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(202) 225-4624

Select Committee on Assassinations

U.S. House of Representatives

3331 HOUSE OFFICE BUILDING, ANNEX 2

WASHINGTON, D.C. 20515

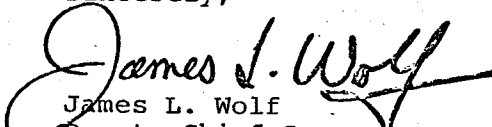
September 8, 1978

Mr. Oliver Patterson
12350 Old Halls Ferry Road
Blackjack, Missouri

Dear Mr. Patterson:

In connection with the investigation of the House Select Committee on Assassinations into the death of Dr. Martin Luther King, Jr., as you requested in our phone call of this evening, I have enclosed a copy of the statement issued by Chairman Stokes. As I indicated, Mr. Stokes has not come to any final conclusions about the activities that occurred; his memo specifically indicates that an interview is pending with you and that more information may be obtained during it.

Sincerely,


James L. Wolf
Deputy Chief Counsel
Legal Unit

JLW:ce
Enclosure
cc: Melvin Wulf, Esquire

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WASHINGTON, D.C. 20515

TO: Committee on House Administration
FROM: Chairman Louis Stokes,
Select Committee on Assassinations
RE: Allegation of Illegal Conduct by Committee Staff
DATE: September 6, 1978

Attached to this memorandum is a report analyzing the allegations of illegal conduct made by Oliver Patterson and Mark Lane against the Select Committee. As of the date of this memorandum, the Committee has not yet conducted a personal interview of Mr. Patterson. The Committee attempted to interview Mr. Patterson as soon as he made his public accusations. One interview that was scheduled with Mr. Patterson for August 12, 1978 was cancelled by Mark Lane, then acting on behalf of Mr. Patterson. Mr. Patterson's present attorney, Melvin Wulf, was contacted to arrange an interview. On August 31, Mr. Wulf informed the Committee that Mr. Patterson would be interviewed, but not earlier than the week of September 11, 1978. An interview is presently scheduled with Mr. Patterson for September 15, 1978.

To evaluate Mr. Patterson's allegations, the Committee Report relies on Mr. Patterson's affidavit (Exhibit 1) and his known public and private statements. The Committee has also attended a Mark Lane/Oliver Patterson press conference during which Lane "offered" physical evidence of claimed illegal conduct on the part of the Committee. This evidence, consisting of a tape-recording between Patterson and Baetz, a photograph of one of their meetings and some scrawled notes, confirmed no more than the fact that Patterson was providing information to Baetz.

In the absence, to date, of an interview with Mr. Patterson, and the production of any physical evidence he may wish to offer, the attached report is complete.

HOUSE SELECT COMMITTEE ON ASSASSINATIONS
STAFF REPORT
ON
ALLEGATIONS OF OLIVER PATTERSON

On August 7, 1978, Oliver Patterson in a news conference publicly alleged that a Committee staff investigator, Conrad Baetz, had engaged in illegal and improper activities during the course of his Committee assignments. (See Ex. 1, formal affidavit of Patterson concerning his allegations.) Present with Mr. Patterson during his public appearances in which he has made such allegations has been Mark Lane, attorney for James Earl Ray. This report is designed to set out each of Mr. Patterson's allegations in detail and provide responses to each. The Committee is confident that these responses will reveal that Mr. Baetz' conduct was legal as well as consistent with the Rules of this Committee and the Rules of the House of Representatives.

Before engaging in an analysis of Patterson's allegations and the Committee investigation of such, it is significant to understand the lawful function that informants in general can and do perform during investigations into criminal activity. Such an appreciation is particularly appropriate in the instant case where Mr. Patterson, Mr. Lane and others have attempted to suggest that the use of informants is inherently sinister and in contravention of constitutional rights.

UTILIZATION OF INFORMANTS IN GENERAL

Proper and lawful utilization of informants and informant information has long been recognized by the federal courts to be a necessary and permissible law enforcement technique. Various court decisions have dealt specifically with the implementation of informants and the relationship of such to certain fundamental guarantees.

