

# CASE CLOSED? OR OSWALD FRAMED?

A Review of Gerald Posner, *Case Closed: Lee  
Harvey Oswald and the Assassination of JFK*

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### CASE CLOSED? OR OSWALD FRAMED?

A review of Gerald Posner, *Case Closed: Lee Harvey Oswald and the Assassination of JFK* (New York: Random House, 1993). Pp. xv, 608. \$25.00

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 which 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 have lied, sometimes repeatedly, to maintain the Warren Commission's conclusions. Congressional Committees have 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.<sup>1</sup> 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 the FBI falsehoods, but not the CIA ones). On balance, unfortunately, it is a lawyerly performance.

*Case Closed* may seem to uninformed readers to be the most persuasive of the succession 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 on-going cover-up. For Posner often transmits without evaluation official statements that are now 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."<sup>2</sup> It has since been granted major publicity in the media, from *U.S. News and World Report* to the *Today* show and *20/20*.

There are many places where 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.

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 his entire project.

<sup>1</sup> U.S. Cong., Senate, Intelligence Committee, *Performance of Intelligence Agencies*, Appendix B: House, Judiciary Committee, *FBI Oversight Hearings*, October 21 and December 11, 1975; Posner, 215-17 (Oswald and FBI in Dallas); House, Select Committee on Assassinations, "Lee Harvey Oswald, the CIA and Mexico City," Classified Staff Study (cited henceforth as Lopez Report, declassified 1993), 123, 164, 183-84, etc. (Oswald in Mexico City).

<sup>2</sup> Posner, pp. 511, 514, etc.



P.D. Scott

- 2 -

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."<sup>3</sup> 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 de Mohrenschildt's 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 Francois "Papa Doc" Duvalier.<sup>4</sup>

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.<sup>5</sup> This false claim is an important one, since the CIA has used it 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, the CIA pre-assassination file on Oswald contained four newspaper clippings of his defection to the Soviet Union in 1959, and two of these contained photographs of him.<sup>6</sup> One could argue that the original error arose from an innocent oversight; although this is unlikely, since it is part of a larger pattern of CIA misrepresentations concerning the photos.<sup>7</sup> One cannot offer such an innocent defense for Posner's repetition of the falsehood. His discussion of the photo issue is a running argument with Summers'; and indeed in this section he repeatedly disputes Summers' allegations.<sup>8</sup>

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 and Organized Crime*

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 (AR 149). Eight pages on this topic in the House Committee Report were supplemented by a staff volume of over a thousand pages. Once this important point is conceded, it is hard not to agree that the Warren Commission's portrait of Ruby as a loner, based on misleading reports and suppression of evidence by the FBI, was a false

<sup>3</sup> Posner, 86.

<sup>4</sup> 12 AR 55-57; Summers, 248; Dick Russell, *The Man Who Knew Too Much* (New York: Carroll and Graf, 1992), 318-19; Warren Hinckle and William Turner, *The Fish Is Red* (New York: Harper and Row, 1981), 210 (contract agent); Peter Dale Scott, *Deep Politics and the Death of JFK* (Berkeley and Los Angeles: University of California Press, 1993), 78. There is also the problem of the alleged KGB defector, Yuri Nosenko, who came to America in 1964 with the claim that the KGB had had nothing to do with Oswald. There are issues here that will probably never be resolved, but Posner, in order to close the case, makes light of them. He spends most of his time confirming what he calls "Nosenko's bona fides" (p. 41), and his arguments are quite persuasive. But even if Nosenko were a bona fide defector, it does not follow that all that he says about Oswald is true. On the contrary, the House Committee reported "significant inconsistencies" in statements Nosenko had given the FBI, the CIA, and the Committee (AR 102). Posner makes the valid rebuttal point (p. 43) that a 1967 CIA review found "massive errors in the transactions of the interviews conducted before and during Nosenko's imprisonment." But he does not reveal to his readers that this finding related to CIA interviews only, leaving unexplained the reported major discrepancies between Nosenko's statements to the Committee and to the FBI. Thus there is still little justification for Posner's having relied so heavily on Nosenko as a principal source.

<sup>5</sup> Posner, 186n; emphasis in original. This false claim was originally made within the Agency by an anonymous official to CIA General Counsel Lawrence Houston. See Anthony Summers, *Conspiracy* (New York: McGraw-Hill, 1980), 381.

