

The Lingering Shadow The Warren Report and Its Critics

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On Nov. 29, 1963, one week to the day after he was elevated to the presidency in the wake of the tragedy in Dallas, President Johnson established The President's Commission on the Assassination of President Kennedy.

In the fall of 1964, after many months of collecting and sifting evidence, the commission issued its findings in a one-volume report and published 26 volumes of testimony and exhibits.

The commission concluded that Lee Harvey Oswald killed the President, that Oswald acted alone, and that Jack Ruby acted alone when less than 48 hours after the assassination he fatally shot Oswald.

However, such was the nature of the case—a president killed as the result of a seemingly incredible combination of coincidence and ill luck, and his accused assassin murdered as a stunned audience of millions watched on television—that the commission's verdict has been questioned time and again.

Many books have been written attacking both the conclusions and the methods of the Warren Commission, as it came to be known after its chairman, Chief Justice Earl Warren. The doubts have been contagious—one recent poll showed that two thirds of the persons questioned said they doubted the commission's conclusions.

Seven months ago the Associated Press assigned two of its top writers to do a through study of the public criticism aimed at the Warren Report.

The writers, Sid Moody and Bernard Gavzer, concluded that

the Warren Commission, whatever its faults, was vastly more thorough and fair in its search for answers than the commission's critics.

The critics, Moody and Gavzer said, "have sat in judgment of the Warren Commission and found it wanting. But they are not judges. They have been prosecutors, making a case. Where fact has served, they have used it. Where it has not, they have not."

"If they have read all the evidence, they have not quoted it all. They have taken the evidence to form theories, to launch speculation. But they have not taken all the evidence."

Moody and Gavzer reported their findings in a dispatch of some 20,000 words, the longest single story ever sent over AP wires.

They divided their report into these sections:

A general comparison of the methods and conclusions of the commission and its principal critics.

An analysis of three of the main points about which the commission and its critics disagree—to wit, the "single bullet" theory, the autopsy report, and the location from which the fatal shots were fired.

An examination of theories that President Kennedy died as a result of some kind of conspiracy.

This is a summary of the research and findings of the report prepared by Moody and Gavzer.

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—1—The Commission and the Critics

Critics of the Warren Report have approached the subject from all angles.

Mark Lane, author of the best-selling "Rush to Judgment," has said: "As long as we rely for information upon men blinded by the fear of what they might see, the precedent of the Warren Commission Report will continue to imperil the life of the law and dishonor those who wrote it little more than those who praise it."

Leo Sauvage, in "The Oswald Affair," said: "It is logically untenable, legally indefensible and morally inadmissible to declare Lee Harvey Oswald the assassin of President Kennedy."

Edward Jay Epstein, in "Inquest," said: "The conclusions of the Warren Report must be viewed as expressions of political truth."

The commission, however, has not spoken in its own defense in the intense controversy swirling around its findings. For all intents and purposes, its final words are those of its report, and those of the 26 volumes of testimony and exhibits related to the report.

One of the principal difficulties in any attempt to sort out the facts is the nature of these volumes: The first 14 books (after the report) include testimony, most of it taken by the commission staff, and Volume 15 is an index to the first 14. The final 11 tomes are exhibits, "as tidily packed as a beatnik's duffle bag," comment Moody and Gavzer. The exhibits are not indexed, and to search through them for a specific statement or affidavit can take hours.

Conflicting Testimony

One who takes the trouble to peruse the records can find many examples of conflicting testimony, particularly among eyewitness accounts of events in Dallas on that terrible November day in 1963.

Many of the questions raised by such conflicts of testimony—like many of the questions

raised by the assassination and attempts to establish, on the basis of necessarily incomplete information, exactly what happened—may never be resolved with 100 percent certainty. Critics of the commission tended to rely heavily on testimony that disputes, if it does not disprove, the conclusions in the Warren Report.

One of the chief criticisms leveled at the commission was that it approached the investigation with a preconceived belief in Oswald's guilt.

"Nonsense," said one staff member. "We looked for the incredible as well as the credible. A lot of us were young lawyers. What greater feather could it be in our caps to prove the FBI wrong?"

