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## The 2017 Houston Mock Trial of Oswald

Written by Larry Schnapf

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**New York Lawyer Larry Schnapf summarizes the previous mock trials of Lee Harvey Oswald from 1967 to the present, and discusses the upcoming trial this November in Houston in which he will participate as counsel for the defense along with Bill Simpich.**

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On November 16 and 17<sup>th</sup>, the South Texas College of Law (STCL) in Houston will be hosting a two-day mock trial titled “State of Texas vs. Lee Harvey Oswald.” For the first time, this mock trial will use 21<sup>st</sup>-century technology and apply what has been learned from the Innocence Project and the 2009 National Academy of Science (NAS) report about forensic evidence to the JFK assassination.

Forensic evidence is used in criminal prosecutions to match a piece of evidence to a particular person or weapon. The NAS report<sup>1</sup> determined that the absence of precise and objective national criteria and methodologies as well as peer-reviewed published studies coupled with the highly subjective nature of the forensic disciplines renders this type of evidence highly suspect, unreliable and extremely prone to manipulation. The forensic methods that were found to lack sufficient scientific basis included firearms/bullets, fingerprints, hair and fiber analysis and tool marks. This kind of evidence was critical to the determination of the Warren Commission and the House Select Committee on Assassinations that Lee Oswald was the assassin of President Kennedy and calls into question the very foundations of the case against Lee Oswald.

The STCL is not the first mock trial of the JFK assassination but it will differ from the prior events. Following is a summary of those mock trials.

### 1967 Yale Law School

This 1967 mock trial was held at Yale Law School before 500 spectators. Jacob D. Fuchsberg, a New York lawyer, served as the judge. Unfortunately, he barred a CBS television crew from filming the event. Therefore, the only reports available about this mock trial are a couple of short news clips and an article published in the April 1967 issue of the *Yale Alumni Magazine*.

Law students served as defense counsel and prosecutors. A law student portrayed Oswald and testified in his own defense. The Oswald defense team argued that there was reasonable doubt Oswald was the actual assassin. The witnesses were principally law students and used the actual testimony that witnesses gave to

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the Warren Commission. The evidence included reproductions of photographs, bullet fragments, blood-stained clothing worn by the late President, and the alleged murder weapon.

The bulk of the prosecution's case centered on the testimony of Dr. James J. Humes, who had been in charge of the autopsy and prepared the autopsy report. Over the course of one-and-a-half hours of direct and cross-examination, "Dr. Humes" provided detailed testimony on his examination of the president's body, the location of the wounds and if the wounds supported the single-bullet theory. Pointing to tests conducted under the supervision of the FBI, Humes testified that a single bullet could have inflicted the throat wound of the President as well as the chest, wrist, and thigh injuries of Governor Connally. On cross-examination, the defense tried to score points by having "Dr. Humes" admit he did not have experience with gunshot wounds and that he had not performed any ballistic tests.

The defense also relied on eyewitnesses to introduce evidence about the number and the origin of the shots. Defense witnesses featured "Lee Bowers", the railway switchman, who claimed to see strangers milling around the wooden stockade on the grassy knoll and later said he saw a puff of smoke or flash of light in that area. Defense witness "Bonnie Ray Williams" testified he went up to the sixth floor of the depository at noon to eat lunch and did not see Oswald or anyone else on that floor. Other defense witnesses included "Governor Connally", who maintained that he had been hit by a separate shot from President Kennedy, "Dr. Malcolm Perry", who testified that he thought the throat wound was an entry wound, and "Ronald Simmons", Chief of the Infantry Weapons Evaluation Branch of the Ballistics Research Laboratory of the Department of the Army, who tested the assassination rifle and discussed problems with the telescopic sight, bolt and trigger mechanism.

In its summation, the defense reviewed the doubts about the shots, the wounds, and Oswald. The defense closed with an acknowledgement that Oswald fled the assassination scene, concluding, "It is a heinous crime to gun down the President of the United States. It is a heinous crime to find an innocent man guilty."

The prosecution began its summation with the undelivered Dallas speech of President Kennedy about “not listening to nonsense,” and urged the jury to ignore the nonsense of the defense theory. The prosecution then reviewed the “hard” evidence: the shells, bullet fragments, the bag in which Oswald allegedly carried the murder weapon. As the prosecutor talked, he disassembled the rifle to show that it could have been carried in the paper bag. As the last screws came apart, he held the rifle apart and held it aloft for a moment and then passed the scope, stock, and barrel to the jury for its examination.

