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IN ARTS

MARCH 10-16, 1989

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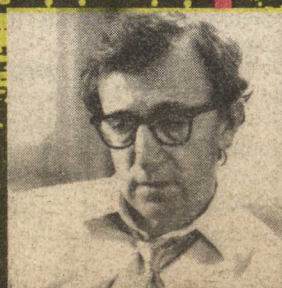
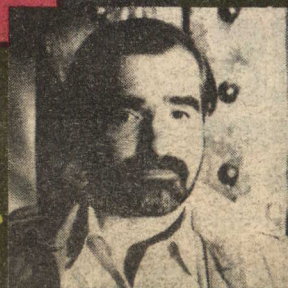
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IN ARTS

**New York! New York! New York!**

**THREE SLICES OF THE APPLE**  
by Scorsese, Coppola & Allen

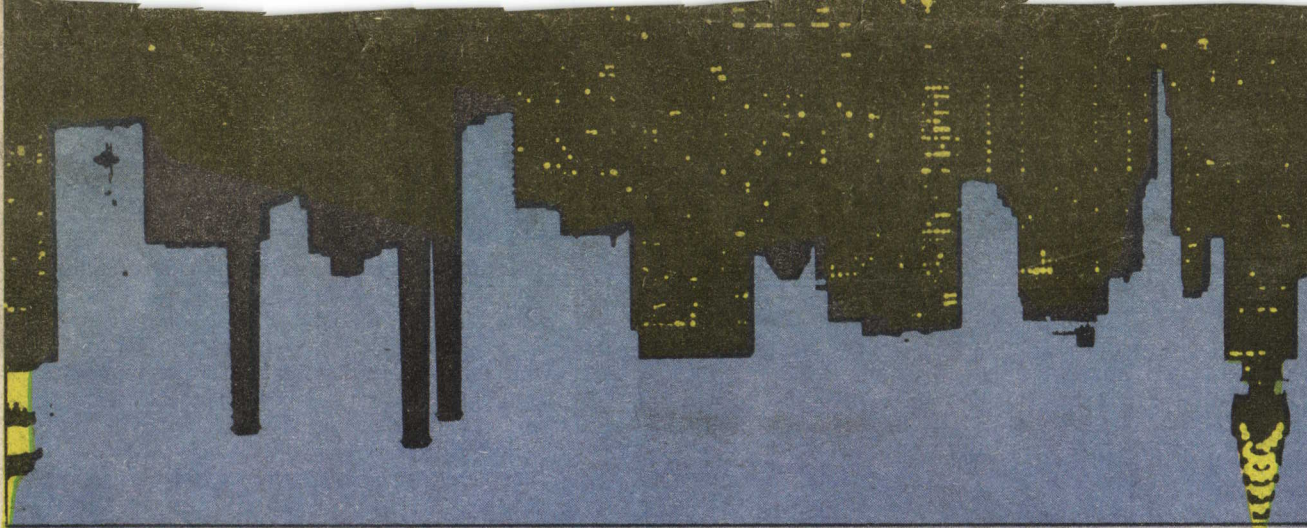


In re: *Commonwealth*  
vs. *Albert Lewin*

**The**  
**making**  
**of a**  
**crooked**  
**case**

by Harvey Silverglate

**T**he admissions, by police and prosecutors, of informant abuse that have threatened a murder prosecution in the killing of



## Where's George?

# Read my lips: Now what?

by Scot Lehigh

**T**he difference between irony and idiocy is a matter of intent. Call it the Quayle Chasm. Certainly no one who has watched the painful public education of the vice-president could have thought Quayle was being intentionally ironic when he said of the lost cause that is John Tower's confirmation battle: "Those who oppose [Tower] resort to rather broad, nebulous, and ambiguous charges."

That's the equivalent of Darth Vader traducing the dark side of the Force. Or John Tower belittling juniper berries. Has J. Danforth Albatross forgotten just how he and George Bush — and all those advisers he pledged to get-to-know on a first-name basis — came to office in the first place?

If Quayle has forgotten how, neither he nor Bush seems to know what they are there for.

Ronald Reagan was the actor, but it is George Bush who is playing president. New presidents give inauguration speeches, so George Bush gave one. Presidents travel and confer with foreign leaders, and so Bush loaded his entourage into *Air Force One* and visited Japan, South Korea, and China. Chief executives submit budgets, and that, too, Bush has done, at least in outline.

