

What Evidence Would Be Admissible?

There must first be deleted the testimony of his wife, Marina, for although she testified on three occasions and was questioned by the press and investigative agencies on scores of others, it is difficult to find any statement which would not be more hurtful than helpful to her husband. Under Texas law, the husband and wife may in all criminal actions be witnesses for each other; but they shall in no case testify against each other except in a criminal prosecution for an offense committed by one against the other.

Considering the transcript and exhibits as the brief of evidence on a trial, there are many facts which appear only in the uncorroborated testimony of Marina Oswald. Chief among them are facts laying the basis for the admission of other criminal transactions (attempt on life of General Walker and threat of assault on Nixon). Whether either of these transactions would have been admissible in any event is extremely doubtful...It might be argued that the Walker and Kennedy incidents both showed a senseless antagonism against public figures and thus lent credence to otherwise implausible conduct, a sort of extension of the motive exception which is, however, ordinarily confined to sex crimes. System or modus operandi is another exception. But sharp differences exist between the two crimes: the extended advance planning and attention given to escape routes in the Walker affair; the differing ideological images of the victims, which makes Walker's demise more understandable within the framework of Oswald's known thinking than the President's, and so on. In any case, it is perfectly obvious that absent his wife's testimony the question is academic, as there is no substantial evidence on which an attempt to introduce the prior attempts could be predicated...

The remaining evidence the commission found of probative value consisted of (1) an undated note which in no way refers to Walker, (2) negative testimony of FBI identification expert that the retrieved but damaged bullet could not be identified as coming from any particular gun, although it "could have been" fired from the rifle used to kill Kennedy and (3) photos of the Walker premises...the note turned over to the investigating officers by Marina* could not, in the absence of testimony, be identified with the event, and it is unclear whether the photographs were also delivered by her or were independently found by officers searching with her permission. The Nixon incident, of course, has no other corroboration.**

Other Facts Depending on Marina's Testimony

/Here Scobey mentions the blue jacket found in the Depository; the "white" jacket found in the parking lot; photographs with rifle; and camera from which made./

More important, she alone identified the rifle as the one which he owned, and that she had seen him practice with it, that it had been moved from New Orleans to Dallas in Ruth Paine's station wagon and that it had been stored in a green and brown blanket in the Paine garage. This is the only eyewitness testimony connecting Oswald with the assassination weapon or definitely identifying his clothing. Other descriptions of clothing show the usual contradictions.

*Was actually turned over to FBI by Ruth Paine; one would think Scobey would know that much.

**Scobey neglects to mention it has internal absurdities which caused its rejection, although the Commission was too chivalrous to call Marina a liar.

Marina Oswald also is the only source of a wealth of background information... on which the "motiveless motive" of his crime depends...Connecting Oswald with the name Hidell was important because the murder weapons were purchased in that pseudonym ...

Defense counsel would next be interested in the exclusion of physical evidence. The case for the prosecution* would show that Oswald had purchased the rifle; that he moved it from New Orleans to Dallas in a green and brown blanket, which he left with his other belongings in the garage...that he took it from the blanket on the night of Nov 21, placed it in a bag made from paper he had obtained at the Depository; and that he carried it to work with him the next morning, representing the package contained curtain rods...

/Scobey next deals with searches and seizures, as to whether they were legally authorized, or whether consent was actually given./

The most important discovery /first search at Irving/ was the blanket in which the rifle had been wrapped, fibers from which were later identified as being identical ...with fibers found in the abandoned bag beneath the assassination window...Marina pointed out the blanket in the belief, she said, that it still contained the rifle... there would seem to be a strong basis for excluding this evidence.

What Might Be Done as to Other Witnesses

/Scobey discusses Oswald's presence on 6th floor as normal; weakness of the Brennan identification; Oswald's departure from the building was reasonable./

It would be a fruitless task to attempt to repel evidence of Oswald's subsequent movements (bus, taxi, change of clothes, walking down certain streets, entering theater, resisting arrest, possessing and attempting to use a pistol)...and flight constitutes circumstantial evidence of guilt. Nor would it be necessary to show that Oswald was aware that he was suspected of the crime. While it would be necessary to show, as to the attempt to resist arrest in the theater, that he knew he was being arrested, this point is undisputed.

There remains the question of whether the Tippit murder would be admissible...As part of an escape attempt it could not be shown until it was first shown that an effort was being made to arrest him. Here the prosecution might succeed, on the proposition that the description being circulated of the assassin was sufficient to raise an inference that Tippit intended to hold Oswald for questioning. However, the testimony of Markham...was merely that after the men talked, Tippit got out of the car on one side and Oswald walked forward on the other and shot him.

The witness was hysterical. Her initial description as well as facts re time of occurrence was inaccurate. Her original identification of Oswald in the lineup was after she had been given sedatives and she remained hysterical for several hours... The admissibility of the Tippit murder is at least arguable.

Assuming it admissible...the transcripts show the usual contradictions which arise to plague the prosecution...Benavides, the eyewitness closest to Oswald, refused to identify him. The Davis sisters were confused as to whether they called the police before or after they saw Oswald leave the car and walk across the lawn...Scoggins... made his identification at the same lineup with Whaley...and it appears from the latter and othersources that Oswald's remonstrances...were so pronounced that any person could have picked him out without ever having seen him before. There are, however, a number of other witnesses who, while they did not see the actual shooting, did see Oswald leave the scene, and who would not be easy to attack.

*The Warren Report, whose claims correspond exactly.

Importance of Physical and Documentary Evidence

If...defense counsel was very, very lucky, he would be able either to exclude or impeach the testimony of a large number of key persons whose accounts add so much to the strength of the report. That is not to say that what would be left...would leave room for reasonable doubt of guilt, but the surprising fact is that the conviction in such an event would depend to an amazing degree on documentary evidence and its interpretation by experts...The circumstantial evidence is either more cogent or less subject to attack than the direct.

Scobey then deals with the rifle and pistol, traced to Oswald by documents with aid of handwriting experts; photo with rifle, traced to Oswald's camera/ While testimony that Oswald brought the dismantled rifle to the Depository is subject to attack because both the Fraziers many times described the brown package...as being much smaller than it would have had to be to contain the weapon, the bag itself found at the scene was shown to have been made from materials to which Oswald had access, and the mute testimony of the object overpowers the statements of the witnesses. Scobey next deals with latent fingerprints found by sophisticated techniques, on cartons; fibers caught on surface of rifle/...testimony established that the bullet found in the limousine was fired by the rifle that was recovered, while the autopsy reports and the ballistics firing tests make plain the manner in which the shots hit their mark. /fibers from blanket found in garage linked to fibers in paper bag...human hairs in blanket itself, linked with body hairs taken from Oswald/

...the Warren Report, conceived as a criminal investigation carried to ~~the~~ utmost limits, illustrates the importance of utilizing the laboratory and the expert as sources of the most cogent evidence in criminal proceedings. It also points up the usual difficulties in dealing with the testimony of living witnesses...

Report Clears Away the Speculation

The report both here and abroad cleared away a fog of speculation which could have induced unfortunate international tensions. It has made a real contribution to the difficult area of proving a negative (no communist conspiracy, no right-wing plot, no context of hate and prejudice/...It represents a new synthesis which may be followed to advantage in future historicolegal investigations.