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Case Closed? Or Oswald Framed?

By Peter Dale Scott

This is a special book about a special case: the two, indeed, are part of a single phenomenon. From the outset, the Kennedy assassination has attracted—along with cranks, ideologues, paranoid obsessives, charlatans, and a clairvoyant—two special kinds of student: the lawyers and the scholars. From the outset there have been reasons (persuasive reasons) of state to close the case; and from the outset there have been glaring problems with the evidence that have kept it open. Over the years there has been no shortage of people (not just lawyers) meeting the persuasive needs of state, nor of people (including some lawyers) following the lure of truth.

If anything has become more clear about the case since the Warren Report, it is that officials of many government agencies lied, sometimes repeatedly, to maintain the Warren Commission's conclusions. Congressional Committees established that FBI agents lied about Oswald's visit to the Dallas FBI office before the assassination, and that CIA officials gave false statements (even within the Agency) about CIA surveillance of Oswald at the Cuban and Soviet Embassies in Mexico City. These official lies have created a touchstone against which new books about the assassination can be tested. Are lies transmitted uncritically, in lawyerly fashion, as evidence? Or are they exposed by scholarly investigation? As we shall see, Posner's performance is a mixed one (he deals with these FBI falsehoods, but not these CIA ones). On balance, unfortunately, it is a lawyerly performance.

Case Closed may seem to uninformed readers to be the most persuasive of the suc-

cession of books that have urged readers to accept the lone-assassin finding of the Warren Report. But to those who know the case it is also evidence of an ongoing cover-up. For Posner often transmits without evaluation official statements that are known to be false, or chooses discredited but compliant witnesses who have already disowned earlier helpful stories that have been disproven. He even revives a wild allegation which the Warren Commission rejected, and reverses testimony to suggest its opposite.

These are serious charges. There are in fact books on both sides of the Kennedy assassination controversy about which similar accusations could be made, and normally one might conclude that such books did not merit a serious rebuttal. But *Case Closed* is a special book, in which Posner more than once acknowledges help from "confidential intelligence sources." It has since been granted major publicity in the media, from *U.S. News and World Report* to the "Today" show and "20/20".

One can agree with Posner's rebuttal of particular critics on particular points (such as the Garrison investigation, and its as-yet unproven allegation that Oswald knew another alleged suspect, David Ferrie). Concerning the physical and medical evidence, he promotes new arguments by others which appear to be worthy of serious consideration. One must grant also that on a topic of this range and complexity no one's book will be flawless. *HW?*

But in *Case Closed* some of the weakest sections of the Warren Commission argument have been strengthened by suspect methodologies and even falsehoods, so systematic they call into question the good faith of the entire project.

On the now-hoary question of whether Oswald's protector in Dallas, George de Mohrenschildt, had a CIA relationship, Posner reverts to the Warren Commission method of letting the CIA answer the question: "CIA officials have provided sworn testimony that there was no de Mohrenschildt-U.S. intelligence relationship. That will not work in 1993. In 1978 the House Select Committee on Assassinations revealed that, when leaving Dallas in May 1963 for Haiti, de Mohrenschildt traveled to Washington and took part in a Pentagon-CIA meeting with his business ally, a Haitian banker named Clemard Joseph Charles. A former CIA contract agent has since suggested that one of de Mohrenschildt's purposes in moving to Haiti was to oversee a CIA-approved plot to overthrow Haitian dictator François "Papa Doc" Duvalier. *Rev?*

The problems with the alleged KGB defector, Yuri Nosenko, who claimed that the KGB had nothing to do with Oswald, will probably never be resolved. Nevertheless Posner, in order to close the case, relies on Nosenko as a major source, even though the House Committee reported "significant inconsistencies" in statements Nosenko had given the FBI, the CIA, and the Committee. Posner makes the point that a later CIA review found errors in the translations of his interviews but he does not reveal that this related to CIA interviews only. This leaves unexplained the major discrepancies between Nosenko's state-



Lee Harvey Oswald

ments to the Committee and to the FBI.

