IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee

-vs-

BISWANATH HALDER

Defendant-Appellant

Case No. 08-1628

On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District.

Court of Appeals Case No. CA-06-087974

MEMOPRANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT BISWANATH HALDER

Biswanath Halder A501980

Mansfield Correctional Institution

PO Box 788

Mansfield, Ohio 44901-0788

Defendant-Appellant pro se

William D Mason #0037540

Cuyahoga County Prosecutor

1200 Ontario Street

Cleveland, Ohio 44113-1664

Tel: 216-443-7800

Fax: 216-698-2270

Counsel for Plaintiff-Appellee

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EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

The decision of the Court of Appeals threatens the constitutional rights of all criminal defendants. The Supreme Court should accept this case to address the three most egregious violations of constitutional rights of a criminal defendant:

1. The (Sixth and Fourteenth Amendment to the) Constitution guarantees speedy trial to a criminal defendant.
2. The (Sixth and Fourteenth Amendment to the) Constitution guarantees effective -- and not simple -- assistance of counsel to a criminal defendant.
3. The (Fifth, Sixth and Fourteenth Amendment to the) Constitution guarantees a criminal defendant the right to take the witness stand and to testify on his own behalf.

STATEMENT OF THE CASE AND FACTS

01. 09-May-2003 (Fri): Defendant-Appellant Biswanath Halder ("Halder") was arrested on felony charges stemming from a shooting incident at Case Western Reserve University ("Case Western").
02. 30-May-2003 (Fri): A Cuyahoga County "grand jury handed down a record-breaking 338 indictments on suspect Biswanath Halder ***." NewsNet5.com
03. 30-May-2003 (Fri): The Court appointed attorney James Kersey and public defenders to represent Halder. Attorneys Robert Tobik and William Thompson of the Public Defender's Office assigned themselves to the case of Halder.
04. 12-Sep-2003 (Fri): Once attorney Kersey proved beyond a reasonable doubt that he had been working for the prosecution, Halder moved to disqualify attorney Kersey from his case. Subsequently, Halder moved to disqualify attorney Kersey four times.
05. 23-Oct-2003 (Thu): Once attorneys Tobik and Thompson proved beyond a reasonable doubt that they had been working for the prosecution, Halder

moved to disqualify attorneys Tobik and Thompson from his case. Subsequently, Halder moved to disqualify attorneys Tobik and Thompson four times.

06. 19-Apr-2005 (Tue): The Court found Halder competent to stand trial. There were competency hearings on February 23, 24, and on March 21, 22, and 23, 2005.

07. 12-May-2005 (Thu): The Court granted Halder's motion to disqualify attorneys Kersey, Tobik and Thompson from his case.

08. 25-May-2005 (Wed): The Court appointed attorneys John Luskin and Kevin Cafferkey to represent Halder.

09. 30-Aug-2005 (Tue): Once attorneys Luskin and Cafferkey proved beyond a reasonable doubt that they had been working for the prosecution, Halder moved to disqualify attorneys Luskin and Cafferkey from his case.

10. 21-Sep-2005 (Wed): The Court denied Halder's motion to disqualify counsel.

11. 02-Nov-2005 (Wed): For the second time, Halder moved to disqualify attorneys Luskin and Cafferkey from his case.

12. 09-Nov-2005 (Wed): The Court denied Halder's motion to disqualify counsel. Immediately, Halder moved to proceed pro se.

13. 10-Nov-2005 (Thu): **The Court prevented Halder from exercising his constitutional right to represent himself.**

14. 14-Nov-2005 (Mon): Jury selection began.

15. 28-Nov-2005 (Mon): The guilt phase of the trial began. Over the next 21 days, the prosecution produced altogether 105 witnesses.

16. 07-Dec-2005 (Wed): Halder filed a pro se motion to dismiss felony charges for delay of trial. In violation of the United States Constitution, Ohio Constitution, and RC 2945.71 et seq, the prosecution did not bring the case to trial within 90 days. The Court has yet to rule on the motion.

17. 14-Dec-2005 (Wed): Halder wrote a letter in his long hand addressed to Judge Peggy Foley Jones expressing his desire to take the witness stand and

to testify on his own behalf (Exhibit "B09"). Halder asked defense attorney Luskin to make five photocopies so that Halder could hand over copies to the judge and the attorneys. Attorney Luskin declined to make any copies on the alleged ground that this is their (prosecution's) trial. He told Halder that our trial would begin on January 17; you would take the witness stand then and testify.

18. 16-Dec-2006 (Fri): The jury returned a verdict of guilty on 196 counts.
19. 17-Jan-2006 (Tue): The penalty phase of the trial began. Over the next three days, the defense attorneys produced 11 witnesses. Each day, the defense attorneys assured Halder that Halder would be the last person to testify.
20. 21-Jan-2006 (Sat): At the end of the penalty phase of the trial, Halder became almost certain that the defense attorneys would not allow Halder to take the witness stand and to expose the truth. Throughout (the guilt and the penalty phase of) the trial, witnesses (especially the ones who have intentionally created the problem -- Shawn Miller, Mike Goliat and Robert Stein) told the jurors lie after lie after lie, the (prosecution + defense) attorneys committed deception after deception after deception, and they made the defendant a silent spectator during the entire proceedings. Case Western Reserve University definitely did not want Halder to expose the truth. This time Halder wrote four identical letters in his long hand addressed to Judge Peggy Foley Jones expressing his desire to take the witness stand, and to explain to the Court the events that took place in the three years preceding May 9, 2003 (Exhibit "B10"). The first thing Halder did that morning was to hand over the letter to the judge and the (prosecution + defense) attorneys. All of them ignored Halder's request. Before the judge charged the jurors, Halder made a verbal request to take the witness stand. **The judge prevented Halder from**

exercising his constitutional right to testify on his own behalf.

21. 22-Jan-2006 (Sun): The jury recommended life in prison for Halder.
22. 17-Feb-2006 (Fri): The Court sentenced defendant Biswanath Halder to life in prison. The Court also appointed attorney David Doughten to represent Halder on appeal.
23. 16-May-2006 (Tue): Halder wrote attorney Doughten a letter asking him to raise certain issues in the Court of Appeals (Exhibits "D60" through "D63").
24. 22-Dec-2006 (Fri): On behalf of defendant-appellant Biswanath Halder, attorney Doughten filed an appellate brief in the Court of Appeals. In his brief, attorney Doughten left out the three most important issues to be raised in the Court of Appeals: speedy trial, ineffective assistance of trial counsel, and defendant's right to testify.
25. 12-Feb-2007 (Mon): On behalf of plaintiff-appellee State of Ohio, County Prosecutor William Mason filed an appellate brief in the Court of Appeals.
26. 19-Mar-2007 (Mon): Defendant-appellant Biswanath Halder mailed a pro se motion to the Court of Appeals to file a supplemental brief to raise the three important issues left out by attorney Doughten.
27. 30-Mar-2007 (Fri): The Court of Appeals denied defendant-appellant Biswanath Halder's motion to file a supplemental brief.
28. 08-Nov-2007 (Thu): By a split decision, the Court of Appeals affirmed the judgment of the Court of Common Pleas dated 02-17-2006 (2007-Ohio-5940).
29. 17-Nov-2007 (Sat): Per App.R. 26(A), Halder mailed to the Court of Appeals a pro se motion for reconsideration of the decision (of 11-08-2007).
30. 03-Dec-2007 (Mon): The Court of Appeals denied defendant-appellant Biswanath Halder's motion for reconsideration.
31. 03-Jan-2008 (Thu): On behalf of defendant-appellant Biswanath Halder, Ohio Public Defender filed in the Ohio Supreme Court a memorandum in support of

jurisdiction appealing the Court of Appeals decision dated 11-08-2007.

32. 31-Jan-2008 (Thu): On behalf of plaintiff-appellee State of Ohio, Cuyahoga County Prosecutor William Mason filed a memorandum in the Ohio Supreme Court in response to jurisdiction.
33. 11-Feb-2008 (Mon): Pursuant to Appellate Rule 26(B), Halder mailed a pro se application to the Court of Appeals to reopen direct appeal.
34. 25-Feb-2008 (Mon): On behalf of plaintiff-appellee State of Ohio, Cuyahoga County Prosecutor William Mason filed a memorandum of law in the Court of Appeals opposing appellant's App.R. 26(B) application for reopening.
35. 23-Apr-2008 (Wed): The Supreme Court of Ohio denied defendant-appellant Biswanath Halder's leave to appeal the Court of Appeals decision dated 11-08-2007 (2008-Ohio-1841).
36. 01-Jul-2008 (Tue): The Court of Appeals denied Halder's Appellate Rule 26(B) application dated 02-11-2008 for reopening appeal (2008-Ohio-3345).

