

## MEMORANDUM

June 21, 1996 (Last Revised: September 10, 1996)

To: Jeremy Gunn, David Marwell  
cc - Doug Horne, Tim Wray

From: Joe Freeman

Subject: Warren Commission/Autopsy Photos

I wanted to pass on, for what it's worth, some speculative thoughts concerning the Commission's treatment of the autopsy photos.

As you know, the historical record is full of contradictory statements on this issue (nothing new insofar as the assassination is concerned). But I am slowly coming to believe that these contradictory statements can be reconciled by positing a conscious determination on the part of at least some key WC players to treat these records in a two-track -- which is to say duplicitous -- fashion. No conspiratorial motives need be assumed in this analysis: the goal of this two-track policy, if it existed, would have been a laudable and eminently defensible one; namely, to respect the Chief Justice's determination to keep the photos out of the *official* (and hence public) record of the Commission's proceedings, while still allowing one or more key staff members to utilize the photos to validate/corroborate both the autopsy report and associated conclusions of the Commission's own report.

We know that Specter and Belin (and probably others) felt strongly about the Commission gaining access to the photos. In their public comments since, both Belin and Specter unfailingly reference the "understandable" concerns of "the Kennedy family", re: preventing the public dissemination and exploitation of the photos. But it is safe to assume that at the time -- as lawyers investigating the murder of the century -- they were incredulous and mortified that the Commission would forgo examining this crucial evidence.

This would have been especially true of Specter, whose investigatory responsibilities could not be properly discharged without this evidence. We know from the record that Specter put his views on this in writing.<sup>1</sup> This is the act of a man who, first of all, is trying to secure a desired outcome by putting direct pressure on his superior and who, secondly, anticipated criticism of the Commission

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<sup>1</sup> Memo from Specter to J. Lee Rankin, "Autopsy Photographs and X-Rays of President John F. Kennedy," April 30, 1964. For more information on this memo, see p. 20 of my May 1, 1996 memo (as revised on September 9, 1996), "Specter/Warren Commission Milestones."

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in the event his advice wasn't followed and wanted to disassociate himself from what he would have regarded as a disastrous decision not to view the photos.

An alternative explanation for Specter's memo is that Rankin, directly or indirectly, asked for it because he wanted ammunition with which to approach the Commission, especially Chief Justice Warren. In this scenario, Rankin -- perhaps after an initial rebuff of some sort from the Chief Justice -- needed to portray himself as articulating the staff's strong grievances on the issue. This latter scenario is perhaps oversubtle, though not wholly implausible.

In either event, Specter was clearly cognizant of the Chief Justice's concerns as he crafted his memo, since he specifically suggests that the number of individuals given access to the photos and X-rays be held to an "absolute minimum" and that they not be made part of the Commission's official records. In the end, of course, *this is exactly what happened*.

But not smoothly, or right away. Specter's memo is the occasion (or excuse, depending on the scenario) for discussion at the Commission's executive session that same day (April 30).<sup>2</sup> "Autopsy Pictures of President Kennedy" is Item 5 on the agenda. During the discussion of this item, Rankin articulates the need to examine the autopsy photos, citing the staff's feelings and proffering what he probably considered a compromise: a recommendation that a doctor and a single Commissioner examine the photos to ensure they were consistent with the Commission's findings, and that the viewing be "unofficial" so that the photos would not have to be included in the Commission's public record. There is reason to believe that it was intended or assumed that the viewing pair would be the Chief Justice and Dr. Humes.<sup>3</sup> McCloy, in particular, seems supportive of moving forward. Warren, while clearly reluctant, accedes "only for verification purposes."

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<sup>2</sup> As to Specter's memo being dated the same day as the executive session, three possible explanations suggest themselves: 1) Rankin urged Specter to get the memo done in time for an already-scheduled executive session, 2) Specter, knowing such a session was scheduled and wanting to force Rankin's hand, wrote the memo with the meeting specifically in mind, or 3) it was a complete coincidence.