There is no excuse for Posner's repeating, uncritically and without footnotes, another old CIA claim, that at the time of the assassination "Oswald's CIA file did not contain any photos" of Oswald. The CIA used this excuse to justify the false description of Oswald which it sent to other agencies on October 10, 1963, six weeks before the assassination. But as Anthony Summers pointed out thirteen years ago in his book *Conspiracy* (McGraw-Hill, 1980), the CIA pre-assassination file on Oswald contained four newspaper clippings of his defection to the Soviet Union in 1959, two of which contained photographs of him. The recently declassified Lopez Report to the House Committee called explanations offered by CIA employees on the matter of the false Oswald description "hard to accept" and "implausible." It is also hard to think of an innocent defense for Posner's repetition of the CIA falsehood in a chapter where he is specifically rebutting Summers. In short, this book is not "a model of historical research," as the historian Stephen Ambrose has claimed. It is a lawyer's brief.

REVERSING THE VERDICT ON JACK RUBY

One would have thought that one issue now resolved beyond question is that Jack Ruby indeed had, as the House Select Committee on Assassinations concluded, a "significant number of associations" with organized crime leaders both nationally and in Dallas. The Warren Commission's portrait of Ruby as a loner, based on misleading reports and suppression of evidence by the FBI, was clearly false.

Yet Posner has produced a witness who revives the Warren Report's portrait of Ruby as "a real low-level loser,"—adding that only "conspiracy theorists" would "believe that Ruby was part of the mob." The witness is Tony Zoppi, whom Posner describes as a former "prominent entertainment reporter for the *Dallas Morning News*." He does not mention that Zoppi had been the source of an "innocent" explanation for Jack Ruby's 1959 visits to the Havana casinos, an explanation so swiftly demolished by the Committee that Zoppi himself retracted it. Thanks to this episode we now know that Zoppi, as well as Ruby, was close to a casino employee of Meyer Lansky called Lewis McWillie, and was himself working at the Riviera, a mob casino in Las Vegas, by the time the Committee interviewed him in 1978.

Why would Posner choose a discredited casino employee to claim that Ruby was not connected to the mob? The answer, surely, is that he is a lawyer out, like the Warren Commission, to "close" a case. Posner opposes the thousand pages of House Committee documentation, not with new rebuttal documentation, but by extended oral interviews with just four witnesses, each of them dubious. One is Jack Ruby's brother Earl, investigated by the House Committee because of allegations that his business and personal incomes increased after Oswald's murder. Another is Dallas Deputy District Attorney Bill Alexander, who in November 1963 allegedly "prepared to charge Oswald with murdering the President 'as part of an international Communist conspiracy.'" (By the time Posner interviewed him, Alexander had become a fervent anti-conspiratorialist.) The fourth is former FBI Agent William Roemer, from the Chicago FBI office that covered up Ruby's organized crime links in the first place.

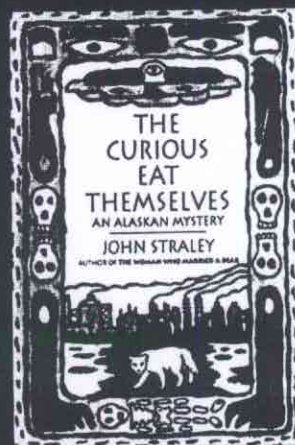
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(The House Committee concluded that the FBI "was seriously delinquent in investigating the Ruby-underworld connections.")

Crucial to closing the case is rebutting the House Committee's finding that Ruby may have had "assistance" from Dallas policemen in entering the Dallas police basement. It learned that doors to another stairway had apparently been left unlocked, and the men guarding these doors reassigned elsewhere shortly before the murder. It learned also that "the Dallas Police Department withheld relevant information from the Warren Commission," particularly that at the time, the sergeant responsible for the reassignments, Patrick Dean (an acquaintance of Dallas mob boss Joe Civello), had been given, and failed, a polygraph test.

Posner ignores these disturbing indications of conspiracy. He writes that "it was never clear whether the door near the public elevators was properly locked," (p.393) but offers no reason to counter the admission by Sergeant Dean, the officer in charge, that the door was not locked. Like the Warren Commission, he concludes that Ruby entered by a different route, a vehicle ramp, even though no witnesses saw Ruby enter that way and eight witnesses (Posner mentions only two) said that he did not. His only evidence for the ramp route is the Warren Commission's: Ruby's own say-so, as testified to later (but not at the time) by four Dallas policemen, one of them Dean.

