

Saturday Review

October 22, 1966 35¢

JFK IN DALLAS

**What Seven New Books Say About the
Assassination of President John F. Kennedy**

By Judge Arnold L. Fein

J F K IN DALLAS

The Warren Report and Its Critics

By ARNOLD L. FEIN

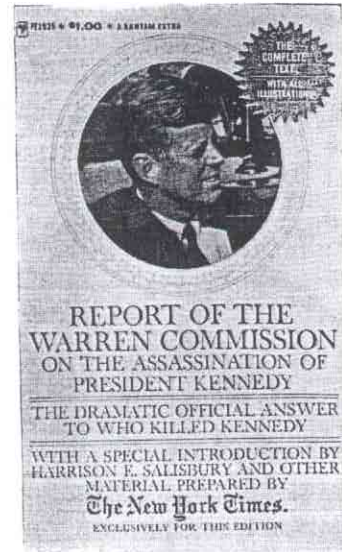
AS THE war against the Warren Commission escalates, it is time to take stock. It is time to inquire into the supposed deficiencies of the Commission, its investigation, and its Report. It is time also to inquire into the possible deficiencies of the critics, their inquiries, and their conclusions. We deal here not with a political campaign or a newspaper report, where license in speech and in reporting is, unfortunately, too often the rule. We deal rather with the assassination of a great and gallant young man, the President of the United States. We deal also with the killing of a confused and bewildered man, his alleged assassin, both within the sight and earshot of an unbelieving world.

The awesome responsibilities of the Commission required that it adhere to

the highest standards of which men are capable, to make an objective and thorough inquiry, and to render a fair and impartial judgment, without passion, fear, or favor.

Perhaps the critics are not obliged to conform to the same standards. But at a minimum should they not be required to state the facts as they are, to report the truth, to avoid the dissemination of unsupported rumors, and to refrain from character assassination and unfounded imputations of improper motives? A decent respect for the opinions of mankind and for the subject matter of the inquiry demands no less.

Did the Commission adequately meet its burdens? Leaving aside for the moment comment on the specifics of the investigation and Report, and the critiques, it is fair to suggest that there is justification for many of the general criticisms of the Commission. Mark Lane and Edward Epstein in particular have fairly and credibly made some of the points. It is now reasonably clear that the Commission should have employed full-time, independent, non-



governmental investigators and more full-time, independent, nongovernmental lawyers. The members of the Commission probably should have devoted more time to their task and should have heard more of the testimony in full-dress formal hearings. The entire investigation should have been further extended in time and scope. The nature of the inquiry required expedition, but not at the expense of adequacy. Speedy justice is essential, but often the only merit of instant justice may be its immediacy. The time required must be measured by the complexity of the problem. Whatever the merits of the dispute

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The Dissenters

Mark Lane Rush to Judgment

A critique of the Warren Commission's inquiry into the murders of President John F. Kennedy, Officer J. D. Tippit and Lee Harvey Oswald
Introduction by Hugh Trevor-Roper

EDWARD JAY EPSTEIN

Inquest THE WARREN COMMISSION AND THE ESTABLISHMENT OF TRUTH

INTRODUCTION BY Richard H. Rovere

The Oswald Affair

AN EXAMINATION OF THE CONTRADICTIONS AND OMISSIONS OF THE WARREN REPORT

Léo Sauvage



between the Commission and the attorney for Marguerite Oswald, Mark Lane, it is manifest that he and the other critics are on sound ground in arguing that a technique should have been evolved for admitting adversary counsel, with the right of cross-examination. It is apparent also that some clues should have been more thoroughly followed and that certain additional witnesses should have been heard and questioned. So too it is evident that a more complete investigation of and report on the inconsistencies in the evidence heard and the official reports submitted to the Commission were required. Conceding the validity of these criticisms, however, does not necessarily require rejection of the Commission's conclusions.

On the other hand, did the critics meet the minimal standards required of them? It is fair to suggest that in many respects they failed to do so. Perhaps the greatest obstacle to an understanding of the investigation and the Report is the widespread public misconception about the nature of criminal trials and investigations. This underlies and infects much of the approach in these books, although it is expressly articulated only by Léo Sauvage, who remarks:

The writer of detective stories who wants to keep his readers never lets question marks and unexplained clues linger after the words "The End." One would think the public would be no less demanding when confronted not by fiction but by a real life investigation, and above all when the victim is the President of the United States.

If it is true, as this passage suggests,

that life must conform to fiction in order to be credible, the Warren Commission was deficient. It did not answer all the questions nor did it explain all the clues. The Report so states at many points. Does this mean that we must reject the Report and the underlying investigation and accept the alternative theories of these critics who not only disagree with the Commission but with each other?

Only rarely does a trial, inquiry, or investigation—civil or criminal—present a tidy package fit for television dramas. More often than not there are loose ends. Guilt beyond a reasonable doubt does not mean beyond all doubt, and so criminal juries must be instructed. The perfect case is usually the fraudulent one.

It was obvious from the outset that there were so many conflicting clues and reports it would be impossible to reconcile them all. But this does not seem to deter our authors. Seizing these gaps or contradictions, some of which were inevitable and many of which the Commission could have avoided or explained, each of these critics has launched an attack on the motives of the Commission, varying in intensity from the professorial tone of Edward Jay Epstein in *Inquest* to the staccato drumbeat of Harold Weisberg in *Whitewash*. Each implies or states that the Commission assumed at the outset that Oswald alone was guilty and then set out to demonstrate or prove it. Perhaps this is so, but these gentlemen have not made the case. It is more easily demonstrable that it is they who have sought to prove their own predispositions.