A jury of 12 with two alternates comprised of volunteers from a North Haven Presbyterian Church listened to the seven hours of argument. It was 2 AM when the judge completed his charge to the jury on the two counts: first degree murder and assault with intent to kill the President. After approximately 75 minutes, the jury informed the judge that they were unable to agree on a verdict. Six jurors felt Oswald was guilty; three believed that, while he had taken part, there was reasonable doubt he had fired the fatal shot. Three thought there was reasonable doubt as to his participation in the crime at all.

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### **1986: London**

This is the mock trial many people recall. A four-day made-for-TV mock trial entitled "On Trial: Lee Harvey Oswald" was held in London in July, 1986. The Showtime cable network subsequently culled a condensed two-part, five and one-half hour program from this production in November, 1986. Former Los Angeles Deputy District Attorney Vincent Bugliosi served as prosecutor and Gerry Spence served as defense counsel. The jury consisted of 12 Dallas citizens who had been flown in to London. Some of the actual witnesses associated with the JFK assassination and the shooting of officer J.D. Tippit testified, along with certain medical experts and some members of the HSCA.<sup>2</sup> After 12 hours of deliberation, the jury returned a guilty verdict. It is generally agreed upon by lawyers that Spence was not prepared for this mock trial and that his performance made a mockery of the event. (For a detailed examination of the program's shortcomings, see Chapter 3 of Jim DiEugenio's book, *Reclaiming Parkland*.)

### **1992: ABA in San Francisco**

In August 1992, the American Bar association conducted a two-day mock trial at its annual Meeting in San Francisco titled the "Trial of the Century: The United States vs Lee Oswald."<sup>3</sup> Evidence was based on testimony derived from the Warren Commission Report and the Report of the House Select Committee on Assassinations. Actors portrayed the witnesses. The prosecution witnesses were Marrion Baker, Domingo Benavides, Howard Brennan, Wesley Frazier, Helen Markham, Harold Norman, Marina Oswald and William Scoggins. Evidence also involved computer animation and enhancement of the Zapruder film.

The prosecution team was comprised of attorneys Jim Brosnahan, Joe Cotchett and John Keke. Representing the defense were Tom Barr, David Boies and Evan Chester. Two federal judges and a state court judge took turns presiding over the trial. The entire proceeding was televised nationwide by Court TV.

A key witness for the prosecution was Dr. Martin Fackler, a ballistics expert. He testified that the bullet found at Parkland Hospital, fragments recovered from the president's limousine and cartridges taken from the sixth floor of the Texas School Book Depository all, came from Oswald's rifle. He also testified that the casings found near Patrolman Tippit's body came from Oswald's revolver. He then discussed how bullets move in the human body and explained the movement of

the bullet that passed through President Kennedy and into Governor John Connally. Another important prosecution witness was Dr. Robert Piziali of Failure Analysis. He testified about the computer reconstruction developed by his firm and how it demonstrated that the shots that hit President Kennedy came from the sixth floor of the Texas School Book Depository.

The defense team told the jury that while Kennedy's assassination has been the most investigated killing in history, every item of evidence ever assembled against Oswald is still open to doubt.

A key defense witness was Roger McCarthy, another ballistics

expert who said the shots that killed Kennedy could not have come from the sixth floor of the school book depository. Dr. Cyril Wecht testified that the president's wounds had come from more than one gunman.

Prior to the mock trial, the 17 potential jurors were selected from a list of San Francisco area residents. They were paid for their participation and did not know the nature of the trial before they were asked to complete a questionnaire. Included were two questions: (1) How much they agreed with the statement that Lee Oswald assassinated President Kennedy and (2) How much did they agree he acted alone. Sixteen of seventeen jurors indicated they were neutral, or agreed that Oswald assassinated the president. Most of the potential jurors also agreed or were neutral that Oswald acted alone.

