

2 enclosures to Bureau
to go with Los Angeles report, letter
dated _____, described as

Re: KENSALT
Los Angeles file number 56-156
Bureau file number 62-587

ENCLOSURE

62-587-1278

STATEMENT
of

JOSEPH P. BUSCH
District Attorney, County of Los Angeles

CONCERNING ALLEGATIONS OF IMPROPER PROCEDURES
BY LOS ANGELES POLICE DEPARTMENT CRIMINALIST
DE WAYNE WOLFER IN THE SIRHAN CASE

October 18, 1971

On May 28, 1971 -- almost three years after Senator Robert F. Kennedy was mortally wounded in the kitchen pantry at the Ambassador Hotel -- attorney Barbara Warner Blehr sent a letter to the City Civil Service Commission charging that Los Angeles Police Department criminalist DeWayne Wolfer improperly conducted ballistics tests in connection with the trial that led to the conviction of Sirhan Bishara Sirhan for the Senator's murder.

On June 4, 1971 -- after conferring with Police Chief Edward Davis -- I initiated an investigation into Mrs. Blehr's charges. I did so because I felt it incumbent on my office to conduct an independent investigation so there would be no loss of confidence on the part of the public as to whether the facts as presented in the courtroom were correct.

When I undertook this investigation, I felt we could complete our review of the charges against Mr. Wolfer in a few weeks. As you know, my time estimate was overly optimistic and twice we had to postpone making this report to the public.

Basically, the additional time required to complete the investigation was necessitated by our discovery that the integrity of the trial exhibits had not been properly protected by the County Clerk's Office.

We presented evidence of the distressingly lax handling of the trial exhibits to the County Grand Jury, and on August 25, 1971, the Grand Jury sent a letter to the Board of Supervisors sharply criticizing the County Clerk's Office for allowing violations of a continuing Superior Court order which set forth the manner in which the exhibits were to be protected.

We then resumed our investigation into the allegations made in the Blehr letter, and we have reached the conclusion that the charges made against Mr. Wolfer are untrue. Our findings show he did not violate proper ballistics procedures in the Sirhan trial.

The investigation revealed only that Mr. Wolfer made a clerical error in labeling the trial exhibit envelope containing three bullets test-fired by him from the gun wrenched out of Sirhan's hand at the assassination scene.

The mislabeled envelope in no way detracts from the salient reality that the murder verdict returned was just and correct. It should be pointed out that the conviction

of Sirhan was the result of a massive six-month investigation which involved interviews of more than a thousand persons and the efforts of more than 75 investigators. The trial itself lasted 17 weeks and filled 31 volumes with 9,063 pages of testimony.

I would like to make some personal comments at this point. During the past four months, I took the unusual action of completely reviewing the evidence of a murder which was committed three-and-a-half years ago before the eyes of many people. I took this step as District Attorney because of the special nature of this event as a stifling public tragedy. A measure of its impact is the continuing and fruitless search by many persons to find a more rational basis for this senseless act.

On April 17, 1969, twelve citizens sat in a jury box and found Sirhan Bishara Sirhan guilty of murder. At that time I was personally convinced of the rightness of that verdict. Now, two-and-a-half years later, I still am totally convinced beyond any doubt that Sirhan Bishara Sirhan killed Senator Robert F. Kennedy.

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REPORT OF DISTRICT ATTORNEY

JOSEPH P. BUSCH

concerning allegations of improper procedures
by Los Angeles Police Department criminalist
DeWayne Wolfer in the Sirhan case

October 18, 1971

PREFACE

On April 17, 1969, Sirhan B. Sirhan was convicted of the murder of Senator Robert F. Kennedy. The conviction was the result of a six-month investigation which involved interviews of more than 1,000 persons and the efforts of more than seventy-five investigators. The trial itself lasted 17 weeks and fills 31 volumes with 9,063 pages of testimony.

BACKGROUND

Three years after the murder of Senator Kennedy on June 5, 1968, Los Angeles attorney Barbara Warner Blehr sent a letter to Muriel M. Morse, General Manager, Personnel Department, Los Angeles City Civil Service Commission. This letter, dated May 28, 1971, alleged that Los Angeles Police Department criminalist DeWayne Wolfer acted improperly in conducting ballistics tests and in testifying concerning evidence in the Sirhan case. Mrs. Blehr based her allegations on Mr. Wolfer's alleged violation of four basic criminalistic "precepts" in his conduct of

ballistic examinations and in his testimony. The validity of these precepts -- not the validity of Mrs. Blehr's charges -- was attested to by three recognized criminalist experts.

On June 4, 1971, District Attorney Joseph P. Busch announced the initiation of an independent investigation into these charges. He stated, "Since this office was responsible for the prosecution of Sirhan B. Sirhan for the assassination of Senator Kennedy, it is incumbent upon us to conduct the investigation so that there will be no loss of confidence on the part of the public as to whether the facts presented in the courtroom were correct."