Accepting Jack Ruby's version as authoritative, Posner also claims that the House Committee "ignored the fact that Secret Service agent Forrest Sorrels also said he heard Ruby tell [the Dallas police] that he had come down the ramp. He thus rebukes the Committee for ignoring a "fact" that emerged after its report was published. In 1964 Sorrels testified under oath that he did not recall hearing Ruby comment on how he got into the basement area

Here again Posner downplays an important Committee finding by turning again to questionable witnesses and totally ignoring the evidence of official cover-up, in this case by the Dallas police.

REPEATING STORIES THE WARREN COMMISSION REJECTED

This lawyerly habit of preferring convenient but discredited witnesses is widespread throughout the book. With respect to Oswald's prior use of weapons (another highly disputable area) he accepts, as did the Warren Commission, the testimony of Marina Oswald. In so doing he does nothing to rebut the finding of Warren Commission Counsel Norman Redlich in February 1964, that Marina "has repeatedly lied to the Secret Service, the FBI, and this Commission on matters which are of vital concern."

Given this unrebutted memo, it is hard to excuse the Warren Commission for relying on Marina's testimony. But Posner resuscitates Marina's story of her attempt to prevent Lee Harvey from shoot-

ing Nixon in 1963 which even the Warren Commission, for complex and unanswerable reasons, discounted as having "no probative value."

But Posner's worst abuse of testimony occurs with respect to Oswald's location before the fatal shots. Posner inherits the Warren Commission's problem that a number of credible witnesses placed Oswald on the first or second floor of the School Book Depository, both shortly before and shortly after the fatal shots were fired from the sixth floor at 12:30 pm. The FBI Summary

Report of December 1963 suggested that Oswald had been observed on the fifth floor between 11:30 and 12:00; but the Warren Commission added that he had been sighted on the sixth floor. Posner, like earlier lone-assassin advocates, reports such alleged sighting as fact: "At 11:40 one of the workers, Bonnie Ray Williams, spotted Oswald on the east side of that floor, near the windows overlooking Dealey Plaza" (p.225).

The problem with this convenient story is that Williams, as if to satisfy his exigent examiners, changed his story not once but twice. An earlier FBI interview on November 23, 1963, reported Williams as saying that he had seen Oswald on the fifth floor about 11:30 am; and that Williams had returned to the sixth floor about noon and seen no one. On November 22, only a few hours after the assassination, Williams had signed and sworn to a Dallas police affidavit, stating categorically that "I didn't see Oswald anymore, that I remember, after I saw him at 8 am."

The Warren Commission was quite aware of this problem. It quizzed Williams about his conflicting earlier statements to the FBI (though not to the Dallas police) and then did not use his belated story of seeing Oswald. And yet it relied heavily on Williams' account (in another story he had failed to report earlier) of hearing shots fired from one floor

above him while watching the motorcade with two coworkers on the fifth floor. Counsel Belin elicited vivid testimony from Williams on this point: "It sounded like it was right in the building....It even shook the building, the side we were on. Cement fell on my head."

Williams' earlier amnesia about what he heard is compensated for by elaborate corroboration from his two alleged companions, "Junior" Jarman and Harold Norman. Indeed the corroboration is so precise that one's suspicions are raised, especially since none of the three had reported their important eyewitness accounts to the Dallas police. We even find these suspicions voiced by Stephen White in *Should We Now Believe the Warren Report?* (Macmillan, 1968), one of the many earlier books which, like Posner's, has tried to persuade the American public that the Warren Commission was right.

The Warren Commission needed an eyewitness to Oswald on the sixth floor in order to combat three eyewitness stories that Oswald had spent this period on the first or second floor of the building. Posner has no better rebuttal for one of these three downstairs witnesses (Eddie Piper) than to say that "Piper... is clearly mistaken

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OPPOSITION TO
THE WARREN
COMMISSION
ACCOUNT OF
OSWALD
WAITING ON THE
SIXTH FLOOR.

as five witnesses had placed Oswald on an upper floor, left behind by the elevators by that time." Posner reports the elevator-encounter story as if it were incontestable fact.