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defence." The US Supreme Court has construed this language to include not only the right to assistance of counsel at trial, see Gideon v Wainwright (1963), 372 US 335, 344-345, 83 SCt 792, 797; Powell v Alabama (1932), 287 US 45, 71, 53 SCt 55, 65, but also to the assistance of counsel on appeal, see Halbert v Michigan (2005), 545 US 605, 610, 125 SCt 2582, 2587; Bounds v Smith (1977), 430 US 817, 822-823, 97 SCt 1491, 1495. The Supreme Court also held that the right conferred is not simply to the assistance of counsel, but also the effective assistance of counsel, both at trial, see Rompilla v Beard (2005), 545 US 374, 380, 125 SCt 2456, 2462; Kimmelman v Morrison (1986), 477 US 365, 383, 106 SCt 2574, 2587, and on appeal, see Evitts

v Lucey (1985), 469 US 387, 396, 105 SCt 830, 836; Entsminger v Iowa (1967), 386 US 748, 751, 87 SCt 1402, 1403.

The Supreme Court held that the basic approach to assessing the existence of ineffective assistance of counsel is the application of a two-pronged test: "First, the defendant must show that counsel's performance was deficient. *** Second, the defendant must show that the deficient performance prejudiced the defense." Strickland v Washington (1984), 466 US 668, 687, 104 SCt 2052, 2064.

(A) Appellate Counsel's Performance was Deficient

In a letter dated May 16, 2006, ... Halder asked his appellate attorney David Doughten to raise several issues in the Court of Appeals (Exhibits "D60" through "D63"). In his appellate brief dated December 22, 2006, attorney Doughten left out the three most egregious violations of Halder's constitutional rights in favor of weaker arguments.

Proposition of Law I: The (Sixth and Fourteenth Amendment to the) Constitution guarantees speedy trial to a criminal defendant.

The right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment Due Process Clause:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ***.

Klopfer v North Carolina (1967), 386 US 213, 223, 87 SCt 988, 993.

Also, Article I, Section 10 of the Ohio Constitution guarantees an accused this same right:

> In any trial, in any court, the accused party shall *** have *** a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed ***.

State v Hughes (1999), 86 Ohio St3d 424, 425, 715 NE2d 540, 542.

The United States Supreme Court has held that the sole remedy for the

denial of the constitutional right to a speedy trial is dismissal. Strunk v United States (1973), 412 US 434, 440, 93 SCt 2260, 2263.

Although the US Supreme Court declined to establish the exact number of days within which a trial must be held, it recognized that states may prescribe a reasonable period of time consistent with constitutional requirements. Barker v Wingo (1972), 407 US 514, 523, 92 SCt 2182, 2188. In response to this authority, Ohio enacted RC 2945.71, RC 2945.72 and RC 2945.73 which designate specific time requirements for the State to bring an accused to trial. State v Pachay (1980), 64 Ohio St2d 218, 222, 416 NE2d 589, 592. RC 2945.71(C)(2) and (D) provide that a person charged with a felony and held in jail on the pending charge in lieu of bail shall be brought to trial within 90 days after arrest, unless the time limit is extended by RC 2945.72. State v Cutcher (1978), 56 Ohio St2d 383, 384, 384 NE2d 275, 276. The Ohio Supreme Court construes the speedy trial statutes narrowly and has repeatedly held that they are mandatory and that the State must strictly comply with their provisions. State v Butcher (1986), 27 Ohio St3d 28, 31, 500 NE2d 1368, 1370.

A defendant has no duty to bring himself to trial. Dickey v Florida (1970), 398 US 30, 38, 90 SCt 1564, 1569. "The State has that duty as well as the duty of insuring that the trial is consistent with due process." Barker, supra, 407 US at 527, 92 SCt at 2190.

Date	Explanation	Chargeable to Defendant	Chargeable to State
09-May-2003	Date of arrest		09-May-2003 until
16-Jul-2003	Defendant waived speedy trial rights until 30-Jan-2004		16-Jul-2003 = 68 days
27-Aug-2003	Psychologist Eisenberg (hired by Defense) evaluated defendant		
04-Dec-2003	Defendant waived speedy trial rights until 31-May-2004	16-Jul-2003 until 19-Apr-2005 = 643 days	

Date	Explanation	Chargeable to Defendant	Chargeable to State
09-Apr-2004	Psychologist Bergman (hired by State) evaluated defendant		
12-Aug-2004	Psychologist Fabian (hired by Court) evaluated defendant		19-Apr-2005 until
19-Apr-2005	Court rendered competency decision		02-Jun-2005 = 44 days
02-Jun-2005	Defendant waived speedy trial rights until 01-Sep-2005	02-Jun-2005 until 01-Sep-2005 = 91 days	01-Sep-2005 until
14-Nov-2005	Trial commenced (jury selection began)		14-Nov-2005 = 74 days
Total = 920 days		Total = 734 days	Total = 186 days

It is abundantly clear from the foregoing that by failing to prosecute Halder earlier, the State has violated Halder's right to a speedy trial under the US Constitution, Ohio Constitution, and RC 2945.71 et seq. Accord, Doggett v United States (1992), 505 US 647, 112 SCt 2686; Dickey v Florida (1970), 398 US 30, 90 SCt 1564; State v Selvage (1997), 80 Ohio St3d 465, 687 NE2d 433; State v King (1994), 70 Ohio St3d 158, 637 NE2d 903.

Proposition of Law II: The (Sixth and Fourteenth Amendment to the) Constitution guarantees effective -- and not simple -- assistance of counsel to a criminal defendant.

Before the trial, the defense attorneys:

- Prevented Halder from contacting the media and from exposing the truth. In the meantime, the media has done an astronomical amount of false and malicious propaganda -- Case Western Reserve University has paid an enormous amount of money to reporters to cover-up its evil acts and to demonize Biswanath Halder. In public opinion, Case Western convicted Halder long before the trial.
- Prevented Halder from contacting anyone -- Halder knows innumerable people from around the world.
- Failed and refused to communicate with Halder -- they came to see Halder five

days before the beginning of the trial.

- o Failed and refused to conduct any discovery whatsoever -- discovery is essential in virtual all cases (this is a death penalty case).
- o Failed and refused to spend any time with Halder in discussing his defense. The fact is that "a grand jury handed down a record-breaking 338 indictments on suspect Biswanath Halder ***." NewsNet5.com, May 30, 2003.
- o Failed and refused to investigate and pursue all avenues of defense.
- o Failed and refused to conduct any pretrial investigation.
- o Failed and refused to locate critical witnesses and interview them.
- o Failed and refused to investigate any mitigating evidence.
- o Failed and refused to make any trial preparations.

During the trial, the defense attorneys:

- o Failed and refused to establish the fact:
  - (a) that Halder helps people from around the world -- all nationalities and all religions -- all the time.
  - (b) that from the time Halder joined Case Western Reserve University as a graduate student in 1996, he tried to improve the institution.
- o Failed and refused to establish the fact that virtually all aspects of government, virtually all aspects of business, and virtually all aspects of academia depend on computers; that cyber-crime has been growing at a phenomenal rate (it is more than doubling each year); that to date, the (federal + state + county + city) government has prosecuted only a tiny minority of the cyber-criminals (less than one in 10,000); and that, if unchecked, the cyber-criminals would destroy our civilization in a short period of time.
- o Failed and refused to establish the fact that a cyber-criminal (an employee of Case Western Reserve University) illegally accessed Halder's Unix shell account at his ISP (halder@apk.net) on July 13, 2000, and maliciously

destroyed all of the files from his account that took Halder a lifetime to create; that immediately Halder brought such unlawful actions to the attention of the authorities at Case Western; that Halder showed them evidence that one of their employees committed several felonies with respect to Halder's Unix account; that Case Western has the expertise as well as the resources to solve cyber-crime, and to take appropriate actions against criminals; that Case Western could have resolved the issue at that time through administrative and legal processes; that instead, Case Western decided to defend and protect the unlawful and illegal actions of the cyber-criminal (who happens to belong to the "master race"); that Case Western also decided to destroy the professional career and the personal life of the victim of the cyber-crime (who happens to belong to an "inferior race"); that on both counts Case Western succeeded by committing a series of illegal acts; that Halder brought such cyber-crime to the attention of staff, faculty, students and alumni of Case Western (Exhibits "K30" & "K60"); that all but one of them stood behind the cyber-criminal.

- o Failed and refused to establish the fact that Halder brought such criminal actions to the attention of the law enforcement agencies (police, FBI, etc); that either they cannot or do not want to do anything with respect to the cyber-crime (Exhibit "E30"); that Halder brought such inaction (on the part of the law enforcement agencies) to the attention of Cleveland mayor, Cleveland city councilpersons, US congresspersons, US senators, etc (Exhibits "F20" through "F22", "F31" through "F34", "F36" & "F37", "F40" through "F42"); that all of them declined to protect Halder's statutory rights (Exhibit "F35").
- o Failed and refused to establish the fact that to resolve the issue through the legal process, Halder brought a civil action against Shawn Miller in the Cuyahoga County Court of Common Pleas (Docket No. CV-01-441308); that Case

Western paid off virtually everyone, and proved that the "master race" does not do anything wrong; it is the "inferior race" -- especially the leadership -- who does everything wrong all the time.