Although *Inquest* is written in a sober and scholarly law-school style with a re-

markable economy of expression, the book is patently tendentious. Its essence is that the Commission was engaged not in the pursuit of facts but of "political truth," that its "dominant purpose" was "to protect the national interest by dispelling rumors" about "conspiracy" and to "lift the cloud of doubts . . . over American institutions," because "the nation's prestige was at stake." This "implicit purpose," deduced by Epstein from newspaper reports and comments taken out of context, is compared with the Commission's explicit purpose stated in the President's directive "to ascertain, evaluate and report on the facts" including "its findings and conclusions."

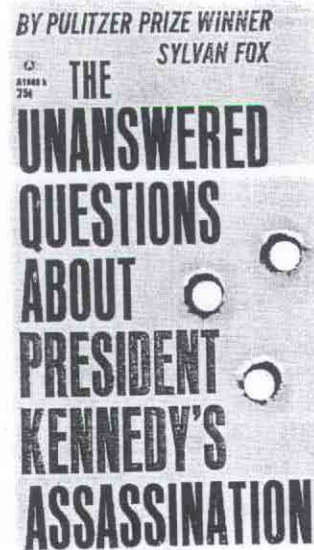
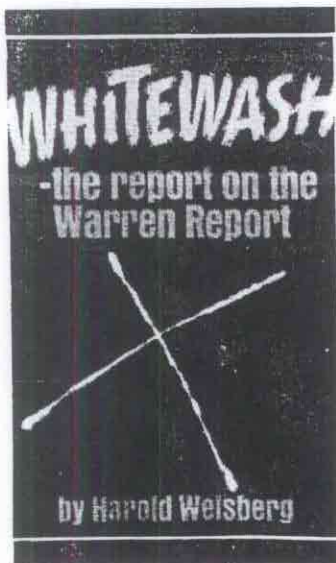
Epstein then argues:

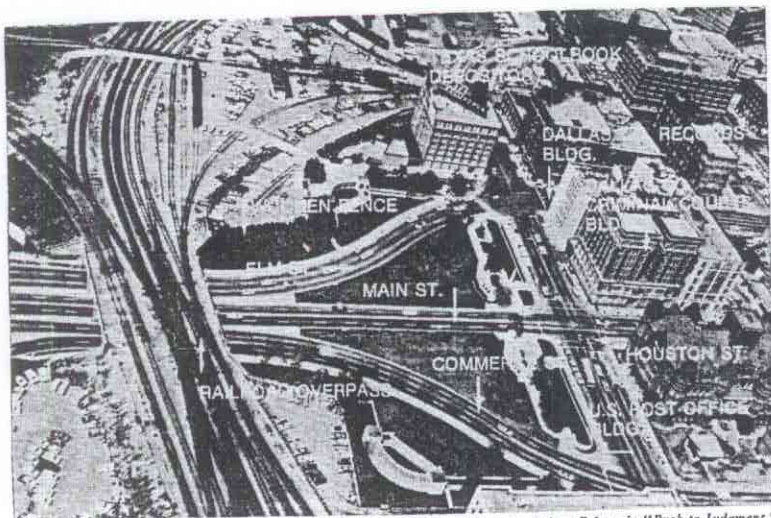
These two purposes were compatible so long as the damaging rumors were untrue. But what if a rumor damaging to the national interest proved to be true? The Commission's explicit purpose would dictate that the information be exposed regardless of the consequences, while the Commission's implicit purpose 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.

Mark Lane makes the same point in *Rush to Judgment*, although not so precisely. The others state it more crudely.

Why? Is it naïve to suggest that the truth is the best way to dispel a rumor? What rumor was so damaging to the nation that the truth could not be told? In *The Second Oswald* Richard H. Popkin suggests:

The Western European critics can only





Dealey Plaza, Dallas—Was the fatal shot fired from the Texas School Book Depository?

see Kennedy's assassination as part of a subtle conspiracy, involving perhaps some of the Dallas Police, the FBI, the right-wing lunatic fringe in Dallas, or perhaps even (in rumors I have often heard) Kennedy's successor.

This paragraph is perhaps the best critique on Professor Popkin's theories and his book. What further commentary is necessary about an inquiry which will repeat without further explanation, clarification, or comment—critical or otherwise—that complicity in the assassination might be attributable to "perhaps even (in rumors I have often heard) Kennedy's successor"?

How could or should the rumor—re-

The Books

Report of the Warren Commission on the Assassination of President Kennedy, prepared by *The New York Times* (Bantam, 726 pp. Paperback, \$1)

Rush to Judgment, by Mark Lane (Holt, Rinehart & Winston, 478 pp. \$5.95)

Inquest: The Warren Commission and the Establishment of Truth, by Edward Jay Epstein (Viking, 224 pp. \$5)

The Oswald Affair: An Examination of the Contradictions and Omissions of the Warren Report, by Léo Sauvage (World, 418 pp. \$6.95)

Whitewash: The Report on the Warren Report, by Harold Weisberg (Harold Weisberg, Hyattstown, Md. 208 pp. Paperback, \$4.95)

The Second Oswald, by Richard H. Popkin (Avon, 174 pp. Paperback, 95¢)

The Unanswered Questions About President Kennedy's Assassination, by Sylvan Fox (Universal/Award, 221 pp. Paperback, 75¢)

peated and undisputed by this its latest circulator, without any suggestion of basis—be dealt with or investigated? The repetition circulates. It neither justifies, explains, nor dispels.