1. Fourth Amendment: Conversations with, or in the hearing of, an undercover agent or government informant are not a search and seizure within the meaning of the Fourth Amendment. The Supreme Court held in Hoffa v. United States, 385 U.S. 293, 302 (1966) that a person speaking within the hearing of a government agent is not relying on the security of any constitutionally protected area, but rather on his misplaced confidence that the listener will not reveal what is said. The use of an informant to gather evidence of incriminating statements for use against the speaker does not pose a Fourth Amendment problem. See also United States v. Sattilo, 507 F.2d 629, (3d Cir.), cert. denied, 421 U.S. 968 (1975) (undercover agent's testimony from notes admissible at trial); Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153 (D.D.C. 1976) (covert penetration of organization does not violate Fourth Amendment); State v. Humm, 234 N.W. 2d 60, 63 (S.D. 1975) (use of informant to "pump" suspects does not violate Fourth Amendment).

Electronic eavesdropping on conversations to which a consenting informant is a party or is physically present is not a search and seizure and no warrant is required. United States v. White, 401 U.S. 745, 752 (1971). This is so whether a) the conversation is transmitted by a device worn by the informant, United States v. White, supra; b) taped by the informant, Lopez v. United States, 373 U.S. 427, 439 (1963); c) taped by other agents monitoring a transmission, Ansley v. Stynchcombe, 480 F. 2d 437, 441 (5th Cir. 1973); or d) taped by other agents monitoring a telephone call, United States v. Bonano, 487 F. 2d 654, 658 (2d Cir. 1973).

II. Fifth Amendment: The Supreme Court in Hoffa v. United States, supra at 304, also held that the use at trial of incriminating statements made to, or overheard by, an informant does not violate the defendant's privilege against compulsory self-incrimination. Such statements are made voluntarily and lack any element of compulsion. Lower federal courts have consistently held that informant obtained statements are admissible and do not violate the defendant's Fifth Amendment privilege. See, e.g., United States v. DiLorenzo, 429 F. 2d 216, 219 (2d Cir. 1970), cert. denied, 402 U.S. 950 (1971); Ansley v. Stynchcombe, supra.

III. Due Process: Courts have seldom treated the argument that the use of an undercover agent is per se a violation of due process. The argument was flatly rejected by the Supreme Court in Hoffa v. United States, supra at 311. It failed again in

United States v. Crow Dog, 532 F. 2d 1182, 1197 (3th Cir. 1976), where the informant infiltrated a political organization when several of its members were under indictment.

Hence, this brief review of relevant case law clearly identifies the constitutional propriety of informant use. No provisions of either the Rules of this Committee or the Rules of the House of Representatives limit or modify in any way the constitutionally prescribed methods of informant utilization.

COMMITTEE INVESTIGATION OF PATTERSON ALLEGATIONS

INTRODUCTION

By his own admission (See Patterson affidavit, Exhibit 1 at page 1, paragraph 4), Oliver Patterson was an informant for the FBI during 1970 and 1971 to obtain information from Jerry Ray, brother of James Earl Ray, and J. B. Stoner, an avowed racist with an alleged background of violence. (Stoner also was a former attorney for James Earl Ray.) This Committee has clearly indicated to both Jerry Ray and Stoner that they are considered as subjects of its investigation into the murder of Dr. Martin Luther King, Jr. Given this characterization of Jerry Ray and J. B. Stoner and the proven intelligence capabilities of Patterson, who on one occasion advised the FBI that Jerry Ray had indicated to him the existence of a conspiracy to kill Dr. King, this Committee determined it only appropriate and propitious to ascertain Patterson's state of knowledge and capabilities for

providing information relative to the possible roles of Jerry Ray and J. B. Stoner in the assassination of Dr. King. Accordingly, Patterson was not only served with a subpoena to appear before this Committee but he was also asked to provide information concerning Jerry Ray and Stoner on a continuing basis. He enthusiastically agreed.

