

CASE DISTORTED: Posner, Connick, and the New York Times

By Bill Davy

When the New York Times published Gerald Posner's article entitled, "GARRISON GUILTY: Another Case Closed" (*New York Times Magazine*, August 6, 1995), they managed to convict a second person without benefit of a trial—the first being Lee Harvey Oswald, whose guilt the *Times* has trumpeted over the years by virtue of its unwavering support of the Warren Report.

The *Times* certainly picked the right person for the job of ferreting out contradictions in the late Jim Garrison's files. Posner's book, *Case Closed*, is rife with contradictions, sloppy research, and distortions. What is surprising is that the *Times* found all of this newsworthy. The contradictions found in the files of the Warren Commission and the House Select Committee on Assassinations (HSCA) would fill volumes. Where were the *Times* and Posner when the HSCA released their files in 1993? Had they been at the National Archives they would have found suppressed evidence supporting the Garrison case. Was Posner too busy at the time to examine these files? Apparently he now has more time on his hands to allow him to first attend the Assassination Records and Review Board hearings in New Orleans and then to examine Garrison's files.

The \$64,000 Question

Why was Posner allowed access to these files? New Orleans District Attorney, Harry Connick, is on record as stating only representatives of the government would be allowed to review these records. Does Posner qualify under this criteria? According to his article, Posner was personally invited by Connick to review the files. [For more on Connick's role in this affair, see *Probe* Vol. 2, No. 5]

It is difficult to comment on the specific allegations that Posner raises without benefit of actually seeing the files. However, it is possible to rebut some of the most egregious distortions. First it might be instructive to look at what Posner claims he examined.

Tracking the Garrison Files

In 1978 two investigators from the HSCA were dispatched to Connick's office to inventory the Garrison files. It took the HSCA staffers four days to inventory the five-drawer file cabinet. The inventory list itself is 23 pages long. Assuming Posner did not graduate Summa Cum Laude from Evelyn Wood, did he have enough time to adequately review all of the files? Even if he did, the Connick files represent only a small portion of the entire Garrison probe output. The Garrison family had approximately a dozen boxes of the late DA's files. (These were turned over to the ARRB). Garrison himself submitted hundreds of pages of documents to the HSCA in the late 1970's (available at the National Archives since 1993). Additional Garrison materials fill several file cabinets at the Assassination Archives and Research Center in Washington, D.C. The Georgetown University Library is home to the Richard Billings Papers, yet another vast collection of Garrison work product. This, combined with the 3,000+ page transcript of the Clay Shaw trial and the newly found Grand Jury testimony, amounts to an avalanche of investigative materials. Did Posner examine all of the above mentioned materials in order to put the Connick files in the proper context? Doubtful.

The Posner Spin

Posner begins his article by confidently informing the reader that "on the eve of the public release of some of Garrison's files, it is finally possible to settle whether the case against Shaw was a fraud." Consider what Posner is saying here. He can finally settle the case by looking at some of the files. One wonders if he employed this same methodology while writing "Case Closed".

Continuing with the article, we are told:

Garrison persisted in following leads even when they were quickly discredited: that an eccentric homosexual, David Ferrie, taught Oswald how to shoot and had visited Texas on the evening of the assassination; and that Oswald, together with some flamboyant homosexuals, had visited a local attorney, Dean Andrews, who claimed his legal bill was

paid by a man known only as "Clay Bertrand." Using these assertions, Garrison soon said the plot to kill the President was "a homosexual thrill-killing." (He claimed that Oswald was a "switch-hitter" and that Jack Ruby was gay.)

Assertions? It is now a documented fact that Oswald was in Ferrie's Civil Air Patrol unit. A photograph showing the two at a CAP barbecue was presented during a PBS documentary [*Frontline* 11/16/93, "Who Was Lee Harvey Oswald?"] Furthermore, Ferrie would occasionally drill his cadets in the use of firearms. It is a matter of public record that Ferrie visited Texas on the evening of the assassination. Ferrie, himself, admitted this. Oswald's visits to attorney Dean Andrews' office are not taken from Garrison, but rather from Andrews' sworn testimony before the Warren Commission. The bit of business about the plot being a "homosexual thrill-killing" is from an article by James Phelan supposedly quoting Garrison. Readers of *Probe* will recall that Phelan has some credibility problems. I don't doubt that Garrison suspected Oswald was a "switch-hitter." Given his association with aggressive homosexuals like Clay Shaw and David Ferrie, one would have to at least consider the hypothesis. Norman Mailer certainly gave it serious consideration in *Oswald's Tale*. There also appears to be indications that Ruby was indeed gay, but so what.

