

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

Thomas W. Spindle, )  
 )  
 ) Petitioner, )  
 )  
 )  
 vs. )  
 )  
 ) AFFIDAVIT OF RICHARD E. FAY  
 )  
 Berrong, )  
 )  
 )  
 ) Respondent. )  
 )

Richard E. Fay, being first duly sworn, deposes and says:

1. My name is Richard E. Fay. I am an attorney in private practice in Charlotte, North Carolina. I am acquainted with Petitioner, Thomas W. Spindle, and represented him as Appointed Military Defense Counsel at his court martial at Ft. Shafter, Hawaii in 1982.

2. I am over the age of eighteen years and am competent to give this affidavit.

3. During my preparation for the defense of the Petitioner at his trial, I submitted to the Government attorney a Request for Discovery on 5 March 1982. Specifically referenced in that discovery request were requests for evidence which might tend to exculpate the Petitioner. In response to that request, the Government notified the undersigned that it had taken numerous latent fingerprint impressions from the victim's body on 6 February 1982, had submitted those to the United States Army Criminal Investigation Laboratory, Camp Zama, Japan.

4. Headquarters, United States Army Criminal Investigation Division Command, 6th Region at Schofield Barracks, Hawaii repeatedly informed the undersigned that these fingerprint impressions were "not capable of identification." At no time can the undersigned recall any agents of the Army's Criminal Investigation Division informing him that the fingerprints were "not suitable" for identification.

Further affiant sayeth not.

  
RICHARD E. FAY

PETREE STOCKTON & ROBINSON  
3500 One First Union Center  
Charlotte, North Carolina 28282-6001  
704/372-9110

Sworn to and subscribed before me this 3rd day of May,  
1990.

  
Notary Public

My commission expires: 10-6-94

(Seal)