

BOOK OF
THE WEEK

Disturbing Attack on the

RUSH TO JUDGMENT, by Mark Lane (Holt, Rinehart & Winston, \$5.95).

By James R. Thompson

THIS is a disturbing book, and though the reactions it provokes are, in many ways, variegated, free-floating and hard to pin down, the disturbances may be found on at least three levels.

First, the book brings back the awful memories of Nov.

22, 1963. John Fitzgerald Kennedy was a man with whom many Americans, especially of my generation, identified, either overtly or subtly. He was young, hand-



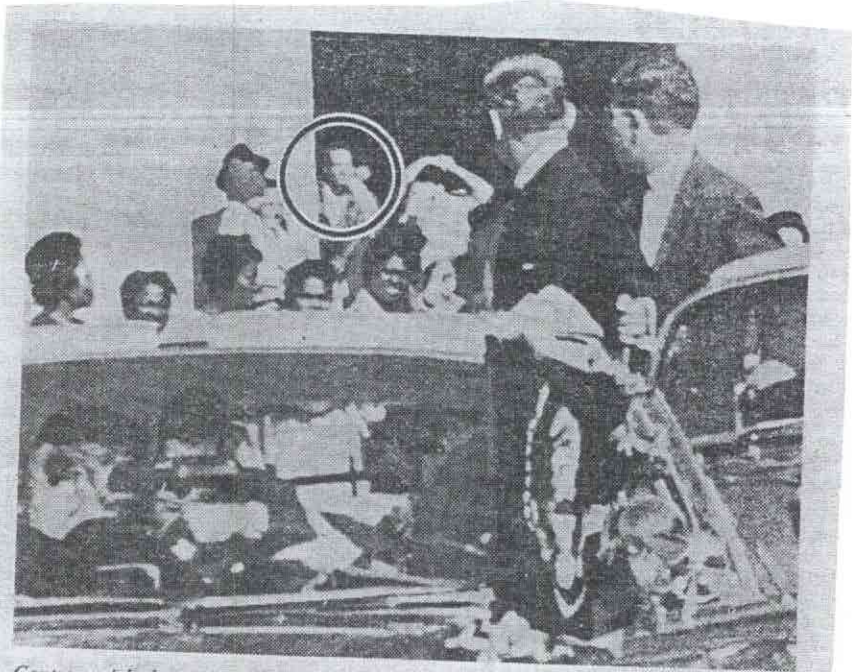
LANE

some, witty, rich, powerful. He had charisma, of course, and to borrow a phrase of another generation, he had, simply, "it". We were young; thought we were handsome and witty, longed to be rich and powerful. His assassination was, therefore, in the words of the Warren Report, "a cruel and shocking act of violence directed" not alone against John Kennedy, the man, but against all of us who loved him.

I HAVE memories of that day, as I suppose most Americans do, which, to me, are particularly ironic. When the killing occurred, I was in a judge's chambers in the Criminal Court watching a "girlie" film in preparation for prosecuting an obscenity trial that was to shortly begin. The morbid connection between that experience and the obscenity committed in Dallas at the same time need not be labored. That night, with the alleged murderer in custody and the air filled with cries for his life, I delivered an address on capital punishment in a local church.

Aside from personal recollections, however, the book disturbs me on two other levels which have led to conclusions

Warren Report



Controversial photograph taken before the doorway of Texas Book Depository at time of the assassination. Was the man in the circle Lee Harvey Oswald?

WORLD WIDE PHOTOS

which may be stated summarily here: The Warren Commission, while doing a massive, almost incredible, job in the time that it had available, did not do a complete job. The report has holes; it does not answer all questions which need answering. It fails, probably unnecessarily, to quell doubts that could have been, and must now be, quelled.

On the other hand, while the commission may have been guilty of rushing to judgment, as the title of Mr. Lane's book

implies, the author is as guilty of attempting to rush us—his readers—to a judgment in a manner which may strike one on first impression as sound and articulate, later as clever, and, on close analysis, and in some instances, as downright dishonest.

