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MAR 30 1982

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES F. DAVEY, Clerk

G. ROBERT BLAKEY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 81-2174
)	
DEPARTMENT OF JUSTICE, <u>ET AL.</u> ,)	
)	
Defendants.)	
)	

PLAINTIFF'S OPPOSITION TO MOTION OF DEFENDANT
FEDERAL BUREAU OF INVESTIGATION FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

This action arises out of several Freedom of Information ("FOIA") requests for materials pertaining to the assassination of President John F. Kennedy which plaintiff made in 1979, 1980, and 1981.

Plaintiff Blakey is a professor of law at Notre Dame Law School. From 1960-1964 he was a special attorney in the Organized Crime and Racketeering Section of the Criminal Division of the United States Department of Justice; from 1966-1967 he served as a special consultant on organized crime to the President's Commission on Law Enforcement and Administration of Justice; from 1966-1973 he was Chief Counsel of the Subcommittee on Criminal Laws and Procedures of the United States Judiciary Committee; and from 1977-1979 he was the Chief Counsel and Staff Director of the Select Committee on Assassinations of the United States House of Representatives.

Professor Blakey is co-author of two books: Racket Bureaus: Investigation and Prosecution of Organized Crime (National Institute of Law Enforcement and Criminal Justice 1978), an empirical study of the management of joint attorney-police officer units engaged in the investigation and prosecution of sophisticated forms of criminal activity; and The Plot to Kill the President (Times Books 1981), a study of the assassination of President John F. Kennedy and the official investigations into the President's death.

The House Select Committee on Assassinations ("HSCA") with which plaintiff was associated as Chief Counsel and Staff Director officially concluded in January, 1979, that "President John F. Kennedy was probably assassinated as a result of a conspiracy...." (HSCA Report, p. 95) This conclusion climaxed more than 15 years of intense controversy and skepticism concerning the Warren Commission's finding that Lee Harvey Oswald acting alone had assassinated the President.

As the United States Court of Appeals for the District of Columbia noted in Allen v. Central Intelligence Agency, 205 U.S. App.D.C. 159, 172, 636 F.2d 1287, 1300, the assassination of President Kennedy is "an event in which the public has demonstrated almost unending interest." Plaintiff's purpose in requesting the materials which he seeks here is to subject them to critical study and thus enhance public knowledge concerning the assassination and its investigation. In this regard, he expects to use these materials in a seminar on the Kennedy assassination to be taught at Notre Dame Law School. The materials themselves will be placed in the library where members of the university community and the public will share equal access to them. He also anticipates that one or more articles dealing with various aspects of the investigation into President Kennedy's murder will be written either by himself or students, or by others who will have access

to the materials. See February 15, 1982 affidavit of G. Robert Blakey, ¶¶ 7-8.

The Federal Bureau of Investigation ("FBI") has moved for summary judgment, contending that it has located and disclosed all of the materials it has responsive to plaintiff's requests that it is legally compelled to search for and release. For the reasons set forth below, plaintiff opposes defendant's motion for summary judgment.

ARGUMENT

I. DISPUTED ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT

It is well-established that a motion for summary judgment is properly granted only when no material fact is genuinely in dispute, and then only when the movant is entitled to prevail as a matter of law. Fed.R.Civ.P. 56(c); Adickes v. S.H. Kress & Co., 398, U.S. 144, 147 (1970); Bouchard v. Washington, 168 U.S.App.D.C. 402, 405, 514 F.2d 824, 827 (1974); Nyhus v. Travel Management Corp., 151 U.S.App.D.C. 269, 271, 466 F.2d 440, 442 (1972). In assessing the motion, all "inferences to be drawn from the underlying facts contained in the [movant's] materials must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). The movant must shoulder the burden of showing affirmatively the absence of any meaningful factual issue. Bloomgarden v. Cover, 156, U.S.App.D.C. 109, 113-114, 479 F.2d 201, 206-207 (1973). That responsibility may not be relieved through adjudication since "[t]he court's function is limited to ascertaining whether any factual issue pertinent to the controversy exists [and] does not extend to the resolution of any such issue." Nyhus, supra, note 32, 151 U.S.App.D.C. at 271, 466 F.2d at 442. These principals were recently affirmed by the United States Court of

Appeals for the District of Columbia in another Freedom of Information lawsuit, Weisberg v. United States Dept. of Justice, 200 U.S.App.D.C. 312, 627 F.2d 265 (1980).

There are several material issues of genuine fact in dispute which preclude summary judgment in favor of defendant Federal Bureau of Investigation at this time; namely, (1) whether the FBI has conducted a thorough, good-faith search for the records requested; (2) whether the FBI has produced the June 29, 1962 FBI report "The Criminal Commission" requested by plaintiff; (3) whether the status of Rogelio Cisneros requires the production of additional records pertaining to him; and (4) whether materials withheld by the FBI under various claims that they are exempt are in fact protected by the exemptions cited.

In addition, summary judgment is also precluded by the fact that the FBI is clearly not entitled to prevail as a matter of law on the issue of plaintiff's right to a waiver of search fees and copying costs.

A. The FBI Has Not Conducted a Thorough, Good Faith Search for Responsive Materials.

It is axiomatic that to prevail in a Freedom of Information Act (FOIA) lawsuit, "the defending agency must prove that each document that falls within the requested class either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." National Cable Television Association, Inc. v. F.C.C., 156 U.S.App.D.C. 91, 479 F.2d 183 (1973). In order to meet its burden of demonstrating that it has conducted a thorough, good faith search, an agency must detail the scope of the search and the manner in which it was conducted. Weisberg v. United States Dept. of Justice, *supra*, 200 U.S.App.D.C. 312, 317, 627 F.2d 365, 372 (1980). Agency affidavits which "do not denote which files were searched or by whom, do not reflect any

systematic approach to document location, and/^{do}not provide information specific enough to enable [the requester] to challenge the procedures utilized," are insufficient to support summary judgment on the search issue. Id., 200 U.S.App.D.C. at 318, 627 F.2d at 373. Furthermore, even if the agency affidavits are detailed and nonconclusory and are submitted in good faith, "the requester may nonetheless produce countervailing evidence, and if the sufficiency of the agency's identification or retrieval procedure is genuinely in issue, summary judgment is not in order." Founding Church of Scientology, Etc. v. Nat. Sec. Agcy., 197 U.S.App.D.C. 305, 317, 610 F.2d 824, 836 (1979).

In the instant case plaintiff challenges the adequacy of the FBI's search with respect to (1) his request for a June 29, 1962 report, "The Criminal Commission", and (2) his request for records pertaining to the Bureau's study of the acoustics work of the House Select Committee on Assassinations.

With respect to the former, plaintiff contends that the FBI has failed to identify the report he requested. Plaintiff, who read the report while he was a special attorney in the Organized Crime and Racketeering Section of the Department of Justice remembers this report as being a national summary over 100 pages long which probably emanated from either the New York City or Philadelphia field offices. March 17, 1982 Blakey Affidavit, ¶¶ 18-19. The report provided, however, is only eleven pages long and is from the Albany field office. Thus, a further search is required to locate the document requested by plaintiff.

By letter dated October 29, 1980, plaintiff requested copies of various documents relating to the Department's and the Bureau's study of the acoustics work of the HSCA, including "all supporting documents, data and calculations by the Bureau." Exhibit 1. On May 21, 1981, he was falsely advised by Mr. James K. Hall, Chief,

Freedom of Information/Privacy Acts Section, Federal Bureau of Investigation, that the Bureau had "no background materials pertaining to [the Bureau's] review." Exhibit 2. However, when it came time to make this representation in court, plaintiff was sent, on February 1, 1982, two such documents. March 17, 1982 Blakey Affidavit, ¶ 11.

In addition to the demonstrated inadequacy of the FBI's initial search for the acoustics materials, there is evidence that the subsequent search was also inadequate. First, there is internal evidence that records not provided exist. Thus, a Bureau memorandum of November 19, 1980, refers to a November 8, 1979 letter of Mr. Robert L. Keuch; a Bureau memorandum of January 14, 1981, refers to a January 7, 1981 letter by Jeffrey I. Fogel; and a Department memorandum dated January 26, 1981, requests action by the Bureau. Plaintiff, however, has received neither the referenced letters nor any documents relating to the Bureau's comments on or response to the Department's request. March 17, 1982 Blakey Affidavit, ¶ 15.

Plaintiff's considerable experience with the FBI and the Justice Department leads him to conclude that:

In short, there should be a number of Department and Bureau documents relating to Department requests for Bureau action as well as Bureau comments and response to Department requests. Bureau offices that should be involved would include the Technical Services Division, the Criminal Investigative Division, the Legal Counsel Division, the Office of Public Information as well as the offices of various assistant directors and the director.

March 17, 1982 Blakey Affidavit, ¶ 14.

Insofar as it pertains to the acoustical materials, the February 18, 1982 affidavit of Special Agent John N. Phillips is insufficient to support summary judgment on the search issue. In the first place, Agent Phillips fails to state that all

materials responsive to this request have been located and produced. He states only that an unidentified employee of the FOIPA Section contacted the employee in the Technical Services Division (TSD) handling liaison with the National Academy of Sciences; that the employee in TSD advised that he had no knowledge of the requested material, other than the public report of the FBI's review of the acoustical analysis; and that in reviewing a memorandum regarding the appearance of FBI personnel before the National Academy of Sciences Committee on Acoustics on January 31, 1981, two additional memoranda regarding the original FBI Acoustical Study were located. Phillips Affidavit, ¶(4)(C).

Thus, Phillips' affidavit contains no statement made on personal knowledge regarding the existence or nonexistence of records sought by plaintiff. But Federal Rule of Civil Procedure 56(e) provides a straightforward command that: "Supporting and opposing affidavits" on summary judgment motions "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." As the Court of Appeals recently asserted in regard to Rule 56(e):

Although the rule's directive with respect to admissibility of an affidavit's contents on summary judgment has been liberally construed, its requirement of personal knowledge by the affiant is unequivocal, and cannot be circumvented. An affidavit based merely on information and belief is unacceptable.

Londrigan v. Federal Bureau of Investigation, 110 D.W.L.R. 173, 176 (January 27, 1982).

The foregoing considerations are sufficient to require that the FBI's motion for summary judgment be denied. There are, however, some additional considerations which, although more general in nature, also caution against acceptance of Bureau

assurances that a thorough search has been conducted. First, the FBI has a history of resisting thorough searches for Kennedy assassination materials, as is evidenced by the reported decisions in Weisberg v. Dept. of Justice, 177 U.S.App.D.C. 161 543 F.2d 308 (1976), and Weisberg v. United States Department of Justice, 200 U.S.App.D.C. 312, 627 F.2d 265 (1980). Second, other FOIA litigants have charged the FBI with engaging in "a war of attrition" designed to wear down the opposition. This Court found that description an "apt one" in Jaffe v. Central Intelligence Agency, 516 F. Supp. 576, 587 (1981), and also concluded that there was evidence which "strongly suggests that the [FBI] has failed to live up to its obligations under the FOIA, despite repeated opportunities to do so over the history of this case." Id., 516 F. Supp. at 583. Third, a Justice Department official intimately familiar with the FBI's search practices and procedures has written a memorandum detailing the FBI's deep-seated resistance to conducting thorough searches for Kennedy and King assassination materials sought by another requester. See Exhibit 3, March, 1980 memorandum by Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals.

Finally, note must be taken of the nature of the records sought and their implications. The HSCA Report concluded that President Kennedy was probably assassinated as a result of a conspiracy. The acoustical evidence considered and developed by the HSCA was crucial to this conclusion. The HSCA's conspiracy conclusion contradicts, however, the findings of the Warren Commission, a presidential commission which had relied primarily upon the FBI to investigate the crime. Subsequent to the HSCA Report, the FBI released a study of the HSCA acoustical report which was critical of the HSCA findings. Therefore, the subject matter of plaintiff's request may provide ample motive for the FBI to conduct a less than painstaking search for materials which

may discredit the FBI's own report on the acoustical evidence.

B. FBI is Required to Search for and Produce Additional Materials on Rogelio Cisneros

In responding to plaintiff's request for records related to Rogelio Cisneros, the FBI has made available "[o]nly those references pertaining to Cisneros which were located in the file relating to the assassination of President John F. Kennedy." FBI's Statement Of Material Facts As To Which There Is No Genuine Issue, ¶ 9. The FBI has taken the position that if other references pertaining to Cisneros exist, they cannot be processed for plaintiff without a written authorization from Cisneros. The Director of the Office of Privacy and Information Appeals, Mr. Quinlan J. Shea, Jr., upheld this position when he informed plaintiff by letter dated November 6, 1980, that:

I have concluded that Mr. Cisneros is not so much of a public figure that all aspects of his life should be open to the public. In my judgment, even to confirm or deny the existence of investigatory records on Mr. Cisneros would constitute an unwarranted invasion of his personal privacy, 5 U.S.C. § 552(b)(7)(C), and, therefore, would violate the Privacy Act of 1974. Accordingly, I am affirming the initial decision of the Bureau not to search for any such records.

See Exhibit 4.

Except for quotation of the above passage in Paragraph 8 of its Statement of Material Facts as to Which There is no Genuine Issue, the FBI does not even allude to this issue in its motion for summary judgment, much less brief it. Insofar as the question of whether the FBI must search for and produce further materials on Mr. Cisneros depends on a factual determination of Mr. Cisneros' status as a "public figure," the Bureau's position is supported only by Mr. Shea's conclusory assertion that he is "not so much of a public figure that all aspects of his life should be open to the public."

In order to understand just how much a "public figure" Cisneros is -- that is, how important he is to the Kennedy assassination and its investigation -- it is necessary to briefly recapitulate what is known to Kennedy assassination scholars as "the Odio incident."

In 1963 Sylvia Odio was a twenty-six year old Cuban emigree who was active in the anti-Castro movement. When she heard a news bulletin that President Kennedy was shot she fainted and had to be taken by ambulance to a hospital in Irving, Texas. The cause of her collapse was the recollection of three men who had visited her apartment in Dallas in the latter part of September 1963 and the realization that it was "very possible that they might have been responsible, as one had mentioned that night that President Kennedy should have been killed by the Cubans."

(CE 3147)^{1/}

The three men who called on Mrs. Odio identified themselves as members of an anti-Castro organization and as friends of her father, a political prisoner in Cuba. Two of the men appeared to be Cuban or Mexican; the third was an American who was introduced as "Leon Oswald." (11H369)^{2/}

When Mrs. Odio saw Lee Harvey Oswald on television after his arrest, she recognized him immediately as "Leon Oswald." Her sister, Annie Laurie Odio, who had seen the visitors briefly, independently recognized Oswald as one of the three men as soon as she saw him on television. (11H382)

^{1/} This citation refers to Warren Commission Exhibit No. 3147.