Mr. Epstein does not go so far. He takes up the alleged conspiracy involving the FBI. This evolved from rumors that Oswald was either an FBI informant or in its employ. Epstein concedes that "no evidence developed to substantiate this possibility" and that even if true the relationship "might not be particularly relevant to the assassination itself." Lane concurs.

Lane and Epstein and the other authors make valid criticisms of how the Commission and its staff handled this rumor. The Commission relied largely on information furnished by the FBI itself for its judgment that the story was without foundation, although the Commission had determined to make its own independent investigation. However, this by no means supports Epstein's conclusion that the Commission's intent was to dispel the rumor whether true or not. And yet this instance is the basis of Epstein's second chapter, "The Dominant Purpose," in which he evolves his theory that finding facts was only the Commission's secondary purpose. In his anxiety to prove his point Epstein succumbs to the device he and the others so often charge against the Commission: ignoring the evidence. He writes, "Nowhere, not even in the 'Speculations and Rumors' appendix, does the Report mention the allegation that had so preoccupied the Commission."

To put it mildly, this is inaccurate. As Mark Lane notes, Appendix XII to the Report, "Speculations and Rumors," in a subsection entitled "Oswald and U.S. Government Agencies," discusses and rejects as baseless the rumors and

speculations about Oswald's alleged association with the FBI, stating the Commission's reasons. A similar but more extended treatment is to be found in Chapter VI of the Report proper, "Investigation of Possible Conspiracy," in a subsection entitled "Oswald Was Not an Agent for the U.S. Government." Some of the books under review, including those by Lane and Epstein, make a forceful case that the Commission's investigation of these rumors and speculations was inadequate. Even if one agrees, and even if one assumes the Commission's conclusion in this respect is false, this neither supports nor warrants Epstein's inaccurate assertion that the Report does not mention the "allegation that had so preoccupied the Commission." This unfounded charge by Epstein has been picked up and repeated in articles relying on and lauding his book. Thus a new rumor circulates.

If Epstein intends only a criticism of the failure of the Report to mention Texas Attorney General Waggoner Carr, Dallas District Attorney Henry Wade, newspaper reporter Alonzo Hudkins, and Dallas Under Sheriff Allan Sweatt as transmitters of these rumors this hardly sustains Epstein's blanket charge that the Report does not refer to or treat with the rumors. Moreover, it represents a questionable criticism of the way the Report is written rather than a demonstration of the Commission's so-called "implicit" purpose. This illustrates another point too. All too frequently Epstein and the others mix their criticism of the way the Report was written with a criticism of the investigation. Thus even when they are satisfied with a particular phase of the investigation they point their attack at the form of the Report. At other times, when the Report seems adequately to deal with a problem, they seize on the investigation as being inadequate.

I have dwelt at length on this matter because it is the dubious foundation stone for Epstein's theory that the Commission was mainly concerned with "the dominant purpose" of producing "only political truth," which underlies his entire analysis and provides the theoretical basis for his more serious allegations.

WHEN the doctors at Parkland Hospital ascertained that the President was indeed dead, the need for an autopsy was evident. The Dallas hospital officials insisted that the law required it to be performed there before the body was moved. This would of course take some time. Federal intervention was questionable, the assassination of a President not then being a federal crime. Nonetheless, Kenneth O'Donnell was determined that the body be taken immediately to Washington, largely, he said, because Mrs. (Continued on page 43)

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Kennedy insisted on staying with her husband. By bluff, persistence, and a threat of force O'Donnell, aided by Secret Service Agent Roy Kellerman and others, removed the body from the hospital, took it to the airport, and caused it to be flown to Washington without waiting for a local autopsy.

The use of this incident in some of these books is curiously revealing. Sauvage explores it in some detail as an event of "political significance," which established a basis for federal jurisdiction over the investigation of the assassination. He cites it as evidence that the Justice Department legally could and should have taken over the entire inquiry. This is part of his rather complicated and murky argument that the Justice Department delayed intervention or avoided it in order not to embarrass the state of Texas, and his contention that the Texas officials were determined to establish Oswald's sole guilt before such federal intervention. Why is not apparent. Everything is grist to this mill. Sauvage glides over the whole complex question of federal-state relations and ignores the fact that the Justice Department's investigation did continue and that the Warren Commission is in fact a species of federal intervention.

Sylvan Fox at no little length uses the incident to demonstrate the pettiness and "ghastly ineptitudes . . . displayed by the Dallas authorities."

Contrast Weisberg's description of it as "an abuse of the Texas authorities." This in a paragraph in which he also declines to "embarrass" the "public servants" who "forcibly removed the President's body," but is critical of the Report for failing to do so and for not noting whether a Texas official was invited to observe or participate in the autopsy. Sauvage, however, quotes O'Donnell as suggesting that a Dallas doctor "accompany the body and take charge of the autopsy."

Weisberg goes on to defend the rights of the state of Texas, thus disrespected. He then suggests that had the autopsy been performed in Texas "there might have been no questions"—but a few lines later he indicates that had a Texas doctor or official been present "it is doubtful if the results would have differed."

Thus these authors use the same facts to infer what they will, however contradictory.

