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## The Warren Commission On Trial

By David S. Lifton

"The American people have deep and abiding doubts about the official explanation of the assassination of John F. Kennedy put forth in the Warren Commission Report . . . By a 3 to 2 margin the American people reject the main thrust of the Warren Report that the assassination was the work of one man and tend to believe the killing was part of a larger plot." These are findings of a nationwide poll just completed by Louis Harris and published in the Los Angeles Times on Oct. 3, 1966.

The widespread attention being focused on the issue of Kennedy's assassination and the national debate that is now beginning to emerge on that question is in large part due to decisions of two major publishing houses to publish two books. The two books are *Inquest: the Warren Commission and the Establishment of Truth* by Edward Jay Epstein, a Harvard doctoral candidate, and *Rush to Judgment* by Mark Lane, New York attorney and former democratic assemblyman from New York City.

Four other books that have been published since last May are: *The Oswald Affair*, by Leo Sauvage—American correspondent for *Le Figaro*, a Conservative Paris newspaper; *Whitewash*, by Harold Weisberg, a former Senate Investigator; *The Second Oswald*, by Dr. Richard Popkin, Head of the Philosophy Department at UCSD; *Forgive My Grief*, by Penn Jones, Jr., a Texas country editor of the *Midlothian* (Tex.) *Mirror*.

These authors do not speak with one voice on all the topics to be considered and their books are decidedly different in approach, style, content, and the position taken on some of the critical issues. Epstein's book, for example, is the outgrowth of

a Master's thesis done at Cornell University under the auspices of Andrew Hacker, Professor of Government. He studied the Warren Commission and how they functioned as a fact finding body, not the assassination *per se*. In the process of this study, he emerges as a critic of their major conclusion that only one man fired all the shots at the President. Epstein interviewed five of the seven members of the Commission itself (Boggs, Cooper, Ford, Dulles, and McCloy—but not Warren or Russell), nine of the assistant counsel, and J. Lee Rankin, the General Counsel. From Epstein's book, we are able to learn much behind-the-scenes information on how the Commission functioned, how they dealt with various specific problems. Whereas the other authors frequently must infer from the Warren Report and its wording what took place behind the scenes before the conclusions were arrived at, Epstein's book actually follows the Commission attorneys and their work the way a sportswriter would follow a baseball team.

In all of the recent books, two junior counsels on



the Commission have received prominent attention for their central roles in the controversy. Mr. Arlen Specter, District Attorney for Philadelphia and Mr. Wesley L. LIEBELER, Asst. Professor of Law at UCLA have emerged amidst the hundreds of figures in the investigation because, unlike the seven Warren Commissioners, they were in direct contact with the case and because they were primary sources for so much of the key material in the Commission's Report.

Mr. Specter, junior counsel in Area I, formally called "the basic facts of the assassination," was principally concerned with determining the source of the shots that killed President Kennedy. The Report concluded that the shots were fired "from above and behind the Presidential limousine." According to the Report, this conclusion was based upon "the nature of the bullet wounds suffered by President Kennedy and Governor Connally."

The most important piece of evidence upon which this "above and behind" conclusion is based is the Naval Autopsy done at Bethesda Naval hospital. The autopsy report is published in the Commission's Report as Appendix IX, and its summary section concludes: "The projectiles were fired from a point behind and somewhat above the level of the deceased." Governor Connally, however, was also wounded by a bullet fired from behind, and a motion picture film of the assassination which was admitted in evidence by the Commission clearly showed that the first (non-fatal) hit of President Kennedy and Governor Connally's wounding both took place in less time than it was possible to fire Oswald's rifle twice. ~~At first glance, this might indicate a second assassin was firing at the motorcade from~~

*Behind. ALLEN SPECTER IS CONTROVERSIAL TODAY BECAUSE.*

he proposed a solution to the above dilemma and took the testimony and evidence which purports to prove that his solution is valid: that one bullet went through both men.

