot Senator Kennedy. See § III(C), *infra*. Defense counsel's failure to adequately investigate the possibility

of a second shooter goes well beyond his failure to hire an independent ballistics expert. Counsel did not fail to request even the most rudimentary pre- or in-trial examination of the bullet identification evidence, nor did he proffer any cross-examination of the state's presentation of the ballistics evidence.

In arguing against the allegation of ineffective assistance, respondent relies upon the "overwhelming" evidence of Petitioner's guilt, in particular Petitioner's own version of the events implicating him, and the fact that Petitioner's guilt was undisputed at trial. (Resp. Answer 16-18.) Neither of these are persuasive reasons for denying an ineffective assistance claim here. First, counsel's failure to dispute Petitioner's guilt at trial is itself one of the specific "acts or omissions" that Petitioner now alleges denied him of his constitutional right to effective assistance. Specifically, as discussed in the preceding paragraph, counsel's decision to concede Petitioner's guilt and argue diminished capacity was constitutionally unreasonable because it was not made after proper investigation. It is true that "defense counsel does not have an obligation to pursue an alternative, conflicting defense once he reasonably selects the defense to present at trial." Phillips v. Woodford, 267 F.3d 966, 979 (9th Cir. 2001). As the Ninth Circuit qualified, however, "the critical words...are' "reasonably selected.'" Id. at 980. In explaining why counsel's choice to focus on an alibi defense was not made after a reasonable investigation into alternatives, the Ninth Circuit wrote that trial counsel "testified at a state-court evidentiary hearing that he would have presented the alternative defense had he had certain documents in his possession; the

state habeas court later made a factual finding that [counsel] indeed had that information in his possession at the time of the trial. Moreover, by his own admission, [counsel] believed Phillips's alibi defense to be an unreasonable one." Id. Similar to counsel's assertion in Woodford that he would have presented the alternative defense if he had certain documents, Grant Cooper stated that if he had "any feeling" that the Wolfer's ballistics conclusions were "improper" he would have explored an alternative defense denying Petitioner's guilt. Joling & Van Praag, *supra*, at 64. In addition, just as it was later found that trial counsel in Woodford "indeed had the information in his possession" that he claimed was a precondition to his exploring alternative defenses, so too did Cooper have notice that Wolfer's conclusions were erroneous in the form of Harper's conclusions to that effect, the state's concession that they could not authenticate the ballistics evidence, and the autopsy report revealing both that Petitioner could not have shot Senator Kennedy (see § III(C), *infra*) and that the bullet removed from Senator Kennedy's neck was not in fact the one presented at trial. Lastly, just as counsel's failure to investigate an alternative to the alibi defense in Woodford was unreasonable because it was based on counsel's belief that "Phillips's alibi defense [was] an unreasonable one," so too was Cooper's failure to investigate the possibility of a second shooter unreasonable because it was based on his "firm belief that Sirhan alone fired the shots and that Mr. Wolfer was testifying correctly under oath." Joling & Van Praag, *supra*, at 64.

Respondent's reliance upon Petitioner's version of events is similarly unpersuasive. In Woodford, the Ninth

Circuit found that counsel's performance was constitutionally deficient because counsel had failed to investigate the alibi put forth by his own client, which turned out to be a weak defense and resulted in a conviction. Woodford, 267 F.3d at 978-979). Thus although Petitioner's statements may be relevant in assessing the "prejudice" prong of an ineffective assistance claim, simply listening to one's own client is no defense to an accusation of constitutionally inadequate representation.

C. The Cumulative Effect of These Constitutional Errors is that There is Not Only a Reasonable Probability that, but for the Constitutional Violations, the Outcome of Petitioner's Trial Would Have Been Different, But Also That It Is More Likely Than Not that No Reasonable Juror Would Have Convicted Him In the Light of the New Evidence

In determining both if the government has violated its disclosure obligations under Brady and whether a defendant has sufficiently alleged ineffective assistance of counsel, the defendant must show that but for the constitutional errors, there is a reasonable probability that the outcome of the proceedings would have been different. See e.g., Kyles v. Whitley, 514 U.S. 419, 433 ("constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."); see e.g., Strickland, 466 U.S. at 694 ("The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."). Moreover, a court "consider[s] the cumulative prejudicial effect of multiple trial errors in

determining whether relief is warranted," Phillips v. Woodford, 267 F.3d 966, 985 (9th Cir. 2001) (citing Mak v. Blodgett, 970 F.2d 614, 622 (9th Cir.1992) (per curiam) (collecting cases)). Thus although any of the individual errors assert in §§III(1)-(2), *supra*, may not, by themselves, be sufficient to meet the materiality and prejudice standards for Brady and ineffective assistance claims, respectively, the court should still grant relief if it can be demonstrated that the combined effect of the errors is such that had they not occurred there is a reasonable probability that the result of Petitioner's trial would have been different.

The burden of proof for actual innocence, meanwhile, is much higher than that for Brady violations or ineffective assistance claims. In order to meet the burden of proof, a habeas petitioner asserting the "actual innocence" exception to the procedural default rule petitioner "must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." Id., 513 U.S. at 327. Petitioner respectfully submits that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence. Petitioner can show that it is more likely than not that no reasonable juror would convict because not only does the evidence not introduced at trial because of Brady violations and ineffective assistance preclude Petitioner as the shooter, it also unequivocally shows that there was in fact a second gunman.

The report of the autopsy that Dr. Thomas Noguchi, then chief medical examiner for Los Angeles County, authored discloses three bullet wounds in Senator Kennedy. For each of these three bullet wounds, there is a column

for “direction,” and for each of the three bullet wounds the direction is described as “back to front.” (Exh. 1, 2-3.) The undeniable conclusion from the autopsy report is that whoever fired the bullets into Senator Kennedy did so from behind. Not a single witness, however, places petitioner behind Senator Kennedy at the time of the shooting. (Petition for a Writ of Habeas Corpus, 110, May 25, 2000.) In fact, every single eyewitness places petitioner in front of Senator Kennedy when the shooting occurred. For example, eyewitness Martin Patrusky, a banquet waiter at the Ambassador Hotel, provided a statement in which he said “Kennedy’s back was not facing Sirhan. Sirhan was slightly to the right front of Kennedy.” Id. at 112. Similarly, eyewitness Vincent Di Pierro, also a waiter at the Ambassador Hotel, provided the FBI with a signed statement in which he stated: “Senator Kennedy…turned to his right in the direction of the heating cabinet and at that time I saw the white male…standing…at the heating cabinet. I saw this individual….[Shoot] Senator Kennedy in the head.” Id. As Di Pierro has Senator Kennedy facing the heating cabinet where the shooter is standing, Di Pierro’s statement places petitioner in front of the victim. Moreover, in his testimony before the grand jury, eyewitness Karl Uecker, corroborates Di Pierro’s placement of petitioner at the heating cabinet, in front of Senator Kennedy. Joling & Van Praag, *supra*, at 94-95. Another eyewitness, Ambassador Hotel maître ‘d Edward Minasian, testified in front of the grand jury that he was approximately two feet in front of Senator Kennedy, and that petitioner, in turn, was in front of Minasian, near the steam heater, when petitioner began firing his weapon. Id. at 100-01. Two other witnesses,

Richard Lubic and Frank Burns, corroborate petitioner's position as in front of Senator Kennedy near the steam table, Id. at 106-08, through their testimony at petitioner's trial.

The eyewitness testimony combines with the autopsy report conclusively proves that petitioner could not have killed Senator Kennedy. Every single witness places petitioner in front of Senator Kennedy at the time of the shooting, and the autopsy report unequivocally demonstrates that Senator Kennedy was shot from his back. It is therefore literally impossible for petitioner to have shot Senator Kennedy. Moreover, the evidence contained within the autopsy report regarding the angle of the entry wounds was never presented at trial (Decl. of Dr. Cyril M. Wecht, 2:7-8), and as such qualifies as "new evidence" of actual innocence.

Even though the new evidence of the angle of the entry wound contained within the autopsy report and the eyewitness testimony regarding petitioner's location at the time of the shooting conclusively prove that it could not have been petitioner who shot Senator Kennedy, the eyewitnesses and the autopsy report contain additional evidence exonerating petitioner. Specifically, the autopsy and eyewitness evidence conclusively prove that petitioner was never close enough to Senator Kennedy to have made the wounds that Dr. Noguchi observed. The autopsy report reveals the Dr. Noguchi observed powder burns around each of the three bullet wounds on Senator Kennedy, and that this is "consistent with very close range shooting." Joling & Van Praag, *supra,* 420-21, 428. According to the autopsy report, Dr. Noguchi and members of the LAPD conducted a test firing on June 11, 1968, in order to

replicate the powder burns that Dr. Noguchi observed around Senator Kennedy's wounds. The autopsy report states, "the test pattern is most similar to the powder residue pattern noted on the Senator's [wounds]" when the gun is fired at a distance of one inch. The "[s]imilarity persists" from a range of up to two inches, according to the report. (Exh. 1, 39-40.)

According to Dr. Cyril Wecht, a licensed medical examiner who consulted with Dr. Noguchi for the autopsy and has reviewed the autopsy report, the only conclusion that can be drawn from this evidence is that Senator Kennedy was shot "at a maximum distance of one to one and one half inches" (Decl. of Dr. Cyril Wecht, 1:21-27); (Petition for a Writ of Habeas Corpus, 110, May 25, 2000.) Petitioner could not have fired the bullet that killed Senator Kennedy because he was never close enough to the victim, nor was he behind him as the autopsy indicated the perpetrator was. There were twelve eyewitnesses to the shooting. The closest any of them places petitioner's weapon to Senator Kennedy is one foot, with an outside distance of five feet. Karl Uecker, who was closest to petitioner and actually grabbed hold of his arm while petitioner was firing, has stated that petitioner's weapon was approximately 1 ½-2 feet from Senator Kennedy, and in front of him. The eyewitness and autopsy evidence thus further prove that petitioner could not have killed Senator Kennedy because where the autopsy report conclusively states that the gun that shot Senator Kennedy was no farther than two inches away and fired from behind him. The eyewitness evidence unequivocally places petitioner's weapon no closer than one foot, and never behind the Senator.

In addition to the eyewitness evidence and autopsy report, there is ballistics evidence, not offered at trial, that refutes the evidence offered by the prosecution that the bullet which killed Senator Kennedy is a match for the weapon that petitioner fired that night. At petitioner's trial, De Wayne Wolfer, an LAPD criminalist, testified that he achieved a ballistics match between the bullet recovered from Senator Kennedy and one he test-fired from petitioner's weapon. (Petition for a Writ of Habeas Corpus, 27, May 25, 2000.) In 1975, Superior Court Judge Robert A. Wenke appointed a panel of seven experts to review Wolfer's conclusions.[14] Id. at 29. All seven of these experts agreed that Wolfer's opinion testimony matching the Kennedy bullet with one test-fired from petitioner's was erroneous and insupportable. Id. at 31. Not only that, but the independent panel was unable to match the bullets recovered from any of the other victims to one's test-fired from petitioner's weapon. The panel did, however, manage to match three of the bullets recovered from the victims to each other, demonstrating that neither time nor storage conditions caused a degradation in the conditions of the bullets that would alter ballistics tests. Joling & Van Praag, *supra,* at 84. None of this ballistics evidence was presented at trial, and it is certainly sufficient to cast serious doubt upon Wolfer's testimony that there was a ballistics match

[14] The seven experts were: (1) Stanton O. Berg, Independent Examiner, Minneapolis, MN; (2) Alfred A Biasotti, California Department of Justice Laboratory, Sacramento, CA; (3) Lowell W. Bradford, Forensic Scientist, San Jose, CA; (4) Cortlandt Cunningham, FBI Laboratory, Washington, D.C.; (5) Patrick V. Garland, Tidewater Regional Laboratory, Norfolk, VA; (6) Charles V. Morton, Forensic Scientist, Oakland, CA; and, (7) Ralph F. Turner, Forensic Scientist, East Lansing, MI. (Book, 78).

between petitioner's weapon and the bullet removed from Senator Kennedy.

In addition to the ballistics evidence casting serious doubts upon the state's assertion that there was a ballistics match between Petitioner's weapon and a bullet recovered from Senator Kennedy during the autopsy, there is audio, ballistics, and eyewitness evidence, though previously not available, that now demonstrates the existence of an additional shooter other than petitioner. During the shooting, a Canadian reporter named Stanislaw Pruszynski had inadvertently left his tape recorder on and recorded the entire incident (Decl. of Robert K. Jolling, JD, 4:2-6). Phillip Van Praag, in collaboration with Robert Jolling, a fellow and past president of the American Forensic Sciences institute, utilized technology and techniques not available at the time to identify 13 distinct "shot-sounds" on the tape (Jolling Decl., 4:25-27). Van Praag and Jolling have concluded that the sounds they heard were, in fact, gun shots rather than, for example, balloons popping. According to Van Praag, the sound from a gun-shot is caused by the vibration of the weapon interacting with its mass. Bullets, because they have a good deal of mass, "resonate" for a much longer period than objects with much lighter mass, such as balloons. Van Praag has concluded that the resonances he heard on the tape resonated for far too long to be anything other than a bullet.

Van Praag's conclusion that he heard 13 distinct "shot-sounds" conclusively demonstrates that there was in fact an additional shooter on the night in question. Van Praag's conclusions demonstrate the existence of a second shooter because petitioner utilized a .22 caliber Iver-

Johnson revolver on the night of the incident (e.g., Jolling Decl., 5:18-26). After emptying his weapon, petitioner did not reload. Indeed, petitioner could not have reloaded because Karl Uecker had pinned his arm down and, along with others, subdued petitioner before he ever had an opportunity to reload. This is not now and has never been disputed. Given that the audio evidence demonstrates that 13 shots were fired, and given that petitioner could only have fired eight rounds, Van Praag's audio analysis conclusively demonstrates the existence of a second shooter.

Van Praag's audio analysis is not limited to the number of bullets fired. Rather, Van Praag also heard on the tape two sets of "double-shots," i.e. two shots fired extremely close together in time. The first set of double-shots that Van Praag detected have a separation of 149 milliseconds, and the second set of double shots Van Praag heard are separated by 122 milliseconds (roughly a rate of 8 per second). According to firearms experts, two or three shots per second is considered fast, and the world's record is reported at 140 milliseconds between shots. Petitioner utilized an Iver Johnson Cadet 55SA eight shot revolver on the night of the shooting. The Iver Johnson is a 1950's low-priced revolver known for its heavy trigger pull and it contains only eight shots. In 2007, Discovery Time Channel conducted a rapid-fire test of the Iver Johnson Cadet 55 model, using a noted firearms expert. The fastest two shot firing interval this expert could achieve was 366 milliseconds. Petitioner's weapon therefore simply cannot be responsible for the two sets of "double-shots" that Van Praag identified because he simply could not have pulled the trigger in such rapid succession. Moreover, at least

two eyewitnesses, Attorney Evan Phillip Freed and Booker Griffin, report seeing a second shooter during the incident. These eyewitness accounts corroborate what Van Praag's audio evidence already conclusively proves: that there was a second shooter on the night in question. None of this evidence was ever presented at trial.

Respondent relies heavily upon the fact that Petitioner's guilt was undisputed at trial, and that Petitioner did in fact confess to the crimes while testifying. The failure to dispute Petitioner's guilt at trial, however, was the result of the state's failure to disclose exculpatory evidence to the defense in violation of Brady. Specifically, without the autopsy report demonstrating that the eyewitness testimony regarding Petitioner's placement and distance from Senator Kennedy rendered it scientifically impossible for Petitioner to have fired the bullets that hit Senator Kennedy, and without the evidence that police recovered more than eight bullets at the scene, there was little evidentiary basis for the defense to dispute Petitioner's guilt. In determining Brady error, "the reviewing court may consider directly any adverse effect that the prosecutor's failure to [disclose] might have had on the preparation or presentation of the defendant's case." U.S. v. Bagley, 473 U.S. 667, 683 (1985). The failure of the defense team to contest Petitioner's guilt at trial can therefore not be a persuasive piece of evidence because that failure is itself the product of constitutional error, both in the form of ineffective assistance and through numerous Brady violations.

The evidence at trial is not compelling not just because much it was the product of constitutional

violation, but also because in the "actual innocence" context, a focus on the evidence that was presented at trial is misplaced because, as the Supreme Court held in Schlup:

> In assessing the adequacy of petitioner's showing, therefore, the district court is not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on "actual innocence" allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial….The habeas court must make its determination concerning the petitioner's innocence 'in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial.' Schlup, 513 U.S. at 327-28 (internal citations omitted).

The result of combining the Bagley rule that "prejudice" resulting from suppression of evidence "any adverse effect that the prosecutor's failure to [disclose] might have had on the preparation or presentation of the defendant's case" and the Schlup rule that a court reviewing an actual innocence claim should "consider the probative force of relevant evidence that was either excluded or unavailable at trial" is that it is irrelevant whether "the trial record contained sufficient evidence to support the jury's verdict" when assessing an "actual innocence" claim. Schlup, 513 U.S. at 327, 331.