- o Failed and refused to ask any questions of witnesses (altogether 118 men and women testified at the trial) to establish the culpability of Case Western Reserve University, CMGI, the FBI, the police, and others. On the other hand, the attorneys used every trick in their books to cover-up the unlawful and illegal actions of several employees, officers, attorneys and agents of Case Western, and to convict Biswanath Halder.
- o Failed and refused to elicit the truth out of lying witnesses. Several witnesses (especially the ones who have intentionally created the problem -- Shawn Miller, Mike Goliat and Robert Stein) perjured themselves to cover-up the evil acts of Case Western and to convict Biswanath Halder. The defense attorneys conspired with the prosecuting attorneys to make those perjured testimonies look real.
- o Failed and refused to produce several essential witnesses who have either intentionally created the problem that led to a violent confrontation on May 9, 2003, or could have resolved the issue shortly after July 13, 2000 through the legal process.
- o Failed and refused to call any mitigating character witness.
- o Misrepresented material facts to humiliate, ridicule and vilify Halder.

It is abundantly clear from the foregoing that by denying Halder's motions to disqualify counsel, the trial court violated Halder's right to effective assistance of counsel guaranteed by the Constitution. Accord, Williams v Taylor (2000), 529 US 362, 397-399, 120 SCt 1495, 1515-1516 (Petitioner was denied his constitutionally guaranteed right to effective assistance of counsel when his attorneys failed to investigate and present substantial mitigating evidence during sentencing phase of capital murder trial.).

Proposition of Law III: The (Fifth, Sixth and Fourteenth Amendment to the) Constitution guarantees a criminal defendant the right to take the witness stand and to testify on his own behalf.

To convict Biswanath Halder, from November 28, 2005 through December 12, 2005, the prosecution paraded 105 witnesses. The defense attorneys countered that with only one witness, Detective Arvin Clar of Cleveland police, who in fact covered-up the illegal and unlawful actions of a cyber-criminal (an employee of Case Western Reserve University) five years ago (Exhibit "E30"). Defense attorney Cafferkey did not ask a single question of witness Clar to establish the culpability of Cleveland police in covering-up the cyber-crime (that led to a violent confrontation on May 9, 2003). Had the police done their job, the issue (hacking of Halder's Unix account) could have been resolved in the year 2000 peacefully through the legal process. Instead, defense attorney Cafferkey did his best to glorify the police and to demonize the victim of the cyber-crime.

Halder wrote a letter in his long hand addresses to Judge Peggy Foley Jones expressing his desire to take the witness stand (Exhibit "B09"), brought that to the Courthouse on December 14, 2005, and asked defense attorney Luskin to make five photocopies so that Halder could hand them over to the judge and the attorneys. Attorney Luskin declined to make any copies on the alleged ground that it was their (prosecution's) trial. He told Halder that our trial would begin on January 17; you would take the witness stand then and testify.

During the penalty phase of the trial (January 17 through 20, 2006), each day the defense attorneys assured Halder that Halder would be the last person to testify.

At the end of the penalty phase, Halder became almost certain that the defense attorneys would not allow Halder to take the witness stand. Throughout (the guilt and the penalty phase of) the trial, to cover-up the evil acts of Case Western Reserve University and to convict Biswanath Halder, witnesses told

the jurors lie after lie after lie, the (prosecuting and defense) attorneys committed deception after deception after deception, and they made the defendant a silent spectator during the entire proceedings. Case Western definitely did not want Halder to expose the truth.

This time Halder wrote four identical letters in his long hand addressed to Judge Peggy Foley Jones (Exhibit "B10"):

> At the end of the guilt phase of the trial (on December 13, 2005), I wanted to take the stand and explain to the Court the events that led up to the incident of May 9, 2003. My attorneys prevented me from doing so. The verdict could not have been any worse than being convicted on all counts.
>
> I have provided the defense attorneys with a list of over 60 witnesses who, under proper examination, could expose the truth. As of yesterday, the defense produced only eight of those witnesses. Hence, I insist on taking the stand, and explain to the Court the events that took place in the three years preceding May 9, 2003.

On the morning of January 21, 2006, Halder handed over copies of the letter to the judge and the (prosecuting and defense) attorneys. All of them ignored Halder. Before the judge charged the jurors, Halder made a verbal request to take the witness stand. The judge prevented Halder from testifying on his own behalf.

A defendant in a criminal case has the right to take the witness stand and testify in his own behalf under the Due Process Clause of the Fourteenth Amendment (which guarantees that no one shall be deprived of liberty without due process of law), the Compulsory Process Clause of the Sixth Amendment (which grants a defendant the right to call witnesses in his favor), and the Fifth Amendment privilege against self-incrimination. Rock v Arkansas (1987), 483 US 44, 51-53, 107 SCt 2704, 2708-2710.

It is abundantly clear from the foregoing that by preventing Halder from taking the witness stand and from testifying on his own behalf, the trial court violated Halder's rights guaranteed by Fifth, Sixth and Fourteenth Amendment to the United States Constitution. Acccord, Florida v Nixon (2004), 543 US 175,

187, 125 SCt 551, 560 (A defendant has the ultimate authority to determine whether to plead guilty, waive a jury, testify in his own behalf, or take an appeal.); United States v Dunnigan (1993), 507 US 87, 96, 113 SCt 1111, 1117 (The right to testify on one's own behalf in a criminal proceeding is a right implicit in the Constitution.); Riggins v Nevada (1992), 504 US 127, 144, 112 SCt 1810, 1820 (Kennedy, J, concurring) (It is well established that the defendant has the right to testify on his own behalf, a right we have found essential to our adversary system.).

By failing and refusing to raise the three most flagrant violations of defendant-appellant Biswanath Halder's constitutional rights in the appellate brief, appellate attorney David Doughten proved beyond any doubts that his performance was deficient. Accord, Penson v Ohio (1988), 488 US 75, 84, 109 SCt 346, 352 (The paramount importance of vigorous representation follows from the nature of our adversarial system of justice.); Swenson v Bosler (1967), 386 US 258, 259, 87 SCt 996, 997 (The assistance of appellate counsel in preparing and submitting a brief to the appellate court that defines the legal principles upon which the claims of error are based and which designates and interprets the relevant portions of the trial transcript may well be of substantial benefit to the defendant.).

Consequently, defendant-appellant Biswanath Halder meets the first prong of the Strickland test.

(B) Deficient Performance of Appellate Counsel Prejudiced the Appeal

Had the appellate counsel raised the three most important issues in his appellate brief, the outcome of the appeal could have been entirely different. It is indisputable that the deficient performance of the appellate counsel prejudiced the appeal. Accord, Wiggins v Smith (2003), 539 US 510, 534-538, 123 SCt 2527, 2542-2544 (Decision of defense counsel not to expand their investigation of defendant's life history for mitigating evidence beyond

presentence investigation report and department of social services records fell short of prevailing professional standards, and inadequate investigation by defense counsel prejudiced defendant.); Glover v United States (2001), 531 US 198, 202, 121 SCt 696, 700 (Increase in prison sentence from 6 to 21 months constituted prejudice required for establishing ineffective assistance, assuming that increase resulted from error in Sentencing Guidelines determination.).

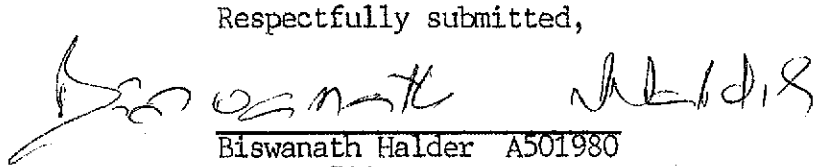
Consequently, defendant-appellant Biswanath Halder meets the second prong of the Strickland test.

Finally, the doctrine of res judicata does not bar this appeal. Immediately after attorney Doughten filed the appellate brief, Halder moved to the Court of Appeals to file a supplemental brief to raise the three most important issues that should have been raised in the Court of Appeals. On March 30, 2007, the Court of Appeals denied Halder's motion to file a supplemental brief.

CONCLUSION

This case involves substantial constitutional questions, as well as questions of public or great general interest. Consequently, the Supreme Court should grant jurisdiction.

Respectfully submitted,



Biswanath Halder A501980
PO Box 788
Mansfield, Ohio 44901-0788

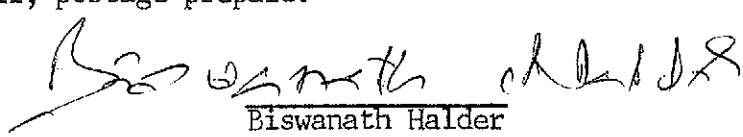
Dated: Mansfield, Ohio

August 11, 2008

Defendant-Appellant pro se

CERTIFICATE OF SERVICE

On August 12, 2008, the defendant-appellant Biswanath Halder served a copy of the foregoing Memorandum in Support of Jurisdiction upon William D Mason, Esq, Cuyahoga County Prosecutor at 1200 Ontario Street, Cleveland, Ohio 44113-1664, by first class mail, postage prepaid.



Biswanath Halder

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE OF OHIO

Appellee

COA NO. 87974

LOWER COURT NO. CP CR-437717

COMMON PLEAS COURT

-vs-

BISWANATH HALDER

Appellant

MOTION NO. 405911

Date 07/01/2008

Journal Entry

APPLICATION BY APPELLANT, PRO SE, TO REOPEN DIRECT APPEAL PURSUANT TO APPELLATE RULE 26(B) IS DENIED.

