

Harris

1 Ultimately, Cooper's trial strategy and performance was reasonable under the
2 circumstances, was not the result of a conflict of interest, and had no effect
3 whatsoever on Petitioner's ability to present his habeas claims in a more timely
4 manner. *S US sealed for 20 yrs*

5 **C. Evidence Presented at Trial**

6 In his Report (CD 199 at 17-31), the Magistrate Judge aptly adopted the
7 California Supreme Court's summary of the trial evidence. *See Slovik v. Yates*, 556
8 F.3d 747, 749 n.1 (9th Cir. 2009); *Moses v. Payne*, 555 F.3d 742, 746 n.1 (9th Cir.
9 2009). Petitioner now complains there is no evidentiary support for the finding that
10 he shot the other victims. (CD 207 at 8-10.) However, Petitioner does not dispute
11 that he fired all eight bullets in his firearm, and the prosecution's ballistics evidence
12 proved that Goldstein, Weisel, and Senator Kennedy were shot with Petitioner's
13 firearm. (15RT at 4153-65.) Thus, Petitioner's objection is frivolous.

14 **D. The Pruszynski Tape Recording**

15 Petitioner objects to the Magistrate Judge's "temerity to dispute Van Praag's
16 seriously scientific analysis with 'opinions' of other 'experts'" who did not "had
17 access to the highly sophisticated computerized program used by Van Praag" and
18 asks for any evidentiary hearing. (CD 207 at 11.) As the Magistrate Judge
19 correctly held (CD 199 at 32-34), there is no need for this Court to conduct an
20 evidentiary hearing on the credibility or reliability of Van Praag's findings for
21 several reasons. First, Respondent has already demonstrated that Van Praag's
22 findings are not "conclusive" evidence of a second gunman and are not shared by
23 other acoustics experts. (CD 184 at 9; LD 17, 18, 24.) Second, Van Praag's
24 findings, even if adopted by this Court, do not disprove the ballistics evidence
25 presented at trial matching the Senator Kennedy neck bullet and two other bullets to
26 Petitioner's revolver, the eyewitness testimony that Petitioner was the shooter, the
27 fact that Petitioner fired all eight bullets in his gun, or Petitioner's pretrial and trial
28 admissions and planning activities. Third, under California's vicarious liability

P/D response

1 had finished shaking hands and was walking forward before any
2 shots were fired, therefor rendering it a physical impossibility
3 for the Petitioner to have put three bullets into him from the
4 rear at powder burn range.

5 Enough of this nonsense. Any challenge to these
6 observations should be brought forward in cross examination at
7 an evidentiary hearing, and not continue to be alleged as
8 "...unreliable and untrustworthy..." from behind a procedural screen.
9 (CD 209 P.8)

10 The Alleged Factual Errors in the Report and the
11 Ballistics Evidence

12 Petitioner has previously, and elsewhere, thoroughly
13 discussed what he believes to be factual errors in the Report
14 and does not wish to repeat that detailed analysis which is
15 already in the record. Petitioner stands by his contention that
16 each of the eleven points set out in that regard are distortions
17 of the evidence actually in the Record. Having said that
18 Petitioner is compelled to bring to the Court's attention, once
19 again, that his allegation of bullet substitution is not
20 speculation but based upon the undisputed fact that when the
21 Wenke Commission Administrator, Patrick Garland, received and
22 examined the ballistics evidence from the Clerk of the Trial
23 Court, he noted in writing that the markings on the base of the
24 Kennedy neck bullet and the Goldstein bullet, introduced into
25 evidence at the trial, **were different from the markings placed**
26 **on the actual bullets by the doctors who removed them from the**
27 **victims' bodies.** Consequently, any comments made by the Wenke
28 experts with respect to those bullets they examined must -

P/D response

1 through no fault of the panel- be disregarded. They were simply
2 not looking at the actual bullets which should have been in
3 evidence but apparently, were not before the Trial Court and
4 jury.