Respondent has argued that the "presence of a second gunman would not exculpate petitioner." Other than this blanket statement, the respondent offers no argument why this is the case. Certainly if it could be shown that someone other than petitioner actually shot Senator Kennedy

that would exculpate him as a principal in the murder. Nor is it clear that petitioner could have been found guilty for aiding and abetting in this crime. In California, accomplice liability "results from an act by the perpetrator to which the accomplice contributed," People v. Prettyman, 14 Cal.4th 248, 259 (1996) (emphasis added), and the state must prove, among other things, that the defendant acted "with knowledge of the unlawful purpose of the perpetrator." Id. (citing People v. Beeman, 35 Cal.3d 547 (1984)) (emphasis added). Here, there is no evidence to suggest that petitioner in any way "contributed" to the acts of the other shooter, nor that he had any knowledge of that shooter or his criminal purpose. In fact, the state has consistently denied the existence of a second shooter, and thus cannot here rely upon a theory of accomplice liability. Nor can the state rely upon a theory of conspiratorial liability. As in most jurisdictions, California requires proof of an agreement between two or more people in order to prove a criminal conspiracy. People v. Jurado, 38 Cal.4th 72, 120 (2006). There is absolutely no evidence of any agreement between petitioner and another to commit the crime, so he cannot be guilty of conspiracy to commit murder.

Perhaps in arguing that the presence of a second gunman would not exculpate Petitioner, Respondent means to suggest that even though there may have been a second shooter, it was still Petitioner who killed Senator Kennedy. The autopsy report combined with eyewitness testimony placing Petitioner in front of and at least a foot away from Senator Kennedy refute any such argument. Or, Respondent could mean to suggest that eyewitness testimony is sufficient to show that, at a minimum,

Respondent is guilty of attempted homicide. Assuming, for the moment, that there is sufficient evidence to demonstrate the intent element of this crime,[15] then the eyewitness testimony would appear to establish the other elements of this offense. To clarify: no argument is asserted that Petitioner was not present on the night of the incident, and nor do we contend that Petitioner did not fire eight rounds from his weapon. "Actual innocence," however, does not require innocence in the broad sense of having led an entirely blameless life." Schlup v. Delo, 513 U.S. 298, 328 n.47 (1995). Rather, all that need be shown is that Petitioner is "actually innocent" for the crime of conviction. Cf. Woodford, 267 F.3d 980-981 (habeas petitioner's claim that but-for errors he would have been convicted of a lesser offense and not death eligible establishes prejudice).

Respondent relies heavily on the fact that petitioner has, at several times immediately after the incident, at trial, and after the trial, admitted to shooting Senator Kennedy. (Resp. Answer, 16-18.) These admissions, however, cannot be taken at face value. Petitioner has consistently stated that he has no memory of shooting Senator Kennedy. Petitioner has even stated that his trial attorneys "inculcated" him with the belief that he killed Senator Kennedy (Exh. 2, 1.) Moreover, due to the state's violation of the Due Process Clause in presenting perjured testimony and withholding exculpatory evidence, as well as ineffective assistance of Petitioner's trial counsel, it did appear at the time of Petitioner's trial that there was overwhelming evidence of Petitioner's guilt. Given these

[15] Intent was essentially the only thing that trial counsel actually did contest.

Admitted Pro Hoc Vice

circumstances, it is hardly surprising that Petitioner conceded killing Senator Kennedy. It is in fact both reasonable and likely that Petitioner did in fact at one point honestly believe he had shot Senator Kennedy because the state has produced evidence of motive and that Petitioner did fire his weapon that evening, and there was nothing to suggest to Petitioner that someone else had killed the Senator.

Conclusion

In conclusion, the Respondent's motion to dismiss should be denied because Petitioner has not defaulted under the Statute of Limitations. Petitioner has not defaulted because the basis upon which it is alleged Petitioner had not properly filed in the state court is not an adequate and independent state grounds that can defeat proper filing.

For the foregoing reasons, Petitioner asks that the Court deny Respondent's motion to dismiss, order an evidentiary hearing on the merits, issue a writ of habeas corpus, an d such other relief as the court may deem just and appropriate.

Dated: October 28, 2010.

Respectfully Submitted,

WILLIAM F. PEPPER

LAURIE D. DUSEK
Attorneys for the Petitioner

Exhibit Two:
Letter from Petitioner to Counsel

Disclaimer: Certain portions of this exhibit have been redacted to preserve attorney-client privilege.

Sirhan B21014
P.V.S.P. D1 225L
P.O. Box 8500
Coalinga CA 93210
Oct. 7, 2010

Dear Ms. Dusek and Dr. Pepper,
Hello and I hope that you are OK and in good health.

I have a couple of items to report.

[redacted]

(2) As to the 1985 interview with the L.A Times reporter. I said what I said because it was literally inculcated into me that I was the only person who killed Bobby Kennedy. But, when the LAPD released the files of my case to the State Archives in 1988 (?), and I began to hear [redacted] from other inmates who watched T.V programs, that I could not have committed the crime, and later when Lynn Mangan began to delve into the records at the Archives in Sacramento, I began to question my involvement in this horrible crime. I asked Attorney Luke McKissick who represented me on Automatic appeal and at parole hearings about investigati possibility of my innocence, he scoffed at and told me that my case is open & shut and that my conviction was "unassailable." Grant Cooper

over

had the some attitude he said to me before and during the trial "Sirhan, for you to tell ME that you didn't Kill Bobby Kennedy, is like me shoving a red hot poker up your ass and you telling me that you don't feel any pain. (Cooper often said this to me when no one else was present).
As I began to develop the conviction that I was innocent based on the newly developed evidence by Rose Lynn Mangan and Larry Teeter I declared at my June 1997 parole hearing that I was innocent of this crime and that I was the victim of a frame up by the prosecution (or some similar words) I continue to proclaim my absolute innocence to this moment.

(3) [redacted]

*(4) If you remember during our last visit on Sept. 27/28, I had a cough that was bothering me for a few days prior. When I visited w/ Munir on Oct 2nd, I had the some but more pronounced cough. The next day, (Sunday Oct 3,) it was full blown with fever, night chivers & sweating etc. A noon on Sunday I reported the problem to medical staff who sent me to the "D" yard Medical Clinic my vitals were taken and I weighed 149 lbs. I was then taken to the prisons central treatment building by go-cart and which was not a part of the "D" yard complex. I was given 2 types of ~~antib~~ anti biotics (Diflucan and Azithromax) a tylenol like drug and about 25 throat lozonges. The Antibiotics were for a period of 6 days. The next day (Monday Oct 4,) I was taken back to this [redacted]

some place where they took blood samples and 2 chest X Rays, one posterior/one lateral, The Dr., (named R. Das-Pa) diagnosed pneumonia and prescribed an inhaler.
The R.N., whose initials are KB spoke about possible Valley Fever infection and advised that I will be given Antibiotics to fight the coccidioidmycosis (valley fever agent, a fungus in the earth) for the 3-6 weeks it takes for the lab results to come back. But this Dr. R. Das-Pa, M.D., apparently did not think it was necessary. On Oct 5 I presented myself at the "D" yard Medical office window and told the lady there that I was still experiencing the same symptoms and the the central medical facility (referred to as CTC) should issue me more Antibiotics - only as a temporary step. But nothing has happend so far. I feel better today but the symptoms are still strong and lingering especially at night. In my opinion an ethical and smart M.D. would have prescribed everything needed in terms of medication just to be on the safe side. But this prison seems to want the valley fever run rampant inside my body until their lab test come back. The R.N. (miss KB) asked me on Monday if I get visitors and I answered yes. Her question seemed to anticipate the flurry of questions that the prison will get about my health from the outside.

A Convicted street (Bar admitted) attorney who lives in my Bldg told me that a lawsuit for damages can be filed and is sustainable against the Calif. Dept of Corrections for placing me in a

a known health injurious environment, the Fresno County Grand Jury has studied the Valley Fever issue at this prison but the prison seemingly always balks at being forthright with the grand jury.
When you visit me again - please shield your faces and mouths and noses from the dust in the wind and keep your car windows closed to prevent any possible exposure to this Valley fever pathogen. It is a horrible and debilitating experience.

(5) [redacted]

(6) I telephoned Muir twice last night (Wed.) and I could hear him say "hello" but he could not hear me - I redialed with the same result. Apparently there is a malfunction with that particular phone. I will try to call Muir again.

[redacted]

God bless you all.

Sincerely,

P.S. Dr. DAS - PA also told me to drink 2 litres of water per day.

S.S.

I still cough and feel the chills and now have an urge to vomit.

DECLARATION OF ROBERT JOLING

I, Robert Joling, hereby declare and state as follows:

1. I am, and have been a licensed attorney for the past 59 years, authorized to practice before the Supreme Court of Wisconsin, the Eastern and Western United States District Courts of Wisconsin, the United States District Court of Arizona, the Federal 7th Circuit Court of Appeals, and the Supreme Court of the United States of America.

2. I am, and have been over the past 53 years, a member and Fellow of the American Academy of Forensic Science, and am a past president (1975-76) of that organization, frequently referred to as the "AAFS" that is comprised of approximately 6000 forensic scientists involving the following disciplines encompassing 11 distinct Sections, to wit:

> (i)Criminalistics; (ii)Digital & Multimedia Sciences; (iii)Engineering Sciences; (iv) General; (v) Jurisprudence; (vi) Odontology; (vii) Pathology/Biology; (viii) Physical Anthropology; (ix)Psychiatry & Behavioral Science; (x) Questioned Documents; and (xi)Toxicology.

Over the course of my career, I specialized in the utilization of many of the forensic sciences, particularly in matters having medicolegal implications.

3. I was one of the founders and a former member of the Board of Directors of the Forensic Science Foundation serving in that capacity for a total of 8-years. I am also

a former member of the British Academy of Forensic Science; a former Associate in Law of the American College of Legal Medicine; and former Associate Professor of Medical Jurisprudence at the University of Arizona College of Medicine.

4. I am a veteran of World War II, having served in the United Sates Air (Corps) Force from February 1943 until February 1946. I was honorably discharged from military service after serving overseas on the United States Territory of Guam. Consequent to my overseas assignment, I was a recipient of a Presidential Unit Citation as a member of the 20th Air Force, 314th Heavy Bombardment Wing, 19th Bomb Group, 28th Squadron. During my early military training, I successfully attended an intensive 6 weeks course in military firearms while stationed at the Ordnance School in Lansing, Michigan. During that training period, I became learned in the nomenclature of weapons ranging from 75 mm canons down to .22 caliber rifles and handguns.

5. In February 1969, at the annual meeting of the American Academy of Forensic Sciences, held at the Drake Hotel in Chicago, Illinois, the late Dr, William G. Eckert, then of Wichita, Kansas, requested my presence in his hotel room at the Drake hotel. When I responded affirmatively and joined Dr. Eckert in his hotel suite, Dr. Thomas Noguchi, then the coroner-medical examiner of Los Angeles, California, was also present. Upon request being made I, as a lawyer involved in medicolegal matters, reviewed and critiqued the autopsy protocol presented to me relating to the autopsy performed by Dr. Thomas Noguchi upon the body

of the late Senator Robert F. Kennedy. I devoted the better part of 2 ½ hours examining and discussing that autopsy protocol, and found it to be the most thorough and complete autopsy I have ever read, before or since said occasion.

6. It was apparent that there was a consensus of opinion, i.e. that the Senator had been fired upon by four separate gun shots, two of which entered his body under the right armpit and traversing at very steep angles upward from right to left. One of these bullets came to rest at C-6 (6th cervical vertebrae) while the other exited the front of his upper shoulder proceeding through and into a ceiling tile located above this area. A third and fatal bullet was fired from a distance approximately 1½ inches to the rear of the Senator's right ear lobe and approximately ¼ inch from his skull. A fourth bullet entered the Senator's suit jacket from the rear near the uppermost right shoulder seam and also entered the ceiling tiles above the area.

7. I have been involved in the re-examination of data relating to the assassination of Senator Robert F. Kennedy ever since that meeting in February 1969 at the Drake Hotel in Chicago, Illinois.

8. I am fully aware that about or during 2004 AD, audio-engineer Philip Van Praag obtained a copy of an audiotape recording of the assassination of Senator Robert F. Kennedy that was at that time in the custody of the California State archives. Later, in 2008, I obtained another copy of this same audiotape that had been retained by the F.B.I. in its office in Washington, DC.

9. The original of this audiotape was made by Stanislaw Pruszynski who was within the Pantry of the Ambassador Hotel at the time of the assassination of Robert F. Kennedy. Pruszynski recorded the shots that were fired within the Ambassador Hotel pantry at that time. This audiotape was later given to Canadian law enforcement officials upon request and, ultimately, copies of it were sent to the F.B.I. in Washington, D.C. and thence to the Los Angeles Police Department and from there possession was given to the California State Archives where a journalist subsequently located it.

10. To the best of my knowledge and belief, the Pruszynski audiotape of the shooting that occurred within the pantry of the Ambassador Hotel in Los Angeles, California on the morning of June 5, 1968, had never been analyzed previously with the degree of precision obtained by the process used by Philip Van Praag because the technology utilized by Van Praag was only recently developed to the point where it has become possible to ascertain with precision and differentiation the gunshot sounds that were being recorded.

11. Using this newly available and acceptable technological acoustical analysis, it was possible to identify a total of 13 distinct gunshots recorded on the Pruszynski audiotape. The Pruszynski audiotape also revealed and confirmed that two pairs of gunshots were identified as being fired almost simultaneously, further confirming that two guns were being fired within the

Ambassador Hotel pantry at the time the Senator was assassinated.

12. In the more than 50 years that I have been a Member and Fellow of the AAFS, I have gained experience, knowledge, and insight into the utilization of forensic processes. I used this knowledge and experience during the trial of criminal and civil cases during the more than 40 years of my legal practice as a trial lawyer. As a Fellow in the Academy, I have contributed several articles that were published in the *Journal of the American Academy of Forensic Sciences*. One such publication, a 4-part dissertation was titled ***Firearms Evidence for Attorneys,*** and was published in the *Journal of the AAFS* in the 1980s. This 4-part article was subsequently re-published with my permission in the official *Journal of the American Firearms and Toolmark Examiners Association*.

13. I have personally examined and inspected the .22 caliber Iver-Johnson 8-shot revolver possessed and utilized by Sirhan Bishara Sirhan within the pantry of the Ambassador Hotel on the morning of June 5, 1968. Therefore, from my professional and personal experience and expertise, I know that on the occasion of the assassination of Senator Robert F. Kennedy, the Iver Johnson .22 caliber model revolver in question held no more than eight bullets in its rotating cylinder.

14. Also from my personal observation of the firing of this model Iver Johnson, Cadet Model, .22 caliber revolver, it is my opinion that the trigger mechanism would not

permit sufficient rapid firing to allow a possibility for any person to manually discharge this model handgun rapidly enough so that the shots would distinctly appear on an audio recording indicating that gun shots had been fired simultaneously.

Disclaimer: It is expressly stated that no opinion stated herein is in any way to be construed as an opinion of the American Academy of Forensic Sciences or of any its officers or members thereof. All statements made herein are solely the professional and personal opinion of the scrivener hereof.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Green Valley, Pima County, Arizona on this 25th day of October, 2010.

Robert J. Joling, J.D.
State Bar of Wisconsin #1005423

STATE OF AZ
County of Pima

ON the 25th day of October, 2010, Robert J. Joling appeared before me and acknowledged the above.

Raelyn Harrison
Notary Public

OFFICIAL SEAL
RAELYN HARRISON
NOTARY PUBLIC-ARIZONA
PIMA COUNTY
My Comm. Exp. June 29, 2012

Exhibit One:
Report of Autopsy Conducted by Dr. Thomas Noguchi, Chief Medical Examiner of Los Angeles County, on Robert F. Kennedy

Disclaimer: Counsel has added page numbers to this exhibit to assist the court in referencing it. Not other modifications have been made.

MEDICOLEGAL INVESTIGATION
ON THE
DEATH OF
SENATOR ROBERT F. KENNEDY

THOMAS T. NOGUCHI, M.D.

DEPARTMENT OF CHIEF MEDICAL EXAMINER-CORONER
COUNTY OF LOS ANGELES

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REPORT ON THE MEDICOLEGAL INVESTIGATION
OF SENATOR ROBERT F. KENNEDY

COUNTY OF LOS ANGELES
DEPARTMENT OF CHIEF MEDICAL EXAMINER – CORONER
HALL OF JUSTICE, LOS ANGELES, CALIFORNIA 90012
THOMAS T. NOGUCHI, M. D.
CHIEF MEDICAL EXAMINER-CORONER

File 68-5731

This is to certify that the autopsy on the body of Senator Robert F. Kennedy was performed at The Hospital of The Good Samaritan, Los Angeles, California, by the staff of the Department of Chief Medical Examiner-Coroner on June 6, 1968.

