

ands of a large police force which he had already accused of framing him. He had no lawyer and had no success in reaching the one of his choice. Yet he cried bloody murder about the rigged nature of the lineup which made his selection almost completely automatic. Only one of those looking at him had failed to make "identification", neither or not he knew it. This was Brennan, of whose participation in the lineups the police, by odd coincidence, had no written record, and who was earlier discussed in this book. "Apparently did not include this, for it is missing from the twelve pages of his report. Captain Fritz's "rough notes and memory" apparently did not include Bookhout did include one sentence in one of his reports, reading Oswald complained of a lineup wherein he had not been granted a request to put on a jacket similar to those worn by some of the other individuals in the lineup" (R625). He said essentially the same thing in his testimony, but eliminating the word "some" (11H310). Because the Report makes only passing reference to the lineups and represents the opposite of what Oswald did or tried to do about them, it would seem that the Commission decided that either Oswald was not being framed or that protection against frameups is not a legal right.

The methods of the police were simple and straightforward. Oswald was always in the No. 2 spot in the lineup. He was the only one in any lineup that was both bruised and cut on the face. His face was also slightly swollen. He was the only one whose clothing as described as "dirty" having been through the scuffle at the theatre and having also lived in them from the time of his apprehension. In addition, besides the matter of the jacket, which Bookhout mentioned, he was also dressed differently. All the others in the first series of lineups were police employees, neatly dressed and in sports clothing. Almost without exception, the witnesses in subsequent testimony referred to Oswald as "Number 2". Most of them admit to having seen his picture in the papers or on TV or both prior to being taken to the lineup. Some of the few denials are suspect.

Apparently in response to Oswald's complaints, the police changed the others in the lineup, with as distinctive a touch as it employed in utilizing its own differently and neatly dressed employees. They used teenagers (2H260-1; 6H461). Even then, the identifications were far from conclusive, for some of those identifying Oswald did not even recall with accuracy the number of men in the lineups. One of the most important witnesses gave three different versions: four, five and six (2H253-62; 6H28-31).

In identifying Oswald at the scene of the Tippitt killing, the Commission drew upon the same witnesses utilized by the police. By far the most important of these was Mrs. Helen Markham, who will be discussed separately. Of her and her condition at the time she identified Oswald for the police, Captain Fritz said his men "were about to send her to the hospital or something" and they had to give her ammonia to revive her, hence his anxiety to get that lineup under way (1H212). Charlie Virginia Davis, as she is called by the Commission, although her name was not "Charlie", is used to describe how Oswald emptied his pistol for the second time as he passed her home and carefully left the empty shells for her to find. She said of the four men in the lineup, "and these five boys, or men, walked up on a platform, and he was Number 2." When asked "Who was Number 2?" her immediate reply was, "The boy that shot Tippitt". She had not seen the shooting, for she had been lying in bed in her living room. Although she said she was certain of her identification of Oswald in the lineup, when she saw him on television, she said, "I wouldn't say for sure". But of the man in the lineup, "I would say that was him for sure" (6H463). Mrs. Barbara Jeanette Davis, her sister or sister-in-law, on which the record is unclear and she may actually be both, was asked if the "Number 2" she picked out in the lineup was wearing the same clothing he had worn at the time she saw him leaving the scene of the Tippitt killing, and said "all except the

didn't have a black coat on when I saw him in the lineup". She was the only person to say the Tippitt killer was wearing a coat and the only person to say his garment was black (3H46-7). But she had told patrolman Poe at the scene of the killing that the killer had been wearing a white jacket (F175).

Another lineup witness at the scene of the Tippitt killing was William Scoggins, a cabdriver. He was taken to a lineup the day following the killing, along about dinner time, actually after 2 p.m. Asked about the identification at the lineup, he said, "I identified the one we are talking about, Oswald. I identified him." Assistant Counsel David W. Bellin said, "You didn't know his name as Oswald at that time, did you, or did you not?" Scoggins replied, "Yes, the next day I did. But of course I didn't know what his name was the day that I picked him out." Having asked us to believe that in the 24 hours he had not seen a newspaper or television, although the Commission was careful not to ask him if he had on Friday night, Scoggins nonetheless admitted, "I think I saw one (picture) in the morning papers" before the lineup (3H330).