Mr. Liebeler has been the center of certain amount of controversy in more than one context. Specter's single bullet theory was a way of eliminating the problem of a second assassin firing from behind the motorcade. But there is another area, forward and to the right of the motorcade, where many people thought shots had come from. This is known as the Grassy Knoll. Liebeler interviewed many, but not all, of the important knoll witnesses. Epstein also consistently presents him in the role of devil's advocate on the Commission. A section of Epstein's Chapter 8, called, "The Liebeler Memorandum," describes how he submitted a twenty-six page memorandum after seeing Chapter four of the Commission's Report, entitled "The Assassin" in galley proof form. Epstein writes that at that late date (Sept. 5, 1964) Liebeler "was disconcerted by the quality of the writing. Liebeler said that the chapter glossed over the evidence that Oswald was a poor shot and had accomplished a difficult feat, and created a fairy tale that Oswald was a good shot and had accomplished an "easy shot." Called to Washington to deal with this new criticism, Norman Redlich is said to have replied: "The Commission judged it an easy shot, and I work

The leader of the nation, a charismatic and symbolic figure, was murdered. The nation was given a "dramatic official" explanation. But this explanation is unconvincing to many independent investigators of the assassination; there are a great number of unanswered questions forcing open the case-book so firmly slammed by the Warren Commission. This issue of INTRO is devoted to an overview of the skeptical literature concerning the official version of the events surrounding John F. Kennedy's death and a prologue to a series of Bruin articles probing this profound shock to the national conscience.



for the Commission."

On Nov. 23, 1964, the twenty-six volumes of testimony and evidence of the Warren Commission were made public. In-depth criticism could now begin with the major question being: Are the conclusions of the Warren Report accurately and logically based on the testimony and evidence contained in the twenty-six volumes? The twenty-six volumes are not easy to work with, nor easy to read. Commenting on the slight criticism the Report met in the eight weeks before the release of the twenty-six volumes, Dr. Popkin in *The Second Oswald* writes: "Some of the early critical questions . . . based on the Report itself and what it failed to resolve . . . were swept aside by faith — faith, first of all, that these matters must have been settled by the mass of data in the twenty-six supplementary volumes of testimony, depositions and documents. These twenty-six volumes seemed to be so imposing, and were, in fact, so impenetrable, that they resolved most doubts. Finally, as Dwight Macdonald pointed out, if the critics of the Report and of the evidence in the twenty-six volumes supposedly supporting it managed to reveal how tendentious, one-sided, and inadequate some of the solutions were, the ultimate faith of the public rested on the integrity of Justice Warren and his fellow commissioners, and the capabilities of the FBI and of the Commission lawyers. It was just too implausible that such irreproachable talent could have doctored the case or have come to the wrong conclusion."

The first fifteen of the twenty-six volumes contain testimony, depositions, and affidavits of the 552 witnesses. The remaining 11 volumes contain much raw data. According to Dr. Popkin,

"The documents are not properly indexed or identified," and their undifferentiated presentation mixes vitally significant data with "a bewildering collection of junk."

An example of such trivia included in these exhibit volumes is Commission Exhibit 672, appearing on page 330 of volume XVII. Here are microphotographs of Oswald's pubic hair. (Inasmuch as hair and fiber analysis was done on a blanket in which Oswald allegedly stored his rifle, perhaps the FBI thought it might bear on the question of whether or not Oswald took his rifle to bed with him at night.)

This massive collection of material probably contains most — if not all — important clues relevant to the case. What is open to question is the interpretation of this material. Do the conclusions of the Report accurately reflect the evidence? Or to pose this question in a manner reflective of the Commission's critics: was there more than one assassin involved in the killing of Kennedy?

What gives the present debate its angry overtones is that the Commission's own twenty-six volumes contain the very evidence which the critics claim gives the lie to the thesis that one man fired all the shots and that Oswald is guilty. Should

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the critics' arguments be valid, the Commission must admit incompetence, that it reasoned badly, or interpreted inadequately the material before it. And the difference between two critics on many of these issues is sometimes simply the difference between one who assumes incompetence is the answer, and those who charge deliberate cover-up.

When the Report came out, Murray Kempton wrote an article in the *New Republic* called *Warren Report: Case for the Prosecution*. Kempton accused the Report of attempting

"to elevate the implausible to the probable. That is the kind of thing we expect, not from judges, but from prosecutors of the better sort. In this instance we begin to see the Warren Report not as a judicial finding but as a presentation of a highly responsible prosecutor of the evidence gathered for him by a police force. It is to test such cases that we have an adversary system of criminal justice; with the best will in the world it is hard for courts to function without minatory presence of a defense counsel."