SPECIFIC ALLEGATIONS

A. Role and payment of money.

Mr. Patterson himself was never a member of the staff of the Committee. His role was solely that of a subpoenaed witness, who, in fact, provided a statement under oath, and who provided additional information to the Committee relative to J. B. Stoner and Jerry Ray. Neither the testimony of Mr. Patterson nor his information were paid for. Mr. Patterson was advised that his role as a testimonial witness and source of information would not result in the payment of money to him by the Committee, except to the extent that Mr. Patterson, like all other witnesses who have testified or provided information to the Committee, would be accorded routine reimbursement for actual expenses for lodging, food, travel, telephone and similar costs incurred during the period that such testimony or information was provided. The Committee has every reason to believe that Patterson understood precisely that he could receive only reimbursement for his expenses and not payment for information on a quid pro quo basis. That Patterson knew to expect only "expense" money is demon-

stated in his response to the following question administered during a recent polygraph test:

Question: Were you promised expense money for travel and undercover work by Pete Baetz?

Answer: Yes. (Emphasis added) 1/

B. Electronic Surveillance

Committee interviews indicate that the staff investigator did not engage in physically recording any conversation overheard by him with the consent of Patterson. Nor did he overhear any conversation without the consent of Patterson. Patterson was also explicitly told that the Committee would not seek his cooperation in the utilization of otherwise proper and legal electronic surveillance techniques in order that the recordings made as a

1/ The only other questions and answers contained in the polygraph test arranged with a private polygraphist by Mark Lane are as follows:

1. Question: Did you telephone and record calls to Jerry Ray, J. B. Stoner, and others with Pete Baetz monitoring some of the calls?
Answer: Yes.
2. Question: Did Pete Baetz furnish you with replacement tapes cassetts to record telephone calls with Jerry Ray and others?
Answer: Yes.
3. Question: Did Pete Baetz direct you to mail documents and hair samples, illegally obtained by you from Jerry Ray, to his Wood River Illinois Post Office Box?
Answer: Yes.

The Committee has not yet had the opportunity to independently evaluate this test or review the post-examination interview of Patterson by the polygraphist who administered the test.

result of such surveillance could be used by the Committee.^{2/} See United States v. White, supra. Accordingly, electronic surveillance equipment has neither been provided or used by the Committee in this or any other instance. Apparently, Patterson, with a background in electronics and personal possession of the necessary equipment, elected to record certain conversations on his own. Committee interviews indicate that the conduct of the staff investigator, therefore, did not constitute violation of the Committee Rules or House Rules; it also was not illegal.^{3/}

C. Hair Samples and Map

Patterson has also alleged in his affidavit (Exhibit 1, page 2, paragraph 7) and his polygraph test (footnote 2, supra, question #3) that the Committee was provided with hair samples and a map

2/ Patterson's allegation relative to electronic surveillance is somewhat amorphous since it is his contention, in an interview with KSD-TV of St. Louis that Baetz never gave him specific instructions in the form of "you do this or you do that," but rather that Baetz had in some way suggested that Patterson record his conversations with Jerry Ray.

3/ Rule 7.1 of the Committee Rules reads in pertinent part: "Tape Recordings. No conversation of Committee members or staff with any person shall be recorded without the prior knowledge and/or written consent of the person whose conversation is to be recorded" Further, it does not preclude the use of an informant to record conversations between the informant and a subject of the investigation, although such a technique involving consensual tape recording by an informant has not been implemented by this Committee in any instance. Rule 7.1 does limit the ability of "Committee members" and "staff" to engage in consensually recorded conversations, but the limitation extends no further.