Weisberg's hints and speculations are the launching pad for his criticism of the autopsy reports and the doctors who performed the autopsy at the National Naval Medical Center in Bethesda, Maryland, the night of the assassination. They were Commanders James J. Humes and J. Thornton Boswell of the Navy Medical Corps and Lieuten-

ant Colonel Pierre Finck of the Army Medical Corps. All concede the expert qualifications of these military doctors. In addition to the medical personnel, FBI agents Francis X. O'Neill and James W. Sibert and Secret Service agents Roy Kellerman, William R. Greer, William O'Leary, and Clinton J. Hill were allegedly present during all or part of the autopsy, which was apparently conducted by Commander Humes.

The autopsy report, signed by the three doctors, states that the President died "as a result of two perforating gunshot wounds, fired from a point behind and somewhat above the level of the deceased." The fatal missile, the doctors found, entered the skull and fragmented; then a portion exited, carrying with it sections of the brain, skull, and scalp.

Much has been written in these books and elsewhere about the head wounds, their source and course. Obviously, the autopsy doctors were not at the scene of the assassination, nor at Parkland Hospital while the doctors there administered to the President in the fruitless effort to save him. The source of the autopsy doctors' conclusion that the fatal missile came from "behind and somewhat above" was necessarily a combination of hearsay and their own observation of the wounds.

These books contain the not unimpressive argument that the head wounds may have been caused by a bullet coming from in front and not from "behind and somewhat above," as the Report states, or even by more than one bullet, and that the bullet or bullets were not and could not have been fired from Oswald's rifle nor by him. Mark Lane's presentation is particularly effective. However, it is fair to say that the conflicts and contradictions and unsupported speculations in these books and the authors' theories on this aspect of the inquiry produce no satisfactory alterna-

tive. Here the Commission's Report is the most convincing. The limits of a magazine article do not permit a detailed analysis of the arguments. Nevertheless, on the basis of numerous scrutinies of the Warren Report and its exhibits, as well as each of the books under discussion and their respective exhibits, plus articles in the press and elsewhere, I am inclined to accept the Commission's conclusion that the shot which killed the President was fired from the sixth floor of the Texas School Book Depository by Lee Harvey Oswald, utilizing his Mannlicher-Carcano rifle. The physical evidence points there and nowhere else.

The other wounds in the President's body present far more difficulties, difficulties with the Commission's Report, but also difficulties with the theories advanced in each of these books. The autopsy report signed by the autopsy doctors states:

The other missile entered the right superior posterior thorax above the scapula . . . and made its exit through the anterior surface of the neck.

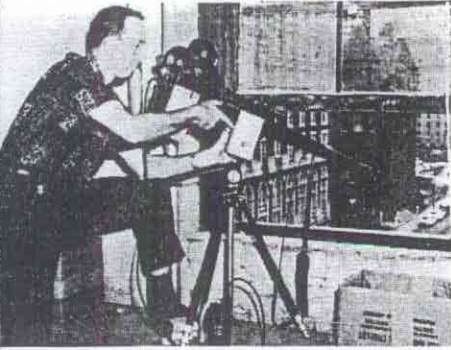
This seems to be saying that one bullet, not the fatal one, entered the President's body just below and to the right of the President's neck above the shoulder bone and exited through the front of his neck. This would be consistent with a wound from above and behind, and with an artist's schematic drawing made later under Commander Humes's direction. However, it is inconsistent with a chart made by the Commander during or right after the autopsy, indicating a lower wound in the back and a higher wound in the front of the throat. It is also inconsistent with the FBI reports of the autopsy and certain newspaper reports, obviously founded on FBI leaks.

The autopsy report is undated. Commander Humes testified it was complet-



Governor and Mrs. John Connally, JFK and Jacqueline Kennedy approximately one minute before the shot—"Mrs. Kennedy insisted on staying with her husband."

—Wide World.



—Wide World.

(l. to r.) FBI agent reenacting assassination, Detective J. D. Day of Dallas Police Department with rifle used to kill Kennedy—"an interval of 2.3 seconds between shots."



—Wide World.

ed and forwarded to higher authority by November 24, within forty-eight hours of the autopsy. Humes's supplemental report was forwarded to The White House Physician on December 6 and shortly thereafter was turned over to the Secret Service. Thus it appears that in December 1963 the Secret Service had the doctors' autopsy reports indicating the President had been shot near the base of the neck from behind and that the bullet had followed a downward course and exited through the lower portion of the front of the neck or throat.

However, the FBI report turned over to the Commission on December 9, 1963, states:

Medical examination of the President's body revealed that one of the bullets had entered just below his shoulder to the right of the spinal column at an angle of 45 to 60 degrees downward, that there was no point of exit, and that the bullet was not in the body.

The FBI supplemental report, dated January 13, 1964, states:

Medical examination of the President's body had revealed that the bullet which entered his back had penetrated to a distance of less than a finger length.

The supplemental report also refers to evidence of "an exit hole for a projectile" in front of President Kennedy's shirt about one inch below the collar button.

These FBI reports to the Commission appear to have been founded upon two reports made and signed by FBI agents Sibert and O'Neill, the first on November 26, 1963, the second on November 29, 1963. The agents' November 26th report states in part that, during the autopsy Commander Humes located a bullet hole "below the shoulders and two inches to the right of the middle line of the spinal column"; that probing by the doctor indicated entry "at a

downward position of 45 to 60 degrees" and that "the distance traveled by this missile was short inasmuch as the end of the opening could be felt with the finger." The agents' report notes that the doctors "were at a loss to explain why they could find no bullets"; "no complete bullet could be located in the body either by probing or X-ray" and "no point of exit" found.