Several critics suggested that the commission should have proceeded differently in its investigation. It should have used an adversary system, this argument says, with a prosecution against and a defense for Oswald.

"It would have been most unequal," a senior counsel commented. "The government all on one side. The report would have sounded like a brief for the prosecution."

"The staff was instructed to proceed in each instance on the possibility that Oswald was not involved. If they didn't want to proceed on that basis, the commission didn't want them to continue."

Supreme Irony

Moody and Gavzer comment that "the irony of the Warren Report is that it is based on the same evidence as the books that attack it. The commission provided in the 26 volumes of testimony and exhibits and additional matter in the National Archives the results of its investigation. And this is the heart of the critics' case. Their witnesses were the commission's. Their evidence was the commission's."

It—The Theory of a Single Bullet

Undoubtedly, the single most important part of the Warren Report was the commission's conclusion that the same bullet wounded both President Kennedy and Gov. John Connally.

The commission arrived at what is known as the "single bullet theory" after being confronted with two pieces of apparently conflicting evidence:

- That the first wound suffered by President Kennedy and Gov. Connally evidently occurred within a time span of 1.6 seconds, and,
- That the rifle presumed to have fired the shots could not be fired faster than once every 2.3 seconds.

The theory is central to these conclusions of the commission:

- That all the shots fired at the President and the governor were fired from Oswald's sniper's perch on the sixth floor of the Texas School Book Depository, and from no other place.
- That all the shots were fired from a 6.5mm Mannlicher-Carcano rifle, owned by Oswald, and found on the sixth floor after the assassination, and from no other weapon.
- That all the shots were fired by Lee Harvey Oswald, and no other person.

Probably the most important single piece of evidence uncovered by the commission was a film of the presidential motorcade—hence of the assassination—as it passed the depository building. It was taken by a spectator and amateur photographer, Abraham Zapruder.

The Zapruder film, however, is subject to conflicting interpretations.

The commission decided it was highly improbable that the President could have suffered his first wound before frame No. 210 of the Zapruder film, primarily because the foliage of an oak tree blocked a sniper's view from the sixth floor of the depository building prior to that frame.

The commission also concluded, on the basis of computations and the visible movements of Gov. Connally, that, at the very latest, he could not have been hit after frame 240. If the president were hit at frame 210 and the governor at frame 240, it would have occurred within a span of 1.6 seconds based on the known speed of Zapruder's camera.

Fatal Bullet

Both commission and critics agree that the film shows clearly the impact of the shot that killed the president in frame 313. The running time between frame 210 and frame 313 is 5.6 seconds. Correlating this with other evidence, the commission decided it was highly probable that all the shots—most likely three—were fired within this span of time.

But, because a sign obstructed the presidential limousine from the lens of Zapruder's camera for approximately seven-tenths of a second, it was impossible to determine exactly when President Kennedy was first hit.

The commission tended to assume that Connally was hit before frame 230, and that Kennedy probably was not hit until sometime after frame 210 but before frame 225, thus making the time differential between Kennedy's first wound and Connally's lower than 1.6 seconds.

Critics agree with the commission that two rounds could not have been fired within 1.6 seconds by the mail-order rifle owned by Lee Harvey Oswald. They also say the rifle was incapable of firing three bullets within 5.6 seconds. By implication, then, according to various theories set forth by critics, there was another source of rifle fire from which Kennedy, or Connally, or both, were hit.

Since the commission found three empty shells in the sixth floor room next to the weapon, and since the majority of the witnesses who testified to the issue said they heard three shots, the commission concluded three shots were fired, though only two shots hit their mark or marks and only one bullet and several bullet fragments were recovered.

Arlen Specter, an attorney for the commission, challenges the critics who say the Oswald rifle was incapable of firing three

bullets in a 5.6 second time span.

"When you fire three times," he told the authors, "the first shot is not taken into account in the time sequence. Look at it this way: aim is taken and there is the first shot. Then 2.3 seconds passes while bolt action is worked and the next shot is fired. Then another 2.3 seconds for the third shot. The three shots can be fired within 4.6 seconds range of time."