from the belongings of Jerry Ray. With respect to the map, on approximately April 17, 1978, while in Washington, D.C., and sharing a motel room with Jerry Ray, Patterson asked if the staff investigators with whom he was in contact wanted him to look through the personal effects of Jerry Ray for documents pertinent to the Committee investigation. Patterson was told immediately and repetitively by both investigators that he should not engage in such conduct. Patterson next advised the Committee on the following day, and after the fact, that he had indeed rummaged through Jerry Ray's belongings and discovered a map that he thought would be of interest to the Committee. He inquired if he should take it and photocopy it for the Committee. After this matter was immediately brought to the attention of the Chief Counsel for the Committee, Patterson was again explicitly instructed not to take the document in question or even allow staff members to view it. Patterson advised a staff investigator in response that he was going to make a copy anyway for his own use in case he wanted to write a book. Subsequent conversations with Mr. Patterson revealed that the nature of the map suggested an active plan by James Earl Ray to escape from the Tennessee Penitentiary where he is incarcerated. Given this significance to the map, the Committee asked Patterson to provide a copy of the map, which was in James Earl Ray's handwriting, so that the Committee could alert the appropriate law enforcement officials to prevent

any escape attempt on the part of James Earl Ray. The actual map never came into the possession of the Committee. Information from the map was, in fact, conveyed to the FBI and the Tennessee Bureau of Investigation, as well as to the Governor of Tennessee. Hence, despite the Committee admonitions to Patterson, he obtained a xerox copy of the map which the Committee felt compelled to accept, in order to prevent a possible catastrophic event, i.e., another escape attempt by James Earl Ray. (Interestingly, on August 15, 1978, in a TV interview, Jerry Ray falsely denied even possessing a copy of the map which Patterson had obtained from him.)^{4/}

As to the hair samples of Jerry Ray provided by Patterson to the Committee, Patterson advised the Committee that he had obtained such from a bathroom where Jerry Ray resided. This technique of suspect identification is clearly recognized in our judicial system: Schmerber v. California, 384 U.S. 757 (1966); Gilbert v. California, 388 U.S. 263 (1967); and Biggers v. Tennessee, 390 U.S. 404 (1968). Further, given the existence of unidentified hairs in the FBI investigation of Dr. King's murder and the necessity of determining Jerry Ray's possible involvement in the assassination, it is most appropriate for the Committee to seek the production of this type of evidence.

^{4/} It is also interesting to note that in Patterson's description of how he obtained his copy of the map he specifically avoids any indication that he searched Ray's belongings in the first instance at Committee instructions. (See Exhibit 1, page 2, paragraph 7.)

D. Subornation of Perjury

With respect to allegations that staff members suborned perjury during Mr. Patterson's sworn statement to the Committee, he has specifically contended in his August 14, 1978 press conference with Mark Lane that, while he cannot remember the questions and answers involved in the subornation effort or even whether he in fact lied, at least he was furnished answers for the last three questions that were posed to him. The last three questions and answers in Mr. Patterson's sworn statement are:

(1) Mr. Eberhardt: Do you still actively participate in the National States Rights Party matters?

Mr. Patterson: No, I have not seen Jerry for about four years.

(2) Mr. Eberhardt: During the last couple of days that you have been with Jerry Ray, has he expressly admitted to you any personal role on his part in the assassination of Dr. Martin Luther King?

Mr. Patterson: None.

(3) Mr. Eberhardt: Has he indicated that John Ray had any personal involvement in the shooting of Dr. King?

Mr. Patterson: No, the statements are there has been no involvement whatsoever.

If it is Patterson's contention that perjury was suborned and obtained in the instance of these three answers, such a contention is not supported by the nature and content of his responses. Question (1) is inquiry with a response consistent with Patterson's known involvement with the National States Rights Party. The

answers to Question (2) and (3) could hardly be instances of suborned perjury since one of the key issues involved in the Committee investigation is a determination of the involvement of Jerry and John Ray in the assassination. The Committee could hardly be expected to suggest negative answers to Question (2) and (3) where such negatives are so fundamentally inconsistent with its mandate to identify any conspiracy to the murder of Dr. King. Staff members present during Patterson's statement confirm the absence of any effort to encourage false testimony from Patterson.