^{2/} This citation refers to Vol. XI, p. 369, of the Warren Commission Hearings.

Mrs. Odio told the Warren Commission that one of the three visitors later quoted the person she identified as Lee Harvey Oswald as saying, following the visit to her apartment, that Cubans "don't have any guts . . . because President Kennedy should have been assassinated after the Bay of Pigs, and some Cubans should have done that, because he was the one that was holding the freedom of Cuba . . ." Warren Commission Report, p. 322.

The Odio incident has been the subject of considerable public attention for the past eighteen years. The Warren Commission discussed the incident in its Report, issued in September 1964. (See Exhibit 5, Warren Commission Report, pp. 321-324) Intense scrutiny of the Odio incident and criticism of the Warren Commission's treatment of it thereafter appeared in books and articles on the Kennedy assassination. See, e.g., Sylvia Meagher, Accessories After the Fact, pp. 376-387 (Exhibit 6), and Harold Weisberg, Whitewash, pp. 270-278 (Exhibit 7).

The House Select Committee on Assassinations conducted a further investigation of the Odio incident and reached different conclusions from the Warren Commission. The HSCA was inclined to believe Sylvia Odio. It concluded that on the basis of the sworn testimony before it appeared that three men did visit her apartment in Dallas prior to the Kennedy assassination and identified themselves as members of an anti-Castro organization. Based on HSCA's judgment of the credibility of Sylvia and Annie Odio, the committee concluded that one of these men at least looked like Lee Harvey Oswald and was introduced to Mrs. Odio as Leon Oswald. (See Exhibit 8, HSCA Report, pp. 137-139)

Rogelio Cisneros was identified by the Rev. Walter J. McChann (CE 2943) as one of the three men including Lee Harvey Oswald (CE 3146) who may have visited Mrs. Odio in Dallas, Texas. Cisneros, on the other hand, denied to the Secret Service that he

knew Oswald or that he was there at the time of the Oswald visit, although he acknowledged being in Dallas that summer and knowing Odio (CE 2896).

As plaintiff points out:

Cisneros' background in anti-Castro Cuban groups, as well as his associations with other individuals and various groups, who may have had a role in the death of the President, can hardly be termed "not a matter of public interest." His identity as a possible associate of Lee Harvey Oswald in the context of highly incriminating evidence -- an explicit death threat a month before the assassination itself -- makes it of substantial public interest, as the Department and the Bureau have already acknowledged by previously releasing documents about him.

March 17, 1982, affidavit of G. Robert Blakey, ¶ 8.

The Court of Appeals has repeatedly taken notice of the strong public interest in the assassination of President Kennedy. In Weisberg v. Dept. of Justice, 177 U.S.App.D.C. 161, _____, 543 F.2d 308, _____ (1976), the Court commented that the plaintiff's inquiry into the existence or nonexistence of records on the FBI's testing of items of Kennedy assassination evidence was "of interest to the nation." In Allen v. Central Intelligence Agency, 205 U.S.App.D.C. 159, 172, 636 F.2d 1287 (1980), the Court asserted that the Kennedy assassination was "an event in which the public has demonstrated almost unending interest." Given the exceptional degree of public interest inherent in the assassination of a President, it is obvious that the balancing required in considering privacy claims must weigh heavily in favor of disclosure. This is particularly true where, as here, the individual concerned could be a key to unraveling a possible conspiracy to assassinate the President of the United States.

The FBI takes the position that it cannot even confirm or deny

the existence of investigatory records on Mr. Cisnerso which it considers "unrelated to the assassination." Leaving aside the obvious question of who is to decide what is relevant to the assassination, and by what standard relevancy is to be measured, it is clear from the holding in Phillippi v. Central Intelligence Agency, 178 U.S.App.D.C. 243, 246-247, 546 F.2d 1009, 1012-1013 (1976), that when an agency takes the position it can neither confirm nor deny the existence of the requested records, the Court may resolve the matter by in camera examination, including the inspection of ex parte affidavits. However, "[b]efore adopting such a procedure, the District Court should attempt to create as complete a public record as is possible." Id., 178 U.S.App.D.C. at 247.

In short, the FBI has made neither the factual nor the legal showing it must make to meet its burden on a motion for summary judgment under FOIA. Accordingly, insofar as its motion for summary judgment pertains to unlocated and unproduced documents regarding Rogelio Cisneros, it should be denied.

C. FBI Has Not Sustained Its Exemption Claims

The FBI has withheld certain materials on the ground that they are exempt from disclosure under 5 U.S.C. § 552(b). Plaintiff's concerns about these withholdings focus on two documents. The first is a six-page internal memorandum to a Mr. Bayse dated February 13, 1981, which "sets forth the details of the appearance on January 31, 1981, of FBI personnel before the Committee on Ballistic Acoustics in the National Research Council of the National Academy of Sciences, concerning the Dallas, Texas, Police Department tape recording made at the time of the assassination of President John F. Kennedy." Phillips Affidavit, ¶ (5)(A). This document is being withheld in its entirety under Exemptions 5 and 7(C).

The second document is the July 19, 1965 La Cosa Nostra report. This document consists of 261 pages, 235 of which have been withheld in their entirety under Exemptions 7(C) and 7(D).

1. The Bayse Memorandum

The FBI seeks to withhold the Bayse Memorandum in its entirety on the basis of Exemption 5. This exemption protects from mandatory disclosure matters that are: "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The exemption was intended to incorporate the government's common law privileges from discovery in litigation. H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966); S. Rep. No. 1219, 88th Cong., 2d Sess. 6-7, 13-14 (1964). The Supreme Court has noted, however, that "it is not clear that Exemption 5 was intended to incorporate every privilege known to civil discovery . . ." Federal Open Market Comm. v. Merrill, 443 U.S. 340, 354-355.

Of the four privileges which the Supreme Court has held to be incorporated into Exemption 5, the only one which the FBI could seem to have in mind is the "executive" privilege which protects advice, recommendations, and opinions which are part of the deliberative, consultative, decision making processes of government. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150-154 (1975); EPA v. Mink, 410 U.S. 73, 85-91 (1973). The ultimate purpose of this privilege is to prevent injury to the quality of agency decisions. NLRB v. Sears, Roebuck & Co., supra, 421 U.S. at 151.

The Phillips affidavit makes it clear that Exemption 5 is invoked to try and protect against premature revelation of "the method of inquiry and preliminary conclusions of the [C]ommittee" [on Ballistics Acoustics of the National Academy of Sciences].

But the National Academy of Sciences is a nongovernmental body; hence, Exemption 5 cannot be invoked to protect its deliberations.

Furthermore, even if the National Academy of Sciences were a government agency, the FBI would not be able to sustain its burden under Exemption 5 on the present record. Exemption 5 does not, as a general rule, apply to "purely factual, investigative matters," EPA v. Mink, supra, 410 U.S. at 89, and where a document contains both nonexempt facts and exempt deliberative materials, segregable factual materials be disclosed. The District of Columbia Circuit has held that claims of nonsegregability must be made with the same degree of detail as required for claims exemption by Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F.2d 820 (1973), cert. denied, 415 U.S. 977 (1974). Mead Data Central v. Dept. of the Air Force, 566 F.2d 242, 260-262 (1977). As Professor Blakey points out, the FBI was to give the Committee on Ballistics Acoustics the results of its technical work, not policy recommendations. See March 17, 1982 Blakey Affidavit, ¶ 33.

Concurrently with this Opposition plaintiff is moving for summary judgment on the Bayse Memorandum on grounds that Exemption 5 affords no protection to nongovernmental bodies such as the National Academy of Sciences. Should that motion be denied, plaintiff will file a motion under Vaughn v. Rosen to compel the FBI to release all segregable, nonexempt materials in the Bayse Memorandum.

2. La Cosa Nostra Report

As noted above, 235 pages of the 261-page La Cosa Nostra report have been withheld in their entirety pursuant to 5 U.S.C. § 552(b)(7)(C) and (D). Exemption 7 exempts from compulsory disclosure

investigatory records compiled for law enforcement

purposes, but only to the extent that the production of such records would *** (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation . . . confidential information furnished only by the confidential source.

Exemption 7(C), like Exemption 6, requires application of a de novo balancing test which weighs the privacy interest and the extent of the invasion thereto against the public interest in disclosure. Common Cause v. National Archives & Records Service, ___ U.S.App.D.C. ___, ___, 628 F.2d 179, 182 (1980). Any attempt to apply a per se rule is "fundamentally incompatible with [such a] balancing standard." Congressional News Syndicate v. United States Dep't. of Justice, 438 F. Supp. 538, 543-544 (D.D.C. 1977), cited with approval in Common Cause, supra, 628 F.2d at 184, n. 12.

The FBI has applied both Exemption 7(C) and 7(D) in blanket fashion. An initial objection to its 7(D) claims is that "[i]t is not true that all, or even most, of the information in [La Cosa Nostra] report[] comes from confidential sources." In fact, most of it came from electronic surveillance." March 17, 1982 Blakey Affidavit, ¶ 22. The fact that electronic surveillance was used to obtain the information does not depend solely on the word of Professor Blakey, but has been reported in the opinion of the United States Court of Appeals for the Second Circuit in United States v. Magaddine, 496 F.2d 455 (2d Cir. 1974).

Many of the principal subjects of the surveillance are now dead and have no protectible privacy interest under Exemption 7(C). "The rest of the principals have been identified, often by the Department or the Bureau in criminal proceeding[s], congressional hearings, and the media as what they are: major figures in organized crime." March 17, 1982 Blakey Affidavit, ¶ 25.

Given these facts, it is apparent that the FBI has not sustained its burden of demonstrating that the withholding of 235 pages of this report under 7(C) and 7(D) is proper. Indeed, it is clear that segregable, nonexempt portions remain and must be disclosed.

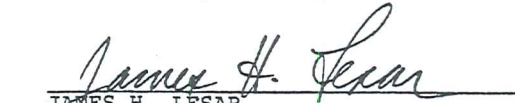
II. THE FBI IS NOT ENTITLED TO SUMMARY JUDGMENT ON THE FEE WAIVER ISSUE

The FBI has moved for summary judgment on the issue of whether plaintiff is entitled to a waiver of search fees and copying costs. Because plaintiff is filing a cross motion for summary judgment on this issue, his arguments on that matter are not repeated here but are incorporated herein by reference.

CONCLUSION

For the foregoing reasons, the FBI's motion for summary judgment should be denied.

Respectfully submitted,

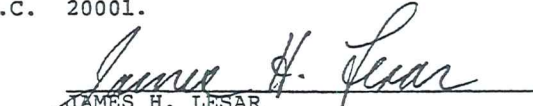


JAMES H. LESAR
Fensterwald & Associates
1000 Wilson Blvd., Suite 900
Arlington, Virginia 22209
702-276-9297

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Motion of Defendant Federal Bureau of Investigation for Summary Judgment was this 30th day of March, 1982, mailed to Nathan Dodell, Assistant U.S. Attorney, U.S. Courthouse, 3rd and Constitution Ave., N.W., Washington, D.C. 20001.



JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. Robert Blakey,
Plaintiff

v.

Civil Action
81-2174

Department of Justice
and
Federal Bureau of Investigation

Affidavit of G. Robert Blakey

I, G. Robert Blakey, being duly sworn, depose and say
as follows:

(1) I am a professor of law at the Notre Dame Law School,
Notre Dame, Indiana, 46556, where I teach courses related to
the fields of criminal law and criminal procedure.

(2) From 1960 to 1964, I was a special attorney in the
Organized Crime and Racketeering Section of the Criminal
Division of the United States Department of Justice; from 1966
to 1967, I was a special consultant on organized crime to the
President's Commission on Law Enforcement and Administration
of Justice; from 1969 to 1973, I was Chief Counsel of the Sub-
committee on Criminal Laws and Procedures, of the United States
Senate Judiciary Committee; and, from 1977 to 1979, I was the
Chief Counsel and Staff Director of the Select Committee on
Assassinations of the United States House of Representatives.

(3) Based on the experience I noted in paragraphs (1) and
(2), I have become familiar with the administrative and other
practices of the United States Department of Justice (hereinafter:
Department) and the Federal Bureau of Investigation (hereinafter:
Bureau).

(4) I have also reviewed the affidavits of Special Agents
John N. Phillips and James C. Felix of February 18, 1982.

I. Status of Rogelio Cisneros

(5) The Department and the Bureau have already determined
that the investigation of the death of President John F. Kennedy

is a matter of public interest by releasing under The Freedom of Information Act the files that they consider relevant to the President's death, including a substantial body of material on Rogelio Cisneros and groups that he was apparently associated with .

(6) This judgment is well-taken, both generally and in particular to Mr. Cisneros. A bibliography compiled in 1978 by the Library of Congress for the Select Committee on Assassinations of published work on the death of the President contains over 1000 entries. Since that time, at least three major books on the assassination have been published, one of which was on the New York Times best seller list for a number of weeks. The role, too, of the so-called Odio incident, as noted below, in the investigation of the President's death remains unsettled in the minds of even those who do not subscribe to a conspiracy theory of the assassination. Wesley Liebler, the Warren Commission counsel in immediate charge of the investigation of the incident, testified to the Select Committee on Assassinations:

MR. CORNWELL: The Sylvio Odio incident was never resolved to your satisfaction, was it?

MR. LEIBLER: No, not really. (XI JFK Appendix at 223 (1979))

In fact, Mr. Cisneros was identified by the Rev. Walter J. McChann (Warren Commission Exhibit No. 2943) as one of the three individuals including the President's assassin, Lee Harvey Oswald, (Warren Commission Ex. No. 3146), who may have visited Mrs. Sylvio Odio in Dallas, Texas, in the summer of 1963. Cisneros, on the other hand, denied to the Secret Service that he knew Oswald or that he was there at the time of the Oswald visit, although he acknowledged being in Dallas that summer and knowing Odio (Warren Commission Ex. No. 2896). Mrs. Odio, a member of an anti-Castro Cuban group known as the Cuban Revolutionary Junta (JURE), told the Warren Commission that one of the three individuals who visited her quoted the individual she identified as Lee Harvey Oswald as saying, following the visit to her apartment, that Cubans "don't have any guts. . . because President Kennedy should have been assassinated after the Bay of

Pigs, and some Cubans should have done that, because he was the one that was holding the freedom of Cuba. . . ." (Warren Commission Report at 322 (1964)).