Posner writes:

[The source of the Ferrie story was a private investigator, Jack Martin, an alcoholic who had been in prisons and mental institutions. Within a week of the assassination, he confessed to the FBI that he had concocted the account while drunk.

True enough I suppose. Although Martin actually recanted his story the weekend of the assassination, telling the FBI that he had contracted a case of "telephinitis" while drunk. What Posner *doesn't* tell us is that at the same time Martin was backtracking to the FBI (and presumably while he was sober), he was writing to the FAA:

Don't your case records on Ferrie show that this guy Oswald was a member of Ferrie's phony CAP squadron. Remember all of those large group pictures. Wasn't his picture in these? . . . Furthermore, was not this the person (Oswald) that Ferrie helped to get into the Marine Corps? [Letter from Martin to Richard Robey, FAA, 11/25/63.]

The FBI, Shaw & "Bertrand"

Andrews, Posner tells us, later recanted his "yarn" after the FBI failed to find anyone in New Orleans who ever heard the name "Bertrand." Also that according to

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Garrison's files Andrews was emphatic in his denial that Shaw was Bertrand. Again what is important here is what Posner ignores (or doesn't know). An FBI memo dated March 2, 1967, from Cartha DeLoach to Clyde Tolson, states:

The AG then asked whether the FBI knew anything about Shaw. I told him Shaw's name had come up in our investigation in December, 1963 as a result of several parties furnishing information concerning Shaw." [FBI document # 62-109060-4635.]

FBI agent Regis Kennedy testified under oath at the Shaw trial that the FBI was looking for a Clay Bertrand, in connection with the assassination, prior to his interview with Dean Andrews. [Shaw trial, 2/17/69]. A Justice Department spokesman, commenting on the Shaw/Bertrand controversy, is quoted in the *New York Times* as saying "Yeah. He's the same guy." [New York Times 3/3/67.] Finally, the FBI had reports in February of 1967 (before Shaw's arrest) from two sources that Shaw was Bertrand. [FBI document #62-109060-4720.] Andrews was later convicted of perjury for his equivocating before the Grand Jury. Andrews' reluctance to name the real "Bertrand" seems to have come from a genuine fear rather than a desire to mislead. British journalist Anthony Summers interviewed Andrews several years later and wrote:

He has since said that to reveal the truth about his caller would endanger his life, and my own brief contact with Andrews confirmed that the fear is still with him today. [Summers, *Conspiracy*. New York: McGraw-Hill, 1980. pg. 340.]

Misrepresenting Bundy

Posner next tries to discredit Vernon Bundy, the heroin addict who testified at the preliminary hearing and trial, that he saw Oswald and Shaw together by the Lake Pontchartrain seawall. Bundy specifically remembered Shaw because of his slight limp. Posner reveals, with a flourish:

I discovered a March 16, 1967, transcript of an interview between Bundy and three Garrison investigators. In that talk, only two weeks after Shaw's arrest, Bundy described the "Oswald" character as a "real junkie" and said his name was "Pete." Not once in a 12-page typewritten statement did Bundy mention any unusual walk or gait. By the time of his testimony, he had dropped any inconsistencies, and his memory had "improved" favorably for the prosecution.

One has to wonder about the accuracy of what Posner is describing here. Because I dis-

covered a memorandum, dated March 16, 1967, written by William Gurvich, one of the three Garrison investigators Posner cites. (The other two were Charles Jonau and Clancey Navarre). At no point does Bundy waver from his identification of Shaw or Oswald. As for Bundy never mentioning Shaw's gait, had Posner dug a little deeper he might have found a memo from Assistant DA, John Volz, also from March 16th, where he writes:

In order to get a more positive identification, I proceeded with Bundy out of the Prison and milled around the foyer of the Criminal District Court Building near the elevators. As soon as Shaw emerged from the Sheriff's office Bundy said "That's him, I'm sure of it. He had the same limp when I saw him on the Lakefront."