E. False Statements to the Media

Patterson has alleged that the staff investigator advised him to give false information to the New York Times regarding the following three matters:

(1) Patterson claims that the staff investigator told him to state that Mark Lane had said that there was no "Raoul" (the individual alleged by James Earl Ray to have set him up as a "dupe" in the assassination of Dr. King). In fact, Patterson had previously reported that both Jerry Ray and Mark Lane had implied in conversations in Patterson's presence that there was no "Raoul." Other evidence gathered by the Committee clearly establishes "Raoul's" non-existence and acknowledgements of such by Jerry Ray (who coincidentally was originally represented by Mark Lane in his initial appearance before the Committee).

(2) Patterson further claims that the same investigator

advised him to state that Lane had no new evidence about the King case. Not only has Lane implicitly so indicated according to earlier Patterson reports to the same staff investigator, but James Earl Ray's recent public testimony before this Committee, with Lane as his attorney, confirms those earlier reports that there would be no "new evidence."

(3) Patterson also contends that the staff investigator advised him to claim that he was terrified of Jerry Ray and that such was the reason why Patterson wanted his relationship with the Committee out in the open, so as to perhaps discourage any harm that might come to him. In fact, Patterson had been warned by the FBI prior to the instant allegations that Jerry Ray had discovered his role with the Committee and that the FBI had reason to express concern for his safety because of such.

F. Threats of Incarceration

Patterson contends that the staff investigator threatened to send his girl friend, Donna Stayton, to prison if she revealed what she had learned of Patterson's role with the Committee. In fact, only after Patterson had initially contacted the staff investigator with the advice that his then disenchanted girl friend, who was acquainted with both Jerry Ray and J. B. Stoner, had knowledge of his sensitive posture, did the staff investigator caution her, out of a sense of concern for Patterson's security, that any disclosure on her part of his role could be construed as an obstruction of a Congressional investigation and therefore a

violation of law. See Title 18, U.S.C., Section 1505 which states in pertinent part:

Whoever corruptly...endeavors to obstruct or impede...the due and proper exercise of the power of inquiry...by any Committee of either House... (s)hall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Such information was imparted in the form of advice, not a menacing threat as Patterson suggests. Furthermore, such advice was rendered by the staff investigator after consultation with staff counsel.