Bullet No. 399

Critics also contest the commission's version of the story of Bullet No. 399. This was the bullet found in almost undamaged condition in Parkland Memorial Hospital. Expert testimony supports the thesis that the bullet was fired by the Mannlicher-Carcano rifle. The commission says that this bullet passed through the president's neck and struck the governor in the chest, wrist and thigh, and that it came from Connally's stretcher.

Critics maintain the bullet did not lose enough weight to have caused both the president's and the governor's wounds, and that there can be no certainty the bullet did not come from the President's stretcher.

The 6.5mm copper-jacketed bullet weighed 158.6 grains. Its standard weight would be 160-161 grains. This means the bullet lost between 1.4 and 2.4 grains.

Lane and Epstein rely on the testimony of three particular witnesses to support their conclusion that the bullet lost too little weight to have caused Connally's wounds. One of them, for example, Cmdr. James J. Humes, chief autopsy pathologist, testified that "this missile is basically intact; its jacket appears to me to be intact, and I do not understand how it could possibly have left fragments in either of these locations, wrist and thigh."

The authors say this conflict was cleared up in other testimony, but "the commission was remiss in not resolving the conflicts when they arose."

They point out that in other testimony the flakes and fragments in Connally's wrist and thigh were described as very small and would have weighed less than 1.4 grains.

III—Controversy Over Autopsy Report

Much of the controversy which has surrounded the conclusions of the Warren Report focuses on the autopsy conducted on President Kennedy and the subsequent report.

The commission uses the autopsy report to establish that Kennedy suffered a back-to-front neck wound. This conclusion is essential to the case against Oswald as the lone assassin.

Lane, Epstein and others, the authors state, misinterpret the holes in Kennedy's suit jacket and shirt — holes 5¼ and 5½ inches, respectively, below the top of the back collar, and 1¼ and 1½ inches, respectively, to the right of center.

There is also the "autopsy descriptive sheet," (part of commission exhibit No. 397) with the outlined anatomical form of the male body in front and rear views. On the male rear view there is a dot marking a wound, somewhat to the right and below the neck.

Cmdr. J. Thornton Boswell, chief pathologist of Bethesda Naval Hospital, who made the dot, since has said, "The dot was meant to imply where the point of entry was." The authors add: "It is a hallmark of the critics' general scholarship that in zeroing in on this sketch none of them points out that although the dot is wrong, the description is clear: 14 centimeters down from the right mastoid process, which is the bony point behind the right ear, and 14 centimeters in from the right acromium, which is the tip of the shoulder joint. That point, on a man of Kennedy's size, is at the base of the neck."

The commission did not introduce photographs and X-rays of the president into the record. Moody and Gavzer, from members of the commission staff, heard two versions of the episode. The first is that

Chief Justice Warren, out of compassion for the Kennedy family, decided not to include the documents as evidence. The second is that the decision to keep them under the seal came from Robert F. Kennedy, who then was attorney general.

Lane says, for example, that "... federal police agents confiscated the crucial photographs and X-rays ..." The authors point out, however, that Cmdr. Humes testified they were "turned over" to the Secret Service, "but nowhere does he say they were demanded or that he objected to releasing them."

Humes also testified, the authors point out, that the X-rays were developed and used by doctors on the night of the autopsy, and that the photos "were made for the record and other purposes." The photos and X-rays, now in the National

Archives, were seen and authenticated last November by four men, including Cmdr. Humes, intimately connected with the autopsy.

Though the hole at the back of the president's neck had the characteristics of an entry wound, according to the autopsy report, critics point to the FBI summary report of Dec. 9, 1963, which refers to a wound "just below the shoulder to the right of the spinal column" from which "there was no point of exit. . . ."

Critics maintain that the actual autopsy report was updated and that the FBI report showing a back wound is the correct version. The authors quote Cmdr. Humes to the effect that the "autopsy notes and holograph draft of the final report" were handed to the commanding officer of the U.S. Naval Medical School on Nov. 24, 1963, and thus was not updated.

IV—The Grassy Knoll

The grassy knoll is a slope of greensward running southwest-erly away from the yellow brick mass of the Texas School Book Depository. On its ridge is an arcade, then a picket fence, shoulder high. The knoll runs along the north side of Elm Street on which Kennedy was slain and ends at a railroad underpass.