But the overwhelming impression is of a presidency lacking direction. His inauguration speech was as devoid of content as it was overloaded with metaphor — the breezes of freedom, winds of change, and the countless other lofty zephyrs that ruffled through its pages apparently stirred up only by the vacuum at its center. What the speech lacked was a central idea,

*Continued on page 14*

Detective Sherman Griffiths are just the tip of an iceberg.

As frightening as were the police actions that have already come to light in the effort to prosecute Albert Lewin for the murder of Griffiths (including the use of perjured police affidavits containing false information from phantom "reliable informants" in order to obtain court-issued search warrants legally), they will not be the last, or the worst, revelations that will seep out from an affair already so sordid that the state attorney general is considering removing part of the case from the hands of Suffolk County District Attorney Newman Flanagan.

Perhaps more damaging will be the revelation that the obtaining of search warrants with perjured affidavits in the Lewin case was not an isolated incident. Indeed, to their shame, similar abuses in the methods used for obtaining search warrants in scores of other cases handled by the Boston Police Department Drug Control Unit (DCU) and other police will likely be uncovered.

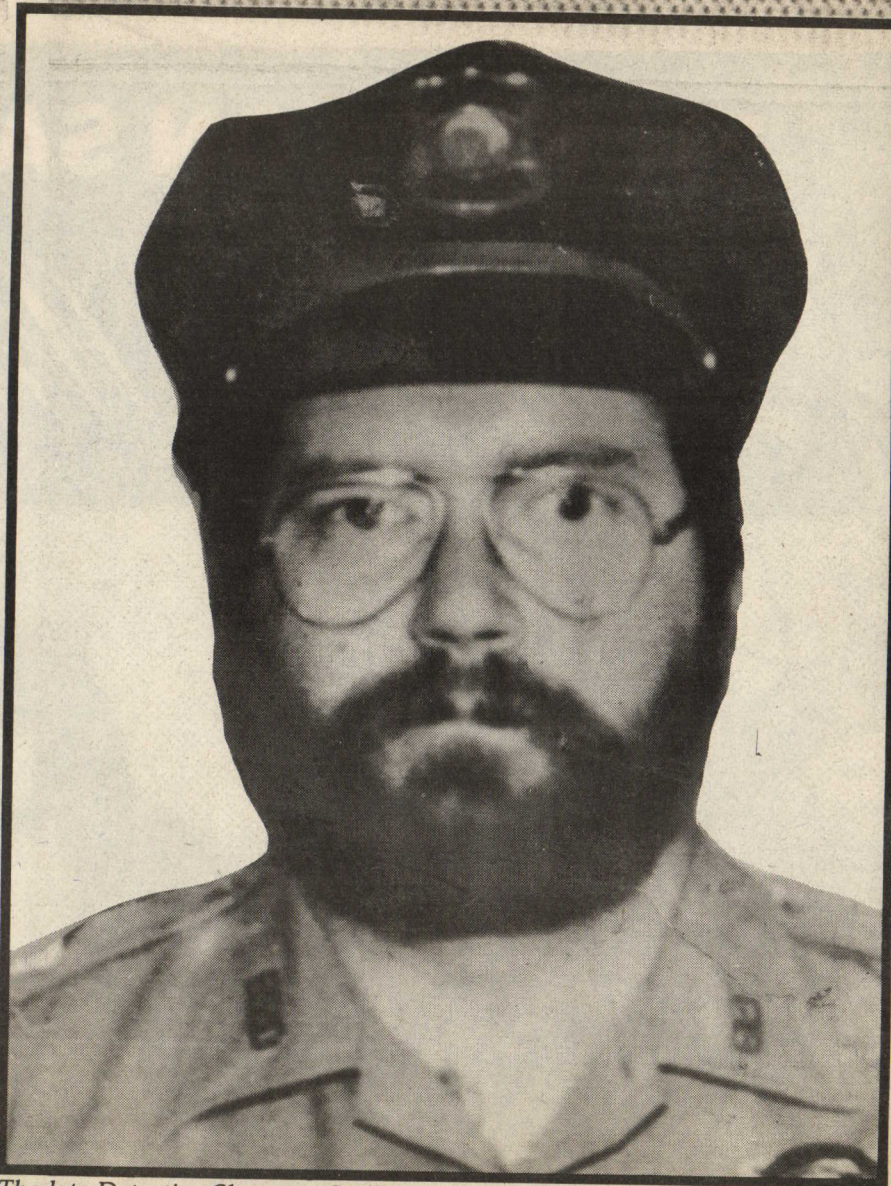
To satisfy constitutional requirements that a magistrate may not issue a warrant authorizing a search

