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ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

**THE
UNANSWERED
QUESTIONS
ABOUT
PRESIDENT
KENNEDY'S
ASSASSINATION**

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(Indicate page, name of newspaper, city and state)

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By SYLVAN FOX

TRANSCENDING all other questions about the assassination of John F. Kennedy are these: Does the story presented to the American people by the Warren Commission survive close scrutiny? Does the Commission establish beyond reasonable doubt that Oswald killed President Kennedy? Does it prove that Oswald and Ruby each acted independently of any accomplices?

Unfortunately, the answers to two of these three questions must be negative. Uncertainty continues to hang like a pall over virtually every significant aspect of the assassination.

We are uncertain about Oswald's motives. We are uncertain about how many shots were fired at Mr. Kennedy and about the precise location of his wounds. We are uncertain about what happened when Oswald was arrested and questioned. We are uncertain about how Ruby got into the police station at exactly the right moment to kill Oswald. We are uncertain about Ruby's motive for killing Oswald. We are uncertain about the existence of conspiracies either in the Kennedy assassination or the Oswald murder or in both.

Skeleton of Certainty

All that remains is a skeleton of certainty: That Oswald participated in the assassination of President Kennedy, either alone or in concert with others; that Oswald killed Patrolman J. D. Tippit, although under precisely what circumstances remains unclear; that Oswald was slain by Ruby. The bones are there, but the flesh is missing.

This then is the Commission's achievement. It proved beyond much doubt half of what it hoped to prove. It showed that Oswald owned a rifle used in the assassination, that he was on the sixth floor of the book depository at the time shots were fired at the President from there, and that he had a rifle with him. It persuaded all but the most die-hard skeptics that no mistake had been made when the Dallas police arrested Oswald as an assassin barely 90 min-

No Answers

But by ignoring testimony that did not fit, by overlooking witnesses, by withholding evidence and leaving dozens of questions unanswered, the Commission failed to prove the other half of its conten-

tion: That Oswald and Ruby each acted alone.

To be sure, the Warren Commission's unfulfilled arguments about the absence of conspiracy do not prove that conspiracy existed. Oswald and Ruby might have operated entirely alone, as the Warren Commission would like to convince us they did. The problem is that the Commission, our only authoritative source of information about the assassination thus far, did not provide a sufficient number of answers to a multitude of questions to permit this conclusion to be drawn. When questions are asked and the answers are not given or are given evasively, the possibility arises that the conclusions are erroneous.

Nevertheless, despite the weaknesses which one suspects the Commission itself must have been aware of, the Commission stated this premise as a cautiously worded conclusion

and attempted to shore it up with whatever evidence seemed to conform to the pattern it required. The Commission had a duty to comfort the American people about the stability and health of our society in a moment of extreme distress. We emerged from the nightmare of Dallas full of dark fears about ourselves and our society. The Commission patted us on the head, told us our fears were groundless, and assured us that the events we had just witnessed were merely the acts of isolated aberrants.

Doubts Persist

Time has passed. The Report has been read and studied. The doubts and uncertainties if anything gnaw more persistently.

Even if there were no other persuasive reasons for doubting many of the Warren Commission's conclusions the methods it employed in reaching

them would be cause enough.

The Commission was charged at its creation with the responsibility of ascertaining as fully as humanly possible the truth about the murder of the President. To determine such truth, it obviously had to examine every shred of evidence it could find before submitting its verdict to the American people. But as we have seen, it did not consider all the evidence. It overlooked some witnesses, ignored the testimony of others, and withheld even from itself such important items as the X-rays and photographs of President Kennedy's body.

What evidence the Commission did examine was almost exclusively provided by police agencies—the Dallas authorities, the FBI, the Secret Service and the CIA. The Commission had no independent investigators of its own.

No Challenge

"Because of the diligence, cooperation, and facilities of Federal investigatives agencies," the Commission explained, "it was unnecessary for the Commission to employ investigators other than the members of the Commission's legal staff."

This created an ominous agglomeration: A body of governmental figures relying for its information on Federal and local police agencies.