From the anatomic findings and pertinent history, I ascribe the death to:

GUNSHOT WOUND OF RIGHT MASTOID, PENETRATING BRAIN.

The detailed medical findings, opinions and conclusions required by Section 27491.4 of the Government Code of California are attached.

Thomas T. Noguchi, M.D.
Chief Medical Examiner-Coroner

TTN:etf

FINAL SUMMARY

GUNSHOT WOUND NO. 1 (FATAL GUNSHOT WOUND)

ENTRY: Right mastoid region.

COURSE: Skin of right mastoid region, right masto petrous portion of right temporal bone, r temporal lobe, and right hemisphere of cerebellum.

EXIT: None.

DIRECTION: Right to left, slightly to front, upward

BULLET RECOVERY: Fragments (see text).

LESIONS IN DETAIL (NEUROPATHOLOGY)

A. Primary lesions - Caused by the bullet and further injurie by bone and bullet fragments.

1. Bone, dura and dural sinus.

a. Penetration of right mastoid process.
b. Fracture of right petrous ridge.
c. Severance of right petrosal sinus.
d. Metal fragments in right temporal bone.

2. Cerebrum.

a. Contusion-laceration and hemorrhage of right tempo lobe.
b. Intraventricular hemorrhage due to above.
c. Metal and bone fragments in right temporal lobe.

3. Cerebellum.

a. Hemorrhagic tract and cavity in right cerebellar hemisphere.
b. Metal and bone fragments in right cerebellar hemi

B. Immediate Secondary Lesions.

1. Bone Lesion.

a. Fracture of right supraorbital plate.

2. Meningeal Lesions.

a. Subdural hemorrhage.
b. Subarachnoid hemorrhage.
c. Laceration of right supraorbital dura.

3. Cerebral Lesions.

a. Contusion-laceration of right orbital gyri.
b. Contusion-laceration of right occipital lobe.
c. Contusion of contralateral (left) inferior temporal gyrus.

4. Cerebellum.

a. Hemorrhagic necrosis of cerebellar tonsils.

5. Brain Stem.

a. Hemorrhage in midbrain.
b. Hemorrhagic necrosis of left inferior olive of medulla.

6. Epidural hemorrhage of C1 and C2 vertebral level.

C. Later Secondary Lesions.

1. Edema of brain and herniations.
2. Subdural hemorrhage.
3. Subarachnoid hemorrhage.
4. Intracerebral and intraventricular hemorrhage.
5. Hemorrhagic infarction of right temporal cortex.
6. Intracerebellar and intraventricular hemorrhage.
7. Petechial hemorrhages of thalami.
8. Brain stem hemorrhage and early necrosis.
9. Herniation of cerebellum through craniotomy wound.
10. Early laminar necrosis of occipital lobe.

GUNSHOT WOUND NO. 2, THROUGH-AND-THROUGH.

ENTRY: Right axillary region.

COURSE: Soft tissue of right axilla and right infraclavicular region.

ENTRY: Right infraclavicular region.

DIRECTION: Right to left, back to front, upwa

BULLET RECOVERY: None.

GUNSHOT WOUND NO. 3.

ENTRY:	Right axillary region (just below Gunshot Wound No. 2 entry).
COURSE:	Soft tissue of right axilla, soft tissue of right upper back to the level of the 6th cervical vertebra just beneath the skin.
EXIT:	None.
DIRECTION:	Right to left, back to front, upward.
BULLET RECOVERY:	.22 caliber bullet from the soft tissue of paracervical region at level of 6th cervical vertebra at 8:40 A.M., June 6, 1968.

EVIDENCE OF RECENT SURGICAL PROCEDURES.

1. Craniotomy, right temporal occipital.
2. Other, minor surgical procedures are described elsewhere

PATHOLOGIC FINDINGS RELATED TO GUNSHOT WOUND NO. 1.

1. Hypostatic Pneumonia.

MISCELLANEOUS PATHOLOGIC FINDINGS NOT RELATED TO CAUSE OF DEAT

1. Adenoma of left kidney (benign).
2. Retention cyst of left kidney.

DESCRIPTION OF GUNSHOT WOUNDS

GUNSHOT WOUND NO. 1:

The wound of entry, as designated by Maxwell M. Andler, Jr., Neurosurgeon attending the autopsy, and more or less evident inspection of the apposed craniotomy incision, is centered 5 inches (12.7 cm) from the vertex, about 3/4 inch (1.9 cm) posterior to the center of the right external auditory meatus about 3/4 inch (1.9 cm) superior to the Reid line, and 2-1/2 inches (6.4 cm) anterior to a coronal plane passing through the occipital protuberance at its scalp-covered aspect. The defect appears to have been about 3/16 inch (0.5 cm) in diame at the skin surface. The surgical incision passing through the area of the wound of entry has been fashioned in a semilunar configuration with the concavity directed inferiorl and posteriorly. The incision has been intactly sutured by metallic and other material. The arc length is about 4 inche (10 cm).

Further detailed description of the area is given elsewhere i this report.

Varyingly moderate degrees of very recent hemorrhage are note in the soft tissue inferior to the right mastoid region, extending medially as well. There is no hematoma in the soi tissue.

In conjunction with the wound of entry, the right external e shows, on the posterior aspect of the helix, an irregularly fusiform zone of dark red and gray stippling about one inch (2.5 cm) in greatest dimension, along the posterior cartilag border and over a maximum width of about 1/4 inch (0.6 cm) a the midportion of the stippled zone. This widest zone of stippling is approximately along a radius originating from t wound of entry in the right mastoid region. Moderate edema and variable ecchymosis is present in the associated portion of right external ear as well.

No evidence of powder burn, tattoo, or stippling is found in area surrounding the wound of entry of Gunshot Wound No.1, t include an arbitrary circular zone superimposed upon the above-described stippling on the right ear.

LESIONS IN DETAIL (NEUROPATHOLOGY)

A. Scalp and Cranium.

A U-shaped recent surgical wound is present over the righ temporo-occipital region of the recently shaved scalp beh the right ear. Many wire sutures are in place. About 2 above the tip of the mastoid process immediately behind t

pinna at about the level of the external auditory meatus, the anterior portion of the skin of the incision shows a semi-circular defect said to be a portion of the original bullet entrance wound (according to the surgeons who were present at the examination). After removing the wire sutures, the scalp is incised by the usual mastoid-to-mastoid incision across the vertex. The incision on the right is extended into the surgical incision mentioned above. After reflecting the scalp, dark red subcutaneous and subgaleal hemorrhages are found in the right temporo-occipital region overlying and around the wound and the surgical craniotomy over an area measuring 9.5 x 10 cm. The hemorrhage ranges up to 3 mm in thickness. The right temporal muscle shows a small amount of hemorrhage along its posterior aspect.

The bony defect of the cranium included the superior portions of the right mastoid process and the adjacent temporo-occipital bones in an irregularly oval area measuring 6 x 5 cm. Gelfoam and hemorrhagic material is removed from the craniotomy site.

A circumferential cut with three notches is made in the calvarium with a vibratory saw. The calvarium is removed from the underlying dura. There is no lesion in this portion of the cranium.

The bone surrounding the craniotomy is removed in a single piece, including the posterior half of the right external auditory canal. The bullet wound in the skull appears to be located with its anterior margin 1 cm posterior to the right external auditory meatus, 2 cm superior to the tip of the mastoid process; but the original configuration is obscured by the surgical enlargement and by the adjacent craniotomy. The surgical opening of the right temporo-occipital bone measures 6 cm anteroposteriorly and 5 cm supero-inferiorly. Burr holes, saw cuts, and rongeur cut can be seen along the margins of the bone.

The bullet wound of the mastoid extends medially to the b of the petrous portion where there is a triangular defect with the base of the triangle corresponding to the petrou ridge and measuring 8 mm in width.

A curved fracture about 1 cm long is found in the central thinnest portion of the right supra-orbital plate with intra-orbital hemorrhage beneath it surrounding the right eye. A laceration of the dura and contusion of the right orbital gyri are located above the fracture.

B. Meninges, blood vessels and cranial nerves.

In the dorsolateral aspect of the subdural space there i

film of blood up to 3 mm thick, covering the arachnoid over both posterior frontal and parieto-occipital regions and extending downward to, and in some places below the sylvian fissure bilaterally, slightly more on the left side than on the right. Similar blood clot is also found on the left middle fossa and in both posterior fossae, again more on the left side. A small amount of blood clot, about 2 cc, is found between the cerebral hemispheres just dorsal to the midbrain.

Rather diffuse subarachnoid hemorrhage is present over the parieto-occipital regions, over the dorsal and right side of the cerebellum and also over the ventral surface of the pons and medulla. All of this, however, is quite slight and the blood clot does not obscure the underlying structure

Epidural hemorrhages are found in the following three locati

1. Adjacent to the craniotomy defect of the right temporo-occipital region. This is minimal and extends not more than 1 cm from the surgical incision and it is less than 1 mm in thickness.

2. Above the right supraorbital plate where the fracture is present as described above. This is deemed minimal and less than 1 mm in thickness covering an area 1.5 x 1 cm.

3. Epidural hemorrhage measuring 2 cm longitudinally and 1 cm transversely is found in the dorsal aspect of the epidural space at C1 and C2 vertebral levels.

The dorsal veins which empty into the superior saggital sinu are inspected but they reveal no evidence of the source of subdural hemorrhage.

The right superior petrosal sinus is severed for a distance 8 mm corresponding to the defect of the petrous ridge mentic above. The remainder of this sinus adjacent to the defect has been cauterized. The tentorium which has its attachment to the right petrous ridge is lacerated where the bony defec is present. This laceration of the dura is continued latera and communicates with the surgical defect which measures 4.5 x 2.0 cm just anterior to the right sigmoid sinus and above the transverse sinus beneath the craniotomy opening. A second surgical defect is present on the dura posterior to the sigmoid sinus and inferior to the transverse sinus and this measures 3 x 2 cm. There are areas of brownish discoloration and a minimal amount of blood clot is scattere along the margins of these dural openings.

The lateral portion of the transverse sinus and the sigmoid sinus thus transverse the craniotomy defect horizontally through its posterior portion and vertically through its inferior portion.

The tentorium cerebelli shows no defects in its central portions.

The dura was lacerated over a small area over the right supra-orbital plate where a curved fracture was present as mentioned above.

The superior saggital sinus, left transverse sinus, left sigmoid sinus and cavernous sinuses are inspected and reveal no evidence of thrombosis or laceration. The right transverse and sigmoid sinuses do not appear to be damaged in spite of their proximity to the dural openings anterior and posterior to it, but cautery marks are on and close to these sinuses which contain dark red blood clot.

Examination of the arteries of the brain stem and cerebellu reveals a right vertebral artery that is smaller than the left. The basilar artery measures 3 mm in diameter and is slightly tortuous. The anterior inferior cerebellar arteri and the posterior inferior cerebellar arteries have a norma distribution and show no evidence of traumatic injury. The left superior cerebellar artery is intact. The right supe cerebellar artery is intact throughout its main trunk but several of its superficial branches are involved in the cortical contusion and laceration of the cerebellum and ma of its deeper branches have been damaged by the penetratin bullet and bone fragments.

All of the remaining blood vessels of the brain stem, cer and cerebral hemispheres have normal distribution and sho very slight atherosclerosis. There is no evidence of inj except for the areas of contusions and lacerations.

The cranial nerves are all intact.

C. Cerebrum.

Slight depression of the cerebral cortex is noted over b posterior frontal and parietal convexities in the areas the subdural hemorrhage that is described above. The ri cerebral hemisphere is slightly larger than the left wit shallow tentorium grooves over both unci, slightly more prominent on the right than on the left. However, there no evidence of herniation of the cingulate gyri beneath falx. The gyri over both cerebral convexities are flat

When the brain is inspected from the ventral aspect, th areas of contusion-laceration can be seen in the cortex the right cerebral hemisphere and a fourth area of cont on the left. The largest one measures 4 x 3 cm. It co of superficial and deep lacerations and contusions of mesial half of the posterior one-third of the right in

temporal gyrus for an anteroposterior distance of 4 cm; the middle third of the right fusiform gyrus for 3 cm and the lateral portion of the hippocampal gyrus for a distance of about 1 cm. Coronal sections show that this laceration has a subcortical hemorrhage extending 1.5 cm into the subcortical white matter to the floor of the posterior part of the temporal horn of the right lateral ventricle with rupture into this cavity. The medial portions of the temporal lesion are characteristic of laceration and contusion while the lateral portions of this lesion are qui characteristic of hemorrhagic infarction.

The second largest contusion is in the middle part of the r orbital gyri and measures 1.5 x 1.0 cm with a 5 mm curved laceration within it. Hemorrhage extends into the subcorti white matter to a depth of 6 mm. This lesion overlies the lacerated dura and fracture of the right supraorbital plate.

The third contusion measures 14 x 7 mm with a linear 6 mm transverse laceration and is situated in the mesial portion of the inferior part of the right occipital cortex.

The fourth contusion of the cortex is a very small lesion ir the middle of the left inferior temporal gyrus and measures 5 x 2 mm. There is no laceration in this area. This condition is limited to the gray matter.

D. Cerebellum.

In the anterior and lateral aspects of the right hemisphere the cerebellum, there is an irregular penetrating wound. Th opening measures 2 x 2 cm with irregular margins. The margi of this wound and adjacent areas are elevated to form a ring of tissue at the bony margin, 2 mm distal to the internal bone surface. This indicates herniation of the cerebellar tissue into the bony defect. On the surface of this defect and in the bone incision, there are fragments of gelfoam and soft friable blood clots.

A partially collapsed linear tract measuring 5 cm in length extends from the cerebellar cortex and subcortical white matter of the cerebellum to the vermis. The tract begins just rostral to the tegmentum of the anterior one-third of the pons, anterior to the middle cerebellar peduncle and proceeds in a superior and posterior direction. From an imaginary transverse plane between the two mastoid bones, one would estimate that this tract proceeds about 45 degrees posteriorly and medially and 30 degrees superiorly from the mastoid perforation. The tract ends in the vermis of the cerebellum where a 1 cm transverse laceration is found in the region of the primary fissure which is approximately 3 cm posterior to the anterior cerebellar notch. At the

termination of the tract, hemorrhage can be seen within the cortical laceration.

The size of the penetrating wound is difficult to determine at this time since the tract is largely filled by the swoll white matter of the cerebellum and by hemorrhage. However, probing into the tract at the entrance wound indicates that it was in the order of 2 cm in width at maximum expansion.

Upon palpation and probing in the region of the laceration in the superior vermis, a metallic fragment is found just beneath the arachnoid membrane and within an area of hemorrhage. This irregular gray metallic fragment measures 6 x 3 x 2 mm and corresponds to the largest fragment that was identified in the postoperative x-ray of a radiopaque object near the midline.

In addition to the penetrating wound and the laceration of the vermis at its terminal end, an area of contusion and hemorrhagic necrosis measuring 2.5 x 2.0 cm covers most of the superior surface of the right cerebellar hemisphere an extends 5 mm over the midline. Beneath this area of contu and communicating with the penetrating wound, a recent hematoma is found that measures 2.5 x 2.0 cm. The hemorrh involves the region of the declive, folium, and tuber. Sm satellite contusions and hemorrhagic necrosis are scattere lateral to the large contusion of the superior surface of the cerebellum. Both cerebellar hemispheres are markedly swollen with flattened gyri and with a cerebellar pressure cone. Two small areas of hemorrhagic necrosis, each 3 mm diameter, are present in the cortex of the herniated left cerebellar tonsil. The right cerebellar tonsil shows a si area of cortical hemorrhagic necrosis also 3 mm in diamete

An elliptical groove over the superior surface of the anterior lobe of the cerebellum indicates upward herniati of these structures through the incisura of the tentorium cerebelli.

Horizontal sections of the cerebellum reveal the penetrat wound and the hemorrhage described above. These lesions destroyed much of the cortex and subcortical white matter the right cerebellar hemisphere, the dentate nuclei and probably the roof nuclei.

E. Brain Stem.

The ventral surface of the pons and medulla is markedly flattened.

The periaqueductal gray matter contains multiple petechi

hemorrhages extending over an area of 8-9 mm in width on the left side and about 5 mm on the right side. In sections above the pons, the midbrain reveals several irregular hemorrhages within the tegmentum. The largest of these hemorrhages is slit-like and measures 5 x 1 mm in size and is situated in the left lateral tegmentum. Numero petechial hemorrhages are found throughout both the tegment and ventral portions of the rostral 3/4 of the pons on multiple horizontal sections. Section through the medulla shows an area of hemorrhagic necrosis 4 x 3 mm in diameter located in the left inferior olive.