FILED AND JOURNALIZED
PER APP. R. 22(E)

JUL 1 - 2008

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Presiding Judge KENNETH A. ROCCO, Concurs

Judge ANN DYKE, Concurs

Judge CHRISTINE T. MCMONAGLE

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87974

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BISWANATH HALDER

DEFENDANT-APPELLANT

JUDGMENT: APPLICATION DENIED

APPLICATION FOR REOPENING
MOTION NO. 405911
LOWER COURT NO. CR-437717
COMMON PLEAS COURT

RELEASED AND JOURNALIZED DATE: July 1, 2008

ATTORNEYS FOR PLAINTIFF-APPELLEE

William D. Mason
Cuyahoga County Prosecutor
By: Thorin Freeman
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

FOR DEFENDANT-APPELLANT

Biswanath Halder, pro se
Inmate No. 501-980
Mansfield Correctional Inst.
P.O. Box 788
Mansfield, Ohio 44901-0788

CHRISTINE T. MCMONAGLE, J.:

Biswanath Halder has filed a timely application for reopening pursuant to App.R. 26(B). Halder is attempting to reopen the appellate judgment rendered in *State v. Halder*, Cuyahoga County Court of Common Pleas Case No. CR-03-437717, which affirmed his conviction for the offenses of capital murder, aggravated murder, aggravated burglary, kidnaping, and unlawful possession of a dangerous ordnance. For the following reasons, we decline to reopen Halder's appeal.

Initially, we find that the doctrine of res judicata prevents this court from reopening Halder's original appeal. Errors of law, that were either previously raised or could have been raised through an appeal, may be barred from further review based upon the operation of res judicata. See, generally, *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104. The Supreme Court of Ohio has also held that a claim of ineffective assistance of appellate counsel may be barred by the doctrine of res judicata, unless the circumstances of a particular appeal render the application of the doctrine unjust. *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204.

Herein, Halder did file an appeal, with the assistance of counsel different than trial counsel and appellate counsel, with the Supreme Court of Ohio and either raised or could have raised the constitutional issue of ineffective

assistance of appellate counsel. The Supreme Court of Ohio, however, dismissed Halder's appeal on April 23, 2008, as not involving any substantial constitutional question. Since the issue of ineffective assistance of appellate counsel was raised or could have been raised on appeal to the Supreme Court of Ohio, res judicata now bars any further litigation of the claim. We further find that the circumstances of this appeal do not render the application of the doctrine of res judicata unjust. *State v. Dehler*, 73 Ohio St.3d 307, 1995-Ohio-320, 652 N.E.2d 987; *State v. Terrell*, 72 Ohio St.3d 247, 1995-Ohio-54, 648 N.E.2d 1353; *State v. Smith* (Jan. 29, 1996), Cuyahoga App. No. 68643, unreported, reopening disallowed (June 14, 1996), Motion No. 71793.

Finally, a substantive review of Halder's brief in support of the application for reopening fails to support the claim of ineffective assistance of appellate counsel. Halder must establish the prejudice which results from the claimed deficient performance of appellate counsel. In addition, Halder must demonstrate that but for the deficient performance of appellate counsel, the result of his appeal would have been different. *State v. Reed*, 74 Ohio St.3d 534, 1996-Ohio-21, 660 N.E.2d 456. Therefore, in order for this court to grant an application for reopening, Halder must establish that "there is a genuine issue as to whether the applicant was deprived of the assistance of counsel on appeal." App.R. 26(B)(5).

"In *State v. Reed* (1996), 74 Ohio St.3d 534, 535, 660 N.E.2d 456, 458, we held that the two prong analysis found in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, is the appropriate standard to assess a defense request for reopening under App.R. 26(B)(5). [Applicant] must prove that his counsel were deficient for failing to raise the issue he now presents, as well as showing that had he presented those claims on appeal, there was a 'reasonable probability' that he would have been successful. Thus, [applicant] bears the burden of establishing that there was a 'genuine issue' as to whether he had a 'colorable claim' of ineffective assistance of counsel on appeal."

State v. Spivey, 84 Ohio St.3d 24, 1998-Ohio-704, 701 N.E.2d 696, at 25.

In support of his claim of ineffective assistance of appellate counsel, Halder advances three issues which he alleges should have been raised by appellate counsel in the original appeal: (1) Halder was denied the right to a speedy trial; (2) trial counsel was ineffective during the course of trial; and (3) trial counsel should have permitted Halder to testify on his own behalf.

Initially, we find that Halder was not denied the right to a speedy trial. Halder was arrested on May 9, 2003 and his trial commenced on November 14, 2005. A review of the trial court docket, in CR-03-87974, clearly demonstrates that Halder's right to a speedy trial was tolled by the following: (1) discovery requests as made by Halder; (2) requests for continuance as filed by Halder; (3)

Halder's "limited" waiver of the right to a speedy trial; (4) competency and sanity examinations as requested by Halder; (5) Halder's pro se motions to disqualify counsel; and (6) Halder's motion to dismiss capital components due to constitutional and international law violations. See R.C. 2945.71; R.C. 2945.72; *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, 781 N.E.2d 159; *State v. Palmer*, 84 Ohio St.3d 103, 1998-Ohio-507, 72 N.E.2d 702; *State v. McRae* (1978), 55 Ohio St.2d 149, 378 N.E.2d 476.

In his second claim of ineffective assistance of appellate counsel, Halder raises 20 issues, which he argues should have been raised in the original appeal: (1) Halder was prevented from contacting the media; (2) Halder was prevented from contacting anyone; (3) trial counsel failed to communicate with Halder; (4) trial counsel failed to discuss the planned defense with Halder; (5) trial counsel failed to conduct discovery; (6) trial counsel failed to investigate and pursue all avenues of defense; (7) trial counsel failed to conduct any pretrial investigation; (8) trial counsel failed to locate and interview critical witnesses; (9) trial counsel failed to investigate mitigating evidence; (10) trial counsel failed to prepare adequately for trial; (11) trial counsel failed to establish that Halder was a charitable person; (12) trial counsel failed to establish that cyber-criminals will destroy our civilization; (13) trial counsel failed to establish that Halder's Unix shell account was destroyed by a cyber-criminal; (14) trial counsel failed to

establish that Halder had filed a civil action in the Cuyahoga County Court of Common Pleas; (15) trial counsel failed to establish the culpability of Case Western Reserve University, the F.B.I., the police, and others; (16) trial counsel failed to elicit the truth from lying witnesses; (17) trial counsel failed to produce several essential witnesses; (18) trial counsel failed to call any mitigating character witnesses; (19) trial counsel misrepresented material facts in order to humiliate, ridicule, and vilify Halder; and (20) trial counsel conspired with the prosecuting attorney to adduce victim-impact evidence.

It is well settled that appellate counsel is not required to raise and argue meritless and/or frivolous assignments of error. *Jones v. Barnes* (1983), 463 U.S. 745, 77 L.Ed.2d 987, 103 S.Ct. 3308. In addition, appellate counsel cannot be considered ineffective for failing to raise every conceivable assignment of error on appeal. Id.; *State v. Grimm*, 73 Ohio St.3d 413, 1995-Ohio-492, 653 N.E.2d 253; *State v. Campbell*, 69 Ohio St.3d 38, 1994-Ohio-339, 630 N.E.2d 339. It must also be noted that consideration of the aforesaid twenty issues on appeal would not have resulted in a reversal of Halder's conviction for the offenses of capital murder, aggravated murder, aggravated burglary, kidnaping, and unlawful possession of a dangerous ordnance. Simply stated, Halder has failed to establish that he was prejudiced by the conduct of appellate counsel. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.ED.2d 674;

State v. Smith (1985), 17 Ohio St.3d 98, 477 N.E.2d 1128; *Vaughn v. Maxwell* (1965), 2 Ohio St.2d 299, 209 N.E.2d 164.

Finally, we find no prejudice associated with the claim that appellate counsel should have raised on appeal the failure of trial counsel to allow Halder to testify at trial. The decision to allow Halder to testify at trial falls squarely within the realm of defense counsel's trial strategy. Judicial review of an attorney's strategic decisions during the course of trial and the appellate process must be granted extreme deference. *Strickland v. Washington*, supra. It must also be noted that Halder has failed to demonstrate the prejudice which resulted from trial counsel's strategic decision to limit testimony during the course of trial.

Accordingly, we find that Halder has failed to establish that he was prejudiced by the conduct of appellate counsel and must deny the application for reopening.

Application for reopening denied.