*Continued on page 6*





COURTESY THE BOSTON HERALD

*Lewin: gunman or victim?*

AP/WIDE WORLD/COURTESY THE BOSTON HERALD

*The late Detective Sherman Griffiths*

# The making of a

Continued from page 1

unless the officer seeking the warrant supplies sworn evidence that there is "probable cause" to believe that illegal activity or evidence of such activity will be found on the premises, the police, in their ardor to apprehend likely suspects, have frequently taken to cooking such sworn evidence, future revelations will show. Moreover, the Lewin case is likely to trigger investigations into at least two other types of abusive informant practices, both of which are lurking in that case — though to date neither has yet attracted much attention.

Separately or combined, these practices pose a substantial danger that innocent people can be — indeed, already have been — convicted of serious crimes, even capital crimes.

Evidence of this is to be found in a careful examination of the Lewin case and how it was brought.

\* \* \*

Suffolk County District Attorney Newman Flanagan and Assistant DA Francis O'Meara may yet manage to convince Judge Charles Grabau to reverse his order dismissing the charges against Lewin, charges stemming from the murder of Detective Griffiths during a "no knock" drug raid on February 17, 1988.

If they do, the focus in the case will shift to an equally serious abuse posed by another dangerous MO in the informant system, one that is also egregiously exemplified in the building of the case against Lewin. It is the method by which police and prosecutors decide who among a number of suspects to target for prosecution and who to turn into witnesses against the target or targets by means of rewards, threats, and other inducements.

In the case at hand, it would appear that police and prosecutors singled Lewin out for prosecution and granted complete immunity and other favors (in exchange for testimony against Lewin) to suspects who seem more likely to have pulled the trigger.

Indeed, it would seem that Lewin was selected for prosecution for murder simply on the basis of convenience — and the government's desire to "solve"

the murder of a police officer quickly, even at the cost of recklessly prosecuting the wrong man.

Also lurking in this case is a third danger created by the witness informant process: the use of prisoners to testify that, during an unguarded moment the defendant, while in jail awaiting trial, made a confession to a fellow inmate or inmates, who then offered to be available to testify — for a price.

Prisoners and prosecutors around the country, including in Massachusetts, have for years entered into such marriages of convenience; in so doing, they have provoked great skepticism and cries of "foul" from criminal-defense lawyers, civil libertarians, and students of the criminal-justice system.

The use of such inmate-informant testimony regarding "jailhouse confessions" recently created a major criminal-justice-system scandal in Los Angeles, and, as a result of the Lewin case, is likely, at long last, to raise major questions about the practice here in the commonwealth.

After all, a major portion of the prosecution's case against Lewin consists of the testimony of one and possibly two fellow prisoners who, in exchange for favors and inducements, are prepared to testify under oath that Lewin confessed the murder to them.

\* \* \*

The police began building their case against Lewin the night Griffiths was murdered.

Griffiths and other members of the Boston Police Department Drug Control Unit arrived at 102-104 Bellevue Street, in Dorchester, to execute a search warrant that had been obtained by DCU member Carlos Luna. Luna had obtained the warrant on the basis of information that he swore to the issuing magistrate had been provided to him by a "reliable informant."

While using a sledgehammer to smash in the heavily fortified door of the third-floor Dorchester apartment where the "informant" had reportedly told Luna that a Hispanic man of medium build was dealing cocaine, Griffiths was killed by a bullet shot through the door by an occupant of the apartment; the gunman had fled, presumably down a rear flight

of stairs, by the time the DCU officers broke into the apartment.

The police ran down the rear staircase, assuming that the occupant or occupants of the apartment had used that route to escape. The staircase led to a first-floor apartment. Upon entering that apartment, the officers found seven persons: two Hispanic males (Hector Calderon and William Barrios), three African Americans (James McConnell, Shirley McConnell, and George Johnson), one black Jamaican (Albert Lewin), and one Caucasian male (William McCloud).