<sup>6</sup> Summers, 381; Warren Commission Document 692; CIA Document 590-252.

<sup>7</sup> Lopez Report, 137-41. The Lopez Report called explanations offered by CIA employees on the matter of the false Oswald description "hard to accept" (139) and "implausible" (140).

<sup>8</sup> Posner, 191 (footnotes 99 and 100), 193 (footnote 105). These cite pages in Summers immediately before and after the account of the photos in Oswald's file.

P.D. Scott

- 3 -

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To avoid this problem, 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."<sup>9</sup> 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's called Lewis McWillie, and was himself working for a mob casino in Las Vegas, the Riviera, by the time the Committee interviewed him in 1978.<sup>10</sup>

Why would Posner choose a discredited casino employee to claim that Ruby was not connected to the mob? The answer, surely, 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 (AR 159). 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.'"<sup>11</sup> 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. (The House Committee concluded that the FBI "was seriously delinquent in investigating the Ruby-underworld connections;" AR 243.)

Crucial to closing the case is rebuttal of the House Committee's finding that Ruby may have had "assistance" from Dallas policemen in entering the Dallas Police Basement (AR 157). 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 (AR 158).

Posner ignores these disturbing indications of conspiracy. He writes (p. 393) that "It was never clear whether the door near the public elevators was properly locked," 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.<sup>12</sup> 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.<sup>13</sup>

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.

<sup>9</sup> Posner, 355, 361.

<sup>10</sup> Scott, 198-99; 5 AH 170ss; 9 AH 164-69. The stake of Meyer Lansky, Moe Dalitz, and the Chicago mob in the Riviera is confirmed by one of Posner's other Ruby witnesses, William Roemer, *War of the Godfathers* (New York: Donald I. Fine, 1990), 82, 167.

<sup>11</sup> William Manchester, *The Death of a President* (New York: Harper and Row, 1967), 326; Scott, *Deep Politics*, 270. By the time Posner interviewed him, Alexander had become a fervid anti-conspiratorialist (Posner, 361-62, 466-67). But Posner is usually scathing about witnesses who have changed their positions (e.g. 139, 227).

<sup>12</sup> Posner, 395; G. Robert Blakey and Richard N. Billings, *The Plot to Kill the President* (New York: Times Books, 321-22).

<sup>13</sup> Posner, 395-96. Posner says "three" Dallas policemen, instead of four. Is he mindful of the problem with Dean's testimony which he does not share with his readers? Accepting Jack Ruby's version as if it were authoritative, Posner also claims (396n) 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 (*Dallas Morning News*, March 25, 1979)." He thus rebukes the Committee for ignoring a "fact" that emerged after their 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 (13 WH 68).



P.D. Scott

- 4 -

*Repeating Stories Which Even 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 un rebutted memo, it is hard to excuse the Warren Commission for relying on Marina's testimony that the Mannlicher-Carcano "was the 'fateful rifle of Lee Oswald.'"<sup>14</sup> But Posner resuscitates a story from Marina which even the Warren Commission, knowing the story's history, discounted as having "no probative value."<sup>15</sup>

Marina said, "Then he got dressed and put on a good suit. I saw that he took a pistol. I asked him where he was going, and why he was getting dressed. He answered, 'Nixon is coming.'" She did not know who Nixon was, but was determined that Lee should not leave the house with the pistol. She asked him to join her in the bathroom, and when he entered she jumped out and slammed the door shut. Bracing her feet against the nearby wall, she struggled as hard as she could to keep the door closed against his efforts to push out. "I remember that I held him," she said. "We actually struggled for several minutes and then he quieted down....At first he was furious, but as he calmed, Oswald agreed to strip to his underwear, and stayed home reading the remainder of the day."<sup>16</sup>

We can only repeat here a few of the problems with this story, which at the time engendered a number of supporting statements to the FBI that were later hastily recanted:

According to one version of this latest story from Marina, Oswald had "intended to shoot Nixon" in Dallas; and she "had locked Lee Harvey Oswald in the bathroom the entire day...to prevent him from doing so"....Faced with the fact that the Oswald bathroom, like all others, locked from the inside, Marina then told the FBI...that in April 1963 "she forcibly held the bathroom door shut by holding on to the knob and bracing her feet against the wall".... Finally she would tell the Warren Commission... that she and her much stronger husband "struggled for several minutes" inside the bathroom....Faced with other, irreducible difficulties in this Nixon story, the Warren Commission discreetly concluded it was of "no probative value."<sup>17</sup>

Note here that Posner has glossed over the inconsistencies in two incompatible stories by attempting to present them as one. In fact if Marina was outside holding on to the knob, she could not have simultaneously been inside struggling with her husband.