(7) The House Select Committee on Assassinations concluded in January 1979, that "President John F. Kennedy was probably assassinated as a result of a conspiracy" (Select Committee's Report at 95 (1979)) and that "the available evidence does not preclude the possibility that individual members [of anti-Castro Cuban groups] may have been involved." (Id. at 129).

(8) Cisneros' background in anti-Castro Cuban groups, as well as his associations with other individuals and various groups, who may have had a role in the death of the President, can hardly be termed "not a matter of public interest." His identity as a possible associate of Lee Harvey Oswald in the context of highly incriminating evidence - an explicit death threat a month before the assassination itself - makes it of substantial public interest, as the Department and the Bureau have already acknowledged by previously releasing documents about him. Any additional invasion of privacy of Mr. Cisneros, beyond that already connected with the release of information in the past, cannot be termed "unwarranted" under 5 U.S.C. §552 (7)(c) or 5 U.S.C. §552 b (c)(7)(C). The only outstanding issue is shall the Department and the Bureau control the test of relevancy (not privacy) when these agencies have steadfastly maintained a single assassin theory in the face of substantial evidence to the contrary. The Freedom of Information Act and the Privacy Act suggest that the records should be open, so that the truth can be determined, not by interested agencies of government, but by the people.

II. Complete and Thorough Record of Search in the Acoustics Area

(9) By letter dated October 29, 1980, I requested copies of various documents relating to the Department's and the Bureau's study of the acoustics work of the Select-Committee on Assassinations, including "all supporting documents, data and calculations by the Bureau. (Exhibit S, in this litigation).

(10) On May 21, 1981, I was falsely advised by James K. Hall of the Bureau that it had "no background material pertaining

to our review." (Exhibit X, in this litigation).

(11) When it came time to make this representation, subject to the jurisdiction of this court, and under penalties of contempt and perjury, I was forwarded on February 1, 1982, two such documents.

(12) Based on my experience with Department and Bureau procedures, it is my considered opinion that there is a substantial possibility that these documents still do not represent full compliance with my original request.

(13) A Bureau memorandum of November 19, 1980, makes reference to a letter of November 8, 1979, of Mr. Robert L. Keuch, a copy of which, according to my records, I have not yet received. A Bureau memorandum of January 14, 1981, makes reference to a letter of January 7, 1981, of Jeffrey I. Fogel, a copy of which, according to my records, I have not yet received. A Department memorandum of January 26, 1981, requested action of the Bureau. I have, according to my records, not received any documents relating to the Bureau's comments on or response to the Department request.

(14) In short, there should be a number of Department and Bureau documents relating to Department requests for Bureau action as well as Bureau comments and responses to Department requests. Bureau offices that should be involved would include the Technical Services Division, the Criminal Investigative Division, the Legal Counsel Division, the Office of Public Information as well as the offices of various assistant directors and the director.

(15) Neither the Department nor the Bureau has made on the record of this litigation a good faith effort to comply with my original request in either a timely or complete fashion. Nothing less than the identification of all individuals involved in any fashion in the Department's and the Bureau's response to the request of the Select Committee on Assassinations for a review of its acoustical work as well as sworn statements from each that the documents produced or identified so far constitute all known documents can dispel, on this record, the powerful inference that

more documents, not identified or produced, still exist.

(16) What is at stake here is the performance of the Department and the Bureau in compliance with a request of a Congressional Committee, a matter uniquely one which the Freedom of Information Act was intended to make a question for public review.

III. Withholding of La Cosa Nostra/
Criminal Commission Reports

(17) On November 29, 1979, I requested two specific FBI reports on organized crime: "The Criminal Commission" June 29, 1962, and "La Cosa Nostra" July 19, 1965. (Exhibit H, this litigation)

(18) I read the Report of June 29, 1962, while I was a special attorney in the Organized Crime and Racketeering Section of the Department; I also recall having access to the Report of July 19, 1965, while I was a special consultant to the President's Commission on Law Enforcement and Administration and Justice.

(19) It is my considered opinion that the excised Report produced in response to the request for the "Criminal Commission" dated June 29, 1962, is not the proper Report. This report is a field report barely 11 pages long. The Report I requested - and remember - was a national summary - the first given to the Department of Justice, over 100 pages long, and similar to the second report produced. It should be out of New York City or Philadelphia. It was prepared - I remember, but am not sure - by Special Agent Joseph Verica (sp.).

(20) Special Agent James C. Felix suggests (Aff. ¶(5)), using boiler-plate language, that it was proper to withhold virtually all of the Report of July 19, 1965, because of information obtained from (1) confidential sources, (2) unwarranted invasion of personal privacy, (3) names of individual investigative interest, (4) information about third parties, (5) identities by state and local law enforcement agencies, and (6) names of FBI agents and support personnel.

(21) This blanket excision is unwarranted. I have no objection to a limited excision based on (1), (3), (4), (5), and (6) above, but (1) and (2) - asserted in a blanket fashion -

violate the Freedom of Information Act, as I understand it.

(22) It is not true that all, or even most, of the information in the two reports I requested comes from confidential sources. In fact, most of it came from electronic surveillance. I know from a variety of sources that electronic devices were used, inter alia, in the Boston area, in Buffalo, in Chicago, in Kansas City, in Las Vegas, in the Los Angeles area, in Miami, in Milwaukee, in the Newark area, in Philadelphia, in the San Diego area, and in Tampa. Such devices are not "confidential sources."

(23) The nature of the surveillance employed can be seen, for example, from the opinion of the Second Circuit Court of Appeals in United States v. Magaddine, 496 F.2d 455 (2d Cir. 1974). The Court observed:

The undisputed evidence adduced at the suppression hearing established that beginning in April, 1961, the FBI placed bugs at several locations in the Buffalo area, including the Magaddine Memorial Chapel in Niagara Falls, the Capitol Coffee Shop also located in Niagara Falls, and the Camelia Linen Supply Company in Buffalo. According to the government, the purpose of this electronic surveillance was to gather intelligence on a feud between the Magaddine and Bonanno families over control of certain illegal activities in Canada and the Western United States. The surveillance, which the government conceded to be illegal, continued until sometime in 1965. (496 F.2d at 457)

(24) Many of the principal subjects of the surveillance - Magaddine, for example, - are dead. As such, it is difficult to see how it can be said that they have any privacy interests under 5 U.S.C. §552 (7)(c) or 5 U.S.C. §552 b (c) 7 (C).

(25) The rest of the principals have been identified, often by the Department or the Bureau in criminal proceeding, congressional hearings, and the media as what they are: major figures in organized crime. It borders on the silly to suggest - in a blanket fashion - that their personal privacy outweighs the public interest in who they are, as shown in Reports 17 years old.

(26) For an identification of the principals by the Department and the Bureau in Congressional proceedings, in which I was the chief counsel, see Measures Relating to Organized Crime, Hearings before the Subcommittee on Criminal Laws and Procedures

of the Committee on the Judiciary of the United States Senate, 90th Cong. 1st Sess. at 124-139 (1969).

(27) To use a football analogy, this request, as in the case of the others, is being "stiff-armed" by the Department and the Bureau. However proper that may be with a private individual - it is not, under the law of the land, which applies to the government as it does to its citizens - it ought to be intolerable in a Court of the United States.

IV Withholding of Acoustics Memorandum

(28) On February 3, 1981, I requested, in follow up of my letter of January 5, 1981, (Exhibit O, this litigation), copies of all memoranda written in connection with. . . [the] appearance [of the FBI] both before and after [a National Science Foundation Panel on January 31, 1981]." (Exhibit W, this litigation)

(29) It is not clear that this request was answered until this litigation was brought. By letter dated May 21, 1981, (Exhibit Y, this litigation), I was told by the Bureau that there was, "in further response to your letter dated January 5, 1981," no "background material," (Exhibit X, this litigation).

(30) The affidavit of Special Agent John N. Phillips of February 18, 1982, paragraph (5) (A) indicates, for the first time, that there is, however, in existence, as I supposed, a memorandum setting "forth the details of the appearance on January 31, 1981, of FBI personnel before the Committee on Ballistic Acoustics in the National Research Council of the National Academy of Sciences. . . ."

(31) Nevertheless, this memorandum being withheld because the work of the NSF Committee is confidential.

(32) By the Bureau's own admission, the memorandum, however, deals with the appearance of the Bureau before the Committee, a fact that is not confidential. It concerns the Bureau's performance in reviewing the work of the Select Committee on Assassinations, about which the Department and the Bureau have already released a public report.

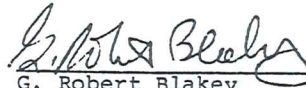
(33) According to the memorandum of January 26, 1981, the Bureau was to give to the Committee the results of its technical

work, not policy recommendations. Robert L. Keuch, moreover, observed:

I believe that it would be extremely inappropriate for any component of the Department to request or encourage the exclusion of other invited experts from any portion of [the January 31, 1981] meeting. I base my opinion upon my understanding that much of the FBI presentation will be critical of the research effort of the other experts present. A Department endorsed exclusion of those experts could generate public doubt regarding the ability of the FBI to support its widely-publicized acoustics report. (emphasis added)

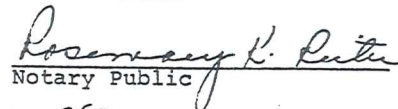
(34) This effort to create a non-existing exception to the Freedom of Information Act for this memorandum is wholly unjustified, based on the information the Department and the Bureau have already released.

(35) Accordingly, the motion of the Department and the Bureau for summary judgment on the grounds that there is no genuine issue of material fact and that as a matter of law judgment for the defendants should be granted ought to be denied.



G. Robert Blakey
Professor of Law
Notre Dame Law School
Notre Dame, IN 46556

Subscribed and sworn to before me on this 17th day of March, 1982.



Rosemary K. Rutter
Notary Public

My commission expires Nov. 25, 1983.

Notre Dame Law School
Notre Dame, Indiana 46556

WRITER'S DIRECT DIAL NUMBER

709-269-0027

October 29, 1980

219-283-4215

Handwritten initials

Mr. Robert Keuch
Office of the Attorney General
Washington, D.C. 20530

Dear Bob:

I received a copy of your letter of October 7, 1980, to Chairman Stokes.

Please change my address in your records to the above.

It would also be appreciated if you would send me the following:

- 1.) a copy of the National Science Foundation "refusal" of May 18, 1979.
- 2.) a copy of the National Bureau of Standards review of December 7, 1979.
- 3.) a copy of the FBI review of the acoustics (due in mid-October), and
- 4.) a copy of the National Academy of Science report (due in mid-January, 1981).

Please send me items 1, 2, and 3 now and item 4 when it is available.

Thank you.

Sincerely,

Bob

G. Robert Blakey
Professor of Law

GRE/lmh

* as well as all *significance*
discussions, dates, and
calculations



**U.S. Department of Justice
Federal Bureau of Investigation**

Washington, D.C. 20535

19
MAY 21 1981

Mr. G. Robert Blakey
Professor of Law
Notre Dame Law School
Notre Dame, Indiana 46556

Dear Professor Blakey:

This is in further response to your letter dated January 5, 1981, with attached letter to Mr. Robert Keuch dated October 29, 1980, for "all supporting documents, data and calculations" pertaining to the FBI's review of the acoustics material concerning the assassination of President Kennedy.

Please be advised that we have no background material pertaining to our review.

Sincerely yours,

James K. Hall
James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division



United States Department of Justice

OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

WASHINGTON, D.C. 20530

MEMORANDUM

March 27, 1980

TO: Robert L. Saloschin, Director
Office of Information Law and Policy

FROM: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

SUBJECT: Freedom of Information Requests of Mr. Harold Weisberg

Reference is made to Mr. Flanders' memorandum to you dated March 4, subject as above.

I have no strong objection to placing this subject on the agenda of the Freedom of Information Committee, although I see no real need to do so. I disagree with many of the assertions in Mr. Flanders' memorandum. I do not agree that the Bureau has searched adequately for "King" records within the scope of Mr. Weisberg's numerous requests. In fact, I am not sure that the Bureau has ever conducted a "search" at all, in the sense I (and, I believe, the FOIA) use that word. It is confusing two totally different matters -- the scope of his requests administratively and the scope of a single lawsuit which we claim is considerably narrower than his administrative requests. Not really touched on in Mr. Flanders' memorandum, but very much involved in this matter, is the issue of what are "duplicate" documents for purposes of the Freedom of Information Act. The Bureau has rejected -- still informally, but very emphatically -- the position I espouse (and with which you agreed in your informal comments on my earlier memorandum to you). Lastly, but very important, is the matter of the scope of the fee waiver granted to Mr. Weisberg. In my view (and as intended by me at the time it was granted), the waiver extends to all records about the King assassination, about the Bureau's investigation of the King assassination (not at all the same thing), about the "security investigation" on Dr. King, and about the

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(2)

Bureau's dealings with and attitudes towards its "friends" and its "critics" as they relate to the King case. The key point is that it extends to records by virtue of their subjects and contents, to the extent they can be located with a reasonable effort — and is not determined by where and how the Bureau has filed the records. Although the Bureau has departed from its initial position in both the King and Kennedy cases (that the only relevant records are those filed by the FBI in the main files on those cases and/or the very principal "players"), it has done so very reluctantly and to a very limited, factual extent. I am personally convinced that there are numerous additional records that are factually, logically and historically relevant to the King and Kennedy cases which have not yet been located and processed — largely because the Bureau has "declined" to search for them.

It is perhaps unfortunate that Mr. Weisberg is the principal requester for King and Kennedy records. He has heaped so much vilification on the FBI and the Civil Division — a considerable part of which has been inaccurate and some of which has been unfair — that the processing of his efforts to obtain these records has almost become an "us" against "him" exercise. My view has always been that the two cases are too important to the recent history of this country for that attitude to have any permissible operation.

The problem I have is that, although I know that what the Bureau wants the Committee to approve would contradict or be inconsistent with promises made to Mr. Weisberg by Bureau and Department representatives, and to representations made in court, and to testimony before the Aboureszk Subcommittee, I do not have the time to carry out the extensive research that would be required for me adequately to represent Mr. Weisberg's interests before the Committee, in an effort to avoid the very real blot on the Department's escutcheon which would result from the approval of the Bureau's position. Accordingly, if this matter is to be placed on the Committee's agenda, I strongly recommend that Mr. Weisberg and his lawyer, Jim Lesar, be invited to attend and participate in the discussions.

cc: Vincent Garvey, Esq.
Civil Division
Inspector Flanders
Federal Bureau of Investigation

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U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

NOV 6 1980

Professor G. Robert Blakey
Notre Dame Law School
Notre Dame, Indiana 46556

Re: Appeal No. 80-1814
QJS:KC:PLH

Dear Professor Blakey:

This letter is in response to your letter dated May 20, 1980, to David G. Flanders appealing his decision concerning your request for records pertaining to Rogelio Cisneros.