CHRISTINE T. MCMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR

IN THE SUPREME COURT OF OHIO

STATE OF OHIO Plaintiff-Appellee -vs- BISWANATH HALDER Defendant-Appellant	Case No. On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District. Court of Appeals Case No. CA-06-087974

DEFENDANT-APPELLANT'S SUPPLEMENT TO THE MEMOPRANDUM IN SUPPORT OF JURISDICTION

Biswanath Halder A501980

Mansfield Correctional Institution

PO Box 788

Mansfield, Ohio 44901-0788

Defendant-Appellant pro se

William D Mason #0037540

Cuyahoga County Prosecutor

1200 Ontario Street

Cleveland, Ohio 44113-1664

Tel: 216-443-7800

Fax: 216-698-2270

Counsel for Plaintiff-Appellee

December 14, 2005

Hon. Peggy Foley Jones
Court of Common Pleas
Cleveland, Ohio 44113

Dear Judge Jones:

Ref: CR # 437717

To convict the Defendant, the prosecution has paraded 105 witnesses who more or less narrated what took place on May 9, 2003. However, violence is not just an act, it is also a process. I have provided the defense attorneys with a list of over 60 witnesses who, under proper examination, can explain to the Court the events that led up to the incident of May 9, 2003. Yesterday, the defense produced only one witness, a detective from the Cleveland Police Department, who in fact covered-up several felonies of a cyber-criminal close to five years ago. Then I told the defense attorneys that I wanted to take the stand and explain to the Court what transpired in the three years preceding May 9, 2003. They have prevented me from doing so. Hence, I insist on taking the stand, and explain to the Court the events that led up to the incident of May 9, 2003.

Very truly yours,

Biswanath Halder

Copy: John P. Luskin, Esq.
William D. Mason, Esq.

Exhibit "B09"

January 21, 2006

Hon. Peggy Foley Jones
Court of Common Pleas
Cleveland, OH 44113

Dear Judge Jones:

Ref: CR # 437717

At the end of the guilt phase of the trial (on December 13, 2005), I wanted to take the stand and explain to the Court the events that led up to the incident of May 9, 2003. My attorneys prevented me from doing so. The verdict could not have been any worse than being convicted on all counts.

I have provided the defense attorneys with a list of over 60 witnesses who, under proper examination, could expose the truth. As of yesterday, the defense produced only eight of those witnesses. Hence, I insist on taking the stand, and explain to the Court the events that took place in the three years preceding May 9, 2003.

Very truly yours,

Biswanath Halder

Copy: John P. Luskin, Esq.
William D. Mason, Esq.

Exhibit "B10"

Biswanath Halder
LORCI # 501980
2075 S Avon-Belden Road
Grafton, Ohio 44044-9805

May 16, 2006

David L. Doughten, Esq.
4403 St. Clair Avenue
Cleveland, Ohio 44103-1125

Dear Mr. Doughten:

Ref: Cuyahoga County Court of Common Pleas Docket #CR-437717

Thank you for your letter of April 27, 2006.

I do want to file a motion for post-conviction relief. Please send me whatever information you have on this procedure.

I want to raise a number of issues to the Court of Appeals.

01. Case Western Reserve University conspired with people at all levels of the justice system.
    (a) The first set of defense attorneys -- Kersey, Tobik and Thompson -- are a part of the conspiracy.
    (b) The second set of defense attorneys -- Luskin and Cafferkey -- are a part of the conspiracy.
    (c) Judge Peggy Foley Jones is a part of the conspiracy.
    (d) Cuyahoga County Jail authorities are a part of the conspiracy.
02. The prosecutor did not bring the case to trial within the specified period of time.
03. The trial court ignored objective lay evidence of the defendant's incompetence to stand trial.
04. Pervasive pretrial publicity prejudiced my case.
05. The defendant has every right to represent himself.
06. The defendant's statement (unsigned and unmirandized) to police after his arrest was improperly admitted.
07. The defendant has every right to take the stand and testify.
08. The trial court did not instruct the jurors to convict the defendant based on a lesser culpable mental state.
09. The trial court refused to instruct the jurors on the lesser included offense of aggravated murder, aggravated burglary, etc.
10. The prosecutor must return to the defendant all items seized from his home, automobile, and elsewhere.
11. "My job is to read this transcript and review what may have occurred during your trial to have caused the result to have been unfair. I raise these issues in a brief to the Court of of Appeals." David L. Doughten, April 27, 2006.
    The brief of defendant-appellant is supposed to be filed within twenty days after the transcript is filed. Even if you read the transcript over the next twenty years, it would not be possible for you to determine what caused the result to have been unfair."
    Everything that has happened in this case from July 2000 onwards is an intentional creation of several employees, officers, attorneys, and agents of Case Western Reserve

University. Some of those people took the stand, e.g., Shawn Miller (28-Nov-2005),* Mike Goliat (29-Nov-2005), Robert Stein (19-Jan-2006), etc. The testimonies of those people are full of lies. None of the attorneys made any attempts whatsoever to extract the truth out of those lying witnesses. In order for me to point out all the lies they have told, I must have their transcripts (I already have the trial transcript of Shawn Miller).

12. Attorney Cafferkey told the jurors lie after lie after lie after lie after lie to denigrate me, to downgrade me, to demean me, to degrade me, and to dehumanize me. I must have the transcript to point out all the lies he told.
13. Defense attorney Cafferkey questioned Prof. Stanton Cort (05-Dec-2005) for a long time to establish that Case Western made a terrible mistake in admitting me to the University. Quite to the contrary. From the time I joined Case Western Reserve University as a graduate student, I tried to improve the institution. And I have more than enough evidence to prove that. Since Weatherhead School of Management (of Case Western Reserve University) was established around 80 years ago, hundreds of men and women taught at Weatherhead (virtually all of them hold doctoral degrees), and tens of thousands of men and women have received MBA degrees from Weatherhead. I want to challenge all of them to find out whether any one of them did as much to improve the institution as I did. I must have the transcript of Stanton Cort.
14. One of the witnesses the State produced was Dennis Markatos (29-Nov-2005), who runs an electronic mailing list called SURGE. Dennis Markatos would have been one of my very good witnesses. For year after year, I have posted articles on SURGE to make the world a better place to live. Despite repeated requests, attorney Cafferkey refused to question Dennis Markatos about my posts. I must have the transcript of Dennis Markatos.
15. Some of the witnesses who took the stand either (a) could have resolved the issue peacefully long before May 9, 2003, or (b) hold vital information regarding the culpability of Case Western Reserve University, CMGI, the police, the FBI, and others, or (c) have told outright lies that "caused the jury to reach an incorrect verdict." They are: Carleen Bobrowski Henderson (30-Nov-2005), John Serrao (20-Jan-2006), Arvin Clar (13-Dec-2005), Phillip Helon (18-Jan-2006), Brandon Hudson (30-Nov-2005), Ann Stanic (29-Nov-2005), Eric Taylor (30-Nov-2005). In order to point out what "caused the jury to reach an incorrect verdict", I must have the transcripts of the above individuals.
16. Soon after an employee of Case Western Reserve University broke into my Unix shell account at my ISP and deleted all of the files therein, I brought such illegal and unlawful actions to the attention of the faculty, staff, students, and alumni of the University. All but one of them stood behind the cyber-criminal. Then, I went to federal and local law

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* The dates within the parentheses indicate the dates on which the witnesses took the stand.

enforcement agencies. They either did not or could not do anything with respect to the crimes committed. Then, I took the matter further and brought such inaction on the part of the law enforcement agencies to the attention of the mayor, city councilpersons, senators, congresspersons, etc. All of them declined to intervene. The defense attorneys failed and refused to establish these very highly important facts.

17. To resolve the issue through the legal process, I brought a civil action against Shawn Miller in the Cuyahoga County Court of Common Pleas. Had Shawn Miller not perjured himself at his deposition on September 28, 2001, the issue could have been resolved peacefully shortly thereafter. Moreover, Case Western paid virtually everyone in the civil case, and proved that the "master" race cannot do anything wrong. It is the "inferior" race (especially the leadership) who does everything wrong all the time. The defense attorneys failed and refused to establish the fact that at all times Case Western insisted on a violent confrontation.
18. The defense attorneys refused to call some of the most vital people as witnesses who have either intentionally created the problem (that led to the incident of May 9, 2003), or could have resolved the issue shortly after July 13, 2000 through the legal process.
19. Virtually all aspects of academia, all aspects of business, and all aspects of government depend on computers; that cyber-crime has been growing at a phenomenal rate; and that, if unchecked, the cyber-criminals would destroy our civilization in a short period of time. The defense attorneys failed and refused to establish this exceptionally important fact.
20. Despite the fact that I know innumerable people from around the world, my trial attorneys prevented me from contacting them.
21. My trial attorneys prevented me from contacting the media and exposing the truth.

In July of 2000, I showed Case Western evidence that one of their employees committed several felonies. Shortly thereafter, Case Western could have resolved the entire issue through the legal process. Instead, Case Western decided to defend and protect the unlawful and illegal actions of the cyber-criminal. Case Western also decided to destroy the professional career and personal life of the crime victim. (And it has succeeded.) In the process, Case Western has committed a series of illegal acts.

Finally, on November 9, 2005, the prosecutor handed over a document to me that proves beyond a reasonable doubt that the illegal access to my Unix shell account at my ISP on July 13, 2000, and deletion of all of the files therein was a joint effort of "Tom, Dick and Harriett" (not their real names) -- all three are employees of Case Western Reserve University, and all of them belong to the "master" race.

