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the Woods Hole conference last summer. At any rate, the *Times'* story sent officials at HUD into hysterics and they called up the reporter who wrote it and bawled him out. Copies of the proposals had been sent around to government offices for comments, and these now were called back to the White House. Minor officials throughout the government quaked lest the sleuths from the White House and HUD accuse them of leaking the story to the *Times*. Mrs. Gabel, who had been scheduled to appear before the Ribicoff committee backed out rather than discuss the secret plan in public. For weeks this childish business went on. At this writing, the plan is said still to be taken seriously at the White House, but details are a secret.

I think Kennedy's New York plan is the most interesting and over the long run holds out the best hope for real change of any of these proposals. Of course, it remains to be seen whether a representative community organization runs the show or whether it is dominated by the businessmen advisers or local Democratic hacks. And it is difficult to envision this kind of program going very far without federal loan guarantees that could help attract private investment.

However, Kennedy is moving in the right direction by seeking to employ people in planning and building their own communities. His program allows for and encourages local diversity; it is meant to place control with the people through a community organization

that in effect is a new sort of local government. The Kennedy scheme deemphasizes OEO's social service approach, and assumes from the beginning that slum institutions must be changed. In particular, it looks toward building an economy.

The lack of interesting and diverse kinds of work is the crucial problem in America for everyone, not simply the poor. Work, not just income, is what determines one's sense of self-importance in the country. The Kennedy plan aims to put people to work. It is ironic that the Office of Economic Opportunity has made exciting work for young, middle-class college graduates who have been hired to find out about their country by living in the slums. And the poverty program has made interesting work for political scientists whose business it is to study the poor. But it hasn't made much work for the poor and it hasn't noticeably changed the ghetto. Giving people decent inexpensive housing and allowing them a larger dole will be some help. But these measures aren't likely to change the shape of the ghetto either, and in fact, they can turn out to be more sophisticated means for manipulating and preserving a dependent subculture.

Very probably the only way we can hope to change the ghetto of the Northern city is to encourage the people living there to decide what they want to make of the place, and then put them to work doing the job. Kennedy's scheme works toward this end.

Reexamining the Warren Report

by Alexander M. Bickel

There is a story (reported in *Newsweek* magazine), that Chief Justice Earl Warren recently remarked in private: "I was a district attorney in California for 12 years, and I tried a number of murder cases. If I were still a district attorney and the Oswald case came into my jurisdiction, given the same evidence I could have gotten a conviction in two days and never heard about the case again." Whether or not uttered by the Chief Justice, the remark bespeaks one widely shared attitude toward the Warren Commission and its report on the assassination. The commission, in this view, performed the function of a jury in a criminal case. Its verdict rests on sufficient evidence, although, of course, there can be no mathematical demonstration that it is a true verdict. Such a verdict should, and does generally in our system, remain undisturbed, unless some bit of

evidence is uncovered that would make a decisive difference in the result, and that is new in the sense of not having been available to the jury. In this sense, none of the recent critics of the Warren Commission has come up with any new evidence. That should, therefore, be that.

And yet that has not been that. On the contrary, serious and responsible proposals for a renewed investigation — a new trial, if you will — have recently come from many quarters. The idea was first broached last summer by Richard N. Goodwin, the former presidential assistant, in a review of Edward Jay Epstein's book, *Inquest*. Mr. Goodwin suggested merely that an independent group should determine whether a new investigation is necessary. Others have since gone farther, among them *Life* magazine, Walter Lippmann,

Arthur Schlesinger Jr., Senator Russell Long of Louisiana, the majority whip, and a number of congressmen. Even a member of the Warren Commission, Representative Hale Boggs of Louisiana, although he sees no reason for a full new investigation, has said that it might be well to have a panel of medical men and others report on photographs and X-rays of President Kennedy's body, made in the course of an autopsy that was performed at Bethesda Naval Hospital. (The Warren Commission found it unnecessary to examine these photographs and X-rays.) Governor Connally of Texas, who has risen rather intemperately to the defense of the Warren Commission, himself harbors grave doubts about one aspect of the commission's findings — doubts which formed the principal basis of *Life* magazine's conclusion that a new investigation should be undertaken. Evidently Governor Connally believes that we must continue to live with these doubts. Might he not have permitted himself also to doubt the proposition that no closer approach to the truth is possible than was achieved by the Warren Commission?

Obligation of the Doubters

Those, on the other hand, who do not accept the Warren Commission's conclusions are under an obligation to sort out their various objections and to distinguish between questions that are crucial to a solution of the assassination, and trivial issues or unfounded surmises. Such doubters and critics are under an obligation also to consider whether the important questions they believe to be still open can under any circumstances be answered — even in terms of probabilities, if not with complete assurance. And they must, finally, take account of arguments against the appropriateness or desirability of a new investigation.

One of these arguments, the contention that like a criminal trial, the Warren Commission's proceedings should not be reopened in the absence of new evidence, is entirely inapposite. Criminal trials are meant merely to find a given individual guilty or innocent of a given charge, so as to satisfy