At the time, there was no reason to believe that any one of these seven was any more or less likely than any other to have done the shooting. Indeed, the initial evidence pointed more to the McConnells and to George Johnson, who was James McConnell's half-brother, than to anyone else, since they resided in the first-floor apartment, where, after a search, police found the murder weapon hidden under a mattress.

Lewin, on the other hand, gave as his address an apartment in Mattapan.

In addition, James McConnell, in the words of Judge Grabau, who later held hearings in the case, "mysteriously eluded police questioning by managing to leave the scene with his young daughter." Plus, there were some major pieces of evidence pointing away from Lewin as a suspect in the shooting. For one thing, Detective Luna had told the magistrate who'd issued the search warrant that the informant — who had provided the information establishing "probable cause" — had stated that the man dealing drugs out of the third-floor apartment was a Hispanic of medium build. Lewin is a black Jamaican who's more than six feet tall. Moreover, a test of Lewin's hands for traces of gunpowder proved negative, whereas James McConnell's hands could not be tested because of his "mysterious" escape from the apartment.

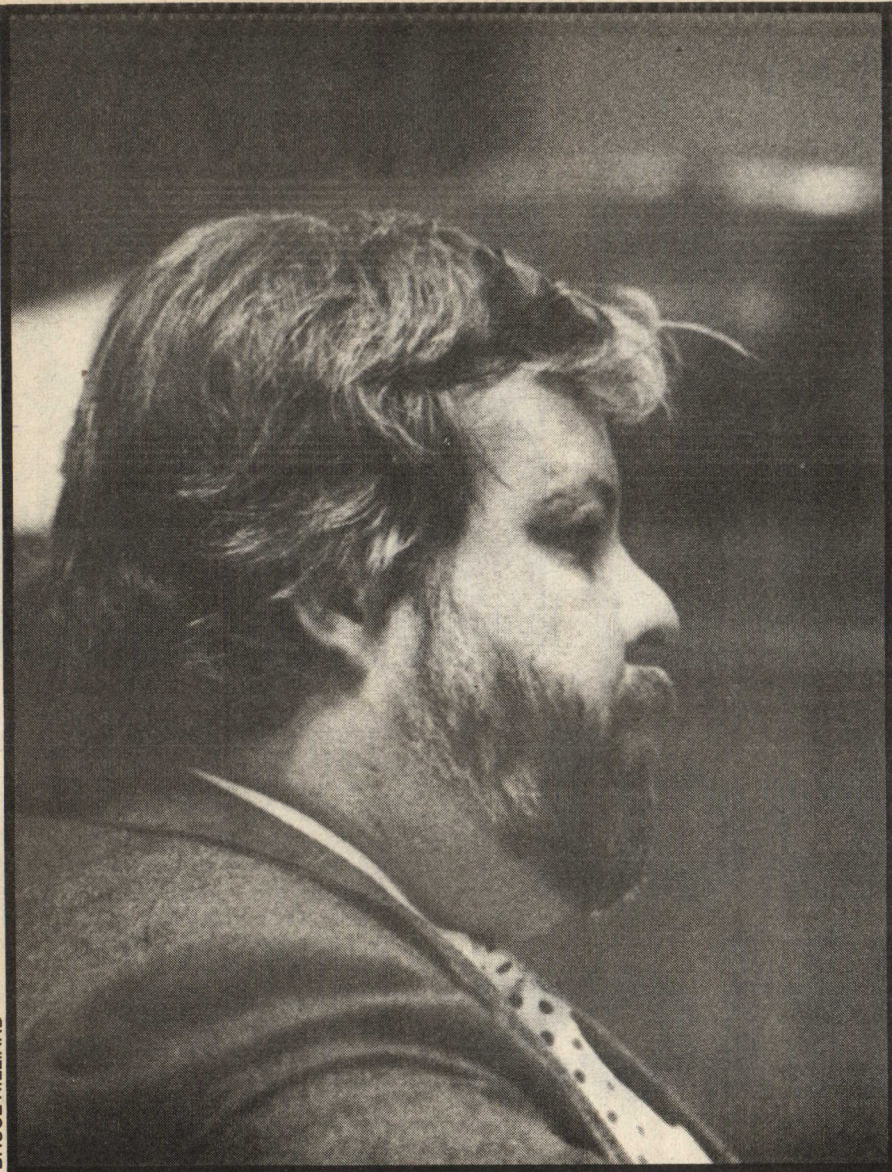
Immediately, however, the police began to build a murder case against Lewin, notwithstanding the absence of evidence pointing to him. It was relatively easy, of course, to marshal a number of witnesses against Lewin, who, as a recent illegal Jamaican immigrant