Again, in the trial phase of the criminal case (State of Ohio v Biswanath Halder), Case Western Reserve University paid virtually everyone to fulfill its three basic objectives:

(a) To save Case Western from bankruptcy.

(b) To cover-up the unlawful and illegal actions of several employees, officers, attorneys, and agents of Case Western.
(c) To convict Biswanath Halder on all counts.

Now, I have to file an appellate brief that must expose the truth -- the appellate brief must inform the world how the prosecuting attorneys, the defense attorneys and the judge conspired with Case Western Reserve University to cover-up the unlawful and illegal actions of Case Western and to convict Biswanath Halder.

From the time the Court appointed you as my appellate lawyer (on February 17, 2006), I have been trying to get in touch with you, without any success. Hence, I would like you to visit me at the Lorain Correctional Institution at your earliest convenience. Please bring all materials with you concerning my case. All of the papers filed in the case, all of the evidence introduced in the case, all the discovery obtained in the case, and all other materials concerning my case should be in the possession of the attorneys in the trial phase (Kersey, Tobik, Thompson, Luskin, Cafferkey, Moran).

On December 7, 2005, I filed a handwritten Motion to Dismiss Felony Charges for Delay of Trial. Enclosed please find the typewritten version of the same motion. Please file the original with the Clerk of the Court, and serve copies to the prosecuting and defense attorneys.

I have faced a very serious problem at Lorain. There is a library on campus. Unfortunately, they have restricted my access to the library for a few hours a week. To write the appellate brief properly, I need a great deal of time. Please file a motion for an extension of time to file the appellate brief.

Thank you for your cooperation.

Very truly yours,

Biswanath Halder

Encl: Motion to Dismiss Felony Charges for Delay of Trial (12/7/05)

Exhibit "D63"

City of Cleveland
Michael R. White, Mayor

Department of Public Safety
Division of Police
Martin L. Flask, Chief
1300 Ontario Street
Cleveland, Ohio 44113-1648
216/623-5005 • FAX 216/623-5584

January 30, 2001

Mr. Biswanath Halder
1918 Coltman Road
Cleveland, Ohio 44106-1918

Dear. Mr. Halder:

I have received a copy of your December 8, 2000 letter to Detective Arvin Clar of our Financial Crimes Unit. Thank you for bringing this matter to our attention.

A review of the preliminary investigation into this matter reveals that Detective Clar presented your case to a Municipal Prosecutor, who ruled that there is insufficient evidence to determine that a crime was committed. According to the Prosecutor, if a crime *was* committed, it probably occurred outside the jurisdiction of the City of Cleveland.

We were subsequently contacted by County Prosecutor Sullivan., who indicated that you are seeking assistance from his office. Please be advised that all of the information received by Detective Clar during the course of his investigation has been forwarded to Mr. Sullivan.

I wish you success in resolving this matter.

Sincerely,

Martin L. Flask, Chief
Cleveland Division of Police

Exhibit "E30"

Date: Fri, 17 Nov 2000 22:44:18 -0500 (EST)
From: "Biswanath Halder" <halder@engineer.com>
Subject: FBI: Fights Crime or Promotes Crime?

1918 Coltman Road
Cleveland OH 44106-1918
Telephone: 216-795-1779
E-mail: halder@engineer.com

November 17, 2000

The Honorable Henry J Hyde
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Hyde:

The government created the Federal Bureau of Investigation (FBI) in the early part of the twentieth century to fight crime and corruption. However, instead of fighting crime, the FBI has recently been promoting crime.

Shawn Miller, an evil man, broke into my Unix shell account at my Internet service provider (ISP) on July 13, 2000, and deleted all of the files in my account.

http://junior.apk.net/~halder/SM.html

This crime falls within the jurisdiction of the FBI. Hence, the following day (14 Jul 00), I called the FBI office in Cleveland, Ohio, and talked to Ms Mary Trotman. She forwarded my call to Mr Charles Sullivan, an agent specializing in cyber-crime. Mr Sullivan took down some of my personal information and said that he was going to call me back. I never heard from him. On August 8, I spoke with him again over the telephone. Mr Sullivan asked me to write down all of the files that I had in my account, the day I created them, the amount of time it took me to create them, the amount of money I spent in creating them, and so on. He also wanted me to gather the receipts for all such expenditures.

Imagine your home has just been burglarized, and you call the police. The police ask you to itemize everything you had in your home, the date and the place of the purchase, and their costs. Then you are asked to come to the police station with the receipts for all such purchases.

The following day (9 Aug 00), I sent an e-mail to Mr Charles Sullivan, which contained the details of the illegal break-in of my Unix shell account, and the malicious destruction of all of my files. Also, I attached the script of the entire account (I had more than 1,100 files in my account). I never heard from him. Then, on August 22, I sent him a second e-mail. Again, he neglected to respond.

Subsequently, I tried to contact the agent in charge of the FBI office in Cleveland, Mr Van Harp. On September 20, I left a telephone message for him. Mr Harp never returned my call, but Mr Sullivan finally did leave a message on my answering machine the following day (21 Sep 00). So, the next day (22 Sep 00) I returned his call. This time, Mr Sullivan asked me to put an exact dollar value on the losses I suffered as a result of the malicious destruction of my account and to send him all that

documentation. I said that no one could measure with exactitude the monetary value of intellectual property; nevertheless, I will try to come up with an approximate value. People do not have dollar bills stacked inside their computers, they have information; and the information I have in my computer is more valuable than virtually anyone else's.

> Just think for a moment that you walk into your office one morning and see nothing but the carpet. All the furniture, all of the documents you had in your desk drawers, the computers (including all the files), the telephones, the water cooler, and everything else is gone. You call the FBI, and they ask you to put an exact dollar value on everything you had in your office.

On October 5, I sent a third e-mail to Mr Charles Sullivan of the FBI in which I approximated (despite the lunacy of the attempt) the dollar value of the files in my Unix shell account at my ISP. Not to my surprise, I never heard from him. On October 16, I sent him an e-mail for the fourth time. As usual, he kept quiet.

Then, on October 19, I contacted the office of the Congresswoman of my district, Stephanie Tubbs Jones, and talked to her district director, Mr Lance Mason. The following day (20 Oct 00), I sent him an e-mail giving the details of the inaction of the FBI in dealing with the illegal break-in of my Unix account. After several telephone calls to Mr Mason, on November 8, he finally sent me an e-mail reply to the effect that the FBI did not open my case because the value of my loss had not been "adequately substantiated." In his words, "The F.B.I. uses discretion to bring cases with a value of loss exceeding $5,000.00."

I do virtually anything and everything on the computer.

- I have created an action-oriented electronic network of Indians; I run the network through the Internet.
- I have taken courses at Case Western; I have done my homework on the computer.
- I develop my homepage on the computer.
- I look for employment over the Internet.
- I am in the process of forming a business over the Internet.
- I try to solve mankind's problems over the Internet.

Some of the documents I had in my Unix shell account at my ISP (halder@apk.net) are irreplaceable. Apart from the destruction of documents, I have and will continue to suffer damages in many other respects, such as strained relationships, inconvenience, wasted time, legal troubles, sleep disorders, business setbacks, etc. Hence, I am at a loss as to how the FBI estimates the damages suffered by me to be under $5,000.00.

Until the 1980s, there was no such thing as "cyber-crime." In 1990, approximately one million people on our planet had access to the Internet. Today, hundreds of millions of people around the world have e-mail addresses. Each day this figure is growing by leaps and bounds. Along with the growth of Internet use, cyber-crime has been growing at an incredibly high rate.

The FBI may want to ignore my case because I am a poor man. However, most criminals start out small, and when unchecked, commit larger and larger crimes. Suppose a cyber-criminal breaks into the computer system of the Pentagon and alters some code. As a result, a nuclear missile may get launched accidentally. You know what is going to happen then. Unlike the Second World War that lasted six years, the Third World War

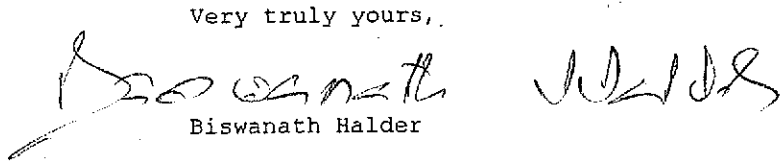
will last for less than six hours. In the ensuing process, anywhere from fifty to ninety percent of the human population will turn into ashes. Both you and I will be in the majority.

Moreover, a cyber-criminal is not limited to committing crime in the United States only -- he knows no geographic boundary. Suppose that such a criminal breaks into the computer system of the Federal Reserve Board of Uruguay and adds or deletes a zero in one of their monetary formulas. As a result, the economy of Uruguay may collapse. Such a criminal may also break into the computer system of the Department of Health in Ukraine and destroy some of their information. Thousands of patients could die as a result of the break-in. Finally, one does not have to be in Cleveland to commit such crimes. A cyber-criminal in Cairo (Egypt), Calcutta (India), Canberra (Australia), or Copenhagen (Denmark) has precisely the same ability to cause irreparable damage to mankind, without even leaving the comfort of his home.