As a result of discussions between Bureau personnel and members of my staff, the Bureau has agreed to conduct an all reference search for any records on Mr. Cisneros that relate to the Kennedy assassination. To the extent that such records are located, they will be processed for release to you. I have concluded, however, that Mr. Cisneros is not so much of a public figure that all aspects of his life should be open to the public. In my judgment, even to confirm or deny the existence of investigatory records on Mr. Cisneros unrelated to the assassination would constitute an unwarranted invasion of his personal privacy, 5 U.S.C. 552(b)(7)(C), and, therefore, would violate the Privacy Act of 1974, 5 U.S.C. 552a(b). Accordingly, I am affirming the initial decision of the Bureau not to search for any such records.

Inasmuch as my action on this appeal does not constitute a complete grant of access, I am required by statute and departmental regulation to inform you of your right to judicial relief. Such relief is available in the United States District


- 2 -

Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where the records sought are located.

Sincerely,

John H. Shenefield
Associate Attorney General

By:


Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

to coemployees that he supposed Oswald would no longer wish to buy a car.⁶⁸⁵

Bogard's testimony has received corroboration.⁶⁸⁶ The assistant sales manager at the time, Frank Pizzo, and a second salesman, Eugene M. Wilson, stated that they recall an instance when the customer described by Bogard was in the showroom.⁶⁸⁷ Another salesman, Oran Brown, recalled that Bogard asked him to assist the customer if he appeared during certain evenings when Bogard was away from the showroom. Brown stated that he too wrote down the customer's name and both he and his wife remember the name "Oswald" as being on a paper in his possession before the assassination.⁶⁸⁸

However, doubts exist about the accuracy of Bogard's testimony. He, Pizzo, and Wilson differed on important details of what is supposed to have occurred when the customer was in the showroom. Whereas Bogard stated that the customer said he did not wish credit and wanted to purchase a car for cash,⁶⁸⁹ Pizzo and Wilson both indicated that the man did attempt to purchase on credit.⁷⁰⁰ According to Wilson, when the customer was told that he would be unable to purchase a car without a credit rating, substantial cash or a lengthy employment record, he stated sarcastically, "Maybe I'm going to have to go back to Russia to buy a car."⁷⁰¹ While it is possible that Oswald would have made such a remark, the statement is not consistent with Bogard's story. Indeed, Bogard has made no mention that the customer ever spoke with Wilson while he was in the showroom.⁷⁰² More important, on November 23, a search through the showroom's refuse was made, but no paper bearing Oswald's name was found.⁷⁰³ The paper on which Brown reportedly wrote Oswald's name also has never been located.⁷⁰⁴

The assistant sales manager, Mr. Pizzo, who saw Bogard's prospect on November 9 and shortly after the assassination felt that Oswald may have been this man, later examined pictures of Oswald and expressed serious doubts that the person with Bogard was in fact Oswald. While noting a resemblance, he did not believe that Oswald's hairline matched that of the person who had been in the showroom on November 9.⁷⁰⁵ Wilson has stated that Bogard's customer was only about 5 feet tall.⁷⁰⁶ Several persons who knew Oswald have testified that he was unable to drive,⁷⁰⁷ although Mrs. Paine, who was giving Oswald driving lessons, stated that Oswald was showing some improvement by November.⁷⁰⁸ Moreover, Oswald's whereabouts on November 9, as testified to by Marina Oswald and Ruth Paine, would have made it impossible for him to have visited the automobile showroom as Mr. Bogard claims.⁷⁰⁹

Alleged association with various Mexican or Cuban individuals.—The Commission has examined Oswald's known or alleged contacts and activities in an effort to ascertain whether or not he was involved in any conspiracy may be seen in the investigation it conducted as a result of the testimony given by Mrs. Sylvia Odio. The Commission investigated her statements in connection with its consid-

eration of the testimony of several witnesses suggesting that Oswald may have been seen in the company of unidentified persons of Cuban or Mexican background. Mrs. Odio was born in Havana in 1937 and remained in Cuba until 1960; it appears that both of her parents are political prisoners of the Castro regime. Mrs. Odio is a member of the Cuban Revolutionary Junta (JURE), an anti-Castro organization.⁷¹⁰ She testified that late in September 1963, three men came to her apartment in Dallas and asked her to help them prepare a letter soliciting funds for JURE activities. She claimed that the men, who exhibited personal familiarity with her imprisoned father, asked her if she were "working in the underground," and she replied that she was not.⁷¹¹ She testified that two of the men appeared to be Cubans, although they also had some characteristics that she associated with Mexicans. Those two men did not state their full names, but identified themselves only by their fictitious underground "war names." Mrs. Odio remembered the name of one of the Cubans as "Leopoldo."⁷¹² The third man, an American, allegedly was introduced to Mrs. Odio as "Leon Oswald," and she was told that he was very much interested in the Cuban cause.⁷¹³ Mrs. Odio said that the men told her that they had just come from New Orleans and that they were then about to leave on a trip.⁷¹⁴ Mrs. Odio testified that the next day Leopoldo called her on the telephone and told her that it was his idea to introduce the American into the underground "because he is great, he is kind of nuts."⁷¹⁵ Leopoldo also said that the American had been in the Marine Corps and was an excellent shot, and that the American said the Cubans "don't have any guts * * * because President Kennedy should have been assassinated after the Bay of Pigs, and some Cubans should have done that, because he was the one that was holding the freedom of Cuba actually."⁷¹⁶

Although Mrs. Odio suggested doubts that the men were in fact members of JURE,⁷¹⁷ she was certain that the American who was introduced to her as Leon Oswald was Lee Harvey Oswald.⁷¹⁸ Her sister, who was in the apartment at the time of the visit by the three men, and who stated that she saw them briefly in the hallway when answering the door, also believed that the American was Lee Harvey Oswald.⁷¹⁹ By referring to the date on which she moved from her former apartment, October 1, 1963, Mrs. Odio fixed the date of the alleged visit on the Thursday or Friday immediately preceding that date, i.e., September 26 or 27. She was positive that the visit occurred prior to October 1.⁷²⁰

During the course of its investigation, however, the Commission concluded that Oswald could not have been in Dallas on the evening of either September 26 or 27, 1963. It also developed considerable evidence that he was not in Dallas at any time between the beginning of September and October 3, 1963. On April 24, Oswald left Dallas for New Orleans, where he lived until his trip to Mexico City in late September and his subsequent return to Dallas. Oswald is known to

have been in New Orleans as late as September 23, 1963, the date on which Mrs. Paine and Marina Oswald left New Orleans for Dallas.⁷²¹ Sometime between 4 p.m. on September 24 and 1 p.m. on September 25, Oswald cashed an unemployment compensation check at a store in New Orleans:⁷²² under normal procedures this check would not have reached Oswald's postal box in New Orleans until at least 5 a.m. on September 25.⁷²³ The store at which he cashed the check did not open until 8 a.m.⁷²⁴ Therefore, it appeared that Oswald's presence in New Orleans until sometime between 8 a.m. and 1 p.m. on September 25 was quite firmly established.

Although there is no firm evidence of the means by which Oswald traveled from New Orleans to Houston, on the first leg of his Mexico City trip, the Commission noted that a Continental Trailways bus leaving New Orleans at 12:30 p.m. on September 25 would have brought Oswald to Houston at 10:50 p.m. that evening.⁷²⁵ His presence on this bus would be consistent with other evidence before the Commission.⁷²⁶ There is strong evidence that on September 26, 1963, Oswald traveled on Continental Trailways bus No. 5133 which left Houston at 2:35 a.m. for Laredo, Tex. Bus company records disclose that one ticket from Houston to Laredo was sold during the night shift on September 25-26, and that such ticket was the only one of its kind sold in the period of September 24 through September 26. The agent who sold this ticket has stated that Oswald could have been the purchaser.⁷²⁷ Two English passengers, Dr. and Mrs. John B. McFarland, testified that they saw Oswald riding alone on this bus shortly after they awoke at 6 a.m.⁷²⁸ The bus was scheduled to arrive in Laredo at 1:20 p.m. on September 26, and Mexican immigration records show that Oswald in fact crossed the border at Laredo to Nuevo Laredo, Mexico, between 6 a.m. and 2 p.m. on that day.⁷²⁹ Evidence set out in appendix XIII establishes that Oswald did not leave Mexico until October 3, and that he arrived in Dallas the same day.

The Commission noted that the only time not strictly accounted for during the period that Mrs. Odio thought Oswald might have visited her is the span between the morning of September 25 and 2:35 a.m. on September 26. The only public means of transportation by which Oswald could have traveled from New Orleans to Dallas in time to catch his bus from Houston to Laredo, would have been the airlines. Investigation disclosed no indication that he flew between these points.⁷³⁰ Moreover, it did not seem probable that Oswald would speed from New Orleans, spend a short time talking to Sylvia Odio, and then travel from Dallas to Mexico City and back on the bus. Automobile travel in the time available, though perhaps possible, would have been difficult.⁷³¹ The Commission noted, however, that if Oswald had reached Dallas on the evening of September 25, he could have traveled by bus to Alice, Tex., and there caught the bus which had left Houston for Laredo at 2:35 a.m. on September 26, 1963.⁷³² Further investigation in that regard indicated, however, that no tickets were sold, during the period September 23-26, 1963 for travel from

Dallas to Laredo or points beyond by the Dallas office of Continental Trailways, the only bus line on which Oswald could have made connections with the bus on which he was later seen. Furthermore, if Oswald had traveled from Dallas to Alice, he would not have reached the Houston to Laredo bus until after he was first reportedly observed on it by the McFarlands.⁷³³ Oswald had also told passengers on the bus to Laredo that he had traveled from New Orleans by bus, and made no mention of an intervening trip to Dallas.⁷³⁴ In addition, the Commission noted evidence that on the evening of September 25, 1963, Oswald made a telephone call to a party in Houston proposing to visit a resident of Houston that evening⁷³⁵ and the fact that such a call would appear to be inconsistent with Oswald's having been in Dallas at the time. It thus appeared that the evidence was persuasive that Oswald was not in Dallas on September 25, and, therefore, that he was not in that city at the time Mrs. Odio said she saw him.

In spite of the fact that it appeared almost certain that Oswald could not have been in Dallas at the time Mrs. Odio thought he was, the Commission requested the FBI to conduct further investigation to determine the validity of Mrs. Odio's testimony.⁷³⁶ The Commission considered the problems raised by that testimony as important in view of the possibility it raised that Oswald may have had companions on his trip to Mexico.⁷³⁷ The Commission specifically requested the FBI to attempt to locate and identify the two men who Mrs. Odio stated were with the man she thought was Oswald.⁷³⁸ In an effort to do that the FBI located and interviewed Manuel Ray, a leader of JURE who confirmed that Mrs. Odio's parents were political prisoners in Cuba, but stated that he did not know anything about the alleged Oswald visit.⁷³⁹ The same was true of Rogelio Cisneros,⁷⁴⁰ a former anti-Castro leader from Miami who had visited Mrs. Odio in June of 1962 in connection with certain anti-Castro activities.⁷⁴¹ Additional investigation was conducted in Dallas and in other cities in search of the visitors to Mrs. Odio's apartment.⁷⁴² Mrs. Odio herself was reinterviewed.⁷⁴³

On September 16, 1964, the FBI located Loran Eugene Hall in Johnsandale, Calif.⁷⁴⁴ Hall has been identified as a participant in numerous anti-Castro activities.⁷⁴⁵ He told the FBI that in September of 1963 he was in Dallas, soliciting aid in connection with anti-Castro activities. He said he had visited Mrs. Odio. He was accompanied by Lawrence Howard, a Mexican-American from East Los Angeles and one William Seymour from Arizona. He stated that Seymour is similar in appearance to Lee Harvey Oswald; he speaks only a few words of Spanish,⁷⁴⁶ as Mrs. Odio had testified one of the men who visited her did.⁷⁴⁷ While the FBI had not yet completed its investigation into this matter at the time the report went to press, the Commission has concluded that Lee Harvey Oswald was not at Mrs. Odio's apartment in September of 1963.

The Commission has also noted the testimony of Evaristo Rodriguez, a bartender in the Habana Bar in New Orleans, to the effect that he saw Oswald in that bar in August of 1963 in the company of a

Latin-appearing man.⁷⁴⁸ Rodriguez' description of the man accompanying the person he thought to be Oswald was similar in respects to the description given by Sylvia Odio since both testified that the man may have been of either Cuban or Mexican extraction, and had a slight bald spot on the forepart of his hairline.⁷⁴⁹ Rodriguez' identification of Oswald was uncorroborated except for the testimony of the owner of the bar, Orest Pena; according to Rodriguez, Pena was not in a position to observe the man he thought later to have been Oswald.⁷⁵⁰ Although Pena has testified that he did observe the same person as did Rodriguez, and that this person was Oswald,⁷⁵¹ an FBI interview report indicated that a month earlier Pena had stated that he "could not at this time or at any time say whether or not the person was identical with Lee Harvey Oswald."⁷⁵² Though when testifying, Pena identified photographs of Oswald, the FBI report also recorded that Pena "stated the only reason he was able to recognize Oswald was because he had seen Oswald's picture in the news media so often after the assassination of President John F. Kennedy."⁷⁵³ When present at Pena's bar, Oswald was supposed to have been intoxicated to the extent that he became ill,⁷⁵⁴ which is inconsistent with other evidence that Oswald did not drink alcoholic beverages to excess.⁷⁵⁵

The Commission has also noted the testimony of Dean Andrews, an attorney in New Orleans. Andrews stated that Oswald came to his office several times in the summer of 1963 to seek advice on a less than honorable discharge from the Armed Forces, the citizenship status of his wife and his own citizenship status. Andrews, who believed that he was contacted on November 23 to represent Oswald, testified that Oswald was always accompanied by a Mexican and was at times accompanied by apparent homosexuals.⁷⁵⁶ Andrews was able to locate no records of any of Oswald's alleged visits, and investigation has failed to locate the person who supposedly called Andrews on November 23, at a time when Andrews was under heavy sedation.⁷⁵⁷ While one of Andrews' employees felt that Oswald might have been at his office, his secretary has no recollection of Oswald being there.⁷⁵⁸

Oswald Was Not an Agent for the U.S. Government

From the time of his release from the Marine Corps until the assassination, Lee Harvey Oswald dealt in various transactions with several agencies of the U.S. Government. Before departing the United States for the Soviet Union in 1959, he obtained an American passport, which he returned to the Embassy in Moscow in October 1959 when he attempted to renounce his U.S. citizenship. Thereafter, while in the Soviet Union, Oswald had numerous contacts with the American Embassy, both in person and through correspondence. Two years later, he applied for the return and renewal of his passport, which was granted him. His application concerning the admittance of his wife to this country was passed upon by the Immigration and Naturalization Service of the Department of Justice in addition to the State Department. And before returning to this country, he

who wished to change his Marine discharge (CE 2901); that another employee in Andrews' office, R. M. Davis, recalled discussing with Andrews in June 1963 the procedure for reversing a discharge from the Marines and remembered that Andrews had mentioned Oswald on various occasions (CE 2900); and (3) that on November 25, 1963, Andrews gave the Secret Service information on Oswald's circumstances, and those of his wife, that would have been unknown to him had he not been visited by and conversed with the real Oswald, as he claimed.