Posner also names Jack Dougherty as a witness to an 11:45 am elevator-encounter citing, without page reference, an "affidavit of Jack E. Dougherty, November 22, 1963." When Posner omits page references one's suspicions are rightly aroused. The affidavit says nothing about an elevator encounter at all.

The big problem here is that the witness score of five (for upstairs) versus three (for downstairs) had originally been one, or later two (for upstairs) versus four (for downstairs). The problematic nature of this evidence had been noted in an early Warren Commission internal memo of February 25, 1964. By March, all five who had declared for upstairs had changed their stories to do so. None had done so more suspiciously than the one witness, Charles Givens, whom Posner chooses (without any hint of this problem) as his main source.

There are three possible responses to the confusion and conflict in witness testimony about Oswald's location. There is the judicious or common sense response (which was that of the House Committee): to conclude that the "inconsistencies in the statements...created problems that defied resolution 15 [now 30] years after the events in Dallas."

There is the scholarly response: to gather more evidence, whether as to what happened inside the Depository, or about the alterations in the witnesses' stories, or about the forces which led to these alterations. In 1971 Sylvia Meagher wrote a piece for the *Texas Observer* titled "The Curious Testimony of Mr. Givens," in which she pointed out that Givens changed stories at least four times in five months, and ended up with his switch from being a downstairs to an upstairs witness. According to an FBI memo of November 22, 1963, Givens had told the FBI that at 11:50 am he had seen Oswald reading a paper in the "domino room" on the first floor. In his Warren Commission testimony of April 8, 1964, Givens told counsel Belin that he had never made the earlier statement, and claimed (for the first time in the official record) that he had seen Oswald on the sixth floor just before noon.

Meagher also reprinted a statement given by Dallas Police Lieutenant Jack Revill (a narcotics detective), on February 13, 1964, to the FBI "that Givens had previously been handled by the Special Services Bureau on a marijuana charge and he (Revill) believes that Givens would change his story for money." She denounced as "patently false" Revill's testimony to the Warren Commission (on May 13, 1964), that Givens had told him on November 22 he had seen Oswald on the sixth floor, on the grounds that Givens had never said this until April 1964.

Finally there is the lawyerly approach: to tell less, not more, to suppress the difficulties with the testimony that is preferred, and to invent nonexistent problems with the testimony of witnesses one wishes to discredit. This is the approach of Posner in *Case Closed*. Instead of admitting, and discussing, the problems with the sixth floor witnesses who recanted their own testimony, Posner completely ignores these problems, and creates the false impression that it is a key first floor witness who has contradicted herself.

Posner is especially concerned to impeach the testimony of

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Carolyn Arnold, which corroborated Oswald's own account of having lunch on the first floor, in opposition to the Warren Commission account of Oswald waiting on the sixth floor. In Posner's words:

Carolyn Arnold, a secretary to the Depository's vice-president, told Anthony Summers in 1978 that at 12:15 she entered the second-floor lunch room and saw Oswald sitting in one of the booths. "He was alone as usual and appeared to be having lunch," Arnold said. Her interview with Summers was the first time she ever publicly told the story about seeing Oswald in the lunch room. But Arnold had given two different FBI statements shortly after the assassination. In one, she said she "could not be sure" but might have caught a fleeting glimpse of Oswald in the first-floor hallway, and in the second statement said she did not see him at all. Arnold told Summers the FBI misquoted her, though she had signed her statement as correct. Four other women worked with Arnold and watched the motorcade with her that day. They support her original statements and not the story she told fifteen years later. Virgie Rachley and Betty Drago accompanied her when she left the second floor at 12:15. They did not see Oswald in the lunch room.

After this apparent demolition of Arnold, Posner dismisses the other two witnesses in a footnote:

William Shelley and Eddie Piper also thought they saw Oswald on the first floor shortly before noon. But Shelley later admitted he saw him at 11:45 A.M., before others noticed him on the sixth floor. Piper thought he saw Oswald at noon filling orders on the first floor, but he is clearly mistaken as five witnesses had placed Oswald on an upper floor, left behind by the elevators at that time (p.227).