In May 2000, a Filipino, after falling in love with everyone, spread the "I Love You" virus. He messed up the world to such an extent that innumerable institutions around the world were closed for business for one or more days. In the United States alone, the disruption of normal business cost the society tens of billions of dollars. The irony is that that Filipino never left his island home of the Philippines.

To sum it up, if the Federal Bureau of Investigation continues to promote cyber-crime, as it has recently been doing, the day is not far away when one cyber-criminal may push the entire human race back to the stone age.

Very truly yours,



Biswanath Halder

Cc: US Congress

##

Date: Fri, 14 Jul 2000 15:33:47 -0400 (EDT)
From: David Condon <dcondon@apk.net>
To: biswanath halder <bhalder@lynx.dac.neu.edu>
Subject: Re: junior.apk.net/~halder/

On Fri, 14 Jul 2000, biswanath halder wrote:

> As soon as you can locate the source of the problem, please
> send me an e-mail at this address. Then I am going to go to the
> telephone and talk to you.

These are the log entries showing the apparent unauthorized access to your account:

Jul 13 21:31:58 junior.apk.net in.telnetd[7842]: connect from nas-36-186.cleveland.navipath.net
Jul 13 21:34:32 junior.apk.net in.telnetd[8456]: connect from nas-36-186.cleveland.navipath.net

These are your own accesses to the account from CWRU:

Jul 13 18:45:45 junior.apk.net in.telnetd[22171]: connect from wsom12156.SOM.CWRU.Edu
Jul 13 20:57:03 junior.apk.net in.ftpd[28499]: connect from wsom12156.SOM.CWRU.Edu

1918 Coltman Road
Cleveland, OH 44106-1918
Telephone: 216-795-1779
E-mail: halder@engineer.com

May 14, 2001

The Hon Michael White
Mayor
City of Cleveland
601 Lakeside Avenue
Cleveland, Ohio 44114

Dear Mr Mayor:

The City has created a public safety department to maintain public safety. However, the Department of Public Safety of the City of Cleveland has proved beyond a reasonable doubt that it is unable to do what it is supposed to do -- maintain law and order in the City of Cleveland.

Shawn Miller, an evil man, broke into my Unix shell account at my Internet service provider (ISP) on July 13, 2000, and deleted all of the files in my account.
http://junior.apk.net/~halder/SM.html

The evil man is an employee of the Weatherhead Computer Center at Case Western Reserve University. I contacted the Security Department of Case Western, who in turn, asked me to contact the University Circle Police. I contacted Detective John Serrao of the University Circle Police, who asked me to contact the City of Cleveland Police. I called the Police Department and talked to Detective Arvin Clar of the Financial Crimes Unit. I set up an appointment with him for Friday, July 28, 2000. When I arrived at the Police Headquarters, Detective John Serrao of the University Circle Police was already there. I met with Det Clar and Det Serrao to discuss the crime, and Sgt David Gerrick of the Financial Crimes Unit joined in the discussion.

During our meeting, I explained to the three officers how and when this crime occurred. I also explained an approach to solving this crime, i.e., the police would need to issue subpoenas to four parties to receive certain documents. Once the police received the subpoenaed documents, the identity of the criminal will be abundantly clear. What follows is a list of the four parties that need to be subpoenaed.

1. NaviPath (a CMGI company)
   800 Federal Street, Andover, MA 01810
2. 1stUp.com (majority-owned operating company of CMGI, Inc)
   575 Market Street, Suite 1000, San Francisco, CA 94105
3. htmlGEAR (The Lycos Network)
   400-2 Totten Pond Road, Waltham, MA 02451
4. Weatherhead School of Management
   Case Western Reserve University
   10900 Euclid Avenue, Cleveland, OH 44106

I have contacted Det Clar of Cleveland Police many times to find out whether he received the aforementioned documents. Finally, on September 16, he mailed me a one-page document that he received from NaviPath. Once I received that document, I called him again, and explained that a follow-up subpoena needed to be issued to "altavista.net." When I asked him about the documents from the three other parties (1stUp, htmlGEAR and Weatherhead), he informed me that he had already issued subpoenas, and that he was in the process of getting those documents.

During the months of August, September, October and November, 2000, I talked to Det Clar many times over the telephone. Then on December 8, I wrote him a letter (with copies to Sgt Gerrick and Chief Flask) asking him for the progress he made in solving this cyber-crime. After many calls to a number of people in the police department, finally I received a letter from Chief Martin Flask dated January 30, 2001 (the letter was mailed on February 2, 2001). In his letter the Chief claimed that "there is insufficient evidence to determine that a crime was committed." The Chief further

added that "if a crime was committed, it probably occurred outside the jurisdiction of the City of Cleveland."

Ohio revise Code Section 2913.04 (unauthorized use of property; computer or telecommunication property) states, in pertinent part:

(A) No person shall knowingly use or operate the property of another without the consent of the owner or person authorized to give consent.

(B) No person shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, computer network, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, telecommunications device, telecommunications service, or information service or other person authorized to give consent by the owner.

(D) (1) Whoever violates division (A) of this section is guilty of unauthorized use of property.

(3) Except as otherwise provided in division (D)(4) of this section, if unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable:

(d) If the value of the property or services or the loss to the victim is one hundred thousand dollars or more, a felony of the third degree.

In addition, Ohio Revised Code Section 2913.42 (tampering with records) states, in pertinent part:

(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;

(B) (1) Whoever violates this section is guilty of tampering with records.

(3) Except as provided in division (B)(4) of this section, if the offense involves a violation of division (A) of this section involving data or computer software, tampering with records is whichever of the following is applicable:

(d) If the value of the data or computer software involved in the offense or the loss to the victim is one hundred thousand dollars or more or if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services and the value of the property or services or the loss to the victim is five thousand dollars or more, a felony of the third degree.

The aforementioned cyber-crime falls within Title XXIX (Crimes-Procedure) of Ohio Revised Code. Hence, I am at a loss as to how the Chief of Police of the City of

Cleveland claims that "there is insufficient evidence that a crime was committed." The fact is that the Police Department did not obtain all the documents essential to solve this cyber-crime. It is amazing that, to cover up their incompetence, the police would go to such an extent as to claim that a crime has never been committed.

Moreover, I live in the Little Italy section of Cleveland, and my ISP is located in downtown Cleveland. Also, the evil man gained access to and destroyed all data in my Unix shell account at my ISP from the Weatherhead Computer Center, which is located in the City of Cleveland. Therefore, the Chief's contention that the crime "occurred outside the jurisdiction of the City of Cleveland" is doubly puzzling.

No crime has ever gone unpunished. Society created the police department to apprehend criminals so that the criminals pay for their crimes. Otherwise, it is the society that ends up paying for the crimes that the criminals have committed. In this case, the Cleveland Police Department has proved beyond a reasonable doubt that it is unable to solve a very simple cyber-crime. You can rest assured that it is just a matter of time before the society ends up paying for the crime that a cyber-criminal has committed.

Finally, I demand an immediate explanation from the City Government as to why the Chief of Police of the City of Cleveland claimed that "there is insufficient evidence that a crime was committed," despite the fact that Title XXIX of Ohio Revised Code makes it a criminal offense to gain access to someone else's computer account without the consent of the owner of the account. Also, the same statute makes it a criminal offense for any person to destroy the data located within the computer system of another person.

Sincerely,

Biswanath Halder

Biswanath Halder

Cc: City Council

Exhibit "F34"

City of Cleveland
Michael R. White, Mayor

Cleveland City Hall
601 Lakeside Avenue
Cleveland, Ohio 44114
216/664-2220
www.cityofcleveland.org

May 15, 2001

Mr. Biswanath Halder
1918 Coltman Road
Cleveland, Oh. 44106-1918

Dear Mr. Halder:

I would like to thank you for taking the time to write to me to regarding the alleged security breach of your Unix account. Unfortunately, I have no authority over the decisions or rulings by the courts to prosecute, so I will not be able to intercede on your behalf. I would encourage you to contact an attorney to help you with your concerns over this matter.

Again, thank you for informing me of your problem and please accept my sincere wish for a happy resolution to this situation.

Sincerely,

Michael R. White
Mayor

MRW/cml

Exhibit "F35"

1918 Coltman Road
Cleveland, OH 44106-1918
Telephone: 216-795-1779
E-mail: halder@engineer.com

July 23, 2001

The Hon Michael Polensek
President, City Council
City Hall
601 Lakeside Avenue
Cleveland, OH 44114

Dear Councilman Polensek:

The government collects taxes and provides certain services to the people. One of the services that the government provides is crime fighting. However, the unholy trio of an utterly incompetent Cleveland Police Department, a perfect idiot mayor, and a felon clerk of the council have established beyond a reasonable doubt that the city cannot or does not want to provide the services that it is supposed to provide, i.e., fighting crime.

Shawn Miller, an evil man, broke into my Unix shell account at my Internet service provider (ISP) on July 13, 2000, and deleted all of the files from my account.

http://junior.apk.net/~halder/SM.html

I immediately brought the above criminal action to the attention of the Cleveland Police. Unfortunately, there is not a single person in the police department who knows what a computer is. Hence, the chief of police claimed, "there is insufficient evidence to determine that a crime was committed." The fact is that the police did not or could not obtain all the evidence necessary to solve this cyber-crime.