Joachim Joesten, author of *Oswald, Assassin or Fall Guy*, writes about the Report in a critical essay accompanying the revised edition of his book:

"As a brief for the prosecution, the Report is extremely able, reflecting the talents of the Commissioners, their staff, and their mastery of the essential skill of the prosecutor: to present to the jury a convincing chain of evidence, never giving any qualification or doubts, however slight. Another technique is to so present the items of evidence as to make a tenuous thread seem as strong as a clothes line."

In the introduction to Mark Lane's *Rush To Judgement*, Professor Hugh Trevor Roper writes: "What most dismayed me, on reading the Report . . . was the evidence . . . of a subtle but discernible process: the process whereby a pattern was made to emerge out of the evidence, and having emerged, seemed to subordinate the evidence to it. The Report of the Warren Commission is an advocate's summing-up. The fact that the advocate believes his own version is not relevant: advocates often do. Before judgement can be given, the advocate of the other side must also be heard . . . When both sides have been heard, and not before, posterity may judge."

Challenging the "summing-up", Edward Jay Epstein has pointed to many flaws in the Commission's Report, and he argues that ineptness is primarily to blame; the Commission attorneys were hurried. If it is true that no man mastered all the FBI reports, for example, then no one man was able to master and get a birds-eye-view of what is now available to every critic and to any citizen who chooses to pay 76 dollars: the complete material to read



in the 26 volumes.

If that is the case, the embarrassing dilemma for the Commission would appear to be that their Report is in error on major points, then benign and innocent reasons explaining how this ever happened can only be purchased at the price of admitting to horrible ineptness. Epstein also puts forward another explanation which views major conclusions of the Warren Report as expressions of Political Truth. According to this explanation, the Commission as an organization and the attorneys as individuals tended to operate on two different levels.

Noting that there was a dualism of purpose on the Commission, Epstein writes: "If the explicit purpose of the Commission was to ascertain and pose the facts, the implicit purpose was to protect the national interest by dispelling rumors . . . These two purposes were compatible so long as the damaging rumors were untrue. But what if a rumor damaging to the national interest proved to be true? The Commission's explicit purpose would dictate that the information be exposed regardless of the consequences, while the Commission's implicit purpose would dictate that the rumor be dispelled regardless of the fact that it was true. In a conflict of this sort, one of the Commission's purposes would emerge as dominant."

When information was brought to the Commission indicating that Lee Harvey Oswald was a paid informant for the FBI (by Texas officials who also purported to have his infor-

mant number and know how much he was paid), Rankin responded as follows: We do have a dirty rumor that is very bad for the Commission, the problem and it is very damaging to the agencies that are involved in it and it must be wiped out insofar as it is possible to do so by this Commission.

Other issues handled in some depth by Epstein include how the Commission handled the allegations that Oswald was a confidential informant for the FBI, and why it was that many witnesses in the area of the grassy knoll were never questioned by the Commission.

Mark Lane's **A Rush to Judgement** is tantamount to a defense brief for Lee Harvey Oswald. Whereas Epstein's field work and research centered around interviewing members of the Commission, Lane did extensive and interesting field work in Dallas, interviewing many witnesses not called by the Commission. There are certain places in the twenty-six volumes where the Commission attorney questioning a witness has been criticized for going "off the record", or for curiously changing the subject. Lane interviewed witnesses such as this (both on film and on tape) and picked up where the Commission left off. (His film bears the same title as his book and is to be released soon.)

Weisberg's **Whitewash** and Sauvage's **The Oswald Affair** are two additional books which deal with all aspects of the assassination, unlike Epstein, who, for instance, mainly concentrates on the Commission's theory that one bullet went through both men. Weisberg's book was the first comprehensive book and is pri-

vately published. It is, unfortunately, somewhat hard on the eyes because the pages are photographically reproduced copies of typewritten pages. This book is extremely well researched, and has an excellent chapter entitled: Oswald's Governmental Relations. Bluntly, this chapter deals with evidence that Oswald was an agent for some larger group.

Popkin's book **The Second Oswald**, is an attempt to put forth a counter-theory based on material in the twenty-six volumes. Some of it is strictly speculative but intriguing information. Nevertheless, this doesn't start until Chapter 5, and is brought out in the process. The first 50 pages of the book contain good up-to-date synopsis material on the theory that there must have been more than one man



The Warren Commission Report, and books by its critics, has stirred interest on this campus, as evidenced by the "Citizens Committee of Inquiry" table on the SU patio.

shooting at the motorcade.

