

Ten years ago, Gerald Ford and his colleagues on the Warren Commission led the official investigation of the assassination of President Kennedy. In August 1972, Attorney General Kleindienst suggested, with unintended accuracy, that the original Watergate investigation would match the Warren Commission's work in extent and thoroughness. The cloak of national security in which Richard Nixon tried to wrap himself was successfully used to impress the investigators (up to and including Earl Warren) with the delicacy of their job - which was not to find the truth, but to reassure the nation that the truth had been found.

A contribution to this reassurance was a book published in 1965 by Ford (with his assistant, John R. Stiles), titled "Portrait of the Assassin." Ford testified at his Vice-Presidential confirmation hearing that his intention was to make the conclusions of the Commission more readable; to that end, excerpts from witnesses' testimony make up most of the book. The book also revealed for the first time how the Commission reacted to a report that Lee Harvey Oswald had been an FBI informant. Ford reported with pride the Commission's determination to get to the bottom of the story, but not their failure to do so.

Ford described a "tense and hushed" emergency executive session on January 2 1964, after Texas Attorney General Waggoner Carr had reported the rumor. Two days later, Carr presented the allegation in Washington, accompanied by Dallas District Attorney Henry Wade, his Assistant D.A. Bill Alexander, and the two lawyers who were assisting Carr as Special Counsel for the Texas Court of Inquiry, Robert Storey and Leon Jaworski. On January 27, the Commission met to consider its response.

There was no question about the serious import of the allegation about Oswald and the FBI. Although efforts were made to suggest that overzealous reporters had generated it, it is clear that various police sources were encouraging the allegation, and that the Texans had reasons of their own for spreading it. One predictable effect was to take the heat off Texas, where the President had been

the Federal government. If Oswald had been an FBI informant, the argument went, naturally the FBI would not have considered him dangerous, and that would be why the FBI and the Secret Service did not warn the Dallas Police about him.

Ford testified that he and Stiles "did not use in that book any material other than material that was in the 26 volumes of testimony and sold to the public generally." That statement is incorrect. His description of the January 27, 1964 Commission meeting (which he had not attended) consists mainly of excerpts from a transcript which was classified Top Secret until this year. It was declassified in June in response to a suit by author and Warren Commission critic Harold Weisberg. The cover page of the transcript alleges that it contains "information affecting the national defense of the United States" and that its disclosure to an unauthorized person was "prohibited by law." - Ford's use (presumably not authorized) was a violation of the security-classification system, but (like the publication of the Pentagon Papers) probably not illegal.

The full transcript shows that Ford edited it as badly as Nixon edited the Watergate transcripts. His biggest distortion was to present this discussion in support of the false claim that the Commission investigated the allegation "with an intensity of purpose that left no stone unturned." The Commissioners were well aware of the obstacles to a proper investigation of the FBI-Oswald story, and of other issues. They knew the inadequacy of what they would end up doing. The Warren Report ultimately relied on statements by the FBI and the CIA that Oswald had not been an informant. The Commission never even saw all of the FBI's files on Oswald. Although the factual situation is complicated, there is very strong evidence that the FBI did have a special relationship with Oswald which was not revealed to the Commission. The FBI apparently did not respond to Oswald's leftist activities with authentic concern.

The Commission members clearly understood the worthlessness of a categorical denial from an intelligence agency. As a matter of policy, they were told, the CIA would lie to protect an informant or agent, unless otherwise instructed by

"Rep. [Hale] Boggs: Let's say [U-2 pilot Francis Gary Powers] had to have a signed contract but he was recruited by someone in CIA. The man who recruited him would know, wouldn't he?"

"Mr. [Allen W.] Dulles [former CIA Director]: Yes, but he wouldn't tell.

"The Chairman [Earl Warren]: Wouldn't tell it under oath?"

"Mr. Dulles: I wouldn't think he would tell it under oath, no.

"The Chairman: Why?"