<sup>3</sup> In a later memo of May 12, 1964, "Examination of Autopsy Photographs and X-Rays," Specter suggests that "we have a court reporter present so that we may examine Dr. Humes after the X-rays and photographs are reviewed...". Similarly, Commissioner McCloy, in a 1967 interview with CBS News, states: "I thought that he [Earl Warren] was really going to see them, but it turned out that he hadn't." (Cited by Harold Weisberg in *Post Mortem*, p. 553.)

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The issue appears to have been settled. But, clearly, it wasn't. The question then becomes, why -- given this documented decision at the April 30th executive session -- does the subsequent history of the Commission's handling of the issue become so obscure and muddled?

The muddling does not appear to have been immediate. Following the April 30th meeting, the decision to move ahead seems to have been communicated back to the staff by Rankin. Certainly the author of the key memo, Specter, acts as if he has been informed. Two weeks after the apparent Commission decision to proceed -- on May 12, 1964 -- Specter authors another memo on the subject, this one entitled "Examination of Autopsy Photographs and X-rays of President Kennedy." In this memo, Specter is no longer *advocating* the examination of the photos, he is *explicating* what should be looked for *when* they are examined. While other interpretations are possible, I believe implicit in this memo is an assumption by Specter that he was *not* going to be among those with access to the photos -- or at least that he *might* not be; hence the need to instruct others what to look for.

When this May 12th memo is written, the reenactment in Dallas is two weeks away and detailed planning for it has already begun. Specter is a key player both in the planning of and the execution of the reenactment.<sup>4</sup>

A definitive reconstruction of what may have transpired during this two week period -- beginning on May 12th when Specter appears to be assuming he won't be seeing the photos and ending on May 24th (or 25th) when USSS Inspector Tom Kelley shows him a single autopsy photo -- is impossible without new input from key participants. But somewhere in this time-frame the earlier game plan decided on by the Commission at its April 30th meeting seems to have fallen apart, necessitating a "Plan B" that was implemented by Thomas Kelley and Arlen Specter in Dallas.

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<sup>4</sup> On the same day Specter writes his memo of instructions relative to what should be looked for when the photos and X-rays are examined, he also authors a four-page memo to Rankin entitled "Agenda for On-The-Site Tests at Dallas." Specter later tells author Richard J. Whalen that Warren was initially opposed to conducting the reenactment at all (unpublished summary of a November 3, 1966 interview). Specter's recollection squares with Epstein's claims in *Inquest* (see pp. 130-131 of *The Assassination Chronicles*, 1992).

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It stretches credulity to suggest that the showing of the photo to Specter in Dallas was a spontaneous act. Kelley is unlikely to have secured the photo (or photos -- though Specter has stated that he was only shown one photo, it is possible that Kelley had more than one photo with him in Dallas) from its safe in the Executive Office Building without some specific purpose in mind. Nor was he likely to have transported the photo to Dallas without such a purpose. Moreover, there is no indication in the record that Kelley actually had the combination to the safe in the office of the Protective Research Section where the photos were kept, suggesting that others may have been complicit in Kelley's retrieval of the photo from the safe.<sup>5</sup> Whatever others may have known or guessed about Kelley's intentions, however, he must have secured the photo with the intention of taking it to Dallas to show someone -- otherwise, why take it at all?

While it is possible that Specter was unaware of Kelley's having transported the photo to Dallas, it is more likely that he knew of Kelley's intention to bring the photo and, in fact, encouraged him to do so. Certainly, Specter had made no secret of his conviction that viewing the photos was essential to the Commission's work. Moreover, as WC Assistant Counsel Howard Willens put it: "These fellows had close working relationships."<sup>6</sup>

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<sup>5</sup> According to Robert Bouck, only he -- or he and his secretary Edith Duncan, depending on which of Bouck's accounts one reads -- had the combination to the safe.