F. Ventricular System.

The lateral and third ventricles are moderately narrowed in size. They contain a small amount of blood clot totaling about 6 cc. The source of the intraventricular hemorrhage is due to rupture into the right inferior horn of the hemor rhage of the right temporal lobe. The fourth ventricle als contains a small amount of fresh blood clots.

G. Spinal Canal and Spinal Cord.

The foramen magnum and the upper cervical vertebrae are inspected and they show no abnormalities.

The bodies of the lower cervical, thoracic and upper lumba vertebrae are removed in a column. After inspecting the spinal nerve roots, the cervical, thoracic and lumbar spin cord is removed in toto.

A 41-cm portion of the spinal cord extending from the high cervical region into the lumbar region is examined. The leptomeninges are thin and transparent. The anterior spin artery is thin-walled and shows no evidence of occlusion o laceration.

The posterior aspect of the spinal cord additionally revea thin leptomeninges and normal distribution of vessels and nerve roots. There is no evidence of pathologic damage tc the spinal cord. The subarachnoid space shows faint blood staining. Multiple transverse sections of the spinal cord and nerve roots show no gross lesions.

H. Pituitary Gland.

The diaphragma sella and pituitary stalk are normal in appearance. The pituitary gland measures 1.1 x 0.8 x 0.5 Section shows a pink homogeneous anterior lobe and a redd gray posterior lobe. The bony structures forming and sur the pituitary fossa are all within normal limits.

MICROSCOPIC REPORT (NEUROPATHOLOGY)

There are 31 slides divided into three groups: A, B and C. Each group is again numbered as A-1, A-2, A-3, or B-1, B-2, B-3, B-4 and C-1, C-2, C-3, C-4, etc.

Sections confirmed all the lesions described at the gross examination.

All tissue sections show congestion and some extravasation with occasional actual petechial hemorrhages, the latter being particularly noticeable in the thalami near the ventricular walls. A few mononuclear cells are present in the perivascular spaces. The ground substance of the cerebral cortex and centrum shows fine vacuolations. In the occipital cortex, there is early status spongiosus, portions of which have a laminar distribution. Some nerve cells have pyknotic nuclei and homogenization of the cytoplasm, the latter showing definite eosinophilia. The white matter of the frontal lobe shows occasional areas of pallid staining. In the ventral pons there is early necrosis in addition to the hemorrhages.

A-1, RIGHT FRONTAL LOBE:

This section shows marked congestion of the meningeal and parenchymal blood vessels. The endothelium of the blood vessels shows hypertrophy. There is no inflammatory infiltrate in the meninges. There is a diffuse rarefaction of the matrix of the cortex and white matter, but more marked in the white matter where there are actual areas of early status spongiosus. Many of the nerve cells are pyknotic. The glial and ependymal elements are swollen.

A-2, LEFT FRONTAL LOBE:

Findings are similar to A-1, except that the status spongiosus of the white matter is not obvious.

A-3, RIGHT TEMPORAL LOBE - HIPPOCAMPUS:

Findings are similar to A-2.

A-4, LEFT TEMPORAL LOBE - HIPPOCAMPUS:

In addition to similar findings as in A-3, there are several small petechiae in the cortex. This section also shows slight subarachnoid hemorrhage.

A-5, RIGHT PARIETAL LOBE:

The general findings of these sections are similar to A-2. However, some nerve cells are not only pyknotic but they are also beginning to show eosinophilia of the contracted and homogenized cytoplasm.

A-6, LEFT PARIETAL LOBE:

This slide shows findings similar to A-2. In addition, there is subarachnoid hemorrhage.

A-7, RIGHT OCCIPITAL LOBE:

This section shows marked congestion of all the blood vessels with extravasation of blood in the white matter. The cortex shows early status spongiosus which has a suggestive laminar pattern.

A-8, LEFT OCCIPITAL LOBE:

This section shows findings similar to A-7 above. Some of the nerve cells are beginning to show eosinophilia of the cytoplasm.

A-9, RIGHT STRIATUM:

In general the blood vessels and nerve cells show changes of th cortex similar to those described in A-2. The subependymal blood vessels show a few mononuclear cells in the perivascular spaces. There is also some extravasation of blood from these vessels.

A-10, LEFT STRIATUM:

The findings are similar to A-9.

A-11, RIGHT LENTICULAR NUCLEUS:

The findings are similar to A-9 except the extravasation of blood is not obvious.

A-12, LEFT LENTICULAR NUCLEUS:

The findings are similar to A-11.

A-13, RIGHT THALAMUS:

These sections show generalized congestion and actual petech hemorrhages in the walls of the third ventricle. The nerve cells show pyknotic changes. Portions of the matrix show ea status spongiosus.

A-14, LEFT THALAMUS:

The findings are similar to A-13 but the petechial hemorrha

A-15, -16, -17, and -18, SPINAL CORD:

Sections are taken from the cervical, thoracic and lumbosacra regions. The vascular changes in the meninges and spinal cor are minimal and certainly not as pronounced as those in the cerebrum. A few of the nerve cells in the grey matter, mostl in anterior horns, show pyknotic changes.

B-1, RIGHT TRANSVERSE SINUS:

Sections show red blood cells between the laminae of the dura. The sinus contains antemortem thrombus along the vessel walls. This thrombus consists mainly of platelets. In the remainder of the blood clot, there are numerous neutrophils.

B-2, RIGHT SIGMOID SINUS:

Portions of the dura show coagulation necrosis with tinctorial changes toward basophilia. Antemortem thrombus is also found in the sinus, as in B-1.

B-3, RIGHT FRONTAL LOBE - ORBITAL GYRI:

Sections show hemorrhagic necrosis of the cortex.

B-4, RIGHT TEMPORAL LOBE - PARAHIPPOCAMPAL AND FUSIFORM GYRI:

This section shows most extensive hemorrhagic defects, both in the grey and white matter. The defect communicates with th external surface. The remaining portions of the specimen show changes similar to A-2.

B-5, RIGHT TEMPORAL LOBE:

The findings are similar to B-4.

B-6, RIGHT OCCIPITAL LOBE, MEDIAL INFERIOR ASPECT:

Sections show superficial hemorrhagic defect of the cortex.

C-1, LEFT INFERIOR TEMPORAL LOBE:

This section shows multiple hemorrhagic necrosis in the cortex.

C-2, MIDBRAIN:

Section shows multiple hemorrhages. The cerebral aqueduct is patent.

C-3 AND C-4, PONS:

Sections show multiple hemorrhage, mostly in the ventral por and acute necrosis. The fourth ventricle is collapsed.

C-5, MEDULLA:

Focal hemorrhagic necrosis is present in the left inferior ol

C-6, CEREBELLUM, DORSAL ASPECT:

This shows a large hemorrhagic defect with multiple petechial hemorrhages in portions of the dentate nucleus. In another portion of the dentate nucleus, where there is no hemorrhage, there is acute necrosis.

C-7, CEREBELLUM, TONSIL:

This shows multiple petechiae in the cortex.

ADDITIONAL MICROSCOPIC SLIDES (NEUROPATHOLOGY):

The Pineal Gland shows a few corpora amylacea.

Sections of the temporal lobe reveal essentially the same histopathological findings described previously.

SLIDE LABELED GUNSHOT WOUND [GSW #1], (Entrance Wound):

The perpendicular section, stained with hematoxylin and eosin, through the wound track shows loss of epithelium and patchy areas of swollen dermis.

The area of margins of squamous epithelium shows perinuclear vacuolation and spindle form distortion.

The dermis is extensively involved with coagulation also visibl in special stain. The hair follicles and sebaceous glands are partly involved also. Capillaries are dilated. There are area of extravasation and infiltration by acute inflammatory cells. Scattered, varying-sized powder residues are found in the keratin layer and the inner surface of the wound track to a depth of 2 mm. There are also disc-like powder granules embedded in the epidermis, and the powder-embedded area is surrounded by pink-staining denatured collagen. Powder residues are in an assortment of shapes and sizes, the edges showing minute crystalloid material which is also visible on the unstained sections.

Subcutaneous tissue and muscle elements are hemorrhagic and heavily infiltrated by neutrophils.

Microscopic Diagnosis:

Entry of the gunshot wound is consistent with very close rang shooting.

SLIDE FROM POSTERIOR ASPECT OF HELIX OF RIGHT EAR, INCLUDING GROSSLY DESCRIBED POWDER SMUDGING AND TATTOOING:

The sections stained with hematoxylin and eosin show patchy areas of loss of epithelium due to thermal and blast effect. The squamous epithelium between the exposed coagulated dermis shows perinuclear vacuolation and nuclear elongation, along with fragmentation at the edges.

Dark brown to black powder residues in varying sizes are embedded through the epithelium to the dermis, which is also recognizable in unstained sections. The dermis shows extensi coagulation of the collagen tissue. Sweat glands and hair follicles, together with associated sebaceous glands, are involved with changes consistent with heat and blast effect. Coagulation of the collagen tissue is also visible on sectio stained by Masson's method.

TTN:ATL:etf

DESCRIPTION OF PRE-OPERATIVE X-RAYS

Anteroposterior and lateral portable films of the skull, expos on June 5, 1968 at approximately 1:00 A.M., reveal a gunshot wound of the right temporal bone. The wound of entry is 2.0 c above the temporal tip and approximately midway between the external auditory canal and the sigmoid sinus region, approxim 1.0 cm posterior to the auditory canal.

There are two bullet tracks. One extends slightly anterior to the vertical dimension (15 degrees). The second extends 30 degrees posterior to the vertical dimension, so that the two tracks diverge 45 degrees.

In the frontal projection, both tracks extend superiorly towar the vertex at an angle of 30 degrees to the horizontal.

In the tracks of the bullet wound are numerous metallic foreic bodies and fragments of the mastoid. The largest metallic fragment is situated in the petrous ridge and at about the arcuate eminence. This measures 12 mm in transverse dimensio 7 mm in vertical dimension, and approximately 12 mm in antero-posterior dimension.

Several metallic foreign bodies are present in the soft tissu lateral to the mastoid process. Twelve metallic foreign bodi one millimeter or larger, are present in the mastoid process. In addition to the largest fragment described, at least thirt metallic fragments one millimeter or larger are present in th posterior fossa.

One fragment of bone and several metallic fragments projected through the orbit above the petrous ridge are, I believe, supratentorial, and in the mesial aspect of the temporal lobe posteriorly.

A fragment, 7 mm in transverse diameter, 4 mm in greatest anteroposterior dimension and vertical dimension, is situated superiorly slightly to the left of the midline and 4.0 cm anterior to the inner cortex of the occipital bone at or just below the tentorium.

The main fragments of the bullet are anterior to the sigmoid sinus as seen in the lateral projection, and this includes tl major bony fragment as well.

DESCRIPTION OF POSTMORTEM RADIOGRAPHS

Postmortem radiographs exposed at 2:00 A.M. to 3:00 A.M., un the direction of the Chief Medical Examiner-Coroner, on Jun 1968, reveal that a major portion of the petrous ridge has b

removed, together with most of the metallic foreign bodies and the detached osseous fragments.

At this time, the metallic fragment most superior and posteri has shifted slightly posteriorly and to the right.

Small fragments remain in the soft tissues lateral to the temporal bone, numbering approximately eleven and very minute Other fragments, approximately seven in number, are situated directly above the petrous apex and, I believe, supra-tentori in the temporal lobe. This represents the remains of the lar metallic fragment noted pre-operatively. Other minute fragme are present in the posterior fossa, numbering approximately twenty.

All of the bony fragments have been removed.

X-rays of the skull at the conclusion of the postmortem revea that five minute metallic foreign bodies were present in the and approximately twenty minute fragments remained embedded i the remaining portion of the temporal bone in the region of t semicircular canals.

DESCRIPTION OF SPECIMEN RADIOGRAPHS OF SURGICAL BONY SPECIMEN

A series of x-ray films was obtained on June 7, 1968 between 4:00 P.M. and 7:30 P.M.

The initial x-rays consisted of the fragments of temporal bon removed at surgery. These were exposed on industrial film-ty M (Kodak) and reveal many more minute metallic foreign bodies than were evident on the early films. Pieces of bone identif as mastoid process are filled with approximately seventy indi metallic fragments. Others bearing the Rongeur marks are fra of cortex removed at surgery from the craniotomy site. Other fragments represent petrous ridge and are also embedded with innumerable fine metallic particles.

The specimen of temporal bone removed at postmortem includes craniotomy site and the remaining portion of the mastoid process extending posteriorly to include the lateral sinus groove and the facial canal distally. Mesially, the bone is amputated lateral to the cochlea. This contains the external auditory canal. Posterior and superior to the canal are many metallic fragments. These number at least sixty, the majorit less than one millimeter in size, with ten above one millimet

DESCRIPTION OF SPECIMEN X-RAYS EXPOSED AT THE GOOD SAMARITAL (Friday, June 7, 1968)

X-rays of the entire brain, taken initially in the vertex-bas

direction, reveal small metallic foreign bodies in the cerebel and temporal lobe. There is a considerable defect of the cerebellum on the right. A small amount of residual contrast (Hypaque) is present in the arterial tree in the left temporal area.

Following the above, the individual sections were x-rayed and labeled respectively: A for the tips of the frontal lobes and successively posteriorly at 2.0 cm intervals, B; C (which includes the anterior aspect of thetemporal lobes); and D; etc. E shows one metallic foreign body in the right temporal lobe, plus a defect in the mesial aspect of the temporal lobe in the region of the uncal gyrus. Residual contrast is in the choroid plexus of the lateral ventricle on the left.

Specimen labeled F consists of slice F plus the separate specimen F-1 from the temporal lobe, which contains ten minute metallic foreign bodies in one segment and three minute ones i another area. The cerebellum is also present which reveals a large defect and twenty minute metallic foreign bodies. The specimens of the brain, G and H, extending to the occipital pol reveal no abnormality.

Separate x-rays were performed on specimen F and F-1 and the cerebellum, plus x-rays of the meninges. The meninges are tattooed with many metallic foreign bodies surrounding the defect; which is in the region of the original wound of entry.

These number fully fifty, with all but three or four under one millimeter in diameter.

TTN:RLS:etf

DESCRIPTION OF SKIN AND HAIR X-RAYS

X-rays of 68-5731 obtained at the Good Samaritan Hospital between 1:00 and 3:00 P.M., Saturday, June 8, 1968.

The right ear is portrayed in profile and en face. The profil shows the skin surface directed away from the identifying numb The larger side of the ear specimen is to the right in both projections.

Tattooed in the skin are many small metallic foreign bodies. Other foreign bodies are present in the ear which do not appea to be metallic.

Gunshot Wound No. 1 was examined in profile with the cutaneous surface directed toward the number. Two fragments of the wour are present. Both reveal metallic foreign bodies of varying size from barely visible to 1 mm in diameter in the subcutanec tissue. Many minute foreign bodies are present in the skin superficially surrounding the wound of entry. These resemble in size the particles seen in the ear.

The skin of Gunshot Wound No. 2 and Gunshot Wound No. 3 also reveals the superficial dense metallic impregnation of the sk with several metallic foreign bodies in the subcutaneous tiss These specimens are also arranged in profile with the cutanec surface extending toward the identifying number.

The third examination is of the scalp hair obtained prior to surgery. In this area, many dust-like metallic particles are evident, varying in size but all extremely small and differi appreciably from the several artifacts noticed to the left o the label "scalp hair" on the superior aspect of the film.

Three metallic particles are noted in the hair obtained at autopsy. Two of these are extremely minute and one is approximately .5 mm in diameter.

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DESCRIPTION OF X-RAYS OF SKIN WOUNDS

X-rays were obtained of the skin wounds, which are labeled 1 2, and 3.

GUNSHOT WOUND NO. 1:

A profile view of the skin surrounding wound of entry in the right mastoid area reveals a few metallic foreign bodies superficially and other larger foreign bodies (1 cm.) in the subcutaneous tissue.

GUNSHOT WOUNDS NOS. 2 AND 3:

A frontal projection of the axillary skin surrounding wounds labeled 2 and 3 reveals fine metallic foreign bodies in both these situations.

The wound of exit is placed in profile. Wound 2 reveals two minute metallic foreign bodies barely visible in the subcutane tissue below the wound.

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HEAD AND NERVOUS SYSTEM (Generally):

Also revealed by the reflection of the scalp is a fairly well demarcated area of non-recent hemorrhagic discoloration, about 1.5 cm in greatest dimension, in the left parietal occipital region. No associated galeal hemorrhage is demonstrated.

The cerebrospinal fluid is blood tinged.

Abundant and freshly clotted but drying blood is found at the right external auditory canal, extending outward to the lateral interstices of the external ear. No evidence of hemorrhage is found at the left ear.

The spinal cord is taken for further evaluation. At the time of removal of the cord, a small amount of cervical epidural hemorrhage is noted. There is no evidence, on preliminary inspection, of avulsion of roots leading to the right brachial plexus.

Those portions of peripheral nervous system exposed by the described dissection show no abnormality.