who was not related to the others, and who barely spoke English, was the odd man out. In a detailed report of the sequence of events by the *Boston Herald's* Michelle Caruso, it became clear how the police and the Suffolk County DA went about the task of building a case that now seems so dubious.

It was essential, of course, for police and prosecutors to convict someone for the murder because a police officer lay dead. The biggest problem was how the prosecution would prove that one of the chief suspects — Albert Lewin, 32, James McConnell, 39, or perhaps another of the seven people found in the first-floor apartment — had pulled the trigger. The gun had no identifiable fingerprints, and the gunpowder test didn't help. McConnell, obviously more sophisticated than Lewin (he had served a stint in state prison for a 1971 armed-robbery conviction and had a lengthy record, and was also an admitted drug abuser), quickly put the blame on Lewin. McConnell's story was promptly corroborated by his wife, Shirley McConnell. James McConnell was represented by defense attorney Henry F. Owens III, an experienced and talented lawyer who cut a great deal for his client — but a great deal for James McConnell, and for the others, is not necessarily the same as a great deal for justice.

One problem with the prosecution's fledgling case against Lewin was the story told by William McCloud, the only Caucasian found in the first-floor apartment.

McCloud initially contradicted McConnell's story that Lewin had run down the back stairs into McConnell's bedroom and handed McConnell a gun to hide in the bed. Rather, McCloud told investigators, McConnell had come running into the apartment from the back stairs carrying "something black in his hand," which McConnell took to his bedroom and hid under the mattress. All of this happened, said McCloud, before Lewin even entered the bedroom. McCloud's repetition of this story apparently caused the prosecutor, Assistant DA O'Meara, to seek several postponements of the probable-cause hearing that was scheduled to take place before Judge Lawrence Shubow in



BRUCE HILLIARD

*O'Meara: seeking a conviction, not justice*



KEITH W. JENKINS

*Flanagan: bringing a shame-filled case*

# crooked case

by  
Harvey  
Silverglate

Brighton District Court.

It became evident that the police and prosecutors were having trouble with McCloud. The government's other witnesses — the two McConnells and Johnson — had quickly fallen into line. They had their own reasons for pinning the murder on Lewin. Not only were the three of them related, but, in exchange for their agreement to testify against Lewin, they had been given the extraordinary inducement of having serious criminal charges against them dismissed in their entirety. This included not just drug charges but the far more serious charges of involvement in the murder of Detective Griffiths, with which the three had been charged up until the bargain was struck with the district attorney's office.

Furthermore, the district attorney promised to help relocate the three of them and to provide them with funds, purportedly to assist them in their relocation. In addition, the prosecutors agreed to assist the McConnells in maintaining custody of their young daughter in the event of any move by the state Department of Social Services to take her away.

The DA's difficulty in initially bringing McCloud into line resulted from his not having the kind of leverage with McCloud that he had with the others — for some reason, McCloud had not been considered a suspect in the murder. That obstacle was removed when O'Meara and detectives from the Homicide Bureau took McCloud to police headquarters for a third interview session the night before the yet-again probable-cause hearing.

Suddenly, the following morning in court McCloud told a story — *mirabile dictu* — fully consistent with that of the other three. It was not clear precisely what had convinced McCloud to be so cooperative. Papers filed by the prosecution show that the DA promised not to charge McCloud "with any criminal offenses relating to his purchase, use, or distribution of drugs" on the day of the raid. People present in the Brighton courtroom on the day of the probable-cause hearing have told me that McCloud appeared bruised and battered. In any event, the prosecution finally had gotten its case together, or so

it seemed. Judge Shubow found probable cause for charging Lewin with the murder, and the case went to the grand jury, which soon indicted Lewin for the crime.

The district attorney's office was satisfied. Not only had the charges against all the "witnesses" been dropped, but the DA had found an out-of-state apartment for the McConnells, outfitted their daughter with new clothes, and given the family financial support.