<sup>6</sup> Unpublished Richard J. Whalen interview of Howard Willens: November 8, 1966. According to a 8/17/92 cover story in *U.S. News and World Report* ("JFK: The Untold Story of the Warren Report"), Willens -- who came to the Commission from the Justice Department -- was also among those pushing for access to the photos and X-rays. According to this article, RFK gave permission for Warren, Rankin and the autopsy doctors to view the photos and X-Rays in June, but this claim is not documented or corroborated.

Why did the “very private and quite unofficial” showing -- as Specter described it to Richard Whalen -- take place in Dallas during the reenactment? Specter’s explanation to Whalen is obscure: “He showed it to me then and there because he’d have the chance to show it to me.”<sup>7</sup> This can be interpreted as follows: in Washington, the photos were kept in Bouck’s safe and Bouck (and perhaps Edith Duncan) mediated even Kelley’s access to them. It might be difficult to surreptitiously, or “unofficially”, show any of them to Specter while in Washington. But once Kelley was out of Washington with one or more of the photos, he could easily arrange a private viewing by Specter or anyone else. Moreover, if we assume that Specter did not have and did not expect to have repeated access to any photos, it is not surprising that Kelley (or Specter and Kelley) chose to have the viewing in Dallas during the reenactment. The reenactment’s purpose, after all, was to validate the preliminary conclusions of the Commission in regard to the timing, number and trajectories of shots fired at the Presidential limousine (as well as the occupants’ relative positions). If, as Specter claims, he only saw a single autopsy photo a single time, then the reenactment would have been the logical occasion for the event, and the back photo the logical photo.

The next question which arises is whether or not others besides Specter and Kelley were aware of Specter’s viewing of the photo. Common sense suggests two explanations for the furtive nature of the event: 1) the showing was unauthorized and both Specter and Kelley were at pains to keep it hidden from those who would not have approved, or 2) the showing *was* authorized but was purposefully arranged so as to be “unofficial” and “private” (to repeat Specter’s own adjectives) in order to ensure that the Chief Justice’s prime directive, re: keeping all photos out of the Commission’s public record, would not be undermined.

My own judgment is that the second alternative is the more likely of the two. First, given Warren’s strong feelings about the photos, Specter would have been risking severe disapprobation from Rankin -- perhaps dismissal -- had his viewing been unauthorized and subsequently discovered. As an up-and-coming young prosecutor with long-term political ambitions, who had presumably applied for his position (in part) in the hope of furthering those ambitions, it strikes me that Specter would have been unlikely to take such a risk. Consequences for Kelley might have been just as severe at the Secret Service.

Second, while it’s a bit of a stretch, there is circumstantial evidence to suggest that at least one other person was aware of the viewing. Howard Willens was interviewed by Richard Whalen on November 8, 1966. Whalen asked the WC Assistant Counsel (and close aide to Rankin) about Specter’s admission (made to Whalen just five days earlier) that he had seen an autopsy photograph

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<sup>7</sup> Whalen interview of Specter: November 3, 1966.

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while in Dallas. Willen's reply included the following sentence (emphasis in original): "Specter, I'm sure, didn't tell you he saw a picture *for certain*. He just saw *a* picture." (Willens also told Whalen that Rankin didn't ask Kelley to show the picture to Specter.)<sup>8</sup>

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<sup>8</sup> Unpublished Richard Whalen interview of Howard P. Willens: November 8, 1964.

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Willens' language parallels Specter's own curious construction on the two occasions when he admits to having seen the autopsy photograph. In an interview published on October 10, 1966 in *U.S. News and World Report*, Specter says: "I was shown one picture of the back of a body which was represented to be the back of the President, although it was not technically authenticated. It showed a hole in the position identified in the autopsy report." On November 3rd, Specter told Whalen: "I saw one picture taken at the autopsy, which was not technically authenticated, which showed the back of a body with a bullet hole, apparently of entry, in the place where the autopsy report said it was."<sup>9</sup> On both occasions Specter was careful to stress the "not technically authenticated" nature of the photo shown to him. Or, to use Willens' language, Specter was shown *a* picture which he could not know *for certain* was genuine. To me, Willens' qualifying note of caution to Whalen suggests that he knew the drill and assumed that Specter, if he had decided to talk about the viewing, would do so in the code agreed upon when "Plan B" was hatched.