FINDINGS

The investigation by the District Attorney has concluded that the allegations of Barbara Warner Blehr concerning the procedures of DeWayne Wolfer in the Sirhan case are untrue. They appear to be the result of inadequate examination of the trial record and incomplete investigation of the actions of Mr. Wolfer during this case.

CONDUCT OF THE INVESTIGATION

To assure thorough examination of the charges leveled by Mrs. Blehr, the District Attorney's Office interviewed

DeWayne Wolfer, Mrs. Blehr, William Harper (whom she named as her chief criminalist source), the three criminalists cited in her letter to the Civil Service Commission, eye-witnesses to the shooting in the pantry of the Ambassador Hotel (who had been previously interviewed), and other persons who claimed special knowledge of the incident. Thousands of pages of trial transcript were reviewed. And, attention was directed to the exhibits -- namely, the bullets -- which were called into question by Mrs. Blehr's charges.

CONDITION OF THE EXHIBITS

When the District Attorney's Office turned its attention to the exhibits, it discovered that serious questions surrounded the handling of Sirhan trial exhibits by the Los Angeles County Clerk's Office.

These questions were sufficient to suspend further investigative activity pending a Grand Jury inquiry into the Clerk's handling of the exhibits. Among the most serious of these questions was the violation of a continuing Superior Court order setting forth the manner in which this evidence was to be handled.

In a letter to the Board of Supervisors dated August 24, 1971, the Grand Jury expressed serious concern about the operations of the County Clerk's Office and stated:

"Because the exhibits under the custody of the County Clerk's Office were handled, examined and photographed by unauthorized persons and mishandled by County Clerk exhibit personnel, there exists a reservation on the part of the 1971 Los Angeles County Grand Jury relating to the present integrity of the ballistics exhibits which were introduced into evidence both during the Grand Jury presentation on June 7, 1968, and during the subsequent trial of the defendant Sirhan B. Sirhan. Since this evidence is presently out of the jurisdiction of Los Angeles County, we are unable to substantiate these reservations."

Following the District Attorney's extensive investigation into the handling of the exhibits and the Grand Jury inquiry, the investigation into Mrs. Blehr's charges continued.

SUMMARY

The basic errors in the Blehr allegations stem from two related incidents:

(1) L.A.P.D. criminalist DeWayne Wolfer mislabeled the envelope which was received in court as People's Exhibit No. 55. The envelope contained three bullets test-fired by Mr. Wolfer from the gun taken from Sirhan B. Sirhan (Serial No. H53725). Mr. Wolfer mistakenly labeled the envelope with the serial number H18602. The latter is the serial number of an Iver-Johnson .22 calibre cadet model gun -- the same make and model as the weapon seized from Sirhan -- which Mr. Wolfer used for other Sirhan case tests on June 11, 1968, five days after he tested the Sirhan weapon.

On June 6, 1968, Mr. Wolfer recovered seven bullets which were test-fired into a water tank from the Sirhan gun (H53725). All seven bullets were compared with the bullet removed from the sixth cervical vertebra of Senator Kennedy. After making these comparisons, Mr. Wolfer positively identified the Sirhan gun as having fired the bullet removed from Senator Kennedy.

Four of the seven test bullets were introduced before the Grand Jury as Grand Jury Exhibit No. 5-B on June 7, 1968. Three of the remaining bullets remained under lock and key in the custody of Mr. Wolfer for comparison with bullets not yet recovered from other Sirhan victims. These were the three bullets which later made up Exhibit No. 55 at the trial in the mislabeled envelope.

(2) Mr. Wolfer conducted two series of ballistic tests. The first was conducted on June 6, 1968, with the gun seized from Sirhan B. Sirhan and the bullets from this test were used to identify the bullets removed from the victims of the crime. The second tests were conducted on June 11, 1968, and Mr. Wolfer used a weapon obtained from the Property Division of L.A.P.D. The use of this weapon (Serial No. H18602) was necessitated by the fact that Sirhan's weapon had been entered in evidence before the Grand Jury and a court order restricted its availability. The second tests were conducted to determine sound

characteristics and to verify muzzle distance by examining gunpowder patterns. This gun was destroyed in July 1969 in accordance with State law.

With the background of these two factors -- the mislabeling of the envelope and the instance of separate tests with separate guns for separate ballistic purposes -- Mrs. Blehr's charges may be examined.

(1) Mrs. Blehr alleges that Wolfer testified that Sirhan's gun (Serial No. H53725) fired bullets into three victims and the envelope of Court Exhibit No. 55 indicates that another gun (Serial No. H18602) fired the three bullets removed from the victims. She further alleges that he thus violated the fundamental firearm identification "precept" that "positive identification of an evidence bullet as having been fired from a particular gun and no other must be based on a comparison of the evidence bullet with a test bullet recovered from the same evidence gun and no other."