"RUSH TO Judgment" is characterized by its author and publisher as a "critique" of the Warren Commission Report. Critique is an improper word, in my view, for it implies a careful, closely reasoned

analysis. Mr. Lane's book is not that. Rather, it reminds one of a sly summation of the defense side of a criminal case by a lawyer who knows that these remarks cannot be interrupted by the objection of a prosecutor who would like to cry, "That is not the evidence," and by a judge who will instruct the jury thus to disregard them.

For the prosecutor and judge are not here. The book itself is written in a style which may persuade the reader, especially the lay reader, that there is very little *credible* evidence to show that Lee Harvey Oswald killed Kennedy; or that Jack Ruby acted alone in killing Oswald. One may begin to doubt that the police of Dallas, and indeed, that the Federal Bureau of Investigation, and the Secret Service, were honest in their investigations. And, unfortunately, recourse to the report in an effort to rebut these allegations is of little aid. Since "Rush To Judgment" is written as a criticism of the report itself, the reader who turns to the report to calm the disquieting implications of these conclusions will find, instead, that Mr. Lane is seemingly buttressed.

The 26 volumes of testimony heard by the commission, which form the basis of the conclusions of its report, are not generally available. One reader in a thousand can or will consult them. And it is not the function of a review to quarrel with the conclusions of the book in detail; time, space and purpose preclude this. Nevertheless, I have chosen an example which to me, on first reading, seemed to be a particularly strong point of Mr. Lane's. An analysis of it will serve to illustrate my fears that Mr. Lane's analysis of the report, and the Oswald-Ruby killings, is not fair, but, in fact, kinky.

THE COMMISSION cited, in partial support of its conclusion that Oswald killed Kennedy by shooting a rifle from the southeast, sixth-floor window of the Texas Book Depository, a man whom Lane calls its "star witness" and a person "on whose identifica-

tion the commission leaned heavily."

This man was Howard L. Brennan. Brennan testified that he was watching the motorcade when he saw a man in the southeast sixth-floor window firing a rifle at Kennedy. Though Brennan did not "positively" identify Oswald in a lineup held thereafter, he did identify Oswald in testimony before the commission. He explained his earlier failure to identify Oswald for fear that it might involve a threat to his personal safety; he suspected a Communist plot.

His identification is, of course, subject to the legitimate criticisms, which Mr. Lane makes, that he knew, at the time of the lineup, that Oswald was in custody for the murder of Patrolman Tippit as well and offered no personal threat to him, and, moreover, if Oswald was involved in a conspiracy, the threat offered to him by the co-conspirators was as likely at the time of his later testimony as it was at the time of his initial lineup hesitancy.

The commission obviously recognized this infirmity, for it clearly stated that it did not base its conclusion that Oswald was the assassin on Brennan's identification. Mr. Lane's labels of "star witness" and "leaned heavily" therefore are not accurate.

BUT MR. LANE is not content to rest there. He attempts to undermine the credibility of Brennan by saying that he had poor eyesight and was not wearing his glasses at the time he purportedly saw Oswald in the window. A reference to the record, however, shows that Brennan testified that, at that time, he used glasses only for reading and was far-sighted. The transformation of "far-sightedness" into "poor eyesight," especially in this context, is a blatant misstatement.

To support his thesis that Oswald was not the killer, Mr. Lane cites the testimony of an 18-year-old eyewitness, Arnold

Rowland, who said he saw a man with a rifle in the *southwest* corner of the building. He remarked on this to his wife, but when they looked back the man had disappeared and did not reappear thereafter. If Rowland, with his "better than 20-20 vision," as Mr. Lane described it, is right, not only was Brennan wrong, but the commission's conclusions concerning the killer of Kennedy and how the murder was performed are gravely jeopardized.

The commission refused to

credit Rowland's testimony on two stated grounds. First, it said, it was not until Rowland testified before the commission that he said he saw, at the same time, another man, a thin, elderly Negro, hanging out the *southeast* sixth-floor window. Second, Rowland's wife admitted that he was "prone to exaggerate," and the commission's subsequent investigation into Rowland's claims about his school records and accomplishments demonstrated that his statements concerning these matters were false.