Now, this might be nothing more than the speech patterns of two talented and cautious lawyers (especially since the statements are being made two years after the Warren Commission has closed up shop). But to me it reads more like careful language agreed upon during the life of the Commission by men determined to forestall any attempts to drag *whatever* Specter saw into the official record. It is the language of plausible deniability, designed to bridge the gap between the demonstrable need to view the photo(s) and the imperative that it/they not be made public. In the event word of Specter's viewing got out while the fate of the autopsy photos were still at issue, the case would be made that first, the viewing was unauthorized and, second, Specter wasn't even sure if he *had* seen an actual autopsy photo. This duality (and the fact that the question asked of Specter was usually framed in the plural number -- "Have you seen the autopsy *photos*?") enabled Specter to say as late as the HSCA era that "I did not see the photographs and X-rays."<sup>10</sup>

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<sup>9</sup> Unpublished Whalen interview of Specter: November 3, 1966.

<sup>10</sup> Specter testimony before the House Select Committee on Assassinations, November 8, 1977, p. 66.

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It may or may not be significant that, in two earlier 1966 interviews, Specter denies having seen the photos and X-rays without mentioning his “unofficial” Dallas viewing of the single “unauthenticated” photo.<sup>11</sup> By early October of 1966 (when the *U.S. News and World Report* article ran), Specter may have known of the upcoming resolution of the issue of the photos and X-rays (the Deed of Gift) and felt he could be more forthcoming. Similarly, by the date of his Whalen interview the transfer had been accomplished and the disposition of the remaining autopsy materials settled.<sup>12</sup>

Returning to the game plan agreed to by the Commission at its April 30th executive session meeting, the question remains: why this surreptitious viewing in Dallas, instead of the more formal (if “unofficial” in terms of the Commission’s public record) examination decided upon by the Commission on April 30th, and why Specter? (Remember, only two weeks earlier Specter was recommending that a court reporter be present when Humes was “debriefed” following his anticipated review of the photos and X-rays.) The answer may lie in a “need to know” calculation made by either Warren or Rankin or both. Specter was the point man on the reenactment: he, not Warren or Rankin, had the best command of the ballistics evidence. Specter was the individual best able to say whether the photo(s) did or didn’t validate the Commission’s preliminary conclusions. The practical necessity of including Specter on the list of those who would see at least the one photo may not have been apparent when the Commission debated the issue of April 30th; by May 24th, presumably, it was.

Moreover, by excluding non-Commission staffers (like Dr. Humes and a court reporter), the likelihood of keeping the viewing “unofficial” -- and even unknown beyond a very small circle -- was greatly enhanced. For Warren/Rankin remained concerned about widening the privileged circle: David Belin, for one, later recounted having asked for and been denied access to the photos and

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<sup>11</sup> June 13, 1966 interview of Specter by Jacob Cohen for an article that ran in the *Nation* in July, and Gaeton Fonzi’s interview (“The Warren Commission, Arlen Specter and the Truth”) which ran in August of 1966 in *Philadelphia Magazine*.

<sup>12</sup> Specter *is* concerned that Whalen not identify him as the one who fingered Tom Kelley as the “Secret Service man” who showed him the picture -- a name Specter gave Whalen on a “not for attribution” basis. Kelley, when confronted with Specter’s assertion by Whalen, refuses to confirm or deny the story; he also refuses to say whether or not Rankin authorized the showing. Still employed at the USSS, it may be that Kelley has less reason than Specter to be sanguine about word getting out. Whalen describes Kelley as “very nervous on the phone, long pauses, trembling voice and breathing.” Whalen phone interview of Kelley: November 7, 1966.