*Twisting Testimony to Imply (or Even State) Its Opposite*

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 seen (by Charles Givens, of whom more below) on the sixth floor. Posner, like earlier advocates of the lone assassin theory, reports another such alleged sighting as fact: "At 11:40 one of the workers, Bonnie Ray Williams, spotted Oswald on the

<sup>14</sup> WR 128, citing 1 WH 119, 14.

<sup>15</sup> Warren Report, p. 189.

<sup>16</sup> Posner, *Case Closed*, 120.

<sup>17</sup> Scott, *Deep Politics*, 271, 289; cf. discussion at 289-91; 22 WH 596, 786; 5 WH 389-90.

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P.D. Scott

- 5 -

east side of that floor, near the windows overlooking Dealey Plaza."<sup>18</sup>

The problem with this convenient story is that Williams, as if to satisfy his exigent examiners, had apparently changed his story not once but twice. An earlier FBI interview on November 23 had 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.<sup>19</sup> One day earlier, 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 any more, that I remember, after I saw him at 8 am."<sup>20</sup>

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 discreetly declined to use his belated story about the sixth floor. And yet relied heavily on Williams' account (in another story he had failed to report earlier) of hearing the shots fired from one floor above him while watching the motorcade with two co-workers on the fifth floor. Commission 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."<sup>21</sup>

Williams's 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 earwitness accounts to the Dallas police.<sup>22</sup> We even find these suspicions voiced by Stephen White, in one of the many earlier books which, like Posner's, has tried to persuade the American public that the Warren Commission was right:

Any student of the Report...must become uneasy at the testimony of the three men who stationed themselves at a fifth floor window in the Depository to watch the motorcade go by. Their stories dovetail admirably: The each heard three shots; they believed they were fired above them; one of them heard three shells hit the floor above them. It may well be so, but uneasiness is engendered when one learns that the Warren Commission stimulated their memories by a reenactment that duplicated in detail the account to which the investigators themselves were by then committed, and in so doing may have made concrete a recollection that had earlier been vague and indistinct.<sup>23</sup>

The Warren Commission needed an eyewitness to Oswald on the sixth floor, in order to rebut 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 as five witnesses had placed Oswald on an upper floor, left behind by the elevators by that time."<sup>24</sup> 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

<sup>18</sup> Posner, 225; cf. 22 WH 681 (FBI interview of March 19, 1964); 3 WH 165.

<sup>19</sup> WCD 5.330, emphasis added; cf. 3 WH 169.

<sup>20</sup> 24 WH 229.

<sup>21</sup> 3 WH 175; quoted in Posner, 242. Cf. 3 WH 179: "I heard three shots. But at first I told the FBI I only heard two - they took me down - because I was so excited, and I couldn't remember too well. But later on, as everything began to die down, I got my memory even a little better than on the 22d, I remembered three shots."

<sup>22</sup> Like Williams, Norman, when testifying to the Warren Commission, recanted details of an earlier statement he had made under oath (3 WH 194; cf. 17 WH 208).

<sup>23</sup> Stephen White, *Should We Now Believe the Warren Report?* (New York: Macmillan, 1968), 57-58.

<sup>24</sup> Posner, 227. For just some of the many problems of the alleged Oswald-by-the-elevator encounter (later doubled to become two Oswald-by-the-elevator encounters), see Gordon Miller, *The Third Decade* (September 1993), 33-35. Miller does not mention that Bonnie Ray Williams (3 AH 168) attributed to the first encounter an exchange of words between Givens and Oswald which Givens (6 AH 351) attributed to the second encounter (when Williams was not present). Posner, undaunted, reports both elevator-encounter stories, along with the Givens version of the exchange of words, as if they were incontestable facts. Posner also names Jack Dougherty as a witness to an 11:45 am elevator-encounter, citing (without page references) an "affidavit of Jack E. Dougherty, November 22, 1963" (Posner, 540, footnote 12). When Posner omits page references, one's suspicions are rightly aroused. The affidavit (24 WH 206) says nothing about an elevator encounter at all. There is also no elevator in the testimony (6 WH 377-78), where Dougherty stated, "It was about 11 o'clock - that was the last time I saw him."