The Report does not do justice to Andrews' testimony about his contacts with Oswald and his phone call from a man, thought to be Clay Bertrand, who asked him to defend Oswald. Needless to say, it does not mention the following fascinating passage of Andrews' testimony.

Andrews: There's three people I am going to find: one of them is the real guy that killed the President; the Mexican; and Clay Bertrand.

Liebler: Do you mean to suggest by that statement that you have considerable doubt in your mind that Oswald killed the President?

Andrews: I know good and well he did not. With that weapon, he couldn't have been capable of making three controlled shots in that short time.

Liebler: You are basing your opinion on reports that you have received over news media as to how many shots were fired in what period of time; is that correct?

Andrews: I am basing my opinion on five years as an ordnanceman in the Navy. You can lean into those things, and with throwing the bolts—if I couldn't do it myself, eight hours a day, doing this for a living, constantly on the range, I know this civilian couldn't do it. He might have been a sharp marksman at one time, but if you don't lean into that rifle and don't squeeze and control constantly, your brain can tell you how to do it, but you don't have the capability. . . . You have to stay with it. You just don't pick up a rifle or pistol or whatever weapon you are using and stay proficient with it. You have to know what you are doing. You have to be a conniver. This boy could have connived the deal, but I think he is a patsy. Somebody else pulled the trigger. . . . It's just taking the five years and thinking about it a bit. I have fired as much as 40,000 rounds of ammo a day for seven days a week. You get pretty good with it as long as you keep firing. Then I have gone back after two weeks. I used to be able to take a shotgun, go on a skeet, and pop 100 out of 100. After two weeks, I could only pop 60 of them. I would have to start shooting again, same way with the rifle and machine guns. Every other person I knew, same thing happened to them. You just have to stay at it.

Liebler: Now, did you see Oswald at any time subsequent to that time you saw him in the street. . . . (11H 330)

The defense rests.

The Proof of the Plot

When the radio flashed the news that the President had been shot while riding in a motorcade in Dallas, a young woman who heard the bulletin fainted and had to be removed by ambulance to a hospital in Irving.

She was Sylvia Odio, a twenty-six-year-old Cuban *émigrée* who was active in the anti-Castro movement. The shock that sent her into unconsciousness was the recollection of three men who had visited her apartment in Dallas at the end of September 1963 and the realization that it was "very possible that they might have been responsible, as one had mentioned that night that President Kennedy should have been killed by the Cubans." (CE 3147)

The three men who had called on Mrs. Odio on or about the twenty-sixth or twenty-seventh of September 1963 had identified themselves as members of an anti-Castro organization and as friends of Mrs. Odio's father, a political prisoner in Cuba, with whom they displayed personal familiarity. Two of the men appeared to be Cuban or Mexican. One called himself "Leopoldo" and the other had a name "something like Angelo." (11H 370) The third man was an American who was introduced as "Leon Oswald." (11H 369)

When Mrs. Odio saw Lee Harvey Oswald on television after his arrest, she recognized him immediately as "Leon Oswald." Her sister, Annie Laurie Odio, who had seen the three visitors briefly, independently recognized Oswald as one of the three men as soon as she saw him on television. (11H 382)

Mrs. Odio did not inform the authorities of her encounter with "Oswald" in September, perhaps because she "feared that the Cuban exiles might be accused of the President's death" (CE 3147); but a woman friend in whom Mrs. Odio had confided notified the FBI, on or before November 29, 1963 (11H 379, CE 3108).

In reporting Mrs. Odio's experience (WR 321-324), the Warren Commission does not question that three men visited her, as she alleged, but gives apparently forceful reasons for concluding that Oswald was not one of those men. The main argument is that Oswald's known movements ruled out his presence in Dallas at the time of the visit, on Thursday, September 26 or Friday, September 27, 1963.

The Commission points out that Oswald crossed the border into Mexico between 6 a.m. and 2 p.m. on Thursday, September 26. On Wednesday, he had cashed an unemployment check at a store in New Orleans which did not open until 8 a.m.; "therefore, it appeared that Oswald's presence in New Orleans until sometime between 8 a.m. and 1 p.m. on September 25 was quite firmly established." (WR 323)

The Commission acknowledges that there is no firm evidence of the means by which Oswald traveled to Houston on the first leg of his trip from New Orleans to Mexico but claims that his only time which is unaccounted for was between the morning of Wednesday the twenty-fifth (when his presence in New Orleans was "quite firmly established") and 2:35 a.m. on Thursday the twenty-sixth, when he boarded a bus in Houston headed for Laredo. The only way Oswald could have gone to Dallas, visited Mrs. Odio, and still arrived in Houston in time to catch the 2:35 bus to Laredo on Thursday the twenty-sixth was to fly, and investigation disclosed no indication that Oswald had traveled between those points by air.

Important Problems

In the Commission's own words:

In spite of the fact that it appeared almost certain that Oswald could not have been in Dallas at the time Mrs. Odio thought he was, the Commission requested the FBI to conduct further investigation to determine the validity of Mrs. Odio's testimony. The Commission considered the problems raised by that testimony as important in view of the possibility it raised that Oswald may have had companions on his trip to Mexico. (WR 324)

Note should be taken of the stipulation that Mrs. Odio's testimony was important, although the Commission somewhat understates the reasons. If Oswald had companions on his trip to Mexico, it would point to an organized, covert activity almost certainly related in some way to the Castro regime. Such mysterious associations and activities in September would demolish any November proposition that Oswald was a lone assassin and would pose overwhelmingly the outlines of a plot, implicating Cubans of some denomination, perhaps with non-Cuban backers, joined in a conspiracy against the life of the President of the United States.

If any aspect of the investigation was more crucial in its implications, it is not readily apparent. The Commission itself recognized the importance of Mrs. Odio's testimony. It is to be expected, then, that her story was the subject of extremely thorough and exacting scrutiny—scrutiny that enabled the Commission to satisfy itself and to assure the American people that there was no "Cuban plot" behind the assassination of President Kennedy but only a lone deranged assassin without political motive.

Just how thorough and exacting was the Commission's investigation?

Unfinished Business

The answer is that the Commission sent its Report to press without even completing the investigation into Mrs. Odio's story. This unbelievable denouement is acknowledged in the Report.

The Commission specifically requested the FBI to attempt to locate and identify the two men who Mrs. Odio stated were with the man she thought was Oswald.⁵

On September 16, 1964, the FBI located Loran Eugene Hall in Johnsandale, Calif. Hall has been identified as a participant in numerous anti-Castro activities. He told the FBI that in September 1963 he was in Dallas, soliciting aid in connection with anti-Castro activities. He said he had visited Mrs. Odio. He was accompanied by Lawrence Howard, a Mexican-American from East Los Angeles, and one William Seymour from Arizona. He stated that Seymour is similar in appearance to Lee Harvey Oswald; he speaks only a few words of Spanish, as Mrs. Odio had testified one of the men who visited her did.

⁵ In a letter to J. Edgar Hoover dated August 28, 1964. (CE 3045)

While the FBI had not yet completed its investigation into this matter at the time the report went to press, the Commission has concluded that Lee Harvey Oswald was not at Mrs. Odio's apartment in September 1963. [Italics added] (WR 324)

Considerable complacency is necessary to join the Warren Commission in assuming, on the basis of an unfinished investigation and an incomplete record, that William Seymour was the "Oswald" at Mrs. Odio's door. We are entitled to proof, not supposition. We are entitled to sworn testimony from Seymour, Hall, and Howard and to further testimony from Mrs. Odio and her sister after they are confronted with those three men.

However, even if the Commission had made a thorough investigation to prove that Hall, Howard, and Seymour were the three men who visited Mrs. Odio and that she and her sister mistakenly had identified Seymour as Oswald, the episode would still constitute strong evidence of conspiracy—but one directed against Oswald as well as the President.

Is there any other way to explain Seymour's introduction as "Leon Oswald"⁶ or the telephone call that Mrs. Odio received from "Leopoldo" the next day (IH 377) when he carefully told her (1) that "Leon Oswald" was a former Marine; (2) that "Oswald" was a crack marksman; (3) that "Oswald" felt that President Kennedy should have been assassinated after the Bay of Pigs; and (4) that "Oswald" was "Joco" and the kind of man who could do anything, like "getting" the Cuban underground or killing Castro.

Whether the visitor was Oswald himself, or Seymour impersonating Oswald, "Leopoldo" took pains to plant seeds which inevitably would incriminate Oswald in the assassination carried out on November 22, so that an anonymous phone call would be enough to send the police straight after him even if he had not been arrested within the hour.⁷ In itself, this setting-the-stage made it imperative for the Commission to press the investigation to the limits and to consider Loran Hall, Lawrence Howard, and William Seymour as prime suspects in the assassination, if they proved to be the men who had visited Mrs. Odio, unless an innocent and incontrovertible explanation for their antics was established.

The Commission's failure to get to the bottom of this affair, with its incapable implications, is inexcusable. If the Commission could leave such business unfinished, we are entitled to ask whether its members were ever determined to uncover the truth. Indeed, the Commission did not even give an honest account of such facts as were established. Its own Exhibits expose the "evidence" presented in the Report as a tissue of evasion and deception which discredits more than it justifies the conclusion that Oswald could not have visited Mrs. Odio.

⁶ The FBI was not unaware of this stumbling block, but it seems unnecessary to take seriously its suggestion that "the name Loran Hall bears some phonetic resemblance to the name Leon Oswald" (CE 3146), an "explanation" that the Commission prudently omitted from the Report—without, however, offering a better one, or, for that matter, confronting the difficulty at all.

⁷ See Chapter 3, footnote 8.

A Credible Witness

Before documenting the charge of deception by the Commission, we should examine the possibility of deception by Mrs. Odio in her testimony about a visit at the end of September 1963 by three men who represented themselves as members of the anti-Castro underground. Several points speak in favor of her credibility, including the fact that the Commission itself concedes the reality of the visit and questions only the identity of one member of the trio.

Mrs. Odio's sister corroborates the visit and recognizes Oswald as one of the men. A letter from Mrs. Odio's father (*Odio Exhibit 1*) corroborates her testimony (*IIH 368*) that she had written to him to inquire whether the three men were his friends, as they claimed.

Moreover, Mrs. Odio related the incident to her psychiatrist a few days after the event (*IIH 373, 381*); representatives of the Warren Commission had a discussion lasting more than an hour with the psychiatrist, Dr. Einspruch, which apparently satisfied them that Mrs. Odio was trustworthy (*IIH 381*). (The official record does not include a transcript or summary of that discussion, perhaps in deference to the confidential nature of the doctor/patient relationship.)

Finally, Mrs. Odio's collapse upon hearing the news of the assassination adds force to her story.⁸

An Accurate Witness?

The accuracy of Mrs. Odio's identification of "Oswald" must be evaluated also. The following facts suggest that it is very unlikely that this was a case of mistaken identity:

- (1) The use of the name "Leon Oswald";
- (2) The immediate recognition of Oswald on television;
- (3) The assertion by the three men that they had just come to Dallas from New Orleans (*IIH 372*), the city which Oswald is said to have left on September 25;
- (4) The assertion by the three men that they were "leaving for a trip" (*IIH 372*), just as Oswald embarked on a trip to Mexico City; and
- (5) "Leopoldo's" statement that he might attempt to introduce "Leon Oswald" into the underground in Cuba, shortly before Oswald actually attempted to obtain a visa for travel to Cuba.

This series of parallels may not constitute conclusive evidence that Mrs. Odio's identification of "Oswald" was correct, but if they are not in the realm of the supernatural, they are persuasive manifestations of the authentic Oswald. If the Commission nevertheless wishes to substitute William Seymour, it might at least explain the means by which the image of Oswald was projected with such fidelity—and why.

⁸ Edward Jay Epstein's book *Inquest* (p. 102) throws additional light on Mrs. Odio's credibility, revealing that Counsel Wesley J. Liebeler "found that a number of details in the woman's story coincided with facts she could not possibly have known."

The Wayward Bus-Rider

Although the prima-facie evidence for Mrs. Odio's encounter with the real Oswald is strong, the constraints postulated by the Commission against Oswald's presence in Dallas at the appropriate time cannot be ignored. According to the Report, Mrs. Odio fixed the time of the visit as Thursday the twenty-sixth or Friday the twenty-seventh of September. Mrs. Odio actually told the FBI that the visit might have been on Wednesday the twenty-fifth, "although she considered the Thursday date to be the most probable." (*CE 3147*)

While the Report does not make it clear that the visit *might* have taken place on Wednesday the twenty-fifth, it does concede the absence of firm evidence as to the means by which Oswald traveled on that date from New Orleans to Houston. Somewhat murky, the Commission then suggests that Oswald's presence on a Continental Trailways bus that left New Orleans at 12:30 p.m. on Wednesday the twenty-fifth "would be consistent with other evidence." (*WR 323*) In Appendix XIII, the Commission becomes bolder, and asserts that "he left New Orleans by bus, probably on Continental Trailways Bus No. 5121, departing New Orleans at 12:20 p.m. on September 25 and scheduled to arrive in Houston at 10:50 p.m." (*WR 731*)

That assertion is arbitrary, lacking positive evidence and overcoming negative evidence by the simple expedient of disregarding it. As will be shown, the Commission did not even convince itself that Oswald left New Orleans on that bus. There is no documentary trace of his presence; the driver did not remember "ever seeing Oswald in person at any time" (*CE 2134*); and not one passenger has turned up who recalled seeing Oswald on Bus No. 5121. Since the bus ride from New Orleans to Houston takes almost 12 hours (*CE 2962*), the lack of witnesses to Oswald's presence on a bus between those two points is evidence of a sort against the Commission's supposition. Other dates or other modes of travel must therefore be considered.