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X-rays.<sup>13</sup>

Indeed, knowledge about the photos and who had seen them was either highly compartmentalized or, alternatively, brazenly lied about to maintain the fiction that they had never been seen by any one.

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<sup>13</sup> David Belin testimony before the Government Information and Individual Rights Subcommittee of the Committee on Government Operations (the "Abzug Committee") on November 11, 1975, "National Archives -- Security Classification Problems Involving Warren Commission Files and Other Records," U.S. Government Printing Office, 1975, p. 10.

Belin, like Specter and Willens, uses careful language when asked about the Commission's access to the photos and X-rays:

"To the best of my knowledge they were not introduced as evidence in any of the hearings... The Warren Commission investigation did not see -- that is, *the Warren Commission itself* did not have before it the actual photographs and X-rays [emphasis added]." (p. 10-11)

Earl Warren's viewing of the photos are a case in point: I have already cited McCloy in 1967 (see footnote 3) indicating his belief that Warren had in the end never viewed the pictures. For several years after the publication of the Warren Commission's Report, it was stated and widely believed that no one on the Commission, including Warren, had seen the photos. But, in early 1967 (*after* the Deed of Gift has apparently resolved the status of the photos once and for all), in a private letter to Arlen Specter, Warren indicated that, in fact, he *had* seen them: "I saw them myself and they were horrible. The other members of the Commission had no desire to see them."<sup>14</sup> This private admission was given wide public exposure in Warren's posthumous memoirs, published in 1977: "I saw the pictures when they came from Bethesda Naval Hospital, and they were so horrible that I could not sleep well for nights."<sup>15</sup> It is not clear -- aside from the almost certainly inaccurate reference to them as having come from Bethesda -- when this viewing would have taken place. My own belief is that it is likely the Chief Justice saw the photos relatively early on, and certainly before the executive session meeting of April 30th. It seems to me that the depth of Warren's conviction that the photos not be made a part of the record is explicable only as a reaction *to his having already seen them*. Thus, he is speaking from the heart and from experience when he intones on April 30th that including the photos in the Commission's record "would make a morbid thing for all time to come."

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<sup>14</sup> Letter from Earl Warren to Arlen Specter, 2/23/67. Warren is responding to a letter Specter sent him the previous August. Specter's letter and Warren's reply can be found in the Warren Papers at the Library of Congress. While even a quick perusal of his papers makes clear that Warren often took months to answer his mail, it may not have been entirely coincidental that his reply to Specter did not take place until after the Deed of Gift.

<sup>15</sup> *The Memoirs of Earl Warren*, p. 371

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One must wonder if J. L. Rankin didn't also view the photographs. As the Commission's Chief Counsel, Warren's right-hand man and Specter's superior, it would have been an act of considerable self-restraint for Rankin not to have exercised his authority in viewing what his boss (Warren) and his lieutenant (Specter) had seen. There are, after all, Bouck's vague recollections (before both the HSCA and the ARRB) of Warren Commission staffer(s) coming to see the autopsy materials at the EOB in the company of Tom Kelley. If Specter only saw the single photo in Dallas, and if another WC staffer saw the photos in Washington, Rankin would clearly be the most likely candidate. Lastly, there is the early (January 27, 1964) Commission executive session where Rankin's language suggests the possibility that he has seen the back shot.<sup>16</sup>

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<sup>16</sup> See my "Specter/Warren Commission Milestones" memo, p. 5. It is also possible that Rankin is referencing, not the autopsy photo, but the autopsy face sheet.