G. Personal Allegations

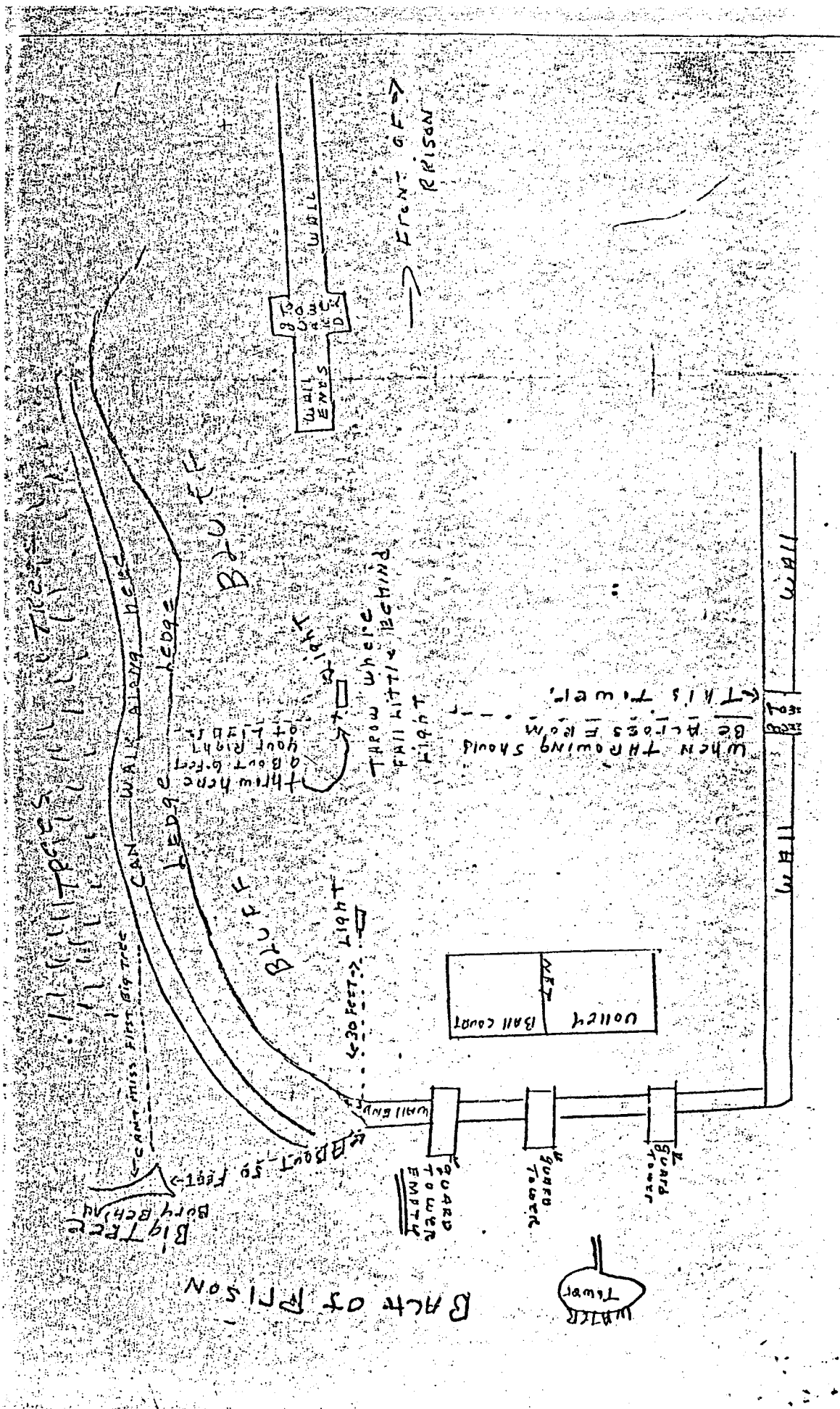
Patterson has sought to further discredit the staff investigator by making allegations of a personal nature. The Committee is satisfied that these allegations are totally false and deems their nature unworthy of further comment.

CONCLUSION

Based on all available information and evidence the Committee is satisfied that the allegations of Oliver Patterson are not founded in fact and that no unlawful or improper conduct has been engaged in by members of its staff.

EXHIBITS

- Exhibit No. 1 -- Statement of Oliver Patterson
- Exhibit No. 2 -- Statement of G. Robert Blakey
- Exhibit No. 3 -- Copy of map provided to Committee by Oliver Patterson



STATEMENT OF

G. ROBERT BLAXEY
Chief Counsel and Director
Select Committee on Assassinations

August 10, 1978

On Monday, August 7, 1978, a man who has been associated with an attorney for the convicted assassin of Dr. Martin Luther King, Jr. held a press conference in which he made several serious allegations concerning the conduct of an investigator for the Select Committee on Assassinations. The man making the charges has given a statement under oath to the Committee, though has never been an employee of the committee.

Since the integrity of the committee's investigation of the assassination of Dr. King has been questioned, the committee is looking into the allegations. The investigator charged with misdeeds, a law enforcement officer who has a top secret security clearance based on an extensive background examination of his character, has been interviewed, as have other members of the committee staff who may have had information concerning the investigator's conduct.

On the strength of a preliminary investigation, the committee categorically denies each and every allegation of wrongdoing. It states with assurance that no federal, state or local law or any rule of the House or of the committee has been violated by the investigator or by any other member of the committee staff.

The committee will continue to conduct a complete investigation of the allegations. If any indication of wrongdoing is uncovered, prompt and appropriate action will be taken and brought to public attention. The committee is determined that the America people will not be misled by attempts to discredit the committee and its investigation.