There were only two witnesses to the Tippitt killing. The second was the only one that was close to it, perhaps as close as 15 feet and not over 25 feet. He is the only one to give a meaningful description, with distinctive characteristics. Domingo Benavides was in his garage truck on the opposite side of the street (6H44-54). He described a man "I might say for the record, that I was not in Dallas on November 22, 1963, and at another point." There was as little humor in what happened to Benavides as there was in the events to which he testified. He was a more-than-willing witness, anxious to help, but some of his distinguishing characteristics, such as the complexion and "curly" hair, ruled Oswald out. He was not taken to the lineup. The Report's examination is "he did not think he could identify the man who fired the shots. As a result, they did not take him to the police station" (R166). The truth is that Benavides was under the impression that he had to guarantee in advance that he could or would make positive identification. As he said, "I wasn't going to say I could identify and go down and couldn't have" (6H452). In addition, who ever heard of the police exercising such delicacy about the wishes of witnesses? There was no questioning in the hearing about the significance of the above quotation. The Report implies no error to the police.

Of utmost importance to the Commission once it determined it had to prove all of Oswald's movements following the assassination (actually, it proved almost none) was William Wayne Whaley, the cabdriver. He was regarded as of sufficient importance to be one of the relatively few selected to appear before the Commission itself (2H253-62; 292-1). His appearance was a disaster to the case against Oswald of a magnitude exceeded by few things except his subsequent deposition (6H28-31).

After seeing Oswald's photograph in the papers, Whaley told his superior in the cab company this man had been a passenger the day before. This appears to have been the means by which the police became interested in him. Although Whaley himself had said he saw Oswald's picture in the papers, in his appearance before the Commission, Assistant Counsel Joseph A. Bell asked, "Before they brought you down, did they show you a picture?" If this question had any purpose, it could not have been to establish that Whaley had had seen a picture prior to his lineup identification of Oswald, for that was already a matter of record. It could have served only to supply a quotation that might indicate the absence of follow-up, namely in that the police did not show him a photograph. Of course, the police did not have to; he had already seen one (2H260).

At the lineup, the police brought in six men, young teenagers, ... At that time he had on a pair of black pants and a white T-shirt,

that's all he had on. But you could have picked him out without identifying him by just listening to him because he was bawling out the policemen, telling them it wasn't right to put him in line with those teenagers and all that and they asked me which one and I told them (2H261). Further on what Oswald said, "He showed no respect for the policemen, he told them what he thought of them. They knew what they were doing and they were trying to railroad him and he wanted his lawyer." At this point Assistant Counsel Ball asked only, "Did that aid you in the identification of the man?" Whaley, of course, was not helped a bit, but someone else (anybody who wasn't sure could have picked out the right one just for that" (2H261).

The subsequent effort of Counsel Ball to clarify this testimony was little credit to the police and district attorney and less help to the Commission. "Now, in this police lineup, now," Ball began, "and this man was talking to the police and telling them he wanted a lawyer, and that they were trying to, you say he said they were trying to, frame him or something of that sort?" He was interrupted by Whaley who explained, "Well, the way he talked that they were doing him an injustice by putting him out there dressed different than those others...." Ball then wanted to know, "Now, did any one, any policeman, who was there, say anything to him?" "Yes, sir," Whaley replied, "Detective Sergeant Leavelle, I believe it was, told him that they had, they would get him his lawyers on the phone, that they didn't think they were doing him wrong by putting him out there dressed up" (2H294).

It is clear that Abt was available by phone to those who sought him, but was not in his office, as he testified. He was easily reached by both friends and the press. The Commission apparently did not consider this in its meditations about Oswald, the police and his lack of a lawyer. Whaley's testimony put out the unkept promise into the record. So the Commission did know.

Whaley was not finished yet. He managed to let it slip out that Oswald "was the only one that had the bruise on the head." And he also identified Oswald as having been in the No. 2 position. But in an affidavit he executed the day of the lineup he swore, "The No. 3 man, who I now know as Lee Harvey Oswald, was the man who I carried...." This discrepancy led to a later deposition-taking. The testimony quoted above was given to the Commission itself, not the staff without members of the Commission present, as most of the statements were given. Here Oswald's, and presumably his family's, interests were being looked out for by Walter Craig, former head of the American Bar Association. On March 12, 1964, Craig was not present.

