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The Duality of the Warren Report

**INQUEST:
THE WARREN COMMISSION
AND THE
ESTABLISHMENT OF TRUTH**
By Edward Jay Epstein
Viking, 224 pp. \$5.00.

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in September

THIS IS indeed a fascinating book. Edward Jay Epstein, its author, tells us he began it as a Master's thesis in government at Cornell University, with the "initial stimulus" coming from a problem posed by Professor Andrew Hacker: "How does a government organization function in an extraordinary situation in which there are no rules or precedents to guide it?"

But Epstein could not answer the question as stated. For the Warren Commission is not an ordinary "government organization" placed in an extraordinary situation; and the absence of rules and precedents to *guide* it was of minor importance, I would even say of no importance at all, compared to the presence of political preoccupations—or prejudices—to *dictate* each of its steps. Thus Epstein's case study, as he

discovered himself while advancing in his research, turned out to apply to something completely different than the case he set out to study.

None of the failures of the Warren Commission, in fact, can be attributed to lack of rules or precedents. The Commission, for instance, could have avoided many of its "errors" by simply adopting the time-tested rule of cross-exami-

nation, "the greatest legal engine ever invented for the discovery of truth," as John Henry Wigmore already stated in 1905, adding that "there has probably never been a moment's doubt upon this point in the mind of a lawyer of experience." I do not doubt that Chief Justice Earl Warren is such a "lawyer of experience". But the main preoccupation of the Commission was with "national interest," not with truth, and the real problem Epstein wound up studying concerned the place of what he calls "political truth"—the French have had the unhappy occasion to contribute the expression *raison d'Etat*—in the activities of a government organization. This is precisely what makes *Inquest* so fascinating.

Since its "primary subject," in the words of the author, was "the Warren Commission, not the assassination itself," one of Epstein's main achievements, and one which confers a really exceptional interest to his book, has been his success in interviewing five of the seven members of the Commission (missing only Senator Richard B. Russell and Chief Justice Warren), General Counsel J. Lee Rankin, eight out of 14 assistant counsel, and the senior U.S. Air Force historian who

had special responsibility for writing the Report.

All these "co-authors" of the Warren Report had remained in majestic—and contemptuous—silence, with the sole exception, as far as I know, of Congressman Gerold R. Ford. The Congressman apparently did not think it unethical to publish a \$6.95 report of his own called *Portrait of the Assassin*, which advertised him as "A member of the Warren Commission" on the jacket. Now some of the others have not only talked to Epstein, but Assistant Counsel Wesley J. Liebel-er even seems to have let him have a copy of a 26-page memorandum criticizing the Report's chapter on "The Assassin." According to the book, Liebel-er submitted this to

the Commission on September 16, 1964.

I suppose there will be a lot of denials and rectifications throughout the time of this writing. *Newsweek* says, quoting one of the "staff alumni" described as "hopping mad," the protest is remarkably anonymous. Epstein, in any event, has gathered enough inside information on the working of the Commission to be able to track the "Limits of the Investigation" as well as the "Limits of the Investigations." The results allow him to define the "Dominant Purpose" of the Warren Commission in the following terms:

"If the explicit purpose of the Commission was to ascertain and expose the facts, the implicit purpose was to protect the national interest by dispelling rumors. If these two purposes were compatible as 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 expressed to

regardless of the consequences, while the Commission's implicit purpose would dictate that the rumors be dispelled regardless of the fact that it was true."

Epstein's conclusion is that in a conflict of this sort, the Commission's purposes would emerge as dominant. "Is there anybody who has any doubt about which one?"

What Epstein does not say is that this "dualism in purpose" applied to the assistant counsel individually as well as to the Commission as a whole. Thus, Wesley J. Liebel-er's 26-page memorandum, which Epstein says was written after Liebel-er read the galley proofs of Chapter IV of the Report (*The Assassin*), called attention to some of the obvious inconsistencies I listed in the articles I wrote for THE NEW LEADER (see NL, October 22 and December 20, 1965,

investigation and conclusions were, in the final analysis, predicated on the accuracy of the FBI reports. The second horn of the dilemma is even more painful, for, if the FBI's statements on the autopsy are accurate, then the autopsy findings must have been changed after January 13. This would mean that the document in the Warren Report which purports to be the original autopsy report is not. This dilemma cannot be resolved in terms of what one considers to be 'inconceivable.' To some it would be 'inconceivable' that the FBI would make a repeated error of this magnitude and import in its final report to the President; to others it would be inconceivable that the Warren Commission would substantially alter the basic facts. The answer may, however, be found in the evidence surrounding the autopsy."

If this evidence is examined by Epstein in a few pages of remarkably clear, sharp, indisputable reasoning, his conclusion is that "the FBI reports are not erroneous." And here the young man from Cornell Uni-

versity almost loses his academic claim.

If the FBI reports are accurate, as the evidence indicates they are, then a central aspect of the autopsy was changed more than two months after the autopsy examination, and the autopsy report published in the *Warren Report* is not the original one. If this is in fact the case, the significance of this alteration of facts goes far beyond merely indicating that it was not physically possible for a lone assassin to have accomplished the assassination. It indicates that the conclusions of the *Warren Report* must be viewed as expressions of political truth."

Regrettably after thus deceptively contributing to the necessary task of replacing "political truth"—that is, a well-intentioned lie—with the real facts, Epstein nevertheless accepts without examination or question, the Commission's "political truth" about Oswald's guilt: While rejecting the Commission's affirmation about the lone assassin and showing convincingly that there *must* have been two assassins, he accepts very lightheartedly the assertion, as one of two if not alone, Lee Harvey Oswald shot at the President. And here we find no arguments, no proofs, no reasoning; only conclusions.

Joseph A. Ball has convinced Epstein that "the chain of evidence (against Oswald) was indeed compelling," and "although the possibility the Oswald was unwittingly involved (that is, 'framed') was apparently not explored, other circumstances—such as the shooting of police officer J. D. Tippit—severely diminished the credibility of this possibility." Later Epstein insists again: "Oswald's subsequent actions—leaving the scene, shooting a policeman, and resisting arrest—certainly were not the actions of an innocent person."

That Oswald left the scene or punched policeman McDonald in the face at the Texas Theater proves absolutely nothing. As for the shooting of policeman Tippit, Epstein cannot ignore the fact that the Commission's case here rests squarely on the shoulders of Mrs. Helen Markham, about whom he has heard from both Liebeler and Ball. Since he has also read in the Liebeler memorandum how unconvincing some of the other charges against Oswald appear even to the eyes of Commission staff members, Epstein's unhesitating acceptance of the Commission's accusations. I hope this was not to make the rest of his book more palatable. Whatever the case, these few unsubstantiated pages damage the lasting importance of an otherwise brilliant and constructive achievement.

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