It all sounds familiar. In our criminal courts, where a prosecutor normally bases his case on information supplied by the police, a similar structure exists.

There is a striking difference, however, between the positions of the courtroom prosecutor and the Warren Commission. The prosecutor's case is subjected to relentless challenge at every step by a defense lawyer. When the prosecutor puts forth an argument, it is countered by the defense counsel. When the prosecutor elicits damaging

testimony from a witness, the defense lawyer has the opportunity to cross examine that witness or to present witnesses of his own in reply. When the prosecutor submits exhibits to the court, the defense can attack them with evidence of his own.

There was no voice in the Warren Commission's investigation to challenge anything. No evidence was questioned, unless the Warren Commission questioned it. No issues were raised unless the Commission raised them. No testimony was evaluated except by the Commission and its staff. No witnesses were cross-examined by anyone.

Major Lapse

The Commission played all the parts in this surprisingly low-key courtroom drama. It was the judge, the jury, the prosecutor and the defense counsel. It played some better than others. The result is a statement that rings with the timbre of a prosecutor's voice. Search as one may, one cannot hear that other voice — the voice of challenge and dissent — anywhere in the Warren Report. It is frightening to consider that, to judge by the Report itself, no member of the Warren Commission took issue or disagreed with a single statement made in that voluminous document. Such unanimity gives the members of the Commission a faceless quality straight out of George Orwell.

The absence of dissent is not a minor lapse on the Commission's part. It goes to the very heart of the question of whether the Commission could possibly hope to learn the truth under the conditions it established for itself. If a dissenting voice had been heard, even faintly, the ultimate image of the assassination very likely would have been appreciably different. Questions that remain unanswered might have been answered. Elements that were omitted because they did

not fit the Commission's preconceptions about the assassination might have been given their proper weight. Lines of inquiry that were dropped or evaded might have been pursued. The parts might have fitted together into a different whole.

The Commission offers a rather feeble apology for its failure to permit a dissenting voice to be heard. In the preface to its Report, it says:

"The procedures followed by the Commission in developing and assessing evidence necessarily differed from those of a court conducting a criminal trial of a defendant present before it, since under our system there is no provision for a posthumous trial.

"If Oswald had lived, he could have had a trial by American standards of justice where he would have been able to exercise his full rights under the law. A judge and jury would have presumed him innocent until proven guilty beyond a reasonable doubt. He might have furnished information which could have affected the course of his trial. He could have participated in and guided his defense. There could have been an examination to determine whether he was sane under prevailing legal standards. All witnesses, including possibly the defendant, could have been subjected to searching examination under the adversary system of American trials.

"The Commission has functioned neither as a court presiding over an adversary proceeding nor as a prosecutor determined to prove a case, but as a factfinding agency committed to ascertainment of the truth."

Why the Commission believed that because Oswald was dead it could not permit the "searching examination" of its witnesses is difficult to understand. Such examination, it would seem, would have enhanced rather than diminished the likelihood of ascertaining the truth.

Truth Observed

The structure of a trial, as it evolved under American law, provides an opportunity for a defense lawyer to refute the prosecution's case. This system works not only because it usually protects the rights of the defendant, but also because it aids in discovering the truth. It sifts and screens evidence, stacks it up against contradictory information, highlights inconsistencies and distortions, and exposes lies.

This is not to say that the Commission should have conducted a full-dress, posthumous trial of Lee Oswald. Such a spectacle would have been an empty gesture, since Oswald was dead and the protection of his rights as a defendant had ceased to be of paramount concern. But simply because no trial was held does not mean that the Commission should have abandoned tested methods of determining the truth through the close scrutiny of evidence, the "searching examination" of witnesses, the independent initiative of a dissenting advocate. In rejecting these traditional tools of the law court, forged above all to lead toward the truth, the Commission fell into a mire of haphazard methods that obscured the truth behind a fog of unsubstantiated distortions and outright lies.