These five witnesses had come up with the elevator story long after the assassination; and one of them, Charles Givens, had originally placed Oswald on the first floor. Posner does not supply a footnote for his statement that Shelley saw Oswald "at 11:45 am." What Shelley told the Commission, unambiguously, is that he saw Oswald on the first floor at "about ten to twelve." The difference of five minutes, trivial in practice, is devastating to Posner's logic, for 11:50 is the Commission's time for the first encounter at the elevator on the fifth floor. In other words, Shelley's testimony cannot be written off as compatible with the highly dubious elevator story.

The apparent problem with Arnold's testimony is an artifact of Posner's own lawyerly imagination:

1) Arnold never told the FBI she "did not see [Oswald] at all." She said that she "did not see Lee Harvey Oswald at the time President Kennedy was shot." This was in response to a narrow question asked of all Book Depository witnesses by the FBI, in accordance with a request from the Warren Commission. Similar if not identical answers were given by Roy Truly, who according to Posner saw Oswald two minutes (some say 90 seconds) after the assassination, and by five of Posner's alleged upper floor witnesses.

2) It is highly misleading to say that "Arnold told Summers the FBI misquoted her, though she had signed her statement as correct." Here Posner conflates two different FBI statements, one of November 26, 1963, about seeing Oswald on the first floor (where she later claimed to have been misquoted), and one of March 28, 1964, about not seeing Oswald at the time of the assassination (which she had signed as correct).

3) Thus there is no evidence that Arnold ever contradicted herself. One might normally suspect witnesses who deny making statements attributed to them by the FBI. But Posner has no grounds for doing so in this case. As he is quite aware, three of his upper floor witnesses (Givens, Williams, and Norman, whose final stories he reports as gospel) had denied under oath making earlier statements attributed to them by the FBI and/or Secret Service. Arnold's different memory after fourteen years is hardly comparable to the dramatic differences in reported stories from Givens after a few weeks, or even hours.

CONFLICTING EVIDENCE

I call Posner's treatment lawyerly, because he is trying both to make some very problematic sixth floor witnesses seem clearer than they were, and to make a first floor witness seem more problematic than she really was. But at times his abuse of evidence goes beyond legal propriety. On the same page, for example, he tries to rebut Oswald's own statement that he took his lunch in the first-floor domino room by a seemingly persuasive barrage of conflicting testimony: "Danny Arce, Jack Dougherty, and Charles Givens [all three of them upper floor witnesses who had changed their stories] also ate in the first-floor room up to 12:15 and said there was no sign of him. The footnoted citation for this statement from Givens is to the Warren Commission Hearings, Volume Six, p.352. But on that page we find the exact opposite testimony: "Mr. BELIN: On November 22 did you eat inside the building? Mr. GIVENS: No Sir." Givens' testimony is consistent with his original affidavit to the Dallas police that at twelve noon he took his lunch break and left the building. After this discovery, one can raise questions about the other alleged witnesses as well.

Not every page of Posner's book is as full of distortions as this one. Even here I have focused on the worst handling of evidence; there are indeed other credible witnesses who create problems for those who believe that Oswald in fact spent this time on the first floor.

But I have no trouble admitting that the evidence is confused, and the Depository witness testimony problematic. It is Posner, in his desire to find the *Case Closed*, who must introduce a false simplicity that in fact is not to be found. There will be those who argue that Mr. Posner is after all a lawyer, and we should expect no better of him.

But my complaint is about the national media pundits who (like Tom Wicker) have hailed this book as "thoroughly documented" and "always conclusive." My complaint even more is with the prominent academics who (like Professor Stephen Ambrose) have hailed it as "a model of historical research." The case will certainly never be closed as long as the media tout such misrepresentations as the proper answer to the critics. ■

Case Closed: Lee Harvey Oswald and the Assassination of JFK; by Gerald Posner; New York: Random House, 1993; 608 pages; \$25.00

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