This highly disturbing method of obtaining testimony against Lewin was quickly obscured by the more dramatic informant-abuse problem that has occupied the news media in recent weeks. That debacle commenced as follows.

Because Detective Luna's supposed "confidential informant" had described the man dealing drugs out of the third-floor apartment as a Hispanic of medium build, a description that clearly did not fit Lewin, Lewin's defense lawyer, Max D. Stern, demanded that Luna produce the informant for an interview. If the informant repeated to Stern what Luna had reported in his search-warrant application, highly exculpatory evidence would result for Lewin. After all, the four government witnesses had testified that Lewin — and Lewin *alone* — had been in the third-floor apartment dealing drugs. The police and DA were relying on, as the heart of their case, the presumption that the individual who had been dealing drugs in the apartment had been the same one who had shot Griffiths. If Stern could produce evidence from the informant that someone not matching Lewin's description had in fact been the drug dealer, it would cast doubt upon the four witnesses' already dubious testimony against Lewin.

Judge Grabau, to whom the case was assigned once the indictment was brought, ordered Luna and the DA to produce the informant. This was probably a shock to the police.

One of the great unspoken assumptions in the legal system is that judges will not force police to disclose the identities of informants, even in circumstances where there is substantial reason to suspect that the police have lied in an application for a search warrant

about what an informant said, or even when there is reason to suspect whether an informant exists in the first place. It is exceptional to find a judge with the integrity and the courage to call a police bluff concerning that most elusive creature, the "confidential informant."

(Law-enforcement and court personnel have been quoted in the media as claiming that the "rule of the street" requires that informants' names not be revealed by police officers to magistrates who issue the search warrants in order to protect the informants. This rule, however, should more properly be called a "bullshit pact" in which judges and magistrates never question the same "anonymous informant" incantation that finds its way into police affidavits for fear of finding the information incorrect or the informants non-existent. The "confidential informant" is to the state system what "national security" is to the federal system — a convenient excuse for avoiding executive accountability and meaningful judicial oversight.)

Judge Grabau — the first Hispanic appointed to the Superior Court and a judge who has garnered considerable respect during his tenure on the bench for both intelligence and probity — turned out to be the exceptional judge. On August 18, 1988, Grabau issued the first of several orders that O'Meara and the police produce the informant so Stern could interview him.

After some four months during which Luna claimed to be looking for his informant without any success, Grabau conducted three days of hearings — on December 6, 8, and 9 — to look into Stern's claim that the police were intentionally disobeying Grabau's order. The judge finally assented on February 21 to Stern's request that the charges against Lewin be dismissed, since the failure to produce the informant deprived him of substantial exculpatory evidence and hence of a fair trial.

The dismissal of the charges had an electric effect on the police and prosecutors. On February 28 O'Meara startled everyone by telling Judge Grabau that the "confidential informant" described by Luna in his sworn application for the search warrant had, in fact, never existed. The warrant had thus

admittedly been obtained by fraud. But though this admission was surely embarrassing to the police and the DA's office, it did appear to offer them one tactical advantage — it seemed to eliminate from the case any claim by Stern that the absence of the informant's exculpatory testimony (that the drug dealer was a Hispanic of medium build) would prejudice Lewin's chances for acquittal.

Meanwhile, a recent potentially explosive development points the finger of guilt even further away from Lewin and toward others found in the first-floor apartment. After Judge Grabau had first made it clear that he was contemplating dismissing the indictment because of the DCU's failure to produce Luna's informant, O'Meara pressed the police officers to produce any and all informants involved in the case. Although Luna did not produce the informant he was still claiming was the source of the information in his search-warrant application, he did produce another informant (referred to in the court papers as "Informant X"), who was interviewed by O'Meara and who, after Judge Grabau did dismiss the indictment, was made available to Stern for a sworn deposition.