Hypnotic Programming

5
6 Respondent once again distorts the evidence presented by
7 Petitioner. Respondent claims that they provided "pertinent
8 literature on the subject of hypnotism" (CD 209 p 13) but they
9 provided nothing of the sort. Petitioner gave a complete review
10 of the literature on hypnosis and anti-social behavior while
11 Respondent cited only one article by Graham Wagstaff that
12 supported their extreme position.

13 Respondent further states, incorrectly, that Petitioner's
14 theory of "hypno-programing or mind-control is controversial..."
15 (CD 209 p 13) and attempts to distort the beliefs held by the
16 two schools of thought on hypnosis and mind control. (id)
17 Petitioner's theory of hypnosis and mind control is not
18 controversial. Petitioner showed that there are two schools of
19 thought on the matter of hypnosis and anti-social behavior. (CD
20 180-3 at 9,17) **The two schools of thought doctrine is accepted**
21 **in California law.** Moreover, two schools of thought pertain
22 specifically as to whether or not hypnosis is a necessary
23 component of mind control. Both schools agree that creating
24 antisocial acts through suggestion is very possible with the
25 right individual; the only disagreement is whether hypnotic
26 induction per se is necessary to create antisocial acts. In
27 other words, both schools of thought agree that antisocial

Wanted / Court Order #2
see page 3 + 4

TYPE OF HEARING SPECIAL PACE
CASE NO. H 233421
SPEC. EXH. NO. 47
ADMITTED IN EVIDENCE
DATE: 11-6-75
BY: J. K. [Signature] COUNTY CLERK DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,)
) NO. A 233 421
) Plaintiffs,)
)
) vs.)
)
) SIRHAN BISHARA SIRHAN,)
)
) Defendant.)

In accordance with paragraph 2 of the Order for Retesting of Exhibits (Order #2), dated September 23, 1975, the following exhibits were marked as indicated.

<u>People's Exhibit No.</u>	<u>Panel Identification No. (PN)</u>
#38 (envelope with 2 bullets)	1 & 1a
#47 (non-fatal Kennedy)	2
#48 (fragments, fatal Kennedy)	3 & 3a
#50 (fragments, Schrade)	4
#51 (bullet, Stroll)	5
#52 (bullet, Goldstein)	6
#53 (fragments, Evans)	7
#54 (bullet, Weisel)	8
#55 (3 test bullets from Sirhan's gun)	A, B & C
Grand Jury #5B (4 test bullets from Sirhan's gun)	D, E, F & G

25

1 where is the gun?
JRR

1 The direction of twist and the number of land and groove
2 impressions and the widths of the land impressions in Panel
3 Identification Numbers (PN) 1 (Ex. 38), 2 (Ex. 47), 5 (Ex. 51),
4 6 (Ex. 52), 8 (Ex. 54), and A through G (Ex. 55 and Ex. 5B)
5 are the same. PN 1a (Ex. 38) is the same in land impression
6 width; however, the direction of twist of the rifling and
7 number of lands and grooves could not be determined because
8 of the impact damage of this specimen.

9 PN's 3 (Ex. 48), 3a (Ex. 48), 4 (Ex. 50), 4a (Ex. 50)
10 and 7 (Ex. 53) are of no value for classical comparison micro-
11 scopy because of their physical condition resulting from impact
12 and/or fragmentation. (PN) 1 (Ex. 38), 1a (Ex. 38), 2 (Ex. 47),
13 5 (Ex. 51), 6 (Ex. 52) and 8 (Ex. 54) have rifling impressions
14 which are available for microscopic comparison with test bullets.

15 The bullets, PN's 2 (Ex. 47), 5 (Ex. 51), 6 (Ex. 52) and
16 8 (Ex. 54) are the same with respect to caliber, weight,
17 number and position of cannellures and copper-colored coating
18 as caliber .22 Long Rifle bullets manufactured by Cascade
19 Cartridges, Incorporated (CCI) and to the bullets, PN's A
20 through G. Microscopic examinations of PN's 1 (Ex. 38), 1a
21 (Ex. 38), 3 (Ex. 48), 3a (Ex. 48), 4 (Ex. 50), 4a (Ex. 50) and
22 7 (Ex. 53) were not indicative of the origin of manufacture
23 because of their physical condition resulting from impact
24 damage and/or fragmentation.