Moody and Gavzer explain why this little of land is of consuming interest to readers of the Warren Report:

"Several men on the overpass saw smoke near the fence as the president fell. If the smoke came from the assassin's rifle, Kennedy could not have been shot in the back, as the autopsy doctors decided. It is as simple as that: he was facing obliquely toward the knoll . . . Lee Harvey Oswald would not have been the lone assassin."

It is in this area of the report that critics and commission are found to differ over conflicting eyewitness testimony. The critics insist that the Warren Commission, for various reasons, tended to dismiss testimony contrary to its version of the crime.

Epstein, for example, wrote that "six of the seven witnesses on the overpass who gave an opinion as to the source of the shot indicated that the shots had come from a 'grassy knoll'."

The authors recount what these six witnesses say in the report volumes, and conclude: "Two, actually, picked the depository area. One who indi-

cated the knoll also thought the shots sounded like they came from Kennedy's car."

The authors also mention three other aspects involving the question of smoke "not dwelled upon by Lane or Epstein in connection with the knoll."

They are: (1) There was a steam pipe in the area; (2) FBI tests showed the alleged assassination rifle produced only a "small amount" of smoke when fired and that modern military gunpowder is smokeless; and (3) None of the approximately 200 assassination witnesses questioned other than those on the overpass mentions seeing any smoke, anywhere.

Moody and Gavzer point out that in dealing with the testimony of eyewitnesses it is often difficult to pinpoint their statements, or define exactly what they mean. This goes for the more than 60 persons who said they thought the shot originated at the depository, as well as the 34 who placed the origin of the shots on the knoll.

The authors contend, however,

that the Warren Commission considered either the testimony or statements of all the eyewitnesses, whereas the critics tend to use only those who support their theories. And even then, the authors say, the critics misuse the testimony.

The authors also note that the knoll area was widely searched by officers immediately after the shots. Nothing of substance was found, the authors report. One constable found footprints "that didn't make sense because they were going different directions." Another witness saw muddy footprints on a car bumper.

"Had an assassin stood there?" the authors ask. "No one had seen one," they continue. "If he had, he had been able to gather up any shells from the ground in the brief time before police arrived because nothing was found. No rifle was found. Nothing . . . nothing to add to what some people said they heard and saw around the knoll: some shots and a puff of smoke."

—V—Conspiracy—

In its report, the Warren Commission said:

"The commission has found no evidence that Oswald was involved with any person or group in a conspiracy. . . . If there is any such evidence, it has been beyond the reach of all investigative agencies and resources of the United States and has not come to the attention of the commission."

Yet, theories about possible conspiracies exist, in books and in the investigation being conducted by New Orleans District Atty. James Garrison. "The Warren Commission, unfortunately, did not answer all the questions," the authors note. "Some, however, are not answerable. Some are not questions at all. They are innuendoes—false scents that confuse the hunt for truth."

One of the conspiracy theories centers around an alleged meeting between Ruby, J. D. Tippitt, the officer the commission said was shot by Oswald, and Bernard Weissman, a young easterner in town mixing with the Dallas right wing.

Lane, himself, told the commission about the meeting, supposed to have taken place in Ruby's Carousel Club on the night of Nov. 14, 1963. The authors, however, cite a long history of testimony concerning the meeting, all of it extremely iffy.

For example, did Ruby know

Tippitt? He definitely knew at least one policeman named Tippitt (there were three), a detective by the name of Gayle Tippitt. Whether he knew J. D. Tippitt or not is a matter for conjecture.

Moody and Gavzer then comment: "But what if, evidence to the contrary, such a meeting did take place? What was its purpose? Lane doesn't suggest one. Neither does any evidence in the Warren volumes."

Lasting Theory

One of the lasting conspiracy theories is that Oswald was in fact an anti-Castro plotter, or was posing as one. This is based on the testimony of Sylvia Odio, an anti-Castro Cuban living in Dallas.

She told the commission that after the assassination she recognized Oswald from pictures as one of a party of three who visited her apartment on Sept. 26 or 27, 1963, on anti-Castro business. One of the other men who visited her told her Oswald had been in the Marines, was an excellent shot, and felt "the Cubans didn't have any guts . . . because President Kennedy should have been assassinated after the Bay of Pigs. . . ."