Mrs. Odio's callers were traveling in a car, with "Leopoldo" driving (*IIH 372*), a detail which the Report neglects to mention. The authors, arguing against a stopover in Dallas en route to Houston, say laconically that "automobile travel in the time available, though perhaps possible, would have been difficult." (*WR 323*)

Even under the Commission's restrictions on "the time available," and in the admitted absence of firm evidence of the way in which Oswald traveled the 358 miles from New Orleans to Houston (*CE 3090*), it appears that he *could* have traveled from New Orleans to Dallas (503 miles) in "Leopoldo's" car, and from Dallas to Houston (244 miles) in the same vehicle, or by private airplane for all we know.

Under the Commission's constraints, Oswald had to cover those distances between 8 a.m. Wednesday, September 25, and 2:35 a.m. Thursday, September 26. But if the basic facts are disentangled from the Report, extracted from the Hearings and Exhibits, and reassembled, the constraints begin to appear dubious, if not artificial. The evidence that Oswald boarded "Bus No. 5133 in

Houston and departed at 2:35 a.m." on Thursday, September 26 (WR 732) is unclear. A ticket agent in the Houston bus terminal sold a ticket to Laredo to a man who could have been Oswald (WR 323); but the man's clothes (brown and white sweater, white dungarees, and white canvas shoes) did not correspond with any of Oswald's garments, and none of the other 11 employees on duty in the bus terminal at the time had any recollection of seeing Oswald (CE 2191). A married couple who were passengers on Bus No. 5133 stated, in a brief affidavit, that they believed that they first saw Oswald on the bus shortly after they awoke at 6 a.m. (III 214); however, they were not pressed to be more precise, and it cannot be said that their testimony is sufficient to place Oswald on the bus at 2:35 a.m. at Houston.

The other constraint imposed by the Commission is even shakier. Oswald was seen leaving his apartment in New Orleans, carrying two suitcases, on Tuesday evening, September 24, according to a neighbor. (WR 730) After that time, there is no definite trace of him in that city. But the Report insists that Oswald was in New Orleans at least until 8 a.m. on Wednesday because he cashed a check at a New Orleans store sometime after 8 a.m. that day. The citation for that statement is an FBI memorandum dated April 7, 1964, which reports:

The Winn-Dixie Store, #1425, 4303 Magazine Street, New Orleans, Louisiana, the place where the warrant dated September 23, 1963 was cashed, was not open to the public on September 25, 1963 until 8 a.m. J. D. Fuchs, Manager . . . approved the warrant for cashing. . . . Mrs. Thelma F. Fisher, Cashier #3 . . . actually cashed the warrant. . . . (CE 2131)

Usually, when the Commission discusses a specific check issued to and cashed by Oswald, the footnotes refer to reports of interviews with the cashiers (see, for example, CE 1165, 1167) and photocopies of the face and back of the check (see CE 1173-1175, 3121). But when the Commission discusses the \$33 check which is claimed to fix Oswald's presence in New Orleans until a specific hour on a specific day, only the FBI memorandum (CE 2131) is cited—no interviews with Mr. Fuchs or Mrs. Fisher and no photocopy of the specific check.

In this instance the Commission itself was not satisfied with the evidence. The direction of the Commission's thinking less than a month before its Report was released is graphically revealed in a letter signed by J. Lee Rankin, addressed to J. Edgar Hoover, dated August 28, 1964. Rankin states:

We are also concerned about the possibility that Oswald may have left New Orleans on September 24, 1963 instead of September 25, 1963 as has been previously thought. In that connection, Marina Oswald has recently advised us that her husband told her he intended to leave New Orleans the very next day following her departure on September 23, 1963. She has also indicated that he told her an unemployment check would be forwarded to Mrs. Ruth Paine's address in Irving from his post office box in New Orleans. We also have testimony that Oswald left his apartment on the evening of September 24, 1963 carrying two suitcases.

It also seems impossible to us that Oswald would have gone all the way back to the Winn-Dixie Store at 4303 Magazine Street to cash the unemployment check which he supposedly picked up at the Lafayette Branch of the Post Office when he could have cashed it at Martin's Restaurant, where

he had previously cashed many of his Reily checks and one unemployment check. That is particularly true if he received the check on September 25, 1963, as previously thought, and had left his apartment with his suitcases the evening before. [Italics added] (CE 3045)

No new evidence on these points was turned up after Rankin's letter to the FBI on August 28, 1964; the possibility that Oswald had left New Orleans on Tuesday, September 24 instead of Wednesday, September 25 was not ruled out. Nonetheless, when the Warren Report was published less than a month later, the very same allegations which Rankin had questioned sharply were now incorporated as "facts."

It is imprudent to overlook the alacrity with which the FBI produced Loran Eugene Hall on September 16, 1964 following on Rankin's request of August 28 to "determine who it was that Mrs. Odio saw in or about late September." (CE 3045) The FBI had been investigating Mrs. Odio's story without locating the three men since December 18, 1963, when she was interviewed by FBI agents James Hosty and Bardwell Odum. (III 369) For reasons unknown, the FBI report on that interview has been omitted from the exhibits; also missing are about ten FBI reports mentioned in Rankin's letter to Hoover (CE 3045).⁹

It's amazing how efficiently the FBI found Loran Hall after Rankin's letter, following an unsuccessful investigation during the preceding nine months; unfortunately, there is no interview report on Loran Hall, no address, no physical description, no indication of his age, nor any details which might permit a comparison with "Leopoldo."

Another footnote to Rankin's letter of August 28, 1964, in which he suggested that Oswald might have left New Orleans a day earlier than believed previously, is the press leak that appeared a few days later. The *New York Post* of August 31, 1964 reported:¹⁰

Investigative agencies have spent many hours and interviewed hundreds of witnesses since the Nov. 22 assassination trying to trace Oswald's steps on the Mexico trip.

It is known, for instance, that he was seen in a Dallas bus station at 6 p.m. Sept. 25 and that he crossed the border at Nuevo Laredo next day. [Italics added]

That is the first and last we hear of witnesses who saw Oswald in a Dallas bus station at six o'clock Wednesday; the Report does not dignify that rumor with a refutation.

At the end of this trail of uncertain and shifting evidence, there seem to be strong but not conclusive grounds for believing that Mrs. Odio's identification of Oswald was correct. However, the Commission's failure to press its investigation to completion leaves open at least a possibility that "Leon Oswald" was

⁹ Reports of Gemberling, December 23, 1963; O'Connor, December 31, 1963; Cleimants, December 14, 1963; Callender, December 24, 1963; April 16, 1964; Kemmy, December 23, 1963; letterhead memorandum, April 15, 1964. The reports covered investigations in Dallas, Miami, New Orleans, Houston, and San Antonio.

¹⁰ "Bus Stub Traces Oswald in Mexico," *New York Post*, August 31, 1964, p. 4.

really William Seymour; and that—in complicity with Loran Hall and Lawrence Howard—Seymour was engaged in a deliberate impersonation of Oswald.

But such a hypothesis requires a link between Oswald and his impersonator through which the latter acquired sufficient familiarity with Oswald's history and circumstances to permit successful impersonation.

The Ingredients of Conspiracy

In the vein of pure speculation, it is possible to postulate a series of threads connecting persons known and unknown which would satisfy the conditions for successful impersonation. The starting point is the summer of 1963, when Oswald came into contact with Carlos Bringuier and others who were active in the organized anti-Castro movement at New Orleans. (WR 407-408, 728-729)

Oswald sought out Bringuier under circumstances which suggest a calculated attempt to infiltrate the anti-Castro movement, perhaps in the hope of acquiring "credentials" for a future defection to Cuba. That is how Bringuier regarded the incident. (10H 32-43)

Bringuier alerted other anti-Castroites against Oswald. One of Bringuier's cohorts went on an infiltration mission of his own, after consulting Bringuier. He went to Oswald's house "posing as a pro-Castro" to "try to get as much information as possible from Oswald." (10H 41) Bringuier also informed Edward Butler, an anti-Communist propagandist (10H 42; 11H 166, 168), who tried "to contact some person, somebody in Washington, to get more the background of Oswald" (10H 42), and apparently did obtain information on Oswald from the House Un-American Activities Committee (11H 168).

It is a reasonable assumption that a warning against Oswald went out also to the right wing of the anti-Castro movement in other cities, Dallas included, and to their American sponsors and supporters, both official (CIA and perhaps FBI) and unofficial (various ultra-reactionary groups). The anti-Castro movement is composed of many competing factions, ranging from the Batistianos and far-rightists (DRF, for example¹¹) who seek the restoration of a regime like Batista's (under which Cuba was an American colony in everything but name), to liberal and reform groups (like Manolo Ray's MRP or later his JURE,¹² which is considered leftist and tantamount to "Castroism without Castro"). The reactionary wing of the movement and the CIA have cordial and close relations, whereas the moderate and progressive factions do not enjoy the CIA's confidence and were systematically excluded from the CIA's planning of the Bay of Pigs adventure (see, for example, *Bay of Pigs* by Haynes Johnson,¹³ or *A Thousand Days* by Arthur M. Schlesinger, Jr.¹⁴).

The right-wing Cuban émigrés were bitter and infuriated by the humiliating defeat at the Bay of Pigs, blaming President Kennedy for refusing to permit direct American military participation in the invasion. The CIA, whose conduct

11 DRF (*Frente Revolucionario Democrático*)

12 MRP (*Movimiento Revolucionario del Pueblo*); JURE [*Junta Revolucionary*]

13 *The Bay of Pigs* (Dell Books, New York, 1964).

14 *A Thousand Days* (Houghton Mifflin, Boston, 1965).

of the whole affair brought the agency into disgrace and jeopardy, had made arrangements to overrule President Kennedy if he canceled the invasion at the last minute, so that the landing at the Bay of Pigs would go ahead regardless of Presidential orders. The revelation that the CIA had contemplated countermanding the White House, on top of its incredible bungling of the invasion from beginning to end, suggested an early end to what has been called "the invisible government,"¹⁵ and a threat to their Cuban protégés.

Dallas, with its hospitable political climate and its plentiful money, inevitably was an outpost of the anti-Castro right wing. Mrs. Odio testified that the Crestwood Apartments, where she lived at the time of the visit by "Leon Oswald," was "full of Cubans." (11H 374) Fund-raising meetings were held in a Dallas bank, by Cuban exiles and their American sympathizers. (CE 2390) Mrs. Odio said that all the Cubans knew that she was a member of JURE, "but it did not have a lot of sympathy in Dallas and I was criticized because of that." (11H 370)

Father Walter J. McChann, who was active in a Cuban Catholic committee concerned with the welfare and relief of Cuban refugees in Dallas, told the Secret Service about a Colonel Caster who was associated with the committee. Father McChann said that Colonel Caster was a retired Army officer who seemed to be "playing the role of an intelligence officer in his contacts with the Cubans" and that he seemed to be "more interested in their political beliefs than in their economic plight or their social problems in the new country." (CE 2943)

Mrs. C. L. Connell, a volunteer worker in the committee, also mentioned the Colonel. She told the FBI on November 29, 1963 that "General Walker and Colonel (FNU) Caster, a close acquaintance of Walker, have been trying to arouse the feelings of the Cuban refugees in Dallas against the Kennedy administration" in speeches before Cuban groups in the Dallas area "in recent months." (CE 3108) (Neither the FBI nor the Warren Commission found that news of sufficient interest to warrant an interview with the Colonel.)

At this point, a hypothetical series of links connects Oswald to Bringuier—Bringuier to the anti-Castro movement in Dallas—the anti-Castro movement to Colonel Caster—and Colonel Caster to General Walker. Walker's right-hand man is Robert Allan Surrey.¹⁶ According to Surrey's own statement in the *Midlothian* (Tex.) *Mirror*, he and FBI Agent James Hosty are bridge-playing companions.¹⁷

Another thread leads from the Walker establishment to Jack Ruby. A former employee of the General's, William McEwan Duff, believed that he had seen Ruby visiting the Walker residence. (CE 2981) There is strong evidence from Robert McKeown (CE 1688-1689, CE 3066) and testimony from Nancy Perrin Rich (14H 345-353) that Ruby was involved in the illegal supply of arms to the Cuban underground.

15 According to *The New York Times* of April 25, 1966 (p. 20, col. 3), President Kennedy told one of the highest officials of his Administration after the Bay of Pigs disaster that he wanted "to splinter the C.I.A. in a thousand pieces and scatter it to the winds."

16 Surrey, apparently, "closely resembled" Oswald (CEs 1836, 2473).

17 "Reopen the Warren Commission," *Midlothian* (Tex.) *Mirror*, March 31, 1966, p. 2, col. 3.

Mrs. Rich testified that she had attended a meeting in Dallas to discuss an offer to her husband of a large sum of money for running guns to Cuba and bringing refugees out to Miami. The head of the group that tried to enlist her husband was an army colonel; another member present at the meeting was Jack Ruby, whom Mrs. Rich recognized at once as her former employer at the Carousel Club, where she had worked briefly as a cocktail waitress.

Ruby, of course, had close links to the Dallas police, some of whom had independent links to the ultra-right in Dallas. J. D. Tippit, for example, had a moonlighting job at Austin's Barbecue; the man who was his boss, Austin Cook, is an acknowledged member of the John Birch Society. (CE 2985)

All these threads can be combined in a web that covers the terrible and unfathomed events of November 22-24, 1963. The nucleus consists of reactionary Cuban exiles who have compiled a record of violence in their new country, ranging from attacks with bicycle chains and Molotov cocktails on peacefully assembled American citizens, to a bazooka attack on the United Nations building; these Cuban counter-revolutionaries are linked to the American ultra-right by many mutual interests, not the least of which was a hatred for President Kennedy, kept at the boiling point by systematic propaganda from, among others, former American army officers.

Is it farfetched to postulate the formation of a plot among members of those circles to revenge themselves not only against the President whom they considered a Communist and a traitor but also against a Marxist and suspected double-agent who had tried to infiltrate the anti-Castro movement?

This hypothesis is, of course, purely theoretical, a mere exercise in speculation attempting to explain the possible rationale for an impersonation of Oswald, in the context of Mrs. Odio's experience and of other stories that pose the possibility of deliberate and informed impersonation.

I am not arguing that such a plot existed, but I do suggest that the Warren Commission's job was to consider and check out all possible theories, however far-out, and not to dispose of disturbing evidence like that lingering in the Odio story by illusory "facts."