"Mr. Dulles: He ought not tell it under oath. Maybe not tell it to his own government but wouldn't tell it any other way. [sic]

"Mr. [John J.] McCloy: Wouldn't he tell it to his own chief?"

"Mr. Dulles: He might or might not. If he was a bad one then he wouldn't....

"Mr. Dulles: I would tell the President of the United States anything, yes, I am under his control. He is my boss. I wouldn't necessarily tell anybody else, unless the President authorized me to do it. We had that come up at times."

The obligatory approach to the FBI was recognized as delicate as well as substantively inadequate. The Commission's General Counsel, J. Lee Rankin, explained:

"We thought, first, about approaching the Department [of Justice] with a request that the Attorney General [Robert Kennedy] inform us as to the situation, not only as to what he would say about whether Oswald was or was not an undercover agent, but also with the supporting data that the commission could rely upon, and there is some difficulty about doing that. As the head of the department, [---] the FBI, of course, is under the Attorney General, but I think we must frankly recognize amongst ourselves that there is a daily relationship there involved in the handling of the problems of the Department and the work of the FBI for the Department, and that we wouldn't want to make that more difficult.

"We were informed by Mr. [Howard P.] Willens, the liaison with the Department ... that it is the feeling of the Department ... that such a request might be embarrassing, and at least would be difficult for the Attorney General, and might, if urged, while we would get the information we desired, make [it] very much more difficult for him to carry on the work of the Department for the balance of his term."

The Commission understandably chose not to involve Robert Kennedy in this problem; he had little to do with any of the investigation. Nevertheless, the Commission and its defenders were eager to interpret Robert Kennedy's silence

as an endorsement of the Warren Report.

In this closed session, the Commissioners admitted the problems raised by the FBI's prior conclusion that Oswald was the lone assassin. This concern was never admitted later in such unguarded terms (no doubt in deference to the FBI's claim that it reports only facts, not conclusions), but it governed the work of the Commission throughout. Rankin responded to the idea of questioning the FBI about their investigations:

"Part of our difficulty in regard to it is that they [the FBI] have no problem. They have decided that it is Oswald who committed the assassination they have decided that no one else was involved, they have decided --

"Sen. [Richard B.] Russell: They have tried the case and reached a verdict on every aspect.

"Rep. Boggs: You have put your finger on it....

"Mr. Rankin: ... They have decided the case, and we are going to have maybe a thousand further inquiries that we say the Commission has to know all these things before it can pass on this. And I think their reaction probably would be, 'Why do you want all that. It is clear.'

"Sen. Russell: 'You have our statement, what else do you need?'

"Mr. McCloy: Yes, 'We know who killed cock robin.' That is the point. It isn't only who killed cock robin. Under the terms of reference we have to go beyond that."

The immediate problem - the allegation that Oswald had been an FBI (or CIA) informant - was discussed in the context of these obstacles. Two distinct approaches were presented. Warren wanted to start by having the Commission get information directly from the sources of the rumor, notably Houston Post reporter Lonnie Hudkins. Rankin recommended first going to Hoover for his explanation and the expected pro forma denial. The real issue was how to avoid the unavoidable implication that they were investigating Hoover. After considerable discussion, the members voted without dissent to let Rankin proceed as he thought best.

Warren hoped that direct inquiries by the Commission would avoid a clash with Hoover. As he put it, "I am not going to be thin-skinned about what Mr. Hoover might think, but I am sure if we indicated to Mr. Hoover that we were investigating him he would be just as angry at us as he was, or would be at the Attorney General."

FOR INVESTIGATING HIM. Warren was too late to avoid it. In a letter of January 27, received the day after the meeting, Hoover angrily denied that Oswald had been an informant. He said (erroneously) that the FBI had "previously made available to the Commission full information concerning our contacts with Oswald." Hoover mentioned that he had learned of the Texans' January 24 visit; it came out only later that the FBI had interviewed Assistant D.A. Alexander the following day. After reviewing the FBI's relations with Oswald "so that there may be no doubt" about them, Hoover said "In the event you have any further questions concerning the activities of the FBI in this case, we would appreciate being contacted directly."