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GUNSHOT WOUND NO. 2:

This is a through-and-through wound of the right axillary, medial shoulder, and anterior superior chest areas, excludin the thorax proper. The wound of entry is centered 12-1/2 inches (31.8 cm) from the vertex, 9 inches (22.9 cm) to the right of midline, and 3-3/4 inches (8.3 cm) from the back (anterior to a coronal plane passing through the surface of the skin at the scapula region). There is a regularly elliptical defect 3/16 x 1/8 inch over-all (about 0.5 x 0.3 cm) with thin rim of abrasion. There is no apparent charring or powder residue in the adjacent and subjacent tissue. The subcutaneous fatty tissue is hemorrhagic.

The wound path is through soft tissue, medially to the left, superiorly and somewhat anteriorly. Bony structures, major blood vessels and the brachial plexus have been spared.

The exit wound is centered 9-3/4 inches (about 24.5 cm) fro the vertex and about 5 inches (about 12.5 cm) to the right of midline anteriorly in the infraclavicular region. There is a nearly circular defect slightly less than 1/4 inch x 3, inch overall (0.6 x 0.5 cm).

Orientation of the wounds of entry and exit is such that their major axes at the skin surfaces coincide with the central axis of a probe passed along the entirety of the wound path. No evidence of deflection of trajectory is fou

MICROSCOPIC EXAMINATION OF THE SLIDE LABELED GUNSHOT WOUND NO. (GSW #2) ENTRANCE WOUND.

The perpendicular sections of the gunshot wound show cellul degeneration of the margins of the covering epithelium. The dermis shows extensive coagulation, early cell infiltration by mostly neutrophiles, and hemolyzed and relatively intact erythrocytes. The area of coagulation necrosis includes disintegration of apparently sweat and sebaceous gland. Only remnants are visualized.

Gunpowder granules embedded into the dermis and the surface of the gunshot wound track are visible on stained and unstained sections.

The subcutaneous and adipose tissue shows extensively extravasated hemorrhage.

GUNSHOT WOUND NO. 3:

The wound of entry is centered 14 inches (35.6 cm) from the vertex and 8-1/2 inches (21.6 cm) to the right of midline, 2 inches (5 cm) from the back anterior to a plane passing through the skin surface overlying the scapula, and 1/2 inch (1.2 cm) posterior to the mid-axillary line. There is a nearly circular defect 3/16 inch by slightly more than 1/8 inch overall (0.5 x 0.4 cm). There is a thin marginal abrasion rim without evidence of charring or apparent residue in the adjacent skin or subjacent soft tissue. The subcutaneous fatty tissue is hemorrhagic.

The wound path is directed medially to the left, superiorly and posteriorly through soft tissue of the medial portion of the axilla and soft tissue of the upper back, terminating at a point at the level of the 6th thoracic vertebra as clos as about 1/2 inch (1.2 cm) to the right of midline.

Bullet Recovery:

A deformed bullet (later identified as .22 caliber) is recovered at the terminus of the wound path just described at 8:40 A.M., June 6, 1968. There is a unilateral, transverse deformation, the contour of which is indicated on an accompanying diagram. The initials, TN, and the numbe 31 are placed on the base of the bullet for future identification. The usual evidence envelope is prepared. The bullet, so marked and so enclosed as evidence, is given to Sergeant W. Jordan, No. 7167, Rampart Detectives, Los Angele Police Department, at 8:49 A.M. this date for further studie

An irregularly bordered and somewhat elliptical zone of variably mottled recent ecchymosis is present in the superior-medial axillary skin on the right, in the zones of wounds of entry No. 2 and No. 3, especially the former. The ecchymosis measures 3-1/2 x 1-1/2 inches (9 x 3.8 cm) overal with the right upper extremity extended completely upward (longitudinally).

TRIANGULATION OF GUNSHOT WOUNDS

Angles and planes refer to the body considered in the standing position, in accordance with usual anatomic custom.

GUNSHOT WOUND #1

Goniometric studies by Dr. Scanlan are described by him elsewh in this report. Photographs of internal features of the skull are confirmatory.

GUNSHOT WOUND #2

Autopsy measurements indicate an angle of 35 degrees counterc wise from the transverse plane as viewed frontally. Triangula measurements from photographs give an angle of 33 degrees.

Autopsy measurements indicate an angle of 59 degrees counterc wise from the transverse plane as viewed laterally from the right. Measurements from photographs also indicate an angle of 59 degrees.

Autopsy measurements indicate an angle of 25 degrees measured clockwise from the coronal plane (anteriorly) as viewed from the vertex.

GUNSHOT WOUND #3

Autopsy measurements show an angle of 30 degrees upward from the transverse plane, counterclockwise as viewed frontally. Photographic studies also show an angle of 30 degrees.

Autopsy measurements show an angle of 67 degrees clockwise fr the transverse plane as viewed laterally from the right. Photographs indicate an angle of about 70 degrees.

Measurements indicate an angle of 5-1/2 degrees counterclockw and behind the coronal plane as viewed from the vertex. The photographs are in agreement for this small angle.

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EXAMINATION OF CLOTHING AT THE TIME OF AUTOPSY:

1. There is a dark blue, fine worsted-type suit coat bearing the label "Georgetown University Shop - Georgetown, D.C.". The coat has been cut and/or torn at the left yoke and left sleeve area. The right sleeve is intact. There is variable blood staining over the right shoulder region and on the right lapel. Two apparent bullet holes are identified in the right axillary region, slightly over 1 inch (2.5 cm) and slightly over 1-1/4 inch (3.2 cm) from the underseam area, respectively, and corresponding with wounds described on the body elsewhere in this report. Also noted at the top of the right shoulder region centered about 1-1/4 inches from the shoulder seam and about 5/8 inch (1.6 cm) posterior to the yoke seam superiorly is an irregular rent of the fabric, somewhat less than 1/4 inch (3.2 cm) in diameter and definitely everting superficiall and upward. The three front buttons of the garment are intact.

   (Subsequent examination of the coat showed the presence of a superficial through-and-through bullet path through the upper right shoulder area, passing through the suit fabric proper, but not the lining.)

2. There is a pair of trousers of matching material with a very dark brown leather belt with rectangular metal buckle and showing the gold-stamped label "Custom Leather, Reversible, 32". The zipper is intact. There is a minimal amount of apparent blood staining over the anterior portions of the trouser legs.

3. There is a white cotton shirt with the label "K WRAGGE, 48 West 46th Street, New York". The laundry mark initia "RFK" are present on the neck band. The left portion of the shirt has been disrupted in approximately the same manner as the suit coat and is similarly absent. The right cuff is intact and is of semi-French design. A chain-connected yellow metal cufflink with plain oval design is in place. A corresponding left cufflink is n among the items submitted. Apparent bullet holes are identified as corresponding to those in the previously described area of suit coat.

4. There is a tie of apparent silk rep, navy blue with an approximately 3/16 inch (0.5 cm) grey diagonal stripe. The label is "Chase and Collier, McLean, Virginia". Th maker is RIVETZ.

5. There is a pair of navy blue, nearly calf length socks of mixed cashmere and apparently nylon fiber, the fiber content stencil labeling still being nearly discernible on the foot portions.

6. There is a pair of white broadcloth boxer type shorts with two labels: "Sunsheen Broadcloth V' Cloth - 34"; and "Custom fashioned for Lewis and Thos. Saltz, Washington". There is a small amount of blood stain at the anterior crotch, along with pale straw-colored discoloration to the left of the fly. A few patches of dry blood are present on the back as well.

7. There is a trapezoidally folded cotton hankerchief showing, on what appears to be the presenting (anterior) surface, several scattered dark red and somewhat brown spots ranging from a fraction of a millimeter to about 4 mm (less than 3/16 inch) in greatest dimension.

8. No shoes are submitted for examination.

The above listed items are saved for further and more detailed study by others.

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GENERAL EXTERNAL EXAMINATION:

The non-embalmed body, measuring 70-1/2 inches (179 cm) in length and weighing about 165 pounds (74.5 kg), is that of a well-developed, well-nourished and muscular Caucasian male appearing about the recorded age of 42 years. The extremities are generally symmetrical bilaterally, showing no obvious structural abnormality.

The head shows extensive bandaging, somewhat blood-stained in the posterior aspect. Dressings are also present in the right clavicular region, the right axilla, and the right ankle regions. Also present over the right inguino-femoral region are apparently elastoplast dressings. A recent tracheostomy has been performed at a comparatively low level. A clear plastic tracheostomy tube fitted with an inflatable cuff is in place. The area also shows a gauze dressing.

Lividity is well developed in the posterior aspect of the body, mainly at the upper shoulder and midback regions with approximately equal distribution bilaterally. The lividity blanches definitely on finger pressure.

Rigor mortis is not detected in the extremities or in the neck.

(Rigor was noted to be developing in the arms and legs by the time of conclusion of the autopsy.)

A complete examination of the external surfaces of the body is undertaken following removal of all dressings.

The head contour is generally symmetrical, due allowance being made for the soft-tissue edema and hemorrhage in the right post-auricular region in general. The hair is gray light brown and of male distribution. Portions of the right half of the scalp have been clipped and/or shaved. Hair in the inguinal and femoral regions has also been shaved in part. Hair texture is medium.

There is an irregularly bordered area of comparatively recent yet pale ecchymosis centered about one inch (2.5 c above the midportion of the right eyebrow. Marked ecchym with moderate edema is present in the right periorbital r but mainly of the upper eyelid. No abnormality is noted the left periorbital tissue externally. No hemorrhage o generalized congestion is seen in the conjunctival or sc membranes. The nose is symmetrical, showing no evidence fracture or hemorrhage. The glabella shows no evidence trauma.

Eye color is hazel. Pupillary diameters are equal at about 5 mm (3/16 inch).

The buccal mucosa and the tongue show no lesion.

Chest diameters are within normal limits and there is bilateral symmetry. The breasts are those of a normal adult male. The abdomen is scaphoid. No abdominal scar is identified. There is an old low medial inguinal scar on th right.

Texture and configuration of the nails are within normal li and no focal lesions are noted. There is no peripheral ede

The skin in general shows a smooth texture and no additiona significant focal lesion. There is abundant suntan, especially at the neck region where its contrast with the areas shaved for surgical preparation on the right can be noted.

No structural abnormality is noted on the back.

There is a diagonally disposed recent surgical incision ab 3 inches (7.5 cm) in length in the right anterolateral fem region. This incisiin has been intactly sutured. There i an associated plastic tubing of small diameter, centered about 1/2 inch (12 mm) from the infero-medial margin of th incision.

Also noted in a comparable location on the left are severa hypodermic puncture marks. These just mentioned areas sho the presence of red-orange dye.

There are recent cutdowns at the right ankle and the later right knee with thin polyethylene tubes in place. No extravasation is noted.

The external genitalia are those of a normal circumcised male.

CAVITIES:

Primary incision is first made as far as the two upper incisions, allowing upward reflection of skin and soft tissue to afford access for carotid angiography before th head is opened. Following completion of these roentgenog studies, the traditional Y incision is continued. The peritoneal surfaces are smooth and glistening. No free fluid is found in the abdominal cavity. There are no adhesions. Abdominal organs are in their usual relative positions.

The pleural surfaces are smooth. There is no pleural effusion.

The pericardium is intact and encloses a small amount of transparent straw-colored liquid.

CARDIOVASCULAR SYSTEM:

The heart weighs 360 gms. and presents smooth epicardial surfaces. There is moderate right atrial dilatation. The contour otherwise is within normal limits. Cut surfaces of myocardium show a uniform gray-red muscle fiber texture with no focal lesion. The endocardial surfaces are smooth. About 50 ml. of dark red postmortem clot is present in the chambers collectively. No cardiac anomaly is demonstrated. The thickness of the left ventricular wall is up to 1.3 cm, and that of the right, 0.3 cm. Valve circumferences are: Tricuspid - 13, pulmonic - 8.5, mitral - 10.5, and aortic - 7 cm. There are no focal lesions. The coronary arterial tree arises in the usual sites and distributes normally. The coronary arteries are thin-walled and pliabl showing widely patent lumina. The aorta has a normal configuration and varies from 3.3 to 5.2 cm in circumferenc The intimal surface of the aorta shows small and comparatively pale yellow atheromatous areas totaling no more thar 10 percent of the area studied.

The lining of the inferior vena cava is smooth throughout. The distal end of the intravenous polyethylene catheter is noted at the level of the second lumbar vertebra and shows no evidence of thrombosis at the tip. Free flow is also demonstrated.

Other vessels studied are not remarkable, save where speci descriptions are given elsewhere in this report.

RESPIRATORY SYSTEM:

The right lung weighs 490 gm.; the left, 330 gms. There a moderate amount of wrinkling of the external surfaces, suggestive of atelectasis. Dusky discoloration is noted in the hypostatic portions bilaterally. The outer surfac of the lungs are intrinsically smooth. Cut surfaces of t lungs disclose a few scattered areas of atelectasis, especially in the left lower lobe. There is mild edema throughout. Hypostatic congestion is noted in an estimat 30 percent of the total lung volume, approximately equall distributed bilaterally. In these hypostatic areas, ther is probably patchy hemorrhage of the matrix as well. No areas of consolidation are identified. Non-congested por of the lungs are comparatively pale tan in color. Anthra pigmentation is not excessive for the age of the subject.

A small amount of slightly pink frothy mucoid material is present in the bronchial tree, but no exudate. There is no evidence of aspiration of gastric content.

The hilar lymph nodes show no abnormality.

NECK ORGANS:

The pharyngeal and laryngeal mucosa shows no focal lesion. There are a few petechial hemorrhages of the epiglottis. Intrinsic musculature and soft tissues of the larynx shows no hemorrhage or other evidence of trauma. The vocal cords do not appear edematous, nor is there evidence of generalized submucosal edema. The hyoid bone is intact.

The trachea is in midline. The plastic tracheostomy tube previously mentioned shows no obstruction of its airway and no exudates or hemorrhagic material. The mucosa lining the trachea is moderately injected at the general level of the tracheostomy, again with no obvious exudate.

The thymus is comparatively fatty but not otherwise remarkable.

HEPATOBILIARY SYSTEM:

The liver weighs 1810 gm. and has a smooth intact capsule. The edges are sharp. Cut surfaces of the liver show no fo lesion in the comparatively dark brown matrix. Little blo wells up from the freshly cut surfaces. A number of norma sized portal veins present themselves. There is no eviden of fibrosis. No fatty sheen is seen on the cut surfaces.

The gallbladder has a wall of average thickness and a smooth serosal surface. The organ is distended by the presence of more than 25 ml of green-black bile of intermediate viscosity. There are no calculi. The extra-hepatic biliary system is patent.

HEMIC AND LYMPHATIC SYSTEM:

The 150 gm. spleen is moderately firm and has a smooth intact capsule. Multiple cut surfaces of the spleen shows no focal lesion in the dark gray-red matrix. The capsule shows no areas of thickening. The malpighian bodies are distinct. No accessory spleen is identified.

There is no evidence of marked departure from normal blood volume. In areas where postmortem clot is found, this is uniformly normal degree and texture. No evidence of any hemorrhagic diathesis is noted.

The abdominal lymph nodes, mainly the para-aortic, show moderate enlargement (up to three times the normal size) but no induration or focal change. Other lymph nodes studied are not remarkable.

PANCREAS:

Configuration and size are within normal limits. Multiple cut surfaces show no evidence of an acute inflammatory change, fatty necrosis, scarring, or hemorrhage.

UROGENITAL SYSTEM:

The right kidney weighs 180 gm. and has a smooth capsule whic strips readily. Cut surfaces disclose normal corticomedullar ratios, with an average cortical thickness of about 6 mm, compared with 1.0 cm of the medulla. There are no focal lesions. A moderate amount of engorgement is noted.

The left kidney weighs 175 gm. and has a generally smooth capsule which can be stripped readily. Also present, howeve is a retention cyst about 2.5 cm. in greatest dimension but showing on subsequent study, a principal volume delineated by a space 2.0 x 1.8 x 1.5 cm. Thin watery liquid is enclos About 3.0 cm from one pole of the left kidney and 2.0 cm. fr the pelvis, is a well-circumscribed and slightly raised subcapsular nodule having a uniform yellow matrix and measur 1.0 x 0.9 x 0.9 cm overall. The cut surface of this yellow nodule protrudes slightly. The lesion is about 6.0 cm from the just described retention cyst. Intervening matrix of th left kidney shows no focal change. The renal pelves of both kidneys and both ureters show no induration, dilatation, or exudates. Ureteral implantation is noted to be normal in th urinary bladder. About 8 ml of faintly amber-pink cloudy urine is contained. There is no focal lesion of the urothel lining. There are no urinary calculi.