The agents state a telephone call was made to the FBI laboratory, which advised that a bullet found on a stretcher in the emergency room at Parkland Hospital in Dallas had been turned over to the FBI; that Dr. Humes was told of it during the autopsy; that he immediately said this "accounted for no bullet being located which had entered the back region and that since external cardiac massage had been performed at Parkland Hospital it was entirely possible that through such movement the bullet had worked its way back out of the point of entry and had fallen on the stretcher."

Further examination of the body, and X-rays of pieces of the skull brought into the autopsy room during the autopsy satisfied Dr. Humes, the agents' report continues, that one bullet "had entered the rear of the skull and had fragmented prior to exit through the top of the skull," and another "had entered the President's back and worked its way out . . . during external cardiac massage." The agents' November 29 report explains that the piece of skull brought into the autopsy room had been found on the floor of the Presidential car and was taken to Washington in another plane, as was the whole bullet found at Parkland Hospital.

It is obvious that these reports are the foundation for the FBI reports. It is equally obvious that they measurably undermine the elaborate speculations expounded in the books under review about the fatal shots coming from in front.

However, there is also an obvious in-

consistency between these reports and the autopsy doctors' report stating that the bullet which entered in the back, near the base of the neck, exited through the throat, despite the doctors' earlier theorizing that this bullet had fallen out. Dr. Humes provided an explanation. During the autopsy he observed that a tracheotomy had been performed on the President at Parkland Hospital, but at the time he had no way of knowing that a projectile wound in the front of the President's neck was used as the point of the incision. Early on the morning of November 23, 1963, following the autopsy, he talked on the phone with Dr. Malcolm O. Perry, who had performed the tracheotomy, and learned of the throat wound, which damaged the trachea and other portions of the neck. From this he concluded that the bullet which entered the President from behind at the right of the base of the neck, or just below it, had exited from the front of the neck or throat. This is the substantiation for that portion of the autopsy report which describes these wounds, stating the back wound was one of entrance and the throat or neck wound one of exit.

It is, as I have said, inconsistent with the FBI reports. It is also inconsistent with newspaper reports based on interviews with the Parkland doctors and with TV statements made by them describing the wound in the front of the neck as a puncture wound, indicating a wound of entrance. Does this mean that the doctors' autopsy report is incorrect or was falsified to sustain a Commission theory or to fasten guilt upon Oswald? It is important to remember that the autopsy report was completed and forwarded to higher authority by November 24, 1963, within forty-eight hours after the assassination, well before the Commission was appointed and before any clear theories of how the assassination had occurred had been formulated. It was also signed by all three of the military doctors who performed the autopsy at Bethesda.

But none of this prevents five of our authors—Messrs. Weisberg, Popkin, Fox, Lane, and Epstein—from launching more or less harsh attacks on Commander Humes and the doctors' autopsy report. The attacks are premised on three grounds: First, that the report is undated—overlooking the fact that the report form provides space only for the date and time of death and date and time of the autopsy, both of which are indicated. Second, that Commander Humes certified in writing on November 24, 1963, that he had "destroyed by burning certain preliminary draft notes." Third, that the autopsy report is inconsistent with the FBI reports. The last is particularly curious because these authors have all been extremely critical of

the FBI with respect to this and other aspects of the investigation; they have freely attacked the FBI's credibility and implied that it was the main sponsor, in addition to the Dallas police, of the theory that Oswald alone was guilty. Sauvage, in his addendum, "American Postscript," uses the inconsistency to damn both the FBI and the Commission. Weisberg also seizes on the alterations made by Humes in his draft of the report and his notes of his telephone conversations with Dr. Perry as evidence of deliberate falsification of the record.

They all prove too much. Perhaps the autopsy report is inaccurate or contains excessive speculation. If we accept the FBI report we must remember it was founded on Humes's prior speculation; it remains undemonstrated that the autopsy report was falsified or altered at a later date to fit a Commission theory. The real animus for the onslaught on Commander Humes is the fact that the autopsy report cuts the ground from under the theories that the shots came from in front.

The most circuitous attack is made by Epstein. Having established to his own satisfaction that the dominant purpose of the Commission was to dispel rumors and establish political truth, he posits the theory that the FBI reports are accurate, that the doctors' autopsy report was altered more than two months after the autopsy, and that the autopsy report published in the Warren Report is not the original one. Hedged with enough "ifs," he ventures that this indicates the conclusions of the Report "must be viewed as expressions of political truth." His technique is interesting. He uses the phrase "purported to be the original" when referring to the published report, and he calls it the "Commission's autopsy report" rather than the "autopsy doctors' report." Like Sauvage, Epstein suggests that the inconsistency presents a dilemma, one horn of which is that if the FBI distorted its report on this basic fact doubt is cast on the entire investigation because the Commission's investigation and conclusions were premised on the accuracy of the FBI reports. Epstein overlooks the fact that he himself has already spent a chapter attacking the credibility of the FBI. He also ignores the fact that the Commission accepted the doctors' autopsy report, not the report of the FBI, which indicates that the Commission's conclusions were not entirely premised on the FBI report. Sauvage sees the point and damns both.