Most of the Commission's subsequent investigation was done as Hoover wanted: in effect, by asking the FBI to investigate itself. The possible primary sources (Hudkins, Alexander, and Dallas Deputy Sheriff Allen Sweatt) were not witnesses before the Commission or its staff. Hoover cleverly undercut the Commission. For example, although Rankin said on January 27 that he did not intend to let the FBI interview Hudkins, the Bureau had already done so. After obtaining information about an official source for the allegation from Joseph Goulden (then reporting for the Philadelphia Inquirer), the FBI hid that lead from the Commission by reporting a single interview of Goulden about two reports from that source in two separate documents. The Commission ultimately relied upon the testimony of Hoover and other FBI personnel, and on an incomplete and inadequate set of affidavits asserting that Oswald had never been an informant.

This transcript reflects poorly on practically all of the parties involved, not just the FBI. J. Lee Rankin, for example, gave a presentation to the Commission which was at variance even with a memo he had prepared for the record. He referred to a Secret Service interview of the reporter Hudkins as an interview of Sheriff Sweatt, contributing to the incorrect consensus that "this all stems back to" Hudkins and not to the Texas officials. The Texans themselves told contradictory stories, and (as the Commission recognized) their motives were suspect.

Comparison of the transcript with the first chapter of Ford's book reveals

omissions and other heavy editing. The Robert Kennedy problem, for example, is not even mentioned, and the essence of the disagreement between Warren and Rankin is obscured. A rational discussion of strategy is made directionless. For example, the Ford and Stiles book omits (without indication) the underlined words in this suggestion by Rankin:

"Would it be acceptable to go to Mr. Hoover and tell him about the situation and that we would like to go ahead and find out what we could about these -- [allegations, by going to the sources]...."

With this change, Warren's response does not make sense:

"The Chairman: Well, Lee, I wouldn't be in favor of going to any agency and saying, 'We would like to do this.' I think we ought to know what we are going to do, and do it, and take our chances one way or the other."

Ford then quotes Warren's determination ("I don't believe we should apologize or make it look that we are in any way reticent about making any investigation that comes to the Commission") but not the equivocating next sentence: "But on the other hand, I don't want to be unfriendly or unfair to him [Hoover]."

Like Rankin and the FBI, Ford plays down the role of Texas police officials as sources for the allegation, and overemphasizes the role of the press (Hudkins, Goulden, and Howard Feldman, who wrote an article in The Nation). Sheriff Sweatt, who was named by Hudkins as a source, is not mentioned in Ford's book; three references to him were deleted. For example, where Senator John Sherman Cooper referred to the Commission's duty "to see what Hudkins and Sweatt say about it, where [did (?)] you get that information," he is quoted by Ford as saying "to see what Hudkins says about it, where he got that information."

We now know that a national security classification of Top Secret was used for ten years to suppress material which is sensitive only politically. The classification was even applied to a status report at the end of the meeting, where various investigative problems (some still unresolved) were discussed. On the other hand, the transcript contains a number of points which it is surprising to see released even now: a discourse by Dulles on how intelligence agencies can incriminate

the FBI's responsibility to infiltrate the Fair Play for Cuba Committee, followed by McCloy's remark that he had "run into some very limited mentalities both in the CIA and the FBI (Laughter)"; and the revelation that during World War II D.A. Henry Wade (then with the FBI) had paid the head of the Ecuadorean police "more than his salary each month," without submitting full records to Washington, "so that they got better service than the local government did."