Congressman Gerald Ford, one of the members of the Commission, has said that "the monumental record of the President's Commission will stand like a Gibraltar of factual literature through the ages to come."¹⁸ The Commission's unfinished business may not disturb the Commission's self-satisfaction or its self-imposed silence; but for those who are haunted by sentence of a frightful miscarriage of justice, and troubled by the loose ends in the "monumental record," that complacency remains incomprehensible.

Epilogue to the Odio Story

Senator John Sherman Cooper never replied to this author's letter of January 21, 1966, requesting information on the results of the investigation of Loran

¹⁸ *Portrait of the Assassin*, pp. 451-452.

Eugene Hall and his friends, which was still in progress when the Warren Report was published.

In July 1966 researcher Paul Hoch was kind enough to make available excerpts from Commission Document 1553 which he had obtained at the National Archives, consisting of an FBI report dated October 2, 1964. That FBI report indicates that only two days after the original locating of Loran Eugene Hall on September 16, 1964, an interview with William Seymour (the FBI did not say whether Seymour in fact resembled Lee Harvey Oswald) elicited a denial that he was even in Dallas in September 1963 or had ever had any contacts with Sylvia Odio. Subsequent interviews with Loran Hall, Lawrence Howard, Sylvia Odio, and Annie Laurie Odio resulted in the collapse of the assumption that Hall, Howard, and Seymour were the men who had visited Mrs. Odio, representing one of their number as "Leon Oswald."

The FBI report of October 2, 1964 was transmitted to the allegedly disbanded Warren Commission well before the release of the Hearings and Exhibits at the end of November 1964. The document was not included among the Exhibits, and if it ever came to the attention of Senator Cooper, he was not prepared to communicate the fact that the possibility of an innocent mistake in identity had disintegrated.

That denouement throws wide open again the whole Odio story with all its implications. We know from Warren Commission Counsel Liebler that details in Mrs. Odio's story coincided with facts to which she had no access and that the possibility of fabrication is thus virtually destroyed. That leaves two possibilities open: that the real Oswald visited Mrs. Odio with two companions, one of whom deliberately planted highly incriminating information about him without his knowledge; or that a mock-Oswald visited her, to accomplish the same purpose.

If there is a re-investigation of the assassination—as there must be if we are not to become the permanent accomplices in the degradation of justice which has taken place—the Odio affair should be high on the agenda.

on television. At that time Rodriguez "run from his house to my house to tell me about it" (11H356).

Ruperto Pena had little to add (11H364-7). He described himself, through interpreter FBI Agent Richard E. Logan, as "more or less pro-Batista." He was not in the bar at the time of Oswald's visit, but he did discuss it later with Rodriguez (11H339-46), upon whom the first mention he had ever heard of lemonade made a lasting impression.

Speaking through the same interpreter, the night bartender, Rodriguez, recalled the patronage of "These two men (who came into the bar). One of them spoke Spanish (and) ordered the tequila . . . Then the man I later learned was Oswald ordered a lemonade. Now, I don't know what to give him because we don't have lemonades in the bar. So I asked Orest Pena how to fix a lemonade. Orest told me to take a little of his lemon flavoring, squirt in some water, and charge him 25 cents for the lemonade, and that's the incident surrounding this situation" (11H342).

It was really only the beginning. There was an exchange of unpleasantries about the prices, and Oswald apparently found one of the Rodriguez lemonades enough. He switched and got drunk, with such a monumental illness that Rodriguez described it thus: "He got sick on the table and on the floor" and into the street where "he continued to be sick." Oswald's companion "could have been a Mexican," but Rodriguez said "at this point I don't recall." He was positive that the man was hairy, a description subsequently used by Mrs. Sylvia Odio in detailing the appearance of the two men who accompanied the man introduced to her as Oswald. In other respects their descriptions also agree. This man was about 5'8" and rather stocky. They, as did other witnesses, clearly recalled this man's "receding hairline."

Unable to recall the exact date, Rodriguez related it to what was then undoubtedly a big thing in the Cuban colony, the Bringuiet demolition of the Oswald handbill distribution. Rodriguez said Oswald's only recorded pub-crawling was a few days either side of the incident. His recollection of the lemonade incident was so clear he even described the part of the bar in which the pair was seated (11H343).

Rodriguez made positive identification of Oswald from pictures (11H345). His opinion of the faithfulness with which the three different pictures represent Oswald coin-

cides with that of Mrs. Odio (11H383). They were shown Bringuiet Exhibit No. 1 (19H173), Garner Exhibit No. 1 (20H4), and Pizzo Exhibit 453-C (21H140). Each made immediate identification from the Bringuiet exhibit. Rodriguez said of the Garner photograph that the Bringuiet one seemed a better representation (11H345-6). Mrs. Odio said of the Garner picture that, while she could identify "Oswald," he did not look quite the same (11H385). Shown the Pizzo picture, Rodriguez (11H346) and Mrs. Odio (11H385) each indicate a difference in appearance.

FBI Agent Logan summarized Rodriguez's picture testimony, saying, "In his mind 'Bringuiet Exhibit No. 1,' which has the man with the 'X' on him is the man who was in the bar and who he later learned was Oswald. This picture stands out in his mind the best, reminds him of the man best; this one (Pizzo) appears to him to be Oswald, but he still says the other photograph is the one he can best identify . . ." (11H346).

Closely paralleling the testimony of the Cubans was that of Attorney Dean Adams Andrews, Jr. (11H325-39), who flavored his remarks with a pungency of speech and picturesqueness of phrasing that lent an unseemly lightness to the seriousness of the occasion. He also volunteered expert data on firearms and other unsolicited information.

In the summer of 1963 "Oswald came into the office accompanied by some gay kids. They were Mexicanos. He wanted to find out what could be done in connection with a discharge, a yellow discharge . . . when he brought the money I would do the work, and we saw him three or four times subsequent to that, not in the company of the gay kids. He had this Mexicano with him. . . ." Later Andrews saw some of these "gay kids" professionally after a police "scoop" that resulted in the arrest of about 50 "for wearing clothes of the opposite sex." Andrews apparently has more than a fair share of this kind of clientele from the Latin population. Asked to estimate the volume, he said, "Last week there were six of them . . . Depends on how bad the police are rousting them. They shoo them in. My best customers are the police . . . God bless the police" (11H-336).

Andrews' link with this element was a semi-mysterious Clay Bertrand, whom he described as "a lawyer without a briefcase" (11H337). Bertrand frequently phoned him on behalf of the homosexual clients "either to obtain bond or

parole for them. I would assume he was the one that originally sent Oswald and the gay kids . . . because I had never seen those people before at all" (11H331).

He is looking for Bertrand and the Mexican but indicated the latter was no longer in New Orleans because "he just couldn't have disappeared because the Mexican community here is pretty small. You can squeeze it pretty good . . . He is not known around here . . . Not too many places they can go without being noticed." His search was subsequent to the assassination (11H331). Bertrand owes him money, and Andrews connects both with the assassination. Six weeks prior to his July 21, 1964, appearance, he saw Bertrand in a bar and he "spooked" through another entrance when Andrews sought a phone to alert the FBI. Andrews berated himself for not following his instinct, saying, "What I wanted to do and should have done is crack him on the head with a bottle . . . I probably will never find him again . . . he could be running because they have been squeezing the quarter pretty good looking for him . . . somebody might have passed the word he was hot and I was looking for him . . ." (11H334, 337). Andrews indicated the FBI is also looking for at least the Mexican, and said, the FBI needs "Latin stools for that boy."

Andrews also saw Oswald distributing his literature outside his office and said there were "a lot of guys . . . that will tear your head off if they see you" with pro-Castro literature (11H329).

Shown the Bringer photograph, he identified Oswald and also said, "a client of mine is over here on the right-hand side . . . And that dress belongs to a girl friend" (11H329). In this sequence, Andrews also describes the Mexican as "stocky, well built," which is in conformity with the other descriptions. Further testifying about the Mexican, Andrews injected a detective-story note, saying, "There's three people I'm going to find: One of them is the real guy that killed the President; the Mexican; and Clay Bertrand."

During Andrews' testimony there were other clear and important leads the Commission did not follow, or, if it did follow them, failed to mention in the Report. As it customarily did with witnesses whose testimony was unwanted, the Report dismisses Andrews in a paragraph (R325) which concludes, "Andrews was able to locate no records of any of Oswald's alleged visits, and investiga-

tion has failed to locate the person who supposedly called Andrews on November 23, at a time when Andrews was under heavy sedation. While one of Andrews' employees felt that Oswald might have been at his office, his secretary has no recollection of Oswald being there."

Andrews' testimony on his lack of records, and the Report fails to contradict him, was clear and gave no basis for the Report's innuendo. He declared, "My office was rifled shortly after I got out of the hospital." He was hospitalized at the time of the assassination (11H331). This burglary of Andrews' files, undisputed by the Report, should have been of keen interest to the Commission.

Andrews' "employee" is his private investigator, Preston Davis, whom Andrews quoted as recalling Oswald's visit (11H335-6). The secretary is Eva Springer who, Andrews said, did not recall Oswald's visit. Neither was called by the Commission. Both, however, were interviewed by the FBI (26H356-7). There are no statements or affidavits from either. In the absence of testimony, these would be best evidence, for even if impartial, the FBI's reports are still secondhand. Nonetheless, both corroborate Andrews.

In the language of the FBI report, "Davis advised that he can not positively state that Lee Harvey Oswald was ever in Andrews' office, but after viewing numerous photographs of Oswald on various TV programs, can state that he is vaguely familiar and may have visited Andrews' office. In addition, he can recall Andrews' mentioning to him on various occasions that an individual named Oswald had been to Andrews' office." Davis also told the FBI he recalled that in June 1963 Andrews "discussed with him the procedure to amend or correct an undesirable discharge from the Marine Corps."

Miss Springer did not recall Oswald but "she recalls Andrews' speaking to her briefly about someone being interested in changing a discharge from the Marine Corps . . ."

Both of these statements are dated December 6, 1963.

It was, in fact, through Andrews that the FBI visited his employee for, although ill, in the hospital, and under heavy sedation, Andrews on November 25, 1963, phoned the Secret Service New Orleans office and gave them the following information about Oswald: That on three occasions, in June-July 1963, Oswald had seen him relative

to his undesirable Marine discharge and his own and his wife's citizenship status; that on November 23, Clay Bertrand had asked him about defending Oswald; and that Oswald's discharge was interfering with his employment possibilities. Andrews also told the Secret Service essentially the same thing as he subsequently testified to, about Oswald's Latin associates (26H732-3).

Is it not asking too much to believe that a man hospitalized and under sedation could have invented a story with such remarkable accuracy so soon?

At the time Clay Bertrand phoned to ask him to represent Oswald, by Andrews' own account he was "squirrelly" and is unclear whether this call was on the 23rd or 24th (he told the Secret Service the 23rd). Unable to go himself, "... I called Monk Zelden ... and asked Monk if he would go over ... I thought I called Monk once. Monk says we talked twice" (11H337). No lawyer—no one named Zelden appeared before the Commission.

These clear evidences of a "False Oswald," the connections of the real or false one with Cuban refugee groups and the attempted establishment of a "cover" in New Orleans are totally ignored by the Commission in its exhaustive inquiry into Oswald's trip to Mexico City, from September 26 until October 3, 1963 (R299-311, 658-9, 730-6).

But it is in this context only that his trip makes sense or has reason. Except for the collateral benefits of being able to quiet rumors and speculations about his possible connections with foreign governments, this tremendous effort in which presumably the FBI and CIA collaborated, possibly with some help from the State Department and in which the Mexican Government assisted, was wasted. There are few things Oswald said or did during the trip that remain unknown. Passengers who shared the buses were tracked down all over the world and interviewed. They recalled his conversation (pro-Castro, and he hoped to get to Cuba), what he ate, where he ate it, where he slept, who he saw where—all are completely and uselessly recorded. Even details of his conferences with the officials of the Cuban and Russian consular staffs are recorded. These included a fight he had with Cuban Consul Eusibio Azque, a long-time career civil servant.

Upon being told by Señora Silvia Tirado de Duran, a Mexican national employed by the Cuban consulate, that

there would be a four-month delay in consideration of his visa application, Oswald blew his stack. All those press notices, all the trouble he had gone to, all his phoney "Fair Play for Cuba" activity which he showed Señora Duran, were wasted. When Oswald became "very excited," Azque came out of his office "and began a heated discussion with Oswald that concluded by Azque telling him that a person of his type was harming the Cuban Revolution rather than helping it."

None of the rest of Oswald's Mexican trip had any bearing on what led to the assassination. It is a truly impressive investigation, a credit to the competence of the investigative agencies, but immaterial because it is out of context.

Oswald "blew his cover," in the terminology of the intelligence trade. And he returned to Dallas.

It was later revealed that he had been kept under surveillance (Newsweek, 12/9/63). This is clear from the knowledge the FBI had of him, disclosed in the very first interrogation November 22, 1963.

Whatever value Oswald might have had to his Cuban associates, he had none when he left Mexico City. He was, to them, the most expendable of men.

Meanwhile, back in Dallas, the "False Oswald" and his companions were busy. Within a day or two of Oswald's departure from New Orleans, they knocked on the door of the modest apartment of Mrs. Sylvia Odio, the United States-educated daughter of a once prominent Cuban couple, then imprisoned on the Isle of Pines (R321-4; 11H367-89).

Representing themselves as friends of her father and as coming from the Cuban anti-Castro group known as JURE, led by Manolo Ray, they quickly overcame her initial uneasiness. Ray, she said, "is a very close friend of my father and mother. He hid in my house several times in Cuba" (11H369). The presumed purpose of their visit was to enlist her assistance in JURE activities. To a degree, she assented.

The detailed information these men had about her family convinced her, "... details about where they saw my father and what activities he was in. I mean, they gave me almost incredible details about things that somebody who knows him really would or that somebody informed well knows. And after a little while, after they mentioned my

father, they started talking about the American" (11H370). "The American" was introduced as "Leon Oswald," a former Marine. The other two used aliases she described as "war" names, a device to hide identities from the Castro government. One she recalled was "Leopoldo." Of the other she is uncertain, but believes he called himself "Angelo."

Representing themselves as having just left New Orleans (as the real Oswald had), they said "they were leaving for a trip (on which the real Oswald had started) and they would like very much to see me on their return to Dallas . . ." (11H372-3).