Epstein, like the other authors, chooses to accept what the FBI and Secret Service bystanders at the autopsy report that they heard (obviously hearsay) but rejects what the doctors who did the autopsy wrote and have not denied.

The second horn of the dilemma, says

Epstein, is that if the FBI Reports are accurate, the doctors' report must have been altered after January 13. He and Sauvage imply that the alteration was designed to bolster the Commission's theory that the President and Governor John Connally were both hit by the same bullet, and that it went through the President's neck and was the bullet found at Parkland Hospital. Epstein ignores the fact that, as he himself reports, it was not until March, four months later, that the single-bullet theory was first advanced and that it was never fully accepted. One might observe that his line of argument, supported by innuendoes such as "purported," "purportedly," and well-sprinkled "ifs," needs far greater demonstration. Lane advances the same argument and concludes there was a belated alteration in the doctors' report.

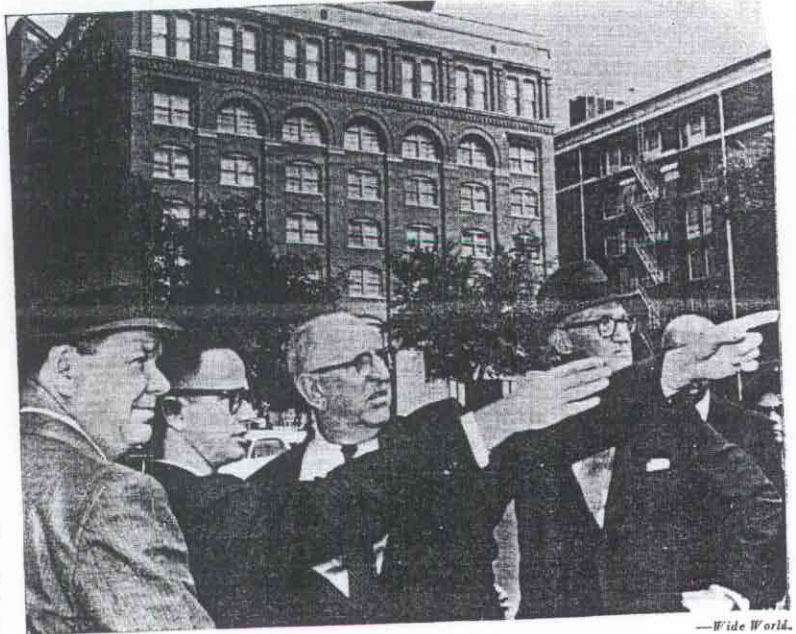
ALL of these books except *The Second Oswald* seem to ignore the fact that the FBI reports were based on the reports of Sibert and O'Neill, who were present at the autopsy; furthermore, that the doctors' autopsy report, which was revised or written in final form the next day, after the phone conversations with Dr. Perry at Parkland Hospital, was forwarded to the Secret Service, not the FBI. As Popkin notes, the FBI reports are phrased in the language of Sibert and O'Neill, rather than the technical language of the doctors.

Why is it necessary to assume falsifi-

cation and a plot? Why cannot the third possibility, the unmentioned possibility—that Commander Humes's explanation is the truth—be accepted? It is not even discussed, except by Popkin. The alternatives proposed by the others involve either falsification by Humes or distortion or worse by the FBI. And although the FBI is their favorite whipping boy on other aspects of the case, here they point the finger at Humes. They do so, I suggest, because this fits more easily into their theories of conspiracy and plot. And if there was a plot to falsify the record, is it inappropriate to ask, "Why didn't somebody tell the FBI?"

It is interesting to note Epstein's comment that the FBI supplemental report implies that the wound in the front of the neck was an exit wound, caused by a fragment from the other bullet, presumably the bullet which entered the head and fragmented. The FBI supplemental report does no such thing. It refers to a wound of exit caused by a "projectile." Since Epstein does not advance the theory of shots from the front and wounds of entrance in front, he has no need to attack the FBI reports, as do the others.

I have expanded on this entire area because I believe it is typical. It is demonstrable that these books use the same technique in dealing with such matters as the identification of the rifle, the proof that it belonged to Oswald, the identification of Oswald, the ques-



Warren Commission members at murder scene (l. to r.), Representative Hale Boggs, Secret Service Agent John J. Howell, Senator Richard Russell, Senator John Sherman Cooper—"vicious attacks."

—Wide World.

tions concerning Oswald's marksmanship, the descriptions of J. D. Tippit's murder, the proof that Oswald was Tippit's killer, the source of the bullet found at the Parkland Hospital, the question of how many shots were fired, the sequence of the shots, the number of shots that hit Governor Connally, the source of the shots—front, rear, or both—, how Ruby got into police headquarters, the alleged relationship between Oswald and Ruby, etc. If one were to catalogue the way each of these books treats each of these matters and to list the theories put forth by each writer as to what happened and who was guilty, it would quickly appear that the pattern of treatment reflects the theory advanced. This is perfectly proper if it does not involve distortion and contradiction and the easy assumption that all who disagree are either corrupt, dishonest, or incredible. That is nonetheless the practice. Only Weisberg is consistent. He finds malevolence everywhere.