Informant X has stated that immediately before the DCU executed the search of the apartment, the informant was taken by Luna to make a drug buy at the third-floor apartment. While standing outside the door of the apartment where he was going to make the buy, Informant X said, he observed two Hispanics and one black male who were then let into the apartment by yet another male already inside the apartment. Informant X, during Stern's deposition, went on to identify, from photographs, the two Hispanics and the black male whom he'd seen outside the apartment. They were, astonishingly, three of the men whom the DA has immunized in exchange for their testimony against Lewin — namely Hector Calderon, William Barrios, and George Johnson. Although he did not identify the male who was at all times inside the apartment, he did say that he overheard that male having a  
*Continued on page 26*

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## Quote

*Continued from page 24*

"is the kind of intercultural wound that is difficult to heal" and suggesting a course of "tactful public statements and private discussions" to "defuse this explosive situation."

The former president gets very high marks for turning the other cheek, seeing how it was Khomeini and company who were responsible for driving him out of 1600 Pennsylvania Avenue. But his namby-pamby remarks on this obscene threat to freedom of speech conjure up an old headline that once ran in a major Boston newspaper and had something to do with "mush" from the "wimp."

Jimmy Carter (God bless his heart) would have been better off spending less time trying to understand the vagaries of the Iranian psyche and more time trying to understand the vagaries of Iranian sandstorms. Then maybe our helicopters could have rescued the hostages — and he could have been re-elected in a landslide.

\* \* \*

Whistle a couple of technicals in the hoop war between the *Globe's* Bob Ryan and the *Herald*. It began on March 5, when Ryan used his basketball column to attack former *Herald* Celtic-beat man Mike Carey for a variety of sins, including representing Danny Ainge in contract talks while he was still covering the team. Ryan and Carey (who still represents Ainge but no longer works at the *Herald*) then went nose to nose at last Monday's Celts practice before Coach Jimmy Rodgers gave them both the heave-ho. And this past Thursday, *Herald* sports scribe Charles Pierce used

staggering implications of police perjury in a capital case — itself a capital crime — blithely asked Judge Grabau to reinstate the murder charge against Lewin, since the "real" informant could now be produced, minus any exculpatory testimony showing that Lewin did not fit the description of the drug dealer who worked out of the apartment.

(The DA's motion that Judge Grabau reinstate the murder indictment against Lewin was still pending as of press time.)

The twists and turns of the case had left nearly everyone skeptical. Judge Grabau was not so quick to accept at face value everything being told to him. Attorney Stern said it was not yet clear what the truth was concerning the informant whose information served as the basis for the search warrant. For several days most press accounts were confused, and it took some time for the media to recognize that this admission of police perjury had thrown into doubt scores of other cases over the years in which search warrants had been obtained by Detective Luna's sworn affidavits. Stern and *Herald* reporters came up with at least 50 such warrants since 1985. The negative publicity got so bad that on March 2 Police Commissioner Francis M. "Mickey" Roache announced that he was suspending (albeit with pay) the three DCU officers O'Meara said had lied, including Luna, his supervisor Sergeant Detective Hugo Amate, and DCU Officer Paul Schroeder.

Indeed, the only observer who seemed not to understand that something was very, very wrong with how the police and the district attorney's office had handled the prosecution was Mayor Raymond Flynn. Flynn, on March 2, at a Hyde Park ceremony to swear in new police recruits, attacked defense lawyers

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gross disparity, claiming that he had no business blasting Carey on old conflict-of-interest charges since Ryan had covered the Celtics for the *Globe* last season at a time when he was negotiating a contract to write Larry Bird's authorized biography.

Pierce's column was a tad shrill for my taste, and his repeated assertions that Ryan's NBA column is no longer "influential" don't quite ring true, but he did convince me that Ryan's attack on Carey was ill-advised. □

## Case

*Continued from page 7*

conversation in both English and Spanish. (Lewin does not speak Spanish.)

In short, according to this informant, produced by the police and the DA, and who claims to have been at the scene minutes before the murder took place, four men were in the third-floor apartment, and none of them was Albert Lewin. This casts considerable doubt on the rewarded government witnesses' crucial testimony — which seems self-serving, to put it mildly — that Lewin, and Lewin alone, was in the apartment dealing drugs at the time of the murder. It also casts considerable doubt on the district attorney's wisdom in giving immunity to these witnesses in what appears more and more to be a bogus case against Lewin.

O'Meara told the court that after the dismissal his office went searching for the "real" informant, the man who had supplied Luna with the search-warrant information, and finally located him. The real informant, said O'Meara, turned out to be someone who had provided the police with a tip about drug dealing in the apartment but had never given the exculpatory physical description sworn to by Luna in his search-warrant application. O'Meara, trying to brush off the

drug dealers" and who "don't have the guts to put a badge on themselves. . . . I'm not impressed by lawyers representing drug dealers to make a "quick buck," said the mayor, and who then "all of a sudden seek their client's release on a technicality."