P.D. Scott

internal memo of February 25, 1964.<sup>25</sup> All five who had declared for upstairs by March 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."<sup>26</sup>

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. Sylvia Meagher in 1971 looked more closely at "The Curious Testimony of Mr. Givens," which changed 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, 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.<sup>27</sup>

Meagher also reprinted an intervening statement on February 13, 1964 to the FBI by Dallas Police Lt. Jack Revill (a narcotics detective), "that Givens had previously been handled by the Special Services Bureau on a marijuana charge and he believes that Givens would change his story for money." And 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.<sup>28</sup>

Finally there is the lawyerly approach: to tell less, not more, to suppress the difficulties with the testimony that is preferred, and to invent non-existent 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 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 Benny Drago accompanied her when she left the second floor at 12:15. They did not see Oswald in the lunch room.

<sup>25</sup> Summarized in Sylvia Meagher, "The Curious Testimony of Mr. Givens," *Texas Observer*, August 13, 1971; reprinted in Peter Dale Scott, Paul L. Hoch, and Russell Stetler, *The Assassinations: Dallas and Beyond* (New York: Vintage, 1976), 245-47.

<sup>26</sup> AR 50.

<sup>27</sup> 6 WH 345-56; WR 143; cf. WCD 5.329 (FBI interview of 11/22/63); all summarized in Meagher, 245-47.

<sup>28</sup> WCD 5.330 (FBI memo of 11/22/63); 6 WH 345-56, WR 143 (Givens testimony); WCD 735.296-97 (Revill to FBI), 5 WH 35-36 (Revill to Commission); Meagher, in Scott, Hoch, and Stetler, 245-48.

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P.D. Scott

- 7 -

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.<sup>29</sup>

(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).<sup>30</sup>

But the apparent problem with Arnold's testimony is an artefact 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."<sup>31</sup> 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.<sup>32</sup>

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 about seeing Oswald on the first floor (where she later claimed to have been misquoted), and one of March 28 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 denied 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.<sup>33</sup> 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.

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."<sup>34</sup> 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." After this discovery, one can raise questions about

<sup>29</sup> Posner, 227; emphasis added.

<sup>30</sup> Posner does not supply a footnote for his statement that Shelley saw Oswald "at 11:45 A.M." What Shelley told the Commission, unambiguously, is that he saw Oswald on the first floor at "about ten to twelve." (6 WH 328). 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 in the elevator on the fifth floor. In other words, Shelley's testimony cannot be written off as compatible with the highly dubious elevator story.

<sup>31</sup> 22 WH 635; FBI interview of March 18, 1964, emphasis added.

<sup>32</sup> 22 WH 634 (Arce), 22 WH 645 (Dougherty), 22 WH 649 (Givens), 22 WH 655 (Jarman), 22 WH 666 (Norman); cf. Howard Roffman, *Presumed Guilty* (Rutherford, NJ: Fairleigh Dickinson University Press, 1975), 185.

<sup>33</sup> 6 WH 354 (Givens); 3 WH 168, 171-72, 173, 180 (Williams); 3 WH 194 (Norman).

<sup>34</sup> Posner, 227.



P.D. Scott

- 8 -

the other alleged witnesses as well.<sup>35</sup>

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.

<sup>35</sup> Givens' testimony is consistent with his original affidavit to the Dallas Police on November 22 that at twelve noon he took his lunch break and left the building. A very similar statement ("At lunch time at 12:00 noon I went down on the street") had been signed and sworn to by Danny Arce (24 WH 199). Arce's different statement to the Warren Commission, that he ate lunch in the "domino room" (6 WH 365), is thus open to question. This leaves only Jack Dougherty, a witness the Warren Report very understandably calls "confused" (WR 153) and who testified twice to Warren Commission Counsel Ball that the shots were fired "before I ate my lunch" (6 WH 379).

November 16, 1993

That's  
all  
folks