Mrs. Odio's sister was in her apartment at the time of the visit. They both immediately "recognized" Oswald at the time of the assassination. Mrs. Odio's shock was spectacular. She immediately connected these men with the assassination and fainted before the suspected assassin's name was broadcast. She was taken to the hospital by ambulance from her place of work, where she lost consciousness at about 1:50, almost to the second the time the real Oswald was being arrested at the Texas Theatre. She said she thought "the three men . . . had something to do with the assassination" (11H383).

There was, indeed, reason for Mrs. Odio to have made this association. "You know," Leopoldo had said of the "False Oswald," "our idea is to introduce him to the underground in Cuba, because he is great, he is kind of nuts . . . He told us we don't have any guts, you Cubans, because President Kennedy should have been assassinated after the Bay of Pigs, and some Cubans should have done that, because he was the one that was holding the freedom of Cuba actually . . . And he said, 'It is so easy to do it.' He has told us . . ." (11H372-3).

The next day "Leopoldo" again spoke of the "False Oswald," saying he "would be the kind of man that could do anything like getting underground in Cuba, like killing Castro. He repeated several times that he was an expert shotman . . ." (11H377).

Mrs. Odio was not called until quite late in the hearings, July 22, 1964, eight months after the assassination and when most of the trail was harder to follow. She had, however, made her story known earlier to the authorities and had been interviewed by the FBI December 18, 1963. At 6:30 p.m. the night of her testimony, she was in the office

of the Secret Service where she was shown "some movie films of some street scenes in the city of New Orleans, and also a television appearance that Lee Harvey Oswald made over station WDSU in August of 1963." Some of the people seemed familiar, and she pointed out certain identifications she had made previously in her testimony, such as an unshaved appearance around the mouth, suggesting a mustache on Oswald. But she could not identify his voice. When asked if looking at the pictures had made her more or less convinced or if she had the same feeling about the identity of Oswald, she said, ". . . I have the same feeling that it was . . . I have a feeling there are certain pictures that do not resemble him. It was not the Oswald that was standing in front of my door," and she pointed out some other slight differences.

The film was rerun a number of times. She was also shown the still pictures and made identification from and comments about them. Of the "False Oswald's" companions, she also pointed out distinguishing characteristics paralleling those made by the New Orleans witnesses, including the opinion they "looked like Mexicans. They did not look like Cubans."

Even when the Commission could not shake or even belittle the testimony of Mrs. Odio, corroborated as it was by her sister and the identification both made of Oswald, it still looked into this further only "in view of the possibility it raised that Oswald may have had companions on his trip to Mexico," and to be certain of its reconstruction of Oswald's schedule on his trip. At no point does the Commission concede the possibility of a "False Oswald."

Most of the section devoted in the Report to the unshakable Sylvia Odio is, in fact, devoted to the recitation of evidence proving that Lee Harvey Oswald could not have been at her apartment September 27 or 28, 1963, the entire point the Report avoids.

The most astounding statement of fact in the entire Report is quietly buried in the last paragraph of the pages quoting and commenting upon Mrs. Odio:

"On September 16, 1964, the FBI located Loran Eugene Hall in Johnsville, Calif. Hall has been identified as a participant in numerous anti-Castro activities. He told the FBI that in September of 1963 he was in Dallas, soliciting aid in connection with

anti-Castro activities. He said he had visited Mrs. Odio. He was accompanied by Lawrence Howard, a Mexican-American from East Los Angeles and one William Seymour from Arizona. He stated that Seymour is similar in appearance to Lee Harvey Oswald; he speaks only a few words of Spanish, as Mrs. Odio had testified one of the men who visited her did. While the FBI had not yet completed its investigation into this matter at the time the report went to press, the Commission has concluded that Lee Harvey Oswald was not at Mrs. Odio's apartment in September of 1963." (R324)

Of course it was not Oswald!

Once the FBI got working, they moved fast. Commission General Counsel J. Lee Rankin did not request the investigation until August 28, 1964. The FBI replied by letter September 21—three days before the Commission delivered its printed Report to the President! But why did not the FBI suspect a "False Oswald" to begin with? And why did the Commission wait until *nine months* after the assassination, until its work was done, to look into it?

Above all, how could it ignore the existence of a "False Oswald" until the bitter end? How could it close up shop, with its files interred for 75 years, knowing a "False Oswald" existed?

12. THE NUMBER OF SHOTS

"Soon after the three empty cartridges were found, officials at the scene decided that three shots were fired," the Report says (R111). "Because that conclusion was widely circulated by the press," which could have learned only from the police, "the eyewitness testimony" may have been "subconsciously colored."

A less polite version was sworn to by Mrs. Jean Lollis Hill on March 24, 1964 (6H205-23). Her friend and companion, Mary Moorman, had taken a Polaroid picture of some commercial value and the pair had been rushed to the sheriff's office where they were, according to her story, kept under involuntary restraint for several hours. During this time the picture and the women were forcibly separated

and, because of its value, they were additionally concerned. Mrs. Hill insisted to a Secret Service man that she had heard from four to six shots. She quoted him as replying, "... we have three wounds, and we have three bullets, three shots in all that we are willing to say right now" (6H221).

By intention or not, this is the formula every agency has considered to the exclusion of all others from the moment Oswald was apprehended. Leaked versions of the FBI report (see Appendix) also quoted it as saying that but three shots were fired. The Commission is no exception.

It just is not possible that as unpracticed a man as Oswald, who was a poor shot as a Marine, could have fired three such fast and accurate shots, but at least there was a chance to make it seem possible he had. With any more than three shots, it clearly could not have been Oswald alone, if at all. Hence, the compulsion to reconstruct a crime in which no more than three shots were fired. With only three shots, the pretense of no conspiracy might be preserved, the crime was "solved," and everybody was off the hook. With another shot, there could be no pretense of a lone Oswald and there was an unsolved crime and a conspiracy.

The Commission also decided upon three shots, and if it had not, it, too, would have had to be searching for the other rifleman or—men and unraveling a conspiracy. Ignoring the necessity that any consideration of more than three shots necessitated at least considering another criminal, the Report on a number of occasions indicated uncertainty about the number of shots but never seriously, however. In at least two unguarded moments, it made unequivocal statements that there *were* three shots. In context, when the Report says "most probably" or used other such phrases, it is merely being evasive, a well fixed habit.

If the Report could not conclude with finality that there had been only three shots, it could likewise not have concluded that the assassin was Oswald alone. With less than three shots, all the shooting could not be accounted for. Whether the Report proves without any possible doubt that there could have been no more than three shots, therefore, becomes one of the most basic of all the many questions about it. If there were more than three shots, the entire Report is demolished. It now rests on the im-

First, Veciana waited more than 10 years after the assassination to reveal his story.

Second, Veciana would not supply proof of the \$253,000 payment from Bishop, claiming fear of the Internal Revenue Service.

Third, Veciana could not point to a single witness to his meetings with Bishop, much less with Oswald.

Fourth, Veciana did little to help the committee identify Bishop.

In the absence of corroboration or independent substantiation, the committee could not, therefore, credit Veciana's story of having met with Lee Harvey Oswald.

(3) *Silvia Odio*.—The incident of reported contact between Oswald and anti-Castro Cubans that has gained the most attention over the years involved Silvia Odio, a member of the Cuban Revolutionary Junta, or JURE. (91) Mrs. Odio had not volunteered her information to the FBI. (92) The FBI initially contacted Mrs. Odio after hearing of a conversation she had had with her neighbor in which she described an encounter with Lee Harvey Oswald. (93) Subsequently, in testimony before the Warren Commission, she said that in late September 1963, three men came to her home in Dallas to ask for help in preparing a fundraising letter for JURE. (94) She stated that two of the men appeared to be Cubans, although they also had characteristics that she associated with Mexicans. (95) The two individuals, she remembered, indicated that their "war" names were "Leopoldo" and "Angelo." (96) The third man, an American, was introduced to her as "Leon Oswald," and she was told that he was very much interested in the anti-Castro Cuban cause. (97)

Mrs. Odio stated that the men told her that they had just come from New Orleans and that they were then about to leave on a trip. (98) The next day, one of the Cubans called her on the telephone and told her that it had been his idea to introduce the American into the underground " * * * because he is great, he is kind of nuts." (99) The Cuban also said that the American had been in the Marine Corps and was an excellent shot, and that the American had said that Cubans " * * * don't have any guts * * * because President Kennedy should have been assassinated after the Bay of Pigs, and some Cubans should have done that, because he was the one that was holding the freedom of Cuba actually." (100) Mrs. Odio claimed the American was Lee Harvey Oswald. (101)

Mrs. Odio's sister, who was in the apartment at the time of the visit by the three men and who stated that she saw them briefly in the hallway when answering the door, also believed that the American was Lee Harvey Oswald. (102) Mrs. Odio fixed the date of the alleged visit as being September 26 or 27. (103) She was positive that the visit occurred prior to October 1. (104)

The Warren Commission was persuaded that Oswald could not have been in Dallas on the dates given by Mrs. Odio. (105) Nevertheless, it requested the FBI to conduct further investigation into her allegation, and it acknowledged that the FBI had not completed its Odio investigation at the time its report was published in September 1964. (106)

How the Warren Commission treated the Odio incident is instructive. In the summer of 1964, the FBI was pressed to dig more deeply into the Odio allegation. (107) On July 24, chief counsel J. Lee Rankin,

in a letter to FBI Director J. Edgar Hoover, noted, ". . . the Commission already possesses firm evidence that Lee Harvey Oswald was on a bus traveling from Houston, Tex., to Mexico City, Mexico, on virtually the entire day of September 26." (108) J. Wesley Liebler, the Warren Commission assistant counsel who had taken Mrs. Odio's deposition, disagreed, however, that there was firm evidence of Oswald's bus trip to Mexico City. (109) In a memorandum to another Commission attorney, Howard Willens, on September 14, 1964, Liebler objected to a section of the Warren Report in which it was stated there was strong evidence that Oswald was on a bus to Mexico on the date in question. (110) Liebler argued, "There really is no evidence at all that [Oswald] left Houston on that bus." (111) Liebler also argued that the conclusion that there was "persuasive" evidence that Oswald was not in Dallas on September 24, 1963, a day for which his travel was unaccounted, was "too strong." (112) Liebler urged Willens to tone down the language of the report. (113) contending in his memorandum: "There are problems. Odio may well be right. The Commission will look bad if it turns out that she is." (114)

On August 23, 1964, Rankin again wrote to Hoover to say, "It is a matter of some importance to the Commission that Mrs. Odio's allegation either be proved or disproved." (115) Rankin asked that the FBI attempt to learn the identities of the three visitors by contacting members of anti-Castro groups active in the Dallas area, as well as leaders of the JURE organization. (116) He asked the FBI to check the possibility that Oswald had spent the night of September 24, in a hotel in New Orleans, after vacating his apartment. (117) Portions of this investigation, which were inconclusive in supporting the Warren Commission's contention that Mrs. Odio was mistaken, were not sent to Rankin until November 9, (118) at which time the final report already had been completed. (119)

The FBI did attempt to alleviate the "problems." In a report dated September 26, it reported the interview of Loran Eugene Hall who claimed he had been in Dallas in September 1963, accompanied by two men fitting the general description given by Silvia Odio, and that it was they who had visited her. (120) Oswald, Hall said, was not one of the men. (121) Within a week of Hall's statement, the other two men Hall said had accompanied him, Lawrence Howard and William Seymour, were interviewed. (122) They denied ever having met Silvia Odio. (123) Later, Hall himself retracted his statement about meeting with Mrs. Odio. (124)

Even though the Commission could not show conclusively that Oswald was not at the Odio apartment, and even though Loran Hall's story was an admitted fabrication, the Warren report published this explanation of the Odio incident:

While the FBI had not yet completed its investigation into this matter at the time the report went to press, the Commission has concluded that Lee Harvey Oswald was not at Mrs. Odio's apartment in September 1963. (125)

Not satisfied with that conclusion, the committee conducted interviews with and took depositions from the principals—Silvia Odio, (126) members of her family, (127) and Dr. Burton Einspruch.

(128) her psychiatrist. (Mrs. Odio had contacted Dr. Einspruch for consultation about problems that could not be construed to affect her perception or credibility.) (129) The committee also set up a conference telephone call between Dr. Einspruch in Dallas and Silvia Odio in Miami, during which she related to him the visit of the three men. (130) Mrs. Odio and Dr. Einspruch concurred that she had told him of the nighttime meeting shortly after its occurrence, but prior to the President's assassination. (131)

Loran Hall testified before the committee in executive session on October 5, 1977; Howard and Seymour were interviewed. (132) The FBI agent who wrote up the Hall story also testified before the committee. (133) From a review of FBI files, the committee secured a list of persons who belonged to the Dallas Chapter of JURE, and the committee attempted to locate and interview these individuals. Additionally, staff investigators interviewed the leader of JURE, Manolo Ray, who was residing in Puerto Rico. (134)

Further, the committee secured photographs of scores of pro-Castro and anti-Castro activists who might have fit the descriptions of the two individuals who, Mrs. Odio said, had visited her with Oswald. (135) The committee also used the resources of the CIA which conducted a check on all individuals who used the "war" names of "Leopoldo" and "Angelo", and the name "Leon," or had similar names. (136) An extensive search produced the names and photographs of three men who might possibly have been in Dallas in September 1963. (137) These photographs were shown to Mrs. Odio, but she was unable to identify them as the men she had seen. (138)

The committee was inclined to believe Silvia Odio. From the evidence provided in the sworn testimony of the witnesses, it appeared that three men did visit her apartment in Dallas prior to the Kennedy assassination and identified themselves as members of an anti-Castro organization. Based on a judgment of the credibility of Silvia and Annie Odio, one of these men at least looked like Lee Harvey Oswald and was introduced to Mrs. Odio as Leon Oswald.

The committee did not agree with the Warren Commission's conclusion that Oswald could not have been in Dallas at the requisite time. Nevertheless, the committee itself could reach no definite conclusion on the specific date of the visit. It could have been as early as September 24, the morning of which Oswald was seen in New Orleans, (139) but it was more likely on the 25th, 26th or 27th of September. If it was on these dates, then Oswald had to have had access to private transportation to have traveled through Dallas and still reached Mexico City when he did, judging from other evidence developed by both the Warren Commission and the committee. (140)

(c) Oswald and anti-Castro Cubans

The committee recognized that an association by Oswald with anti-Castro Cubans would pose problems for its evaluation of the assassin and what might have motivated him. In reviewing Oswald's life, the committee found his actions and values to have been those of a self-proclaimed Marxist who would be bound to favor the Castro regime in Cuba, or at least not advocate its overthrow. For this reason, it did not seem likely to the committee that Oswald would have allied