IN ROWLAND'S defense, Mr. Lane cites Rowland as saying that he told the FBI, immediately after the shooting, that he saw such a man in the southeast window, but the FBI did not include this in its reports. Here the commission, in my judgment, falls down. For the FBI agents who took Rowland's early statements were not called to rebut this. Moreover, says Mr. Lane, and with some justification, exaggeration or even falsification of scholastic prowess does not, alone, justify disregarding testimony on an unrelated subject in the absence of any *motive* to falsify testimony about such an event. And Mr. Lane is correct in pointing out, as the commission does not, that Mrs. Rowland qualified her assessment of her husband's credibility by adding that he exaggerated only to make himself seem a better "student" or "salesman" than he was. Most

of us, at times, are prone to such pronouncements about our vocations.

But Mr. Lane does not tell the whole truth, either. Affidavits from Rowland's teachers and acquaintances strongly suggest that he was untruthful in other areas which could not be fairly characterized as bragging. These are found in the evidence volumes, but not in the report or in the Lane account. And what is worse, Mr. Lane cites the testimony of

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Deputy Sheriff Craig in support of the fact that Rowland told him, immediately after the assassination, that he saw both the killer and an elderly Negro man on the sixth floor. But when we turn to Craig's testimony in the record, it is clear that Craig said that Rowland told him that both were in the same window, which is not what Rowland told the commission. Craig does not corroborate Rowland, therefore, and Mr. Lane is consciously or unconsciously in error in claiming that he does.

OTHER examples of this technique could be noted. While he does what may be, to the lay reader, a persuasive job in deprecating the eyewitness accounts of the murder of Patrolman Tippit, Mr. Lane's treatment of the ballistics testimony, which ties Oswald squarely to the crime, is shoddy. He simply cannot make go away the evidence that cartridge cases fired by the gun Oswald had in his possession at the time of his arrest were those dropped by the killer of Tippit.

As I have said, the Warren Report is in some measure unsatisfactory. To note some questions out of many: The assumption that Oswald succeeded in killing Kennedy with an old rifle because he was an expert marksman is unconvincing. A photograph taken seconds after the assassination shows a man in the doorway of the Texas Book Depository that bears a striking resemblance to Oswald. If it is him, he could not have been the killer, yet when the commission explains it away with the testimony of an onlooker that it is his, not Oswald's, picture, no picture of the onlooker is published in the report. Why not?

On many occasions, the commission deprecated the credibility of witnesses by citing the fact that they failed to tell the FBI or the Secret Service, in prior interviews, of

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things that they included in their commission testimony. Mr. Lane says the interviewers left these things out. And yet the commission never called the agents to rebut these claims. The interviews could have been recorded on tape and there would be no question about what was said. This was not done.

WE ARE TOLD, by author and publisher alike, that research of "more than two-and-one-half years went into the writing of the book." I suppose this assertion is made to add weight to the book's conclusions. In light of this, I find it incredible that the publisher, or his attorneys, did not make even random spot checks of the volumes of evidence to put Mr. Lane's analyses to the test. Had they done so, and had they found such shallow or careless analyses, to put it mildly, as the Rowland-Brennan conflict that I have outlined above, it seems to me that questions of publishing integrity would have been raised in connection with responsibility for putting this book out to the public, at least in its present form.

Mr. Lane's intense professional interest in the case began almost immediately after the assassination. He is a New York lawyer who has been engaged in practice for more than 15 years, almost exclusively as defense counsel in the trial of criminal cases. As a member of the New York legislature in 1960 he sponsored bills calling for the abolition of capital punishment. He was retained for a brief time by Mrs. Marguerite Oswald to clear the name of her son, Lee Harvey Oswald. He testified twice before the Warren Commission and has made speeches on the assassination throughout the United States and in Europe.

IN MY judgment, a consideration of "Rush to Judgment," and the Warren Report that it attacks, leads to two conclusions.

First, the American people are entitled to a true "cri-

tique" of the Warren Commission Report. They have not yet had it. "Rush to Judgment," while doubt-provoking, is entirely inadequate, and in many instances, unfair.

We are also entitled to an answer to "Rush to Judgment" on the part of the commission, its individual members or its defenders. This answer, at least, should be immediately forthcoming to reaffirm the integrity of the commission and its conclusions. The doubts raised by "Rush to Judgment" may be spurious, they may be dishonest, but while the book is here and an answer is not, they will stand.

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