Nor is the Warren Commission without fault. With respect to the inconsistencies in the doctors' autopsy reports, the FBI reports and the FBI agents' reports, the Commission had a clear duty. Its obligation was to inquire into the inconsistencies, to question all who were involved. It had a duty to report the facts and to include all of the reports in its own Report. Unlike that of a jury, the function of the Commission was not merely to render a verdict of "innocent" or "guilty." Its duty was to disclose the facts and explain its conclusions. It failed to do so.

THIS leads to the single-bullet theory. The autopsy doctors reported that a bullet had entered the President's body at the base of the neck or in the back above the shoulders and exited through his throat. The theory is that the same bullet then entered Governor Connally's body through the back, emerged under his right nipple, went through his right wrist, and pierced his right thigh; later it fell out, landing first on his stretcher and subsequently on the floor at Parkland Hospital, where it was found and turned over to the FBI.

I am dubious about this theory. It flies in the face of evidence, expert and otherwise, concerning direction, velocity, and effect. First advanced by Humes and Commission counsel Arlen Specter in March of 1964, it was a useful hypothesis. By that time examination of films taken by an amateur named Abraham Zapruder had indicated Governor Connally was first hit 1.8 seconds after President Kennedy. Experiments with Oswald's bolt action rifle showed it could not be fired within less than an interval of 2.3 seconds between shots. The single-bullet theory would reconcile this. The Commission and most of the staff lawyers

were doubtful about it, as were all the doctors and ballistics experts. Governor Connally insisted he must have been hit by a different bullet because he had heard a shot before he felt the impact of the bullet striking. Since a bullet travels faster than the speed of sound, he reasoned he could have been hit only by a second bullet. The evidence was clear that Kennedy had been hit by the first bullet.

According to Epstein, after the single-bullet theory was thoroughly explored and tested, the members of the Commission were of divided opinion about it. Epstein reports that Commissioner John J. McCloy, who accepted the hypothesis and wanted a unanimous report argued there was evidence both men had been struck by the same bullet but, in view of other evidence, the Commission could not concur on the probability of this. Representative Gerald R. Ford wanted to say the evidence was "compelling." Senator Richard B. Russell, who was doubtful, wished to say merely that there was only "credible" evidence. Commissioner McCloy proposed that the word "persuasive" be used, and this was agreed. The Report states:

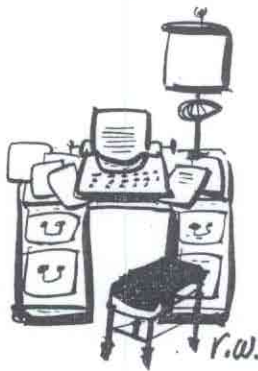
Although it is not necessary to any essential findings of the Commission to determine just which shot hit Governor Connally, there is very persuasive evidence from the experts to indicate that the same bullet which pierced the President's throat also caused Governor Connally's wounds. However, Governor Connally's testimony and certain other factors have given rise to some difference of opinion as to the probability, but there is no question in the mind of any member of the Commission that all the shots which caused the President's and Governor Connally's wounds were fired from the sixth floor window of the Texas School Book Depository.

Epstein and others have made much of the fact that this paragraph represents a compromise in language and does not completely accept the single-bullet theory. It seems appropriate to comment that almost any decision, re-

port, or opinion by a court, commission, or committee made up of several independent-minded men or women must necessarily include compromise language when there are conflicting items of evidence. Not until now had I heard that this was either wrong, unfair, or dishonest. I suggest that this paragraph and others in the Report's conclusions tend to indicate fairness rather than the technique of a prosecutor's brief, as the commentators claim.

THIS brings up the whole question of credibility of testimony. A theme that runs through all of these books is that the testimony of many of the witnesses relied on by the Commission must be rejected because in some respects their statements were demonstrated to be incorrect or false. The authors do not ask that the same standards be applied to their own witnesses, or those upon whom they rely. But this is not the real point. It is a general proposition of law, applicable in all courts I know anything about, that the jury be charged that if it finds a witness has lied about one material point it may reject all of his or her testimony, but is not required to do so. The jury may reject so much as is false and accept so much as it finds credible. This is not a rule solely for legal fact-finders, but a rule of life, utilized by most men in all their decision-making. It is logical and sensible. Why the Commission did not have a right to follow the same practice is unclear.

In this connection the Commission's utilization of Helen Louise Markham's testimony identifying Oswald as the Tippit murderer is of interest. There are obvious difficulties with her testimony, particularly in the light of Mark Lane's attack on her credibility. However, the portions of the transcript of Lane's tape-recorded telephone conversation with her, quoted by Lane and Sauvage, do not support the comments by them and by some of the others that she varied in her descriptions of the killer or that Lane adequately identified himself in his phone call. He never told her the phone call was being tape-recorded or whom he represented. Both of these matters are the main bases for the vicious attacks on her credibility and on the Commission. The Commission's Report gave her testimony only "probative" value. Epstein reports that Commission counsel Joseph Ball, who wrote the first draft of Chapter IV of the Commission's Report setting forth the case against Oswald, did not wish to rely on her testimony, nor that of Marina Oswald, nor that of Howard Brennan. Epstein also writes that Commission counsel Wesley Liebel, the source of much of Epstein's material, also disbelieved Mrs. Markham. In this connection it is worthy of comment that several of our authors have sharply criti-



cized both Liebler and the Commission on the ground that Liebler's examination of Mrs. Markham as a witness was too weak and too friendly and designed only to protect her and her story. Now we are told he did not believe her. Commission counsel Norman Redlich, who wrote the final version of the chapter, utilized the testimony of all three as support for its conclusion.