Asked if he had a statement to make following Whaley's testimony, Craig's representative, Lewis F. Fowell, said, "... In a conversation with Mr. Rankin (Commission General Counsel) yesterday morning we agreed that rather than my asking questions directly of witnesses, I would make suggestions ... and I have been following that practice ..." (2H294).

The real Whaley whammy was reserved for April 6, when Assistant Counsel David W. Ballin took a deposition from him in Dallas (6H422-34). There remained the conflict between Whaley's sworn statements in the identification of Oswald.

In a futile, almost ridiculous, attempt to reconcile the conflicts in his identification at the lineup, and ignoring the fact that all positions were identified by an official number, which he saw, over the heads of the four different men in the lineup, Whaley said that, counting from right to left rather than left to right, Oswald was the third man. After attributing the "error" of two blocks in the location at which Oswald disembarked from his cab to the presence of reporters in the building (with no indication that they were anywhere near him when he executed the affidavit), Whaley administered the coup de grace to the lineups:

"I signed that statement before they carried me down to see the lineup. I signed that statement, and they carried me down to the

lineup at 2:30 in the afternoon."

The transcript cannot give the tone of voice in which Ballin asked him questions, but the reader should have no trouble imagining it. "You signed this affidavit before you saw the lineup?" he asked. Whaley's reply was, "... you are getting me confused."

There then was a brief exchange of questions and answers in which Whaley volunteered that "Bill Alexander from the district attorney's office was there also" and then manfully started all over again, detailing how the police wrote out what they wanted him to sign, but in this version he said the number of the man he was going to identify was left blank pending the lineup (6H430). With still another version in part of which Whaley said, "I made this statement more to Bill Alexander," intervening, Ballin asked, "Now when you signed it - what I want to know is, before you went down, had they already put on there a statement that the man you saw was the number 3 man in the lineup?"

"I don't remember. I don't remember whether it said three or two or what," Whaley responded.

"Did they have any statements on there before you went down to the lineup?" Ballin wanted to know.

"I never saw what they had in there," Whaley told him. "It was all written out by hand. The statement that I saw, I think was this one, and that could be writing. I might not even seen this one yet. I signed my name because they said that is what I said" (6H431).

With a little encouragement, Whaley offered still a different version, in which he signed a blank paper, as his codused words seemed to say, "because they had to get, a stenographer typed it up". Soon he got back to saying he signed the affidavit after it was typed. But when again asked by Ballin, "... had they already put on there a statement that the man you saw was the No. 3 man in the lineup?" Whaley again said, "I don't remember that. I don't remember whether it said two or three or what ... I never saw what they had in there ... I signed my name because they said that is what I said" (6H431).

When Ballin again made an effort to undo the "two-three" punch Whaley had thrown at everyone involved, Whaley uttered a magnificent and appropriate understatement: "I don't want to get you mixed up and get your whole investigation mixed up through my ignorance, but a good defense attorney could take me apart...." (6H432).

Oswald's Representation Before the Commission

Mark Lane is a lawyer and former New York public official. He was engaged by Mrs. Marguerite Oswald, the dead man's mother, "to represent the interests of her son" (2H59). Shortly after the Commission was organized, he presented it with a brief in Oswald's behalf. By the time of his appearance before the Commission on March 11, 1964, he had been informed by the Commission that it had rejected his request to be permitted to represent Oswald. The reason given by the Chairman was that "Lee Oswald left a widow. She is his legal representative. She is represented by counsel..." (2H57).

Charles Rhyne, another former head of the Bar Association and an assistant to Craig, asked one of the exceedingly few questions ever asked by any of these gentlemen: Did Lane want the Commission to "make an inquiry into whether his civil rights were violated...." (2H59). Lane replied affirmatively. Rhyne told Lane he was repeating what came from other sources, such as newspapers, in reply to which Lane alleged two other evidences: The death of the accused and the fact that it would be impossible ... to secure 12 jurors probably anywhere in this country" who had not already concluded that Oswald was guilty.

There were few interjections by those lawyers recognized by the Commission as representing Oswald's interests. Mostly these few