Our investigation reveals that the first allegation is the result of a mislabeled envelope and not the firing of another gun in the pantry of the Ambassador Hotel on June 5, 1968. Mr. Wolfer,

in fact, identified the bullets removed from three victims by comparing them with test bullets fired from Sirhan's gun.

(2) The second allegation concerned Mr. Wolfer's violation of firearm "precept" number two: "The most accurate and reliable determination of the approximate distance between the muzzle and victim (excluding contact) based on powder pattern distribution must be made with the actual evidence gun and no other. It is also important to use the same make and type of ammunition, preferably from the same batch or lot number. (When the evidence gun is not available, a similar gun may be used but the validity of the test is always more questionable.)"

In making muzzle distance tests -- because of the unavailability of the Sirhan gun -- Mr. Wolfer used a gun of the same make and model (Iver-Johnson .22 calibre cadet) with a relatively close serial number (indicating proximity in time of manufacture) and identical ammunition from the same batch, purchased at the same gun shop where Sirhan purchased his ammunition. In his testimony, Mr. Wolfer insisted on distance tolerances which take into account the fact that he did not have access to the Sirhan gun for the distance test.

Mr. Wolfer's testimony makes it clear that he did not violate "Precept 2" as alleged by Mrs. Blehr.

(3) The third "precept" which Mr. Wolfer allegedly violated states, "The land and groove dimensions (part of the rifling specifications) may be identical or nearly identical between different firearms manufacturers."

Mr. Wolfer's statement in court testimony that "different manufacturers have different rifling specifications" does not contradict the third "precept." He emphasized that his identification of the bullets was based on other more particular characteristics, namely that the imperfections in the barrel of any firearm "produces a series of thousands of scratch marks" on a bullet. And, he relied heavily on these particular characteristics in making his identification -- clearly, attentive to the third "precept" of firearms identification as cited by Mrs. Blehr and clearly refuting this charge.

(4) The final "precept" which Mr. Wolfer allegedly violated states: "Very similar copper coatings are used on many different makes of lead revolver bullets."

In his testimony, Mr. Wolfer did not rely solely on the characteristics of the alloy coating, but on other characteristics as well, to identify the bullets removed from the victims as Mini-Mag ammunition. However, laboratory tests of the alloy and its particular application to the bullets convinced him that it could only be Mini-Mag ammunition.

It should be noted that other evidence was introduced at the trial to prove that Sirhan B. Sirhan purchased such ammunition at the Lock, Stock & Barrel Gun Shop in San Gabriel on June 1, 1968, and that he was seen firing these bullets at the San Gabriel Valley Gun Club range on June 4, 1968.

(5) A subsequent charge by Mrs. Blehr that Mr. Wolfer falsely stated his academic qualifications concerning a course in anatomy have been disproved by an affidavit from the University of Southern California which indicates that the disputed anatomy course simply had a different number when Mr. Wolfer went to college than it does today in the catalogue referred to by Mrs. Blehr.

CONCLUSION

(1) The investigation of the allegations contained in the letter of Barbara Warner Blehr to the Los Angeles City Civil

Service Commission uncovered serious errors in the charges of Mrs. Blehr.

(2) Careful study of these errors and the facts in the situation refute the allegations brought by Mrs. Blehr against DeWayne Wolfer.

(3) The investigation uncovered a clerical error on the part of criminalist Wolfer.

(4) The investigation raised serious questions concerning the present integrity of the exhibits in the Sirhan case because of the handling of the evidence by unauthorized persons while it was in the custody of the Los Angeles County Clerk.

(5) No other relevant facts were uncovered by this investigation.

The evidence is now in the custody of the California Supreme Court in San Francisco. The case of The People of the State of California v. Sirhan Bishara Sirhan is now on appeal before the California Supreme Court with the California Attorney General representing the People and Luke McKissack and Godfrey Isaac for the defense.

Copies of this report will be sent to the Los Angeles County Board of Supervisors, the Attorney General of California, Messrs. McKissack and Isaac, the Los Angeles Police Department.

A copy of the Grand Jury's letter concerning the present integrity of the exhibits will be forwarded to the Chief Justice of the California Supreme Court, which now has custody of the exhibits.

PERSONAL COMMENTS

During the past four months, I took the unusual action, as District Attorney, of completely reviewing the evidence of a murder which was committed three-and-a-half years ago before the eyes of many people. This step was taken because of the special nature of this event as a stifling public tragedy. A measure of its impact is the continuing and fruitless search by many citizens to find a more rational basis for this senseless act.

On April 17, 1969, twelve citizens sat in a jury box and found Sirhan Bishara Sirhan guilty of murder. At that time, I was personally convinced of the rightness of that verdict. Now, two-and-a-half years later, after having completely reviewed the evidence which has been amassed, I still am totally

convinced beyond any doubt that Sirhan Bishara Sirhan killed Senator Robert Kennedy.

The origins of that murder are somewhere in the head of the man whose case is now on appeal. I can only quote the words of Senator Robert Kennedy's brother, our slain president: "Life is unfair."