The prostate is symmetrical with a transverse diameter of 3.5 cm. Cut surfaces show no distinct nodular areas and no focal lesion. There are scattered areas of vascular engorge ment near the origin of the prostatic urethra. A slightly gritty texture is found on the cut surfaces of the prostate. Scattered discrete calculi up to 2 mm in diameter are found

The seminal vesicles are of normal configuration and contai a small amount of green-gray mucoid material.

Both testes are present in the scrotal sac and are of norma size and consistence. Tubular stringing is readily accomplished. No evidence of hydrocele is present.

DIGESTIVE SYSTEM:

The esophagus is lined by smooth pale-gray epithelium following the usual longitudinal folds. No focal lesion is found. The stomach has a wall of average thickness and a smooth serosal surface. There is mild gaseous dilatation No evidence of hemorrhage or ulceration is found in the gastric mucosa. Within the lumen is about 500 ml of cloudy gray watery mucoid material in which no discrete food fragments are found. The duodenum, small intestine, and colon show no gross abnormalities of mucosal or serosal elements. The appendix is not identified. The mesenteric lymph nodes are not remarkable.

ENDOCRINE ORGANS:

The pituitary is intrinsically symmetrical and within the normal limits of size, as is the sella turcica.

The thyroid is symmetrical and not enlarged; cut surfaces the brown-red colloid matrix shows no focal change.

The adrenals total 13.5 gm and are of normal configuration Multiple cut surfaces show no focal lesion. The thickness of the cortex is little more than one millimeter. The medullary tissue is not remarkable.

MUSCULOSKELETAL SYSTEM:

The bony framework is well developed and well retained. N evidence of a diffuse osseous lesion is found. The fractu of the right orbital plate and of other components of the base of the skull are described in detail elsewhere in thi report, mainly the neuropathology section. No additional evidence of recent fracture or other focal trauma is demon strated in the skeleton.

The clinically described and radiologically documented old fractures are not dissected.

The vertebral marrow is a uniform brown-red, showing no focal change.

Cut surfaces of muscles studied, in areas apart from the trauma,show no abnormality.

SPECIMENS STUDIED:

Organs and body fluids enumerated elsewhere in this report for the purpose of toxicological examinations.

GENERAL TOXICOLOGICAL ANALYSES:

Nothing significant could be detected in a "General Unknown" analysis performed on blood, liver and lung tissue.

MICROSCOPIC STUDIES:

Tissue sections for microscopic examination as denoted in othe portions of this report.

BLOOD TYPING:

Group A_1, Rh positive.

RADIOLOGICAL EXAMINATIONS:

Radiographs of the entire body were made at the time of autops Subsequent radiographic studies are described elsewhere in thi report.

PHOTOGRAPHS IN CUSTODY OF THIS OFFICE:

At autopsy: 35mm Kodachrome transparencies and prints of dissection and study of pertinent external and internal anatomic features.

At-scene investigation: Ambassador Hotel: 35mm Kodachrome transparencies and prints.

At test firings: 35mm Kodachrome transparencies and prints.

Special studies under our direction: Infra-red and panchromati photographs by James Watson, Scientific Investigation Divisi Los Angeles Police Department.

Prints of certain photographs by other jurisdictions, for corroborative studies by this office.

TTN:JEH:etf

AUTOPSY CHRONOLOGY AND PERSONNEL:

AUTOPSY:

Place: The Hospital of The Good Samaritan Medical Cen
1212 Shatto Street
Los Angeles, California 90017

Date and Time: June 6, 1968. Shortly before 3:00 A.M., the Chief Medical Examiner arrived at the hospital and took charge of the case. Autopsy commence at 3:00 A.M. The body was released from custo at 9:15 A.M. the same date.

COUNTY OFFICIAL IN CHARGE OF MEDICOLEGAL INVESTIGATIONS:

Thomas T. Noguchi, M.D.
Chief Medical Examiner-Coroner
County of Los Angeles

AIDE IN CHARGE OF INTER-AGENCY RELATIONS:

Herbert McRoy
Administrative Deputy, Coroner

PATHOLOGISTS:

Thomas T. Noguchi, M.D.
Chief Medical Examiner-Coroner

John E. Holloway, M.D.
Deputy Medical Examiner

Abraham T. Lu, M.D.
Deputy Medical Examiner (In Charge of Neuropathology)

RADIOLOGIST:

R. L. Scanlan, M.D., Chairman
Department of Radiology
The Hospital of The Good Samaritan Medical Center, and
Deputy Medical Examiner.

Postmortem radiographs taken under the direction of the Chief Medical Examiner with assistance of Dr. Scanlan and his staff.

MEMBERS OF NEUROSURGICAL TEAM PRESENT AS OBSERVERS:

Henry M. Cuneo, M.D., Neurosurgeon in Charge
Nat D. Reid, M.D.
M. Andler, M.D.
James Poppen, M.D.

PATHOLOGIST FROM THE HOSPITAL OF THE GOOD SAMARITAN PRESENT AS OBSERVER:

J. A. Kernen, M.D.

CONSULTANTS FROM THE ARMED FORCES INSTITUTE OF PATHOLOGY:

Pierre A. Finck
Colonel, MC, USA
Chief, Military Environmental Pathology Division and
Chief, Wound Ballistics Division

Charles J. Stahl, III
Commander, MC, USN
Chief, Forensic Pathology Branch and
Assistant Chief, Military Environmental Pathology Divisior

Kenneth Earle, M.D.
Chief, Neuropathology Branch

FORENSIC AND MEDICAL PHOTOGRAPHERS:

John E. Holloway, M.D.
Deputy Medical Examiner

Richard Kottke
Deputy Coroner

Charles Collier
Scientific Investigation Division
Los Angeles Police Department

IN CHARGE OF SECURITY OF AUTOPSY ROOM, FOR THE OFFICE OF THE CHIEF MEDICAL EXAMINER-CORONER:

Charles Maxwell
Chief of Investigation Division

AUTOPSY ASSISTANT:

Edward Day
Senior Investigator

OTHERS PRESENT:

Other individuals were present from time to time during the autopsy for various purposes. Names of these authorized persons appear on rosters maintained by the Department and other agencies also bearing responsibility for the security of the autopsy room.

PATHOLOGIST FOR GENERAL MICROSCOPIC STUDIES AND CLINICO-PATHOI CORRELATION:

Victor J. Rosen, M.D.
Deputy Medical Examiner

ADVISORS NOT PRESENT AT AUTOPSY:

William G. Eckert, M.D.
Pathologist to St. Francis Hospital, Wichita, Kansas

Russell S. Fisher, M.D.
Chief Medical Examiner
State of Maryland

Edward H. Johnston
Colonel, MC, USA
Assistant Chief of Pathology
Armed Forces Institute of Pathology, Washington, D.C.

Bruce H. Smith, Jr.
Captain, MC, USN
The Director
Armed Forces Institute of Pathology, Washington, D.C.

Cyril H. Wecht, M.D., LL.B.
Chief Forensic Pathologist
Allegheny County, Pennsylvania and
Director, Pittsburgh Institute of Legal Medicine

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NEUROPATHOLOGY

Inspection of the head and removal of the brain, spinal cord a temporo-occipital bone began at 7:40 A.M. and was completed at 9:15 P.M., June 6, 1968, in the autopsy room of The Hospital o The Good Samaritan, Los Angeles, California.

Preliminary examination of the brain and cranial wound was mad by 10:00 A.M., including two horizontal sections through the midbrain and upper portion of the pons.

The specimens were then placed in 10 percent neutral formalin for fixation and transferred to the laboratories of the Chief Medical Examiner-Coroner, Hall of Justice.

At 4:00 P.M., June 6, 1968, after six hours of preliminary fixation, the brain was cut in six coronal sections and examined. Records were made of all gross findings.

At 7:00 P.M., June 7, 1968, the brain was further cut into 13 coronal sections and re-examined. All lesions and their locat were again confirmed and descriptions checked for accuracy.

Color photographs and radiographs, including internal carotid artery angiography, were made at different stages of examinati

RADIOGRAPHY

Radiographs of the brain specimen were taken on June 7, 1968.

ADDITIONAL PHOTOGRAPHY

Infra-red and black-and-white photographs of scalp hair, gunsl wounds and of skin from the right ear were taken on June 8, 1

AT-SCENE INVESTIGATION

At-scene investigation at the Ambassador Hotel, 3400 Wilshire Boulevard, Los Angeles, was conducted by Dr. Noguchi and Commander Stahl on June 8, 1968.

Additional ballistic aspects were considered during a follow-u at-scene investigation with Mr. DeWayne Wolfer, Los Angeles Police Department and Drs. Holloway and Noguchi on June 11, 1

TEST FIRINGS

Test firings were conducted on June 11, 1968, using a weapon a ammunition supplied by the Los Angeles Police Department as be of the most nearly identical manufacture possible to that of t fatal weapon. An area adjacent to the firing range on the Los Angeles Police Academy was utilized. Personnel consisted of Drs. Holloway and Noguchi, Mr. DeWayne Wolfer and Sgt. William J. Lee. Preliminary studies were with a target composed of a single layer of muslin over 3/8 inch (9 mm) gypsum board. The muzzle was perpendicular to the target unless otherwise no

A firm contact firing shows a circular defect about 3/8 inch (9 mm) in diameter, surrounded by a concentric zone of powder deposition about 7/8 inch (22 mm) in diameter and sometimes ha a multi-laminar configuration at the periphery. These are on outer surface of the muslin. Also evident on the under surfac is a concentric zone of pale soot deposition about 3 inches (7 in diameter.

At a 1/4 inch muzzle distance, there is a 5/16 by 1/4 inch (7. 6 mm) defect with transverse ripping of the fabric over a zone 1-1/2 inches (3.8 cm) in length and about evenly divided bilat Also present is a concentric zone of dense, dark gray discolor one inch (2.5 cm) in diameter with irregular "clouding" within zone up to 2-1/2 inches (6.3 cm) in diameter. Several faint radial smudges are identified as corresponding roughly with th known land-and-groove characteristics of the test weapon.

A firing at 1/2 inch muzzle distance is similar in configurati except for the absence of ripping of the target fabric and abs of land-and-groove "puffs." Visually detected powder residue present in a zone having a maximum diameter of about 6 inches (15 cm).

At one inch distance there is the usual central defect and den but comparatively homogeneous smudging up to a radius of 1-5/8 inches (4.2 mm).

A firing at 2 inch muzzle distance shows fairly homogeneous bu comparatively lighter smudging up to a radius of 2-1/4 inches (5.6 cm). Discrete tattoo particles are now seen in a central zone up to 7/8 inch (2.2 cm) in radius.

The 3 inch distance firing shows pale mottling of powder resid within a radius up to 2-1/4 inches (5.6 cm), as well as finely dispersed powder granules up to a radius of about 1-3/4 inches (4.4 cm).

At 4 inches there is a pale smudging zone up to 1-3/4 inches (4.4 cm) in radius. In sharp contrast, discrete powder tattoo particles are identified out to a radius as much as 2 inches (

Target configuration was then changed as follows. A single layer of muslin was placed over several crumpled thicknesses of the same fabric. Additional firings at close contact, loose contact, 1/8 inch (3 mm), 1/4 inch (6.5 mm), all show patterns similar to those on the original target.

A series of firings was then performed using geometry simulatin that of the fatal gunshot wound to the head, as determined by previous studies. The post-auricular region was simulated by the padded muslin described above. The ear was simulated by an animal ear obtained from an abbatoir and with the hair removed.

With the test weapon at an angle of 15 degrees upward and 30 degrees forward (to correspond with goniometric data) and at a distance of one inch (2.5 cm) from the edge of the right "ear," the test pattern is most similar to the powder residue pattern noted on the Senator's right ear and on hair specimens studied. Similarity persists, on the 2 inch (5 cm) distance firing, with respect to the distribution of discrete powder gr

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DESCRIPTION OF SPECIAL PHOTOGRAPHY AND RADIOGRAPHIC STUDIES DONE JUNE 7, 1968, AT THE PHOTOGRAPHY DEPARTMENT, LOS ANGELES POLICE DEPARTMENT, AND AT THE GOOD SAMARITAN HOSPITAL.

Report of supplemental examinations done on the brain and vario associated bony tissue obtained both at the time of surgery and at autopsy.

2:10 P.M. on June 7, 1968

The undersigned and Colonel Pierre A. Finck took the fixed and previously partly sectioned brain specimen, along with bone fragments submitted from the Surgical Pathology Department, Good Samaritan Hospital, and a segment of skull removed at autopsy (to include the surgical margins of the wound of entry to the head and a portion of the associated trajectory zone) to the Los Angeles Police Department Crime Laboratory by prior arrangement. It was recommended by the Director of the Scientific Investigation Division of the Los Angeles Police Department, Captain Martin, that the contemplated x-ray studies might be better accomplished at another facility. There was, however, at our disposal, the services of the Photographic Department of the Los Angeles Police Department and the followi photographs were taken by James Watson, Senior Photographer, ur our direction:

1. Segment of bone removed at autopsy from the right mastoid region, internal aspect, infra-red at a ratio of reproduction of 1:1 on the negative.

2. The external aspect of the above specimen, infrared technique.

3. External aspect of the above specimen; black and white; pan.

4. Internal aspect of the same; black and white; pan.

The foregoing photographs are all on 4 x 5 material and all bea the identification No. 68-5731, the autopsy number.

5. A 1:1 ratio photograph of various fragments of bone submitted from the Surgical Pathology Department of Good Samaritan Hospital under their number B-2411-68. Pan film; millimeter scale included in photograph.

6. An infra-red study of the same material in the same orientation and at the same scale.

The above negatives, having been exposed and developed and showing adequate representation of the fractures sought, were left for printing by the Los Angeles Police Department photo lab.

We left the Los Angeles Police Department Building at 4:10 P.M to pursue the x-ray studies at The Good Samaritan Hospital, Department of Radiology. These were done in the company of and with the kind consultation of Drs. R. L. Scanlan and J. D. Camp. The x-ray technician for these studies was Mr. G. O. Drianis. We arrived at The Good Samaritan Hospital at 4:15 P.M. for these studies.

The first studies were of the brain slices re-assembled in th best approximation of their original anatomical positions and x-rayed with the cerebellum approximated in situ as well (two exposures, radiation entering at the vertex).

The thus assembled brain was then x-rayed in a similar manner but with the cerebellum detached slightly along the mid-sagit axis (four films).

The segment of skull excised at the time of autopsy and conta both the surgical defect and portions of the wound of entry t the head was then x-rayed with the specimen in as intimate contact with the film plane as possible and thus very nearly representative of a perpendicular view through the center of the surgical defect, but not the wound of entry. Two exposur of this aspect were made. The specimen was then rotated 90 degrees so as to provide a somewhat lateral view with refere to that portion of mastoid in the specimen. The specimen was supported for this study by a balsa wood block. Two exposure were made at varyingly perpendicular planes to the foregoing The above-mentioned four exposures are all contained on one sheet of film.

Composite films embodying visible evidence of the gunshot wo to the head were then made, including that portion of dura i which the traumatic and surgical defect was present, a porti of posterior aspect of temporal lobe nearest the wound of entry, and the two portions of cerebellum as previously sect by the Neuropathologist. Four films of this configuration w taken to include some variety of roentengraphic technique in of the considerable variation of geometry in the specimens studied. All of the foregoing described films bear the auto number 68-5731.

The next study was a series of two exposures on one sheet of film of the collection of bone fragments obtained at time of surgery (or a portion of these same). The fragments were oriented to emphasize two particular fragments, larger as it happened, which show on infra-red negatives some reaction in that spectrum. The two fragments are at the upper portic

of the x-ray field, the lower aspect being delineated by the number B-2411-68, Surgical Pathology accession number for this specimen at The Good Samaritan Hospital. Again a varying technique was used to afford a more meaningful interpretation of radio-dense areas.

Returning to the brain specimen proper, the re-assembled speci men was then arranged in a serial manner commencing from anterior and proceeding posteriorly with the arbitrary assignr of alphabetical designation of the slices which had been previously chosen by the Neuropathologist.

This first film includes arbitrary sections A, B and C. A letter R designates the right hand side of the array. The next film in this series includes arbitrary sections D and E. The next film includes arbitrary sections F, G and H, with the addition of a separate segment of cerebral cortex and associat hemorrhagic material known to have come from the region of the wound of entry to the head. The latter material bears the designation F-1. This series ends with section H which represents the terminus of the occipital lobes.

The next film is a composite of arbitrary section F, its accompanying fragment F-1, and separated views of cerebellum. Alignment of these specimens on the film is such that the mid sagittal plane passes perpendicular to the film; the separate fragment of cerebrum and the associated hemorrhagic material comparably distant from the midline; and the ventral portion the cerebellum (including the pons) are similarly aligned. T remaining portion of cerebellum is then placed to the left of the ventral portion but along the same axis of lateral displacement.

The next film includes the foregoing configuration and adds t portion of dura which was originally fixed in formalin with t brain and which includes the traumatic and surgical defect.