The lawyers could strike a total of five jurors: three for the prosecution and two for the defense during *voir dire*. At the conclusion of the trial, the jury deliberated for 2 ½ hours, but after several ballots was unable to reach a verdict. Seven of the jurors voted to convict Oswald while five favored acquittal. The five jurors that were removed during *voir dire* constituted a surrogate or shadow jury. They sat through the trial and saw the same evidence as the jury. This group of dismissed jurors voted 3 to 2 for acquittal.

Earlier that year, the jury in a mock trial by the Arts & Entertainment network, found Oswald innocent. No information was available about this proceeding.

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### **2013: Texas**

Three mock trials were held in Texas in 2013. One was by the State Bar of Texas, one by the Dallas Bar Association and one by the Bench Bar Conference for the Eastern District of Texas. The case was prosecuted as a federal crime, even though killing a president was still a state crime in 1963.<sup>4</sup> The Dallas event was held at the Old Criminal Courts Building.

Toby Shook represented the defense in each of these proceedings. For the Dallas event, U.S. Attorney for the Northern District of Texas, Sarah Saldaña, served as the prosecutor and

State District Judge Martin Hoffman presided.

The mock trials only lasted three hours each, so the attorneys were limited on the number of witnesses and evidence that could be used. Included in the evidence was: the Zapruder film, clips of Oswald speaking to the media, autopsy drawings, and a replica of the assassination rifle.

Because of the time constraints, Shook was limited to cross-examining the prosecution witnesses and was not allowed to put on witnesses to establish the various conspiracy theories. For example, when the prosecution offered that Oswald's prints on boxes near the so-called sniper's nest were evidence he was the assassin, Shook countered that Oswald's job was to move boxes, so it would be natural for his prints to be there.

All three proceedings ended up in hung juries. About three-fourths of the 150 who watched the trial in Dallas County's Old Criminal Courts Building indicated by a show of hands that they did not believe the gunman acted alone.

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### **2016: Michigan**

The Macomb County Bar Foundation and the Society for Active Retirees organized two mock trials in the fall of 2016. The mock trials were two hours. Both sides stipulated that the rifle found on the Sixth Floor was Lee Oswald's rifle and that he had fired three shots that day. In other words, the question of Oswald's innocence was not in dispute. There was a single witness who was a local judge who had read numerous books on the assassination. The sole question to be determined by the attendees who served as a grand jury was whether they believed Oswald acted alone or as part of a conspiracy. Given the sparse evidence before them, it is not surprising that both audiences voted overwhelmingly that Oswald was the lone gunman.

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Logistics for the STCL mock trial are still being finalized. The presiding judge for the Harris County Criminal Court, Honorable Jay T. Karahan will preside with attorney Gus Pappas serving as prosecutor. The defense team will be led by California lawyer Bill Simpich and New York lawyer Larry Schnapf. Continuing legal

education credits will be offered. There will be a dinner following the first day of the mock trial. The planning committee is hoping to announce a very prominent keynote speaker. The event organizers hope to stream the mock trial. The two JFK conferences that will be held that weekend in Dallas are considering live streaming the mock trial. Stay tuned for more details.

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## NOTES

<sup>1</sup> “Strengthening Forensic Science in the United States: A Path Forward”.

<sup>2</sup> The witnesses included Marion Baker, Eugene Boone, Charles Brehm, Johnny Brewer, Ted Callaway, Nelson Delgado, Buell Wesley Frazier, Vincent Guinn, James Hosty, Seth Kantor, Cecil Kirk, Edward Lopez, Monty Lutz, Bill Newman, Harold Norman, Paul O’Connor, Ruth Paine, Charles Petty, Lyndal Shaneyfelt, Tom Tilson, Cyril Wecht, The five- hour broadcast and a 90-minute highlights film are available at: <http://on-trial-lho.blogspot.com/> and at: [https://www.youtube.com/playlist?list=PL0O5WNzrZqlOubam491Q\\_OKBOBzfh7RDj](https://www.youtube.com/playlist?list=PL0O5WNzrZqlOubam491Q_OKBOBzfh7RDj).

<sup>3</sup> Excerpts from this trial are available at: <https://drive.google.com/file/d/0BzWAr91aL-BEZIZyb1NKS3YzMXc/view>.

<sup>4</sup> An excerpt of the mock trial held in Dallas is available at: <https://drive.google.com/file/d/0BzWAr91aL-BEY01nZEdldFE1Y0E/view>.

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