The commission decided it highly probable that Oswald could not have been in Dallas on the dates mentioned. Other evidence indicated he was in transit to, or actually in, Mexico at the time.

Epstein, for one, says the Odio matter never was resolved.

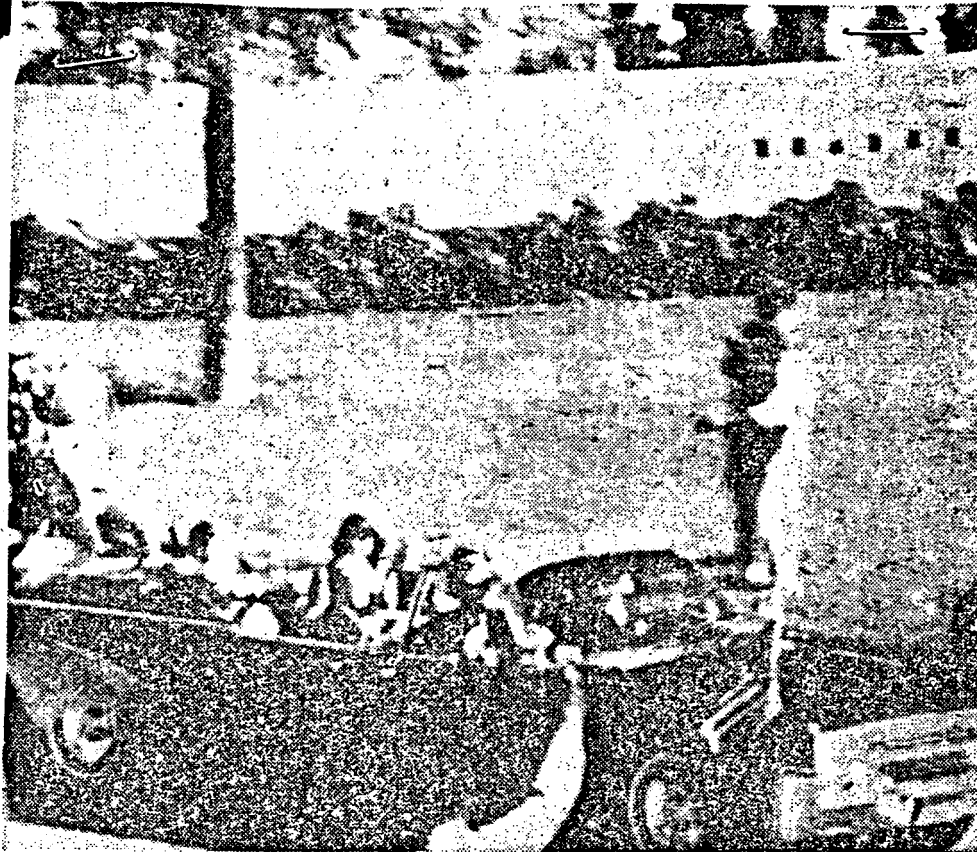
The authors conclude: "In effect, it was. As much as it ever can be. The commission was faced with a choice: the testimony of Mrs. Odio and her sister against the evidence they were mistaken. It chose the evidence.

"Yet it was the commission that presented all the evidence pro and con about Mrs. Odio. The critics did not," they continue, concluding:

"One may interpret what the commission found, and the critics have, abundantly. But while, as of this date, there may be doubters, books and speculation, the critics have yet to produce that one essential of proof—evidence."



THE WARREN COMMISSION—From left, Rep. Gerald Ford, R-Mich.; Rep. Hale Boggs, D-La.; Sen. Richard Russell, D-Ga.; Chief Justice Warren; Sen. John Sherman Cooper, R-Ky.; John J. McCloy, New York banker; Allen Dulles, former CIA head; and J. Lee Rankin, chief counsel.



—Associated Press

THE ZAPRUDER FILM—This frame from a film of the presidential motorcade taken by Abraham Zapruder, an amateur photographer, clearly shows President Kennedy reacting to his first wound. The Warren Commission said Gov. Connally, in the front seat next to the window, was wounded by the same bullet.