The last film in this series is an array of the wounds of ent and exit. An "entry" column is arranged on the left of the film and the "exit" column on the right. Numbers appearing beside specimen images correspond to the assignment of gunsho wound numbers indicated in the autopsy protocol. Entry No. 1 is a view in which the superior portion of the image represen merely the integumental free surface and the remainder represents subcutaneous tissue. The specimen designated to include Entry No. 2 and Entry No. 3 is oriented on the film such that the radiation enters at the free surface of the ski Orientation of this specimen takes into account the previousl placed (at time of autopsy) suture nearest Entry No. 2. A faint image of this identifying suture is seen in this radiograph. Exit No. 2 is taken with the same orientation as the tissue including Entries 2 and 3.

Technical data for radiographs of wounds of entry and exit: 90 KV, 100 MA and 1/2 second exposure. The film suggested by Drs. Scanlan and Camp and used for these studies was Eastman Industrial type, affording superior contrast and resolution.

The above studies having been completed and all films processed and dried, the undersigned left The Hospital of The Good Samaritan at 7:25 P.M., to take the above items to the Hall of Justice. Colonel Finck had previously left the hospital (at 7:00 P.M.) for the purpose of returning the brain and other specimens (excluding the tissues containing wounds of entry and exit) to the Office of The Chief Medical Examiner-Coroner for further evaluation by the Neuropathologist. The undersigne returned the gunshot wound specimens to the office, along with the above described films.

TTN:JEH:etf

REPORT OF CHEMICAL ANALYSIS

COUNTY OF LOS ANGELES MEDICAL EXAMINER-CORONER

Toxicology Laboratory
Hall of Justice
Los Angeles, California

File No. 68-5731

ne of Deceased: Senator Robert F. Kennedy Lab. No. 6-161

e Submitted: June 6, 1968 Time: 8 A.M.

topsy Surgeon: T. T. Noguchi, M.D.

terial Submitted:

Blood X	Liver X	Stomach
Brain	Lung X	Lavage
Femur	Spleen	Urine
Kidney	Sternum	Gall bladder
Drugs	Chemicals	

st Desired: General Toxicological Analysis

aboratory Findings:

A general toxicological analysis was performed on blood, liver and lungs. Nothing significant could be detected.

Examined By: R. C. Gupta, Ph.D. Head Toxicologist. Date: June 14, 1968

REPORT OF MICROBIOLOGICAL ANALYSIS
CHIEF MEDICAL EXAMINER-CORONER'S OFFICE

Bacteriology Laboratory
Hall of Justice
Los Angeles, California

File No. 68-5731

e of Deceased Robert F. Kennedy

e Submitted June 6, 1968

opsy Surgeon Thomas T. Noguchi, M.D.

erial Submitted Blood for ABO and Rh Typing.

oratory Findings: BLOOD: Group A1 Rh positive.

Roderick I. Luke

amined By Roderick I. Luke Date June 12, 1968

GENERAL MICROSCOPIC DESCRIPTION

CARDIOVASCULAR SYSTEM

HEART (Sections 72-12 A, B and C; 72-13 A, B and C; 72-14 A, B and C; 72-15 A, B and C; 72-16 A, B and C; 72-17 A, B and C; 72-18 A, B and C; 72-19 A, B and C; 72-23 A, B and C.)

Epicardial surfaces show flat sparse mesothelium. The epicar fat is of normal amount. In a few areas there is the usual degree of insinuation of epicardial fat cells in the outermos myocardium extending between isolated fibers and bundles of fibers. All sections show regular myocardial fibers with central nuclei which are of consistent and regular size. Tinctorial characteristics are uniform with the usual degree of eosinophilia. Within the myocardial interstitium is a minimal amount of edema, usually located adjacent to small vascular channels. No myocardial necrosis, fiber fragmentati or inflammatory infiltrate is observed. No microscopic intra-myocardial hemorrhage can be identified. The endocardial sur show an intact endothelium. The usual complement of fibrous connective tissue is present subjacent to the endothelium. Sm tributaries of the coronary arterial tree included in the sect of heart show no intrinsic disease. No thrombi or emboli are identified.

AORTA (Sections 72-28 A, B and C)

The section is that of a complete circumferential segment of aorta. It includes intima, media and a generous portion of adventitia. The endothelial surface is intact. In a few ran areas, minimally increased amounts of fibrous tissue can be n beneath the endothelium. A few minute pools of mucopolysacch material are seen in the deep intima and inner most media. O rare isolated foam cells can be seen immediately subjacent to the endothelium. The pattern of the elastic plates of the me is normally preserved. The adventitia consists of the usual loose collagenous connective tissue. The vasa vasorum extend from the adventitia into aortic wall are of normal caliber. inflammatory infiltrate is identified in any layer of the aor wall.

INFERIOR VENA CAVA (Sections 72-29 A, B and C)

The structure of the full thickness of vein wall is preserved. The endothelial surface is intact. The usual complement of subendothelial fibrous tissue is present which appears to be loosely arrayed bundles of collagen. The media of the vein s the usual bundles of smooth muscle separated by collagen bund The smooth muscle gradually thins out as it approaches the adventitia which is composed of loose areolar connective tiss

A few small nerve trunks and blood vessels in the adventitia are unremarkable.

CORONARY ARTERIES (Sections 72-23 A, B and C; 72-24 A, B and C; 72-25 A, B and C represent gross sections of branches of the coronary tree. Sections 72-26 A, B and C; 72-27 A, B and C represent longitudinal sections of coronary arteries.)

Cross-sectioned vessels show intact endothelial surfaces. No cross-sectioned branches show significant luminal compromise. There is a slight increase in fibrous tissue deposition immedia subjacent to the intima, blending with the muscular media. Rar isolated foam cells can be identified. No sharply defined plaques are observed. In a few areas, loose fibrillar appearin pink-staining material is noted in the subintimal connective tissue adjacent to the muscular media and is surrounded by smal aggregates of fibroblasts, foam cells and rare lymphocytes.

The longitudinally sectioned arterial branches show no addition alterations beyond those previously described in the cross-sectioned segments.

RESPIRATORY SYSTEM

TRACHEA (Sections 72-4 A, B and C; 72-5 A, B and C; 72-6 A, B and C)

Sections of trachea include epithelium, cartilagenous rings and peritracheal connective tissue. There is focal denudation of the surface epithelium. In other areas the normal columnar epithelium is intact. Some evidence of early regeneration of denuded epithelium is noted. The tracheal basement membrane is irregularly thickened and eosinophilic. Immediately sub-jacent to it are aggregates of lymphocytes in a slightly edemat subepithelial stroma. Most of the tracheal mucous glands appea intact. A few of their ducts contain inspissated secretions. In one block (72-6 A, B and C) neutrophilic leukocytes are note aggregating beneath the basement membrane. There is stromal hemorrhage adjacent to the neutrophils. In another section (72-5 A, B and C) necrosis of the epithelial and subepithelial tissue down to the level of perichondrium is noted. The areas o necrosis are manifested by loss of nuclei with persistent nucle dust, smudging of blood vessels, and some extravasation of bloo The necrosis also involves mucous glands. At the junction of t vital and necrotic tracheal mucosa, neutrophilic leukocytes are gathered. The tracheal cartilagenous rings are viable. In all sections, some central cartilagenous calcification is noted. S extravasation of blood into the peritracheal connective tissue seen.

LUNGS (Sections 72-7 A, B and C; 72-8 A, B and C; 72-9 A, B and C; 72-10 A, B and C; 72-11 A, B and C)

Sections of pulmonary parenchyma are essentially similar to one another. All show moderate engorgement of the arterial bed with red blood cells as well as congestion of the alveolar capillary bed. In addition, precipitated proteinaceous edema fluid can be seen in many microscopic fields, located within alveolar spaces as well as within the perivascular and peri-bronchial interstitial tissue. Anthracotic pigment aggregates are sparse and collected in subpleural foci associated with sli fibrous tissue proliferation and lymphocytic aggregates. Other small aggregates of anthracotic pigment can be seen in perivasc and peribronchial location. Terminal bronchioles, respiratory bronchioles, and many alveolar ducts contain neutrophilic exuda In some small respiratory passageways plugging by neutrophilic cells can be seen, while in other areas the aggregation is loos In the areas of intra-alveolar neutrophilic exudation diapedes: of neutrophils through alveolar capillaries can be observed. areas of the neutrophilic collections, fibrin mesh-works are noted. In a few alveolar spaces, fibrinous material appears compressed against the lining, but hyaline membrane formation is not a prominent feature in any of the sections examined. Larger bronchi, small bronchi and bronchioles of various calib show prominent folding of their mucosal surfaces and some post mortem denudation of epithelium. In the areas of pulmonary parenchyma not involved with the pneumonitic process, slight hyperexpansion of alveolar ducts and alveolar spaces is noted. Several small pulmonary arterial branches contain thrombo-embo material filling the lumen. No organization is observed. Sea of vessels in the described sections reveals no obvious emboli central nervous system tissue.

LUNGS (Sections L20-1 A, B and C; L20-2 A, B and C; L20-3 A, B and C; L20-4 A, B and C; L20-5 A, B and C; L20-6 A, B and C; L20-7 A, B and C; L20-8 A, B and C; L20-9 A, B and C; L20-10 A, B and C; L20-11 A, B and C; L20-12 A, B and C; L20-13 A, B and C; L20-14 A, B and C; L20-15 A, B and C; L20-16 A, B and C; L20-17 A, B and C; L20-18 A, B and C; L20-19 A, B and C; L20-20 A, B and C)

Multiple sections of pulmonary parenchyma reveal varying amou of red cell congestion of the capillary bed, exudation of neutrophilic leukocytes and proteinaceous material into scattered alveolar spaces, and precipitated edema fluid in ot alveolar spaces. The changes are patchy. In some sections, there is collapse of individual pulmonary lobules. In other sections, small bronchi and bronchioles show post-mortem auto sloughing of the epithelium. Neutrophilic leukocytic aggrega are also seen in some bronchioles. In other fields, randomly scattered in the sections examined, hyperinflation of alveola

spaces can be recognized. In section L20-2 A, B and C, two small vascular channels contain aggregates of fibrillar to spongy, pale-pink staining material in which ghosted nuclear structure can be identified. This material suggests embolic autolyzed central nervous system tissue. Special stains for myelin will be prepared.

HEMIC AND LYMPHATIC SYSTEM

LYMPH NODES (Sections 72-35 A, B and C; 72-36 A, B, and C)

Two lymph nodes are represented in these sections. Slides 72- A, B and C show a node structure embedded in considerable fibı adipose tissue. Within the fibro-adipose tissue, are several myelineated nerve structures. The lymph node itself shows a well-formed capsule. The subcapsular sinusoids are open. The lymph node cortex shows small reactive follicles. In the medullary portion of the node are aggregates of macrophages obscured by black pigment. The lymph channels in the medullar portions of the nodes are unremarkable. The lymph node repres on section 72-36 A, B and C demonstrates an intact capsule wit small amounts of adjacent areolar tissue and a few tags of smc muscle. In this node the subcapsular sinusoids are also open lined by normal littoral cells. The node cortex has small, rat symmetrically distributed lymphoid follicles with visible reactive centers. Within the medullary portion of the node is a large amount of black pigment consistent with carbon incorporated into macrophages. The medullary lymphoid sinusoids ar unremarkable. The reticuloendothelial cells lining the sinuso are not unduly prominent.

SPLEEN (Sections 72-30 A, B and C)

The splenic capsule is intact and of normal thickness. The trabecular framework of the splenic parenchyma is unchanged fr normal. Malpighian follicles are normally arrayed along the central arterioles. No significant reactive centers are ident Some of the central arterioles show a mild to moderate degree hyalinosis. Throughout the splenic section, red pulp sinusoid are engorged with red cells. The cell population of the red pulp is normal. No evidence of extramedullary hematopoiesis i seen. There is no acute splenitis.

BONE MARROW (Sections 72-31 A, B and C)

Section of marrow includes the enclosing cortical compact and medullary cancellous bone. The adjacent periosteum is of the usual thickness and composed of dense bundles of collagen and small numbers of fibroblasts. The bony cortex shows the usual lamellar pattern. The cancellous bone trabeculae are of the usual configuration. The marrow within the medullary space is cellular and is approximately 20 percent fat. The cellular

maturation of all lines is orderly. Megakaryocytes are present. The myeloid to erythroid ratio is approximately 2.5 to 1, suggesting an early hyperplasia of the erythroid line. There is prominent activity of the normoblastic series in the marrow.

THYMUS (Sections 72-57 A, B and C; 72-58 A, B and C)

All sections show residual thymic elements embedded in lobulat fat containing several small blood vessels. The thymic lobule show nodular peripheral aggregates of mature lymphoid thymic cells. The medullary portions of the thymus are looser but ar composed of lymphoid cells in a delicate reticular stroma. Hassell's corpuscles are prominent in all sections. Many show prominent cystic change and the cystic areas are filled with flakes of keratin-like material and epithelial cells with occasional formation of epithelial pearls. Amorphous floccule pink-staining material surrounds the recognizible ghosted area There is no evidence of reactive lymphoid follicular activity within the thymus.

GASTROINTESTINAL SYSTEM

ESOPHAGUS (Sections 72-37 A, B and C)

The section is that of a complete cross-sectional representat of esophagus. Outer adventitial fibro fatty tissue tags are present. The circular and longitudinal muscles, bundles and associated nerve filaments and ganglia are normally distribut The submucosa consists of rather loose areolar connective tis The muscularis mucosae is prominent but not abnormally thicke The submucosa contains small clusters of lymphocytic cells ne blood vessels. The esophageal squamous epithelium is intact and shows normal maturation from basal layer to the lumen. T section appears to represent mid-esophagus as no outer skelet muscle attachments or submucosal gland structures are identif

TONGUE (Sections 72-1 A, B and C)

This section includes a generous strip of lingual mucosa, subepithelial tissue and a prominent mass of lingual skeletal muscle. The epithelial surface shows numerous filiform papil lations. The tips of the papillae are covered with slightly hypercornified squamous epithelium. The epithelial maturat: appears orderly. Numerous bacterial colonies are present in the exfoliating squamous cellular debris. Colonies appear t be predominantly coccal. The lingual musculature is entirel within normal limits. There is no evidence of inflammation.

STOMACH (Sections 72-38 A, B and C; 72-39 A, B and C; 72-40 A, B and C)

All sections reveal similar features. The gastric serosa and muscularis are unremarkable. The gastric mucosal folds are prominent. The epithelium is moderately well preserved. Some superficial autolytic loss of the columnar surface epithelium adjacent to the gastric pits is noted. Between some mucosal folds are aggregates of entrapped mucus, containing exfoliated surface cells. The capillary bed of the mucosa appears engorge Surrounding the necks of the gastric glands are rather prominen aggregates of plasma cells and occasional lymphocytes. In a few areas these cellular aggregates extend through the full thickness of mucosa and form small mononuclear aggregates at the junction of mucosa and muscularis mucosae. A distinctive feature observed in all sections is prominence of the parietal cell population of the gastric glands, with relative reduction in the zymogen cell population. The muscularis mucosae is of normal thickness. Submucosal tissues are of loose areolar typ and contain engorged thin-walled blood vessels.

PANCREAS (Sections 72-41 A, B and C)

The sections are similar to one another. All show well preser lobular pancreatic tissue. The vascular bed is mildly to moderately congested. Occasional fat cells are present within the lobules themselves, but there is no fat in the interstitia tissue. Several interlobular ducts and some intralobular duct elements contain inspissated proteinaceous pink-staining mate The epithelium within most ducts is well preserved. Only rare pancreatic acini show ectasia. There is no interstitial inflammatory reaction identified. The islets of Langerhans appear normally distributed through the lobular parenchyma an show no evidence of hyalinization. There is no evidence of arteriolar sclerosis.

LIVER (Sections 72-42 A, B and C)

All sections are similar. The liver lobular architecture is well preserved. The portal triads contain no inflammatory ce infiltrate. The portal vein tributaries, hepatic artery tributaries and bile ducts are unremarkable. The central vei show mild to moderate engorgement by red blood cells. Some congestive changes in the innermost pericentral sinusoids are also observed. The liver cells are arranged in plates of sin cell thickness. There is minimal edema of the spaces of Diss The cells of von Kupfer are normally distributed. There is n evidence of cholestasis. The pericentral liver cells contai usual complement of lipochrome pigments.

GALLBLADDER (Sections 72-43 A, B and C)

A section of gallbladder shows extensive autolytic changes involving the mucosa, with all the cells apparently ghosted and anucleated. The gallbladder muscular coat is unremarkable. The liver bed of the gallbladder is included in the section and shows unremarkable liver cells at their junction with the pericholecystic connective tissue.