In summary, I would posit a scenario wherein the Chief Justice sees the autopsy photographs early on and makes a determination that they must be kept out of the public record at all costs. Probably Rankin sees one or more of the photos during this early period, as well, but in any event is fully aware of the Chief Justice's feelings and is committed to honoring them.<sup>17</sup> The staff's ongoing investigative efforts focus on critical questions regarding the number, timing and trajectory of the shots in Dallas. The Zapruder film is studied endlessly without providing a final resolution of these issues, let alone a solid confirmation of the single-bullet theory. Staffers take the initiative in communicating to Rankin the need to carry the investigation further: for Specter, this means looking at the autopsy photos and X-rays (for Redlich, to cite another example, it means urging Rankin to sign off on a reenactment in Dallas).<sup>18</sup> Rankin is torn between the Chief Justice's wishes and the compelling logic of his subordinates. He attempts to get resolution at the April 30th executive session meeting of the Commission. He appears to have succeeded as Warren reluctantly accedes to the proposal to have one Commission member and one doctor view the photos and X-rays. For whatever mix of reasons, this formal decision is never implemented (Humes, for instance, will not see the photos and X-rays until the November 1, 1966 military inventory). Perhaps the Chief Justice or Rankin, already concerned about keeping the pictures and X-rays out of the record, receive another input from Robert Kennedy. In any case, a minimalist "Plan B" is conceived which involves only one photo and one Warren Commission staffer (Specter). While it is barely conceivable that Plan B is hatched by Kelley and Specter alone, it is more likely that Rankin and possibly Warren himself have signed off (it is also possible that other staffers, like Willens, are aware of the plan and that still others, like Belin, learn of the plan after it is executed). Critical to the plan is the maintenance of plausible deniability for all concerned. This is important in order to deflect possible calls for the photo(s) to be included in the public record in the event that word leaks out that it/they have been viewed. The plan works: Specter's viewing of the single autopsy photograph in Dallas enables him to finish his portion of the draft report with confidence. The Commission's Report is published without the photos or X-rays, and without the Commission even having (officially) seen them. Pressure to release the material slowly mounts, but it is not directed at the Warren Commission, whose job is finished. Earl Warren has discharged his obligations to President Johnson and the nation without

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<sup>17</sup> According to the *U.S. News and World Report* article cited earlier (see footnote 6), Rankin was on the list of those whom Robert Kennedy agreed to have view the photos in June of 1964. Gerald Posner, in *Case Closed*, again cites Willens as instrumental in securing this permission and, moreover, clearly implies that Rankin actually saw the photos -- as opposed to having simply received permission to do so (pp. 407-408).

<sup>18</sup> There is reason to believe that Redlich was speaking for both himself and others (like Specter) in writing his memo of April 27, 1964 on this topic.

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running afoul of the Kennedy family or his own conscience. The final disposition of the photos and X-rays are sorted out by the Justice Department and the Kennedy family (via Burke Marshall) in the fall of 1966 -- two long years after the Commission has completed its work and disbanded. As the Commission's staffers and members return to their lives and other pursuits, and the urgency of maintaining secrecy about the handling of the materials recedes, some participants begin to divulge pieces of the puzzle, leaving us with the incomplete record we have today.<sup>19</sup>

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<sup>19</sup> It was not only Warren Commission staffers like Specter who began to talk. The Treasury Department, in the form of David Acheson, wrote Jacob Cohen as early as April of 1966, indicating that autopsy X-rays (and perhaps photos) had been made available to Warren Commission staffers. The Treasury Department's Public Affairs Office reiterated this message in June of 1966. Finally, Acheson confirmed to Richard Whalen in early November of that same year that "at least one" WC staffer had seen autopsy photos. We don't know what the chain of transmission was for Acheson's claims, but presumably it came up the ladder from the Secret Service, not from former Warren Commission staffers. As for Thomas Kelley, who struck Whalen as decidedly uncomfortable talking about the subject at all in 1966, he apparently was sufficiently calmed by 1970 to tell Harold Weisberg that he had, in fact, shown autopsy X-rays to certain members of the Commission's staff (*Post Mortem*, p. 285).