Since this transcript supplements what critics have known for years about how bad the Commission's investigation was, why has it been declassified now? The government claims that it was cleared for release by the National Archives, the FBI, and the CIA after a review prompted by Harold Weisberg's suit under the Freedom of Information Act. (Executive Order 11652 provides for such a review of certain Top Secret material which is more than ten years old.) Weisberg argued persuasively that the Top Secret classification was unjustified by the subject of the discussion, was technically unauthorized, and had been made routinely. On May 3, 1974, Judge Gerhard Gesell ruled against Weisberg, not because of the classification but on an unsubstantiated government claim that the transcript was withholdable under the exemption granted to certain investigatory files. The subsequent release may have reflected a desire to avoid a bad precedent, and an awareness that Gesell's decision should have been reversed on appeal. The full 86-page transcript, with annotations and a commentary on the legal and factual issues, is being privately published by Weisberg.

The disclosure of damaging material about the Commission and the FBI, and the revelation of Ford's Nixonian editing skills, may be just a coincidence. It is also possible that the release had something to do with the evidence that Hoover was looked upon as a possible obstruction. John Erlichman has made a parallel argument in justifying the Plumbers' operations; other material embarrassing to the FBI has been released in the counter-intelligence program (COINTELPRO) and Kissinger wiretap cases. In any event, whatever use may have been intended, the transcript supports the case for strengthening the Freedom of Information Act.

after this January 27 meeting is that, assuming the allegation that Oswald was an FBI informant was false, their concern was to establish its falsity in a way which appeared thorough but which did not offend the FBI. President Johnson had convinced Warren to serve on the Commission only by arguing that squelching various (unspecified) rumors was essential to the nation's security. Warren passed on to the Commission staff Johnson's estimate that 40 million deaths would result from a nuclear war. At best the Commission never recognized just how much its concern about national security and national tranquillity precluded its professed commitment to finding the truth.

The details of the Commission's failure to check out Oswald's relationship with the FBI reveal much about how a successful coverup materializes. One minor aspect of that complicated story is noteworthy now: Leon Jaworski emphatically and unfairly deprecated Hudkins' report. Apparently he was asked to check it out informally; he spoke not to the reporter but to his editor. Jaworski reported back to Rankin, noting that Hudkins' story did not say that Oswald was an informant but raised that question based on the "speculations" of others. Jaworski pointed out that the Commission already had the testimony of the FBI agents (but only some of those involved, as Jaworski should have realized), and of Oswald's mother (who was being emphasized as the source of the rumor, to discredit it). He concluded, "I am wondering if it is really worth your effort to follow up on Hudkins." The Commission evidently agreed that the effort was not worthwhile. In their own final report, Carr, Jaworski and Storey endorsed the Commission's investigation, claiming that they knew of "no untapped sources" of relevant information, while repeating the implication that the Federal authorities should have warned the Texans about Oswald.

In the few days after Nixon's resignation, the country was reportedly eager to forget Watergate - a mood cultivated if not created by the media. Ford and Jaworski were in the key positions to decide how and whether the still unexplained crimes of the last few years would be investigated. Ford's prolonged support of

Nixon on issues from Vietnam to Watergate, and his work on the Warren Commission, are reminders that a reputation for integrity and candor among his colleagues in the government does not mean that he will serve the interests of the people. Jaworski's contacts with the Warren Commission's investigation show that he at least knows how to go along with a coverup when the supposed perpetrator of the crime is out of the way and broader national interests are thought to be involved.

We do not need a second coverup in the guise of amnesty and a desire to forget the past. At the very least, some of the roots of Watergate go back to before the Kennedy assassination - for example, "the whole Bay of Pigs thing" in which E. Howard Hunt was involved and which Nixon wanted to keep under wraps. (It may be that Nixon was euphemistically referring to Hunt's involvement in attempts to assassinate Fidel Castro; such attempts, it is widely speculated, had some connection with Kennedy's murder. [See, for example, Victor Marchetti and John Marks, "The CIA and the Cult of Intelligence," p. 306; E. Howard Hunt, "Give Us This Day," p. 38.]) As Representative Henry Gonzalez has suggested, a Congressional committee should re-examine and reopen the investigation of the assassination. One of the lessons of Watergate is that the country wants, and can learn from, the truth.

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