Just as one might expect, the Commission itself was uneasy about its methods and its ability to perform its lofty, self-proclaimed duty as a factfinding agency.

Uncertain Role

Three months after it began its work, it suddenly summoned Walter E. Craig, the president of the American Bar Assn., to "participate in the investigation and to advise the Commission whether in his opinion the proceedings conformed to the basic principles of American justice."

In other words, after three months of work, the Commission—composed of seven law-

yers including the chief justice of the United States—was dubious about whether it was indeed functioning as a factfinding agency or whether it was building a prosecution case, and it felt the need to call upon an independent legal expert for advice and help.

Craig did not enter the lists like a Clarence Darrow to slay the dragons of distortion. He cross-examined no one, challenged no evidence, asked almost no questions.

The Peoples' Interest

What was needed was a responsible, vigorous, independent lawyer who represented not Oswald's interests but the interests of the American people, as contrasted with the American political establishment.

His purpose would have been to raise the questions the American people wanted answered, to cross-examine witnesses, to produce witnesses of his own, to pursue fruitful lines of inquiry abandoned by the Commission's lawyers to prevent distortions and evasion; from cluttering the Commission's record.

Had he performed his purpose well, the Commission could have performed its better. It could have functioned as a genuine factfinding body, listening to the information obtained by police agencies and to attacks by the devil's advocate, then determining where the truth lay.

Charged with such responsibility, our public inquirer

would have spared us a host of uncertainties that remain.

He would have insisted, for example, that the Commission determine the source of the initial police alarm for a suspect in the assassination.

Moments after the assassination, the Commission tells us, Howard Brennan, the pipefitter who was across the street from the book depository when the motorcade passed, reported to policemen that he had seen a man firing a rifle from the building's sixth floor.

"Within minutes of the assassination, Brennan described the man to police," the Commission said. "This description most probably led to the alert sent to police cars at approximately 12:45 p.m."

Key Issue

The Commission leaves us in doubt about a key issue here. It says Brennan "most probably" was the source of the information broadcast at 12:45, fifteen minutes after the shooting. But it is not sure. The reason for the Commission's uncertainty? It was unable—or did not bother—to locate any policemen to whom Brennan had reported his observations, and it apparently did not ask the police radio dispatcher where he got the description he broadcast at 12:45 p.m.

If our public inquirer had been present, he would have demanded a more precise de-

termination than this of the source of the dispatcher's information. Had a policeman been found who took the information from Brennan and reported it to the dispatcher, a dark cloud of doubt would have been dissipated. If it turned out that no policeman took such information from Brennan, and that the dispatcher's description came from another source, an entirely new area of investigation would have been uncovered.

Such a representative of the public interest would not have permitted the Warren Commission to suppress the X-rays and photographs of President Kennedy's body. He would have demanded, on our behalf, the right to see such vital evidence and to determine from it the precise location of the President's wounds.

He would have discovered uncalled witnesses like Mr. and Mrs. Frank Wright, whose account of the Tippit murder differed so drastically from the version provided by the police and the Warren Commission.

A Deeper Probe

He would have located the four newspaper employees who heard shots coming from behind them on the grassy knoll to the west of the book depository.

He would have insisted on

hearing from more than two witnesses to Oswald's arrest in the movie theater.

He would have questioned Captain J. W. Fritz in more detail about his unrecorded interrogations of Oswald, and he would not have allowed the Warren Commission to put Fritz's destruction of important evidence behind evasive language.

He would have probed much more deeply into the so-called "police" car that signaled in front of Oswald's rooming house.

He would have examined more closely the circumstances surrounding Oswald's death.

In short, he would have attempted to clear up the myriad little puzzles that remain unsolved.

Unfortunately, the key words here are "would have." Such an advocate for the people was never appointed. His questions—which are really our questions—remain unanswered.

The Warren Commission deprived us of his counsel, and in doing so, it robbed us of the confidence we should have felt about the results of its investigation. The American people were the losers. We were the ones who, by the inadequacy of the Commission's methods, were denied reasonable certainty about what took place on November 22, 1963.

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