25 It is pointed out that PN 2 (Ex. 47) the non-fatal
26 Kennedy bullet, was found to have the same number and position
27 of cannellures as a known CCI caliber .22 Long Rifle copper-
28 coated hollow point bullet.

29 It is determined from the microscopic examination of
30 PN 2 (Ex. 47), that the number of cannellures is the same as on
31 PN 8 (Ex. 54). The quality, and the absence of color in the
32 "Balliscan" photographs ("Harper Ex. 47, Ex. 54" and "Hearing

1 Ex. 47 and Ex. 54") did not permit the determination of the
2 number of cannellures on PN 2 (Ex. 47).

3 Microscopic examination of the few remaining undamaged
4 areas of PN 8 (Ex. 54) show no significant differences in the
5 quality of rifling impressions when compared with PN 2 (Ex. 47).
6 Examinations of the Balliscan photographs ("Harper Ex. 47,
7 Ex. 54" and "Hearing Ex. 47 and Ex. 54") revealed that erroneous
8 conclusions can be reached because of surface damage to PN 8
9 (Ex. 54) resulting from impact. This damage could be interpreted
10 as a difference in the quality of the rifling impressions.

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11 Depth of land impression determination as referred to
12 in line 2, page 8, of the Court Order dated September 23, 1975,
13 is not a usual firearms identification examination procedure.
14 The information which can be determined from such a measurement
15 has no foreseeable significant value to the solution of the
16 firearms identification problems in this case.

17 The requested measurements of the rifling angles or
18 pitch in lines 7 and 8, page 8 of the Court Order dated
19 September 23, 1975, will not be conducted until after the
20 classical comparison microscopy examinations have been completed.
21 At that time the value and necessity of such examinations will
22 be determined.

23 A microscopic examination of (PN's) 1 (Ex. 38), 1a (Ex. 38),
24 2 (Ex. 47), 5 (Ex. 51), 6 (Ex. 52) and 8 (Ex. 54) and A through
25 G (Ex. 55 and Grand Jury Ex. #5B) does not reveal any unusual
26 amount of oxidation or deterioration of a nature which would
27 substantially affect a classical microscope comparison exami-
28 nation.

29 Special Hearing Exhibit 10, a photomicrograph depicting
30 a bullet comparison, was found to be a comparison between
31 PN 2 (Ex. 47) and PN 6 (Ex. 52). This was determined by a
32 matching of the surface defects in the photomicrograph and

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1 those appearing microscopically on PN 2 (Ex. 47) and PN 6 (Ex.52).
2 On the basis of such comparisons, it does not appear that PN 2
3 (Ex. 47) and PN 6 (Ex. 52) have changed appreciably between
4 June 6, 1968 (when the photomicrograph was taken) and the present
5 date.

6 A microscopic examination of PN 2 (Ex. 47), PN 8 (Ex. 54),
7 A, B, and C (Ex. 55) revealed the presence of microscopic in-
8 dentations, which measure approximately .003" in diameter. These
9 indentations do not appear in the original "Harper Balliscan
10 photographs," taken in 1970. However, these indentations appear
11 in the Balliscan photographs taken in April 1974 for the "Kennedy
12 Hearing." The source of these indentations has not been deter-
13 mined from a microscopic examination of these impressions.

14 Based on the above examinations, there is no evidence to
15 indicate that more than one gun was used to fire the items
16 examined.

17 Procedures used in forming the above conclusions consisted
18 of microscopic measurement, comparative microscopy with known
19 standards, and weighing. The procedures were conducted in a team
20 atmosphere with each panel member recording his own data, from
21 personal observation, on an individual worksheet.

22 DATED: October 3rd, 1975

23 Patrick V. Garland
24 Patrick Garland

Stanton O. Berg
Stanton O. Berg

25 Cortlandt Cunningham
26 Cortlandt Cunningham

Ralph F. Turner
Ralph Turner

27 Alfred A. Biasotti
28 Alfred A. Biasotti

Charles V. Morton
Charles V. Morton

29 Lowell W. Bradford
30 Lowell W. Bradford