(What Flynn failed to mention, or perhaps didn't understand, was that in the Lewin case, the "technicality" was that there was a substantial chance, if not a probability, that Lewin was not the one who had killed Detective Griffiths. And as for defense attorney Stern and "a quick buck," Flynn failed to note, or perhaps he didn't know, that Stern had been appointed to represent the indigent Lewin by the Committee for Public Counsel Services, the state public-defender agency, making it certain that Stern would take a substantial financial bath for his vigorous defense of a man who appears to have been falsely accused of a murder. And as for courage, whereas it is true that Stern chose to be a lawyer rather than a cop, it surely takes considerable courage to challenge the Boston Police Department and the Suffolk County district attorney's office with such explosive allegations of wrongdoing.)

\* \* \*

In order of seriousness, it seems that the manipulation and use of the highly dubious testimony of rewarded witnesses — particularly those who but for their "cooperation" might well have been the accused rather than the accusers — should overshadow even so outrageous a practice as the obtaining of search warrants on the basis of fabricated "probable cause" evidence from phantom "confidential and reliable informants."

Indeed, the practice of rewarding, and obtaining the testimony of, people who would seem to be better candidates for the role of defendant than witness is some-



thing for which DA Flanagan and his staff have become rather notorious. The Lewin matter is just the latest in a long series of cases in which Flanagan has used this dubious tactic to seek a conviction.

As noted above, there is present in the Lewin case yet a third "sub-species" of informant abuse: the use of prisoners to testify that the defendant made a confession to a fellow prisoner or prisoners while they were incarcerated together.

The DA has at least one such inmate witness in the Lewin case, and has hinted that a second may be brought forward. In legal papers produced in the case, O'Meara tells the story behind one of them, and it is enough to raise the eyebrows of even the most hardened law-and-order zealot.

The disclosed inmate witness is one Anthony Wells, who is reported to have made a collect phone call to Boston Police Detective Charles J. Fleming, who then dutifully reported the event to Assistant DA O'Meara. Fleming reported that on the morning of May 3, 1988, Wells, calling from the Deer Island House of Correction, told him that while Wells was in court in Dorchester one day, he was handcuffed to and transported to the Charles Street Jail with none other than Albert Lewin. Wells said that this fact could be verified, since the news media had videotaped them getting into the paddy wagon together. Fleming reported. According to Fleming's memo, "Wells went on to say that during the transport he asked the guy [Lewin] if he was scared and he responded, 'Yeah.' He then asked if he actually did the shooting and the guy said, 'Yeah, but I didn't know he was a police officer.'"



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Any experienced prosecutor — and O'Meara, as chief of the Homicide Unit of DA Flanagan's office, surely is one — knows that during any high-profile or important prosecution, particularly when it involves the killing of a police officer or some other serious crime for which the authorities want very badly to convict someone, there is a good chance that some prisoner housed in the same institution as the defendant accused of the offense will phone the police or DA and report that the defendant confessed the crime during a jailhouse conversation in which he let down his guard.

Those with experience in the criminal-justice system generally take such jailhouse confessions with more than a grain of salt. After all, prisoners who offer such testimony are almost always looking for some favor in return for their help in convicting the defendant.

The telltale signs were indeed present in the case of Anthony Wells's offer to assist in Lewin's prosecution. Detective Fleming's memo to O'Meara continues as follows: "I asked Wells why he was such a concerned citizen and he replied, 'Why do you think?' I said I have an idea but I want you to tell me. Wells then said he is doing 18 months for larceny from the person and he has a parole violation and he was willing to cooperate in the hope of getting his sentence reduced. I told him I was unable to make any promises or anything other than I was sure someone would interview him sometime this week."

Sure enough, someone did interview Wells, and despite all the skepticism that his proffered testimony merits, O'Meara placed him on the government's list of witnesses against Lewin. O'Meara filed with the court a signed statement, reporting that the DA had agreed to recommend that Wells's sentence be terminated, that he be placed in a drug-abuse program for a month and then into a halfway house, and that the DA would ask the

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