It might also interest Posner to know that Bundy testified at the preliminary hearing on March 17, 1967.

Fast & Loose with the Facts

Finally, Posner tries to deliver a knock-out punch by attempting to discredit the Clinton/Jackson witnesses. But here Posner is just up to the same old tricks that he used in *Case Closed*. Posner writes:

The most telling abuse shown by the files probably concerns four witnesses from Clinton, La., who were used to bolster a sighting of Oswald, Ferrie and Shaw. The witnesses gave almost uniform trial testimony, saying that during a Congress of Racial Equality voter-registration drive in the late summer of 1963, a black Cadillac, driven by Shaw, stopped in town. Ferrie and Oswald were passengers. This testimony seemed strong. Yet, the files confirm suspicions that the witnesses initially gave dramatically conflicting statements to investigators. Some had failed to identify Oswald, Shaw or Ferrie. Others had described the Cadillac as an "old and beat-up Nash or a Kaiser" or instead of three men in the car, they originally said four, or two, or a woman with a baby. Some swore the Oswald look-alike was in a voter-registration line, while a few thought he applied for a job at a mental institution, and another claimed to have cut his hair. Several placed the sightings in October, when Oswald was in Dallas, and two thought Jack Ruby drove the car. Moreover, the files reveal new information that Garrison's investigators had tried in vain to find support for the alleged sighting. They had combed the Clinton area; more than 100 local residents failed to recall a dark car or strangers in the small town. At a separate meeting of 60 CORE volunteers, investigators explained the story and projected pictures of Oswald, Shaw and Ferrie. No one remembered the incident.

As in *Case Closed*, Posner combines witness recollections of four separate events that transpired over a course of three days at four different locations. I, too, have seen these memos and Lea McGehee did indeed cut Oswald's hair.

Makes sense. After all he was the town barber in Jackson. (Not Clinton as Posner would have us believe). McGehee also recalled a Nash or Kaiser arriving *coincidental* to Oswald's arrival. At no time does McGehee ever claim Oswald got into or out of that car. The two CORE workers were uniform in their identification of the principals. The Clinton registrar of voters, Henry Earl Palmer, did indeed originally state that he thought the incident may have taken place in October. What Posner *doesn't* tell us is that in that same memo Palmer says the incident could have taken place as early as September 1st.

None of this should come as a surprise to readers of *Case Closed*. For instance, let's look at how Posner covers the Shaw trial in his book. He devotes all of three paragraphs to a complex case that lasted over a month and generated in excess of 3,000 pages of transcript. And how accurate are those three paragraphs? From *Case Closed* (softcover edition, pgs 447-448):

Despite his promises of spectacular disclosures, Garrison presented the same basic prosecution he had in the 1967 preliminary hearing. Yet this time the problems in his case were readily apparent. Russo testified again that he had seen Ferrie, Oswald, and Shaw at the party, but said they might not have been planning a conspiracy but instead just "shooting the bull." Then Dean Andrews took the stand and admitted that Clay Bertrand was an invented character. Trying to prevent his case from falling apart, Garrison introduced the Clinton, Louisiana witnesses... Although they were not relevant in determining Shaw's guilt or innocence, he called Marina Oswald, Bethesda pathologist, Pierre Finck, and witnesses from Dealey Plaza.

Even a cursory glance at James Kirkwood's book, *American Grotesque* (New York: Simon and Schuster, 1970), will reveal how far off base Posner is here. (I have to assume Posner read the book, since he footnotes and quotes from it in *Case Closed*.) The Clinton/Jackson people were the *first* witnesses to appear, followed by several New Orleans policemen, then Charles Steele, Vernon Bundy, and Charles Spiesel. Russo is called next, some four days into the trial. Dean Andrews, Marina Oswald, and Pierre Finck were not called until days later. No doubt due to the fact all three were *defense* witnesses *not* State witnesses as Posner writes. Whether Posner purposefully juxtaposed these events—as he did with the Clinton witnesses—it strains one's credulity to consider this book was nominated for a Pulitzer.

In their zeal to close the case, the *Times* has once again disserved the American people. Both Posner and the *Times* have some more homework to do before they can hope to render a verdict of "Case Closed." ♣