Epstein makes a big point of this, as proof that the Commission relied on unreliable witnesses. He ignores the significant fact that Ball and Liebler, both of whom had doubts about these witnesses, did not disagree with the Commission's conclusion that Oswald alone was guilty, as shown by other evidence—the ultimate concern in this chapter. That every paragraph had to be written and rewritten until it met the approval of all seven Commissioners would seem to warrant Epstein's commendation rather than his criticism.

Despite the attacks on the Commission and the evidence it relied on, there remains adequate evidence that Oswald was guilty. If there was another assassin, he left no trace.

Popkin's suggestion of a second Oswald is sheer speculation. The allegations of conspiracy are equally tenuous. No physical evidence supports the theory that the shots were fired from the railroad overpass or the grassy knoll. If the shots came from in front, how does one explain Governor Connally's wounds? If the FBI reports are correct concerning the President's back wound, as all of these writers except Popkin seem to accept, the shot must have come from behind. The FBI report would also indicate that the bullet found at Parkland Hospital fell out of the President's back during cardiac massage. This bullet was clearly identified as having been fired from Oswald's rifle.

Popkin avoids this implication of Oswald's guilt by hinting that Ruby planted the bullet at the hospital, as farfetched and unsupported a conjecture as could be imagined.

THE ascertainment of truth is not easy. The adversary method is undoubtedly superior, although it has weaknesses. That method was difficult if not impossible in the case of the Warren Commission. The Commission was appointed because the killing of Oswald meant there could be no adversary trial. If the local officials in Texas believed, as they intimated, that Oswald was the sole assassin, they would pursue the matter no further. However, there were obvious doubts, both about Oswald's guilt and the performance of the Dallas police. An investigation seemed called for. Epstein and others stress the political nature of this Commission. Any Commission

would, I believe, be subject to the same criticism.

The Commission had to find the facts. At what point would adversary counsel be appointed? Whom would he represent? And in what manner? Suppose the Commission found evidence indicating someone other than Oswald was guilty? What procedure would it follow? And when would counsel be appointed or permitted? Even though Mark Lane's legal standing was dubious, since he represented Oswald's mother and not his widow or his estate, it might have been better if he had been permitted to act as adversary counsel. How this could have been handled in the light of the Commission's procedures is difficult to determine. Nevertheless, a technique should have been devised. The Commission not only had to be just; it had to appear to be just.

For the same reason, the Commission should have heard several other witnesses and given a more adequate explanation in its Report of the reasons why it accepted certain evidence and rejected other evidence. Of the conclusions postulated, I believe the Commission's are the most credible, and that it made a case against Oswald. Whether guilt beyond a reasonable doubt could have been established in an adversary trial is another matter. Marina Oswald could not have testified. Hearsay testimony would not have been admissible, and adversary counsel would have been present. However, it is fair to say that much of the stuff in these books could not have been utilized either.

As I said at the outset, the critics also have a duty. They have failed it. Each of them in one way or another suggests there was a conspiracy involved. Weisberg asserts, without any evidence in support, that the Commission "exculpated" "Presidential assassins." Again without credible evidence Sauvage maintains that the assassination was the product of a right-wing racist plot and that Oswald was killed as part of a Dallas police plot to prevent discovery of the first plot. Fox finds Oswald guilty, but suggests, on the most tenuous basis, that there was a plot in which Ruby and Oswald were involved. Lane makes a strong defense of Oswald, points the finger at Ruby, also on a flimsy basis, and likewise suspects a conspiracy.

Lane's is the strongest case for Oswald. He makes some telling points, vigorously and effectively. *Rush to Judgment*, however, is marred in great measure by name-calling imputations of motive, which remain undemonstrated, and by inconsistencies and contradictions in the attack. I have already noted the forced conclusions he attempts to draw from his tape-recorded telephone conversation with Mrs. Markham. Positing a second Oswald, engaged in a conspir-



—Wide World.

Lee Harvey Oswald—"The ascertainment of truth is not easy."

acy with the known Oswald to assassinate the President, Popkin holds that the second Oswald and a third man were the real assassins. According to him, the known Oswald was the patsy; the second Oswald was on the sixth floor of the School Book Depository, where he fired some of the shots while the third man fired other shots from the grassy knoll. Popkin concedes the known Oswald killed Patrolman Tippit. All this theorizing arises from evidence that a man who looked like Oswald was engaged in suspicious activity during the months before the assassination. Because, at the times and places involved, Oswald could not physically have been present, the Commission found that this activity, attributed by some to the known Oswald, was that of some other unknown man. Epstein's theory is that Oswald was guilty, but he implies a second assassin. The common theme of the books is conspiracy and, in effect making it part of the conspiracy, improper motivation on the part of the Commission. Repeated often enough, the charge may stick. These attempts to set up doubt, without adequate basis, are dangerous and, on the evidence, unwarranted. Conspiracies have an objective. What objective was served by the assassination of President Kennedy? And what steps have been taken to carry it out? Nowhere in these books is there a suggestion of an answer.

Finally, it should be noted that no one has yet been able to produce a scintilla of proof or a minute reason why the Commission would want to exculpate the real assassin or assassins, if Oswald was even indeed innocent or not alone. Until some credible evidence of this is forthcoming, it is inappropriate so to hint or assert. Or must we just assume that the Warren Commission wished to have the Presidential assassin or assassins on the loose? **end**