Penn Jones' **Forgive My Grief** is a collection of articles first run in his paper, the **Midlothian Mirror**. Jones has devoted much time to on-the-spot investigating in Dallas, and has done quite a bit of work investigating deaths peripheral to, but possibly connected with, the assassination of President Kennedy. The November issue of **Ramparts** magazine will give a considerable amount of space to his findings. One of his most important discoveries concerns a meeting which took place on Sunday afternoon, Nov. 24, 1963, at Ruby's apartment shortly after he murdered Oswald. This is the beginning of his book.

**The Oswald Affair**, by Sauvage is a presentation of a defense brief. He is not as organized as Lane, nor as in-depth as Weisberg. Sauvage spends a considerable portion of his time attacking other critics by name and, having accused others of speculation, then creating a theory of his own. Nevertheless, the book is well written and well argued. Because the author is a Euro-

and well ARGUED. BECAUSE THE AUTHOR IS A EURO-



mean, the reader gets insights and interpretations, he will not get from the other books.

There is corollary to the thesis that the Warren Report is a prosecutor's brief, which may help to explain the reaction of the several Commission attorney's who have appeared in debate, been interviewed on TV, and issued statements for the press.

David S. Lifton became interested in the validity of the Warren Commission's conclusions in the Spring of 1965. At that time, he was shown that the Zapruder motion picture film, accepted in evidence by the Warren Commission, showed that President Kennedy's head was snapped violently backwards and to the left against the rear seat of his limousine at the instant of impact of the fatal shot. As a graduate student in the Engineering School this one fact seemed anomalous inasmuch as the Warren Report concluded that Oswald fired the fatal shot from behind and above the motorcade, yet the left-rearward head snap indicated a right-front shot source on the grassy knoll. He bought a set of the 26 volumes and proceeded to study the case in depth hunting for evidence either overlooked or possibly misinterpreted by the Warren Commission. He spent six weeks on the staff of Ramparts magazine this summer. While there, he discovered the whereabouts of Officer Tippit in the final moments before he was shot, something no one on the Warren Commission bothered to determine. A major area of interest for Lifton is working with photographs, taken during the moments of the shooting, in an attempt to find indications of other gunman firing at the motorcade. He does not believe that the Warren Report was written by men who were party to any conspiracy to suppress the truth. He thinks the Kennedy assassination is, today, an unsolved crime, and that the Warren Report simply represents an erroneous answer, ineptly arrived at.

In each case, these men have responded to the most widely published arguments in a rather odd manner. To a man, they have rushed to the defense of their Report, sometimes repeating the same statements which are carefully shown to be in error in the works of the

published critics, and attempting to reassert the validity of the conclusions which have been so badly under exposure to critical argument. Why?

The Warren Report is supposed to represent the truth as far as it could be determined. The critics purport to refute the major conclusions of the Commission. They raise serious issues. Presented to the literary community, they have been reviewed widely and, on balance, quite favorably.

Reviewing *Inquest* for the New York Times, Eliot Fremont-Smith wrote: "*Inquest* represents what must now be termed a new and preliminary investigation into the assassination of President Kennedy . . . A Pandora's box, perhaps, but there it is — it has been opened." Richard Goodwin, formerly Assistant Special Counsel to President Kennedy writes in *Book Week*: "If we cannot deny this book, then the investigation must be re-opened . . ." Max Lerner wrote: "I have just read a book which, I must admit, shakes for the first time the belief I have had in the report of the Warren Commission. The book is *Inquest* . . ."

Finally, Senator J. W. Fulbright referring to both *Inquest* and Weisberg's book *Whitewash* writes: ". . . Two books make it clear that the Commission's evidence was riddled with internal inconsistencies and that the procedures of the Commission were far from flawless while those of the FBI were — in some respects — unimaginably sloppy . . ."

Their unanimous reaction raises serious questions as to the alleged objectivity of the men on the Commission. The reactions suggest that these men regard the Warren Report's conclusions as some sort of client that has to be defended at all costs. This is inconsistent with their task as defined initially by President Johnson when he formed the Commission. He said then that their job was to determine the truth as far as it could be known.

It is as if their case which they had initially won is now up for an appeal, an appeal which takes the form of a serious reconsideration and debate in the court of public opinion. The lone assassin finding has been challenged. Oswald's guilt is being challenged. Serious questions are being raised regarding a possible confidential relationship between Oswald and the U. S. government. Published arguments purport to show that some of the chief evidence accepted by the Commission is fraudulent.

We will examine the material in future issues.