On May 14, 2001, I wrote a letter to the mayor of Cleveland demanding an explanation from the city government as to why the chief of police of the City of Cleveland claimed, "there is insufficient evidence that a crime was committed," despite the fact that Title XXIX of Ohio Revised Code makes it a criminal offense to gain access to someone else's computer account without the consent of the owner of the account. Furthermore, the same statute makes it a criminal offense for any person to destroy the data located within the computer system of another person.

The following day the mayor responded to my letter. The mayor claimed that he had "no authority over the decisions or rulings by the courts to prosecute." The mayor also encouraged me "to contact an attorney." Did I state anywhere in my letter of May 14 that I went to court? Had there been any decision or ruling by

any court in this case? How can a perfect idiot be the mayor of a major industrial city like Cleveland?

Then I called the mayor's office and asked for an appointment with the mayor. The woman who answered the phone asked me what was it about. I told her that I wrote a letter to the mayor on May 14, and I have myself a copy of my letter. She asked me to fax her the letter. First of all, I do not have access to a fax machine. Moreover, the letter is seven-pages long. Hence, faxing the letter to her along with the mayor's response would cost me some money. I asked her to get hold of my letter and the mayor's response from the mayor's office (which may be next door to her). She told me that those letters have already gone to storage and for me to fax her the letters. Then I mailed her a copy of my letter to the Mayor (dated 05-14-2001) and a copy of the mayor's response to me (dated 05-15-2001). A few days later I called her again and asked for an appointment with the mayor. She informed me that the mayor had advised me to see a lawyer.

The mayor may think that OJ is the only smart man in the United States. Far from it. Immediately after OJ killed two people, he hired some of the most powerful criminal defense lawyers. And you know what happened. These days OJ plays golf. Hiring lawyers is beyond the means of ordinary individuals. Is the mayor willing to set up a fund with taxpayers' dollars so that the fund pays for lawyers for crime victims?

People pay taxes: income tax, sales tax, excise tax, estate & gift tax, property tax, inheritance tax, etc. In the year 2000, the state and local governments in the United States collected the sum of $ 880.351 billion in taxes. One of the services the state and local governments provide to society is crime fighting. If the government cannot or does not want to provide this service, should it collect taxes from the people with the false promise that it is going to fight crime?

Also, on May 14, I left 21 copies of my letter to the mayor at the city council office to be distributed to all the city councilpersons. A few days later I called some of the city councilpersons. None of them received my letter. Then I talked to the office of the city council president. She informed me that it is the discretion of the clerk of the council whether or not to distribute the letter to the city councilpersons. Tampering with mail is a felony. How can a felon be the clerk of the council?

If the unholy trio of an incompetent police department, a perfect idiot mayor, and a felon clerk of the council continue to rule Cleveland, very dark days are ahead for Clevelanders.

Sincerely,

Biswanath Halder

Cc. City Council

Date: Sat, 17 Nov 2001 03:57:23 -0500 (EST)
From: "Biswanath Halder" <halder@engineer.com>
Subject: FBI -- Does It Fight Crime?

1918 Coltman Road
Cleveland, OH 44106-1918
Telephone: 216-795-1779
E-mail: halder@engineer.com

November 16, 2001

The Honorable Patrick J Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

Dear Senator Leahy:

The government created the Federal Bureau of Investigation (FBI) in the early part of the twentieth century to fight crime and corruption. However, the FBI has proved beyond a reasonable doubt that it does not want to fight crime.

Shawn Miller, an evil man, broke into my Unix shell account at my Internet service provider (ISP) on July 13, 2000, and deleted all of the files in my account:

http://junior.apk.net/~halder/SM.html

This crime falls within the jurisdiction of the FBI. Hence, the following day (14 Jul 00), I called the FBI office in Cleveland, Ohio, and talked to Ms Mary Trotman. She forwarded my call to Mr Charles Sullivan, an agent specializing in cyber-crime. Mr Sullivan took down some of my personal information and said that he was going to call me back. I never heard from him. On August 8, I spoke with him again over the telephone. Mr Sullivan asked me to write down all of the files that I had in my account, the day I created them, the amount of time it took me to create them, the amount of money I spent in creating them, and so on. He also wanted me to gather the receipts for all such expenditures.

> Imagine your home has just been burglarized, and you call the police. The police ask you to itemize everything you had in your home, including the date and the place of the purchase, and their costs. Then you are asked to come to the police station with the receipts for all such purchases.

The following day (9 Aug 00), I sent an e-mail to Mr Charles Sullivan, which contained the details of the illegal break-in of my Unix shell account, and the malicious destruction of all of my files. In addition, I attached the script of the entire account (I had more than 1,100 files in my account). I never heard from him. Then, on August 22, I sent him a second e-mail. Again, he neglected to respond.

Subsequently, I tried to contact the agent in charge of the FBI office in Cleveland, Mr Van Harp. On September 20, I left a telephone message for him. Mr Harp never returned my call, but

Mr Sullivan finally did leave a message on my answering machine the following day (21 Sep 00). Therefore, the next day (22 Sep 00), I returned his call. This time, Mr Sullivan asked me to put an exact dollar value on the losses I suffered as a result of the malicious destruction of my account and to send him all that documentation. I said that no one could measure with exactitude the monetary value of intellectual property; nevertheless, I will try to come up with an approximate value. People do not have dollar bills stacked inside their computers, they have information; and the information I have in my computer is more valuable than virtually anyone else's.

> Just think for a moment that you walk into your office one morning and see nothing but the carpet. All the furniture, all of the documents you had in your desk drawers, the computers (including all the files), the telephones, the water cooler, and everything else is gone. You call the FBI, and they ask you to put an exact dollar value on everything you had in your office.

On October 5, I sent a third e-mail to Mr Charles Sullivan of the FBI in which I approximated (despite the lunacy of the attempt) the dollar value of the files in my Unix shell account at my ISP. Not to my surprise, I never heard from him. On October 16, I sent him an e-mail for the fourth time. As usual, he kept quiet.

Then, on October 20, I contacted the office of the Senators from Ohio, DeWine and Voinovich (the two US Senators from Ohio have merged their casework offices). I wrote a letter informing them of the inaction of the FBI in the illegal break-in of my Unix shell account. On October 24, the Senators responded to my letter and wrote me that they "will contact the proper officials in an effort to be of assistance to [me]." Despite the fact that I have called the offices of both Senators on innumerable occasions, their casework office has yet to hear from the FBI. Additionally, I wrote each one of them a letter asking for a personal appointment; in each case, they denied my requests.

In the meantime, several things have happened.

1. The people continue to pay taxes (income tax, excise tax, employment tax, estate & gift tax, etc). In the year 1999, the people paid a total of $1,827.454 billion of their money to the federal government. All the time people have fervently hoped that, rather than intimidating the rest of the world, their government would make proper use of their tax dollars by eliminating crime and criminals from society.

2. The Senators (100 of them) continue to run around and lecture about how they are going to make America crime free, and thereby make the country a better place to live for law-abiding people. While they run around and lecture, police officers, state troopers, secret service agents, and a host of other law enforcement officials protect them -- at the expense of taxpayers' dollars.

3. The cyber-criminals continue to rampage the information infrastructure:

   http://junior.apk.net/~halder/ccc.html

They have broken into the computer systems of US corporations at least 5,579 times (including Amazon, AT&T, Bibliofind, Bloomberg, Bricksnet US, Buy.com, Charles Schwab, Chase Manhattan Bank, Christian & Timbers, Cisco Systems, Citibank, CNN, E*Trade, eBay, Folsom, Fujitsu, GTE, Issue Dynamics, MCI, Motorola, Novell, Omega Engineering, Southwestern Bell, Sprint, Sun Microsystems, Yahoo, etc); US academic institutions at least 614 times (including Harvard, MIT, Oregon State, Southern California, etc); US network service providers at least 734 times (including Aye Net, LaserNet, Verio, etc); and the US government at least 354 times (including Departments of Defense, Energy, Interior, Justice & State, the US Army, the US Information Agency, the US Postal Service, the US Senate, the CIA, the FBI, the IRS, the White House, etc):

http://www.attrition.org/mirror/attrition/country.html

The professional criminals are well aware that the FBI is busy silencing political dissenters -- they do not have any time for the criminals.

If the Federal Bureau of Investigation continues to prove that it does not want to fight crime, very dark days are ahead for the American people.

Very truly yours,

Biswanath Halder

Cc: United States Senate

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Biswanath Halder

E-mail Address: halder@engineer.com & biswanath@halder.net

Mailing Address: PO Box 606216 Cleveland OH 44106-0216

Telephone (home): 216-795-1779 (24 hours)

http://junior.apk.net/~halder/

##

8 January 2000

NATIONAL PLAN FOR INFORMATION SYSTEMS PROTECTION

President's Message

THE WHITE HOUSE

WASHINGTON

In less than one generation, the information revolution and the