UROGENITAL SYSTEM

KIDNEYS (Sections 72-44 A, B and C; 72-45 A, B and C; 72-46 A, B and C; 72-47 A, B and C; 72-48 A, B and C; 72-49 A, B and C; 72-50 A, B and C; 72-51 A, B and C)

Sections of kidney show moderately well preserved tubular eleme and intact glomeruli. Most of the interstitial renal vascular bed is engorged with red blood cells. The glomerular capillary bed shows red blood cell engorgement. There is no evidence of renal tubular necrosis. In some sections, proximal tubular epithelium shows a slightly vacuolated to ground glass appearan suggestive of a minimal osmotic nephropathy. Only rare glomeru in multiple sections examined show ischemic obsolescence. In general, small arteries of arcuate to interlobar size show slig intimal fibrous thickening. No significant arteriolar hyalinization is found.

Sections taken from blocks 72-44 and 72-45 include an adenomato nodule within the outer cortex. This nodule appears well encapsulated by dense hyalinized fibrous tissue. A few central fibrous trabeculae course across the nodule. The nodule is composed of sheets, cords and tubules of small cuboidal to columnar cells, occasionally arranged as papillary fronds. The cells have sparse pale pink vacuolated to finely granular cytoplasm and large oval to rounded basophilic nuclei.

No mitotic activity is recognized within the nodule. No insinuation into blood vessels or the surrounding renal parenchyma is observed. There is scarring with associated tubular atrophy and some glomerular distortion and compression in the cortex immediately adjacent to the nodule.

Sections from blocks 72-46, 72-47, and 72-48 include the grossly described renal cyst. The cyst wall is composed of hyalinized fibrous connective tissue. The lining consists of sparse cuboidal cells. The renal parenchyma immediately adjacen to the cyst wall shows a generous rim of atrophic cortical and medullary tubules, compressed and distorted glomeruli, clusters of hyalinized glomeruli, and a minimal lymphocytic infiltration. These changes are consistent with pressure atrophy. Some small blood vessels in this area immediately adjacent to the cyst show prominent fibrosis.

Sections of the kidney including the papillae as they enter the calyces show normal endothelial lining the calyces and a normal fibrous and muscular calyceal wall. The tip of a papilla is covered with unremarkable cuboidal epithelium. Th collecting tubules appear unremarkable except for a rare focu of calcium salt deposition in their basement membranes.

BLADDER NECK - PROSTATE (Sections 72-52 A, B and C; 72-53 A, B and C; 72-54 A, B and C)

Sections examined from block 72-52 include bladder with bladde neck and prostatic junction. The bladder wall musculature is unremarkable. The blood vessels immediately subjacent to the bladder epithelium are markedly congested with red cells. The is some loss of the transitional epithelium. In its place neutrophilic leukocytes and occasional mononuclear cells are clustered. The sub-epithelial tissue extending into the muscularis shows moderate edema and associated chronic inflammation. In the prostatic uretheral portion of the specimen, there is also sub-epithelial edema and mild inflammation. The prostatic glands at the junction of bladder neck and prostate show normal papillary epithelium of columnar type, with basall located nuclei. No atypical features are identified. Section from blocks 72-53 and 72-54 show only prostatic elements. The fibro-muscular stroma is unremarkable. The glands are arrange in their normal manner. The epithelium is intact. A few smal ductules contain neutrophilic leukocytes and proteinaceous debris and are surrounded by mononuclear cells and rare neutro Other glandular elements contain inspissated proteinaceous material, rare corpora amylacea, and a few small calcific spher

TESTIS (Sections 72-55 A, B and C)

Sections are essentially similar to one another. The tunica albuginea is thick and composed of laminated collagen bundles. A few minute ductular epithelial rests lined by cuboidal column cells and containing inspissated pink-staining material are see within the tunica albuginea. The testicular parenchyma shows the usual tubular pattern. There is mild interstitial edema. Interstitial cells are arranged in small and large clusters. Many show golden pigment within their eosinophilic cytoplasm an a few contain crystalloids of Reinecke. The parenchymal tubule show mild basement membrane thickening. Most tubules show orde spermatogenesis extending through spermatozoa formation. Only rare tubules appear to show absence of spermatozoa formation an in these, spermatids can be identified.

ENDOCRINE SYSTEM

THYROID (Section 72-56 A, B and C)

The thyroid follicles show mild to moderate variation in size.

Most contain rather abundant colloid. There is peripheral scalloping of colloid in a few follicles. The thyroid epithelium is generally low and cuboidal. A rare thyroid follicle shows squamous metaplasia. There is no evidence of interstitial inflammation, edema or fibrosis. Intrathyroid blood vessels are unremarkable.

PITUITARY (Sections 72-59 A, B and C; 72-60 A, B and C; 72-61 A, B and C; 72-62 A, B and C; 72-63 A, B and C; 72-64 A, B and C)

Multiple sections of the pituitary includes anterior, intermedi and posterior portions. The connective tissue capsule around the pituitary shows focal extravasation of blood. There is no hemorrhage within the substance of the pituitary, however. The anterior lobe contains the usual complement of cells of eosinop basophilic and chromophobic types. The eosinophils show the usual nodular aggregation along the anterior pole. There is no evidence of necrosis of pituitary cells. Within the pars intermedia a few colloid filled cystic structures lined by attenuated cuboidal epithelium are seen. The posterior lobe has the typical neural appearance and is unremarkable.

ADRENALS (Sections 72-65 A, B and C; 72-66 A, B and C; 72-67 A, B and C; 72-68 A, B and C)

All sections of adrenal are essentially similar. All show a connective tissue capsule composed of dense hyalinized fibrous tissue containing fibroblasts. This capsule has a sharp junctio with the surrounding periadrenal fat. Some of the periadrenal fat is of the fetal type such as is frequently seen in this region. A few small arterioles in the adrenal capsule and perirenal fat show minimal hyalinization of their walls. No extracapsular cortical nodules are identified. A few intra-capsular microscopic aggregates of adrenal cortical cells are seen. The adrenal cortex shows well demarcated zonation. The glomerulosa is well formed and easily demarcated from the fasciculata. There is no significant nodularity identified within the cortex. The cells of the fasciculata have pale pink cytoplasm which is granular to finely vacuolated. The vascular bed appears mildlycongested in the reticularis; in some sections it is moderately to markedly congested as it approaches the medulla. The reticularis shows cells having rather dense eosinophilic cytoplasm. There is the usual interdigitation of reticularis with the adrenal medulla. The medullary cellular elements are well-preserved. The usual thick walled venous channels are seen within the medulla.

PERIPHERAL NERVOUS SYSTEM

PERIPHERAL NERVE (Sections 72-72 A, B and C)

Peripheral mylineated nerve including its epineural connective

tissue shows well formed axonal structures with the usual complement of Schwann cell nuclei distributed in a normal manner. No diagnostic changes are recognized.

MISCELLANEOUS

Slides labeled 72-2 and 72-3 A, B and C are sections of pieces of gelfoam covered peripherally with blood clot, and showing early migration of neutrophilic leukocytes into the more peripheral interstices.

Slides labeled 72-32, 72-33, and 72-34 A, B and C and 72-22 A, B and C are all pieces of blood clot; no lamination or organization is present; and the material appears to be of either agonal or post-mortem origin.

Slides labeled 72-21 A, B and C and 72-20 A, B and C show pieces of gelfoam infiltrated with red cells, neutrophils and lymphocytes. Fibrin and red cells are at the periphery.

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SURGICAL PATHOLOGY SLIDES FOR REVIEW

Microscopic review of surgical tissue sections from The Hospital of The Good Samaritan, received in this office on June 7, 1968. Sections are labeled B2411-68, and consist of three slides.

One section shows skin and subcutaneous fat. Only a small are of surface epithelium is present. Several pilosebaceous struc and scattered sweat glands are noted. Collagen of the dermis shows fragmentation and coagulation, and some coagulation of epidermis is also present. Extravasation of blood into the dermis is widespread, and early neutrophilic migration out of capillaries into dermis and subcutaneous fat is recognized. Scattered fragments of bone dust are spread through the disrupted dermis. Aggregates of fine brown granular material can be observed near and in the most disrupted dermal tissue. These are consistent with grains of gunpowder.

Another tissue section reveals small pieces of disrupted edematous cerebellar cortex without reaction or hemorrhage. Purkinje cells show variable degrees of distortion and nuclear pyknosis. Small pieces of bone are also present on the slide are irregular pieces of blood clot and fibrin mesh with entrap leukocytes.

The third slide is a section of a piece of gelfoam to which ar adherant a piece of blood clot, a few bony spicules and sparse pieces of brain tissue. Some minute strips of tissue consiste with leptomeninges are also noted.

TTN:VJR:etf

CLINICO-PATHOLOGICAL CORRELATION OF SYSTEMIC AUTOPSY FINDINGS

INTRODUCTORY COMMENT:

The gross and microscopic findings obtained from the postmortem examination of the decedent have been correlated with informati available from the clinical records of The Hospital of The Good Samaritan. Each organ system is reviewed, noting all changes and how these changes were manifested clinically. In addition, effects of therapy and the effects of the agonal events upon the gross and histopatholoigcal findings are described.

CARDIOVASCULAR SYSTEM:

The structure of the cardiovascular system appears to be within normal limits for the age of the decedent. There is no morphologic evidence of sustained hypertension, as the heart weight is normal and the myocardial thickness is also within the range of normal. No valvular deformities or abnormal intracardiac shunts are found to account for the systolic murmur reported in the clinical notes. No vegetations or antemortem marantic thrombi are seen grossly or microscopically. No myocardial necrosis of the type occasionally noted following the treatment of shock with vasopressors is identified in multiple sections. The coronary arteries reveal no evidence of significant luminal compromise by atherosclerosis. The minimal amount of interstitial edema within the myocardium is considered to be of agonal origin. The aorta and the venae cavae are within normal limits. No antemortem thrombus is recognized in the inferior vena cava in the region of the central venous catheter. The splenic vascular bed shows an amount of arteriolar hyalinosis normally seen in individuals of the stated age. Minimal fibrous thickening of the intima of intermediate sized renal arteries is also consistent with the age of the individual. The slight amount of hyalinosis of occasional periadrenal arterioles is also considered to be within normal limits.

RESPIRATORY SYSTEM:

The gross and microscopic changes described in the trachea are those usually found in comatose individuals in whom tracheostomy has been performed. The patchy denudation and regeneration of surface epithelium frquently accompanies measures utilized to keep the airway open. The are described in the microscopic notes as showing mucosal necrosis and acute inflammation is typical for the site of a tracheostomy tube. Such a lesion can show complete regeneration of epithelium folliwing removal of the tracheostomy tube. The degree of calcification of tracheal cartilage rings is usual for the age of the decedent.

The pulmonary alterations are those usually encountered in t comatose individual. Mild intra-alveolar and interstitial e frequently appears during the agonal period of life. Some pooling of secretions in the dependent portions of the lungs the accumulation of the edema fluid in the hypostatic areas given rise to a mild bronchopneumonic process. No evidence abscess formation is noted microscopically, and the broncho- pneumonic process appears to be early, showing no evidence o organization. No microscopic evidence of oxygen toxicity is noted. The pulmonary septal cells are unremarkable. The thr emboli described microscopically are small and infrequent in these sections. These thromboemboli appear to be of recent origin and are not associated with infarction. Material sugg of necrotic central nervous system tissue is identified in tw arterial branches. Such pulmonary embolization of central ne system tissue is not infrequent in craniocerebral trauma in w large vascular channels have become disrupted.

HEMOLYMPHATIC SYSTEM:

The lymph nodes examined microscopically are within normal li The spleen demonstrates red pulp congestion such as is usuall seen as an agonal event. There is no manifestation of system sepsis. The bone marrow reveals a slight erythroid hyperplas this change reflecting an early response to a major blood los The thymus demonstrates the usual residual atrophic lobules. Many small cystic structures derived from Hassall's corpuscles are found throughout the medullary portion. Such cystic chang are not clinically significant.

GASTROINTESTINAL SYSTEM:

The bacterial colonies identified in the hypercornified lingua epithelium are frequently seen on the tongue of an unconscious individual where there is no mechanical effect of chewing or swallowing to cleanse the surface of the tongue. No inflammat changes are identified in the tongue.

The esophagus shows no evidence of mucosal erosion or ulcerati and there is no evidence of esophagitis.

The stomach shows no evidence of mucosal erosion or ulceration frequently associated with central nervous system disorders. T minimal amount of superficial autolysis of the epithelium is consistent with the post mortem interval from pronouncement of death until autopsy. Of interest is the prominence of parietal cells in the gastric glands. The plasmacytic and lymphocytic aggregates within the lamina propria suggest a slight chronic gastritis.

No specific lesions are identified in the entire gastrointestin tract.

PANCREAS:

The pancreas shows no gross or microscopic alteration of any significance.

The central venous congestion observed within sections of liver is a usual agonal event. No liver cell necrosis is observed and the liver is devoid of inflammatory disease. There is no demonstrable evidence of toxicity of any therapeutic agent in the material examined.

UROGENITAL SYSTEM:

The left kidney contains a solitary renal cortical adenoma and a renal cortical cyst. The adenoma is well circumscribed, small, and composes of benign renal tubular epithelial cells. Lesions of this type are extremely common findings in postmort examination and are of no clinical significance. The solitary renal cortical cyst is of no clinical significance. The slight amount of compression atrophy of renal parenchyma adjacent to both the adenoma and the cyst is so minimal as to not compromise renal function.

There is no evidence of renal tubular necrosis morphologically demonstrable in right or left kidney. The minimal vacuolar change described in some of the proximal tubular epithelium is a frequent finding associated with mannitol infusion. Such changes are reversible. There is no evidence of infection involving the renal pelves or calyces or parenchyma. The vascular congestion described is considered of agonal origin.

The slight amount of calcification around basement membrane around collecting tubules identified in the renal papillae is of obscure origin. Such calcification can be seen in individuals suggesting large amounts of milk or alkali or vitamin D. It is of no clinical significance.

The mild edema, congestion and slight acute and chronic inflammation of the bladder neck is consistent with the presence of an indwelling catheter. The changes are mild. No ulceration of bladder mucosa is recognized. The small collections of acute inflammatory cells within the prostatic periuretheral glands are also consistent with the presence of an indwelling catheter. There is no evidence of hyperplasia of prostatic glands. The small calcific spherules and corpor amylacea within the prostate are frequent normal findings.

The testicular tissue is completely within normal limits.

ENDOCRINE SYSTEM:

The thyroid gland and pituitary gland show no gross or microscopic alteration.

The adrenal glands are small but within normal limits. The cortices are thin, have normal zonation and show decreased lipi The adrenals frequently show this pattern in healthy individual dying acutely due to various causes. The Decadron therapy was of too short a course to have caused significant suppression and atrophy of the adrenal cortex.

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NOTE: In the preparation of these opinions and conclusions, number of diagrams, x-rays, and photographs, together with th descriptive notes were utilized as work documents consistent with generally accepted medicolegal practice. In each instan these items support the findings and conclusions contained herein. They are, however, not included as part of this report, pursuant to the provisions of Section 129 of the California Code of Civil Procedure.

TTN:etf

SIGNATURES

Thomas T. Noguchi, M.D.
Chief Medical Examiner-Coroner

John E. Holloway, M.D.
Deputy Medical Examiner

Abraham T. Lu, M.D.
Deputy Medical Examiner

Victor J. Rosen, M.D.
Deputy Medical Examiner

Robert L. Scanlan, M.D.
Deputy Medical Examiner

DECLARATION OF CYRIL H. WECHT, M.D., J.D.

1. I, Cyril Wecht, a licensed medical doctor and medical examiner, submit this declaration in support of the Petitioner's claim of innocence in this habeas corpus proceeding.

2. I am recognized internationally as an expert in the field of forensic pathology and legal medicine.

3. In this capacity, I have been consulted by numerous law enforcement agencies and other governmental groups in the United States and several foreign countries.

3. I have personally conducted approximately 17,000 autopsies and reviewed or supervised approximately 36,000 other autopsies.

4. Dr. Thomas Noguchi was the Los Angeles County Coroner and lead forensic pathologist conducting the autopsy on Robert F. Kennedy.

5. Dr. Noguchi consulted with me on this case, and I am extremely familiar with the autopsy report regarding Senator Kennedy.

6. The physical evidence, which is described in detail in the report, confirms that Senator Kennedy died of a gunshot wound which entered Senator Kennedy's head through the mastoid bone behind his right ear at point blank range, that is, at a maximum distance of one to one and one half inches, and moving forward.

7. This can be stated with certainty because of the presence of powder burns at the entrance point.

8. This forensic scientific finding was further demonstrated and corroborated by appropriate ballistics tests.

9. There has never been any dispute that this was the fatal wound, or that it was inflicted from behind Senator Kennedy to the back of his head at point blank range.

10. The angle of entry of the fatal gunshot was in an upward and forward direction.

11. Dr. Noguchi told me personally that he was never asked about these facts during the trial of Sirhan B. Sirhan.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed at ___, on 10/26/10

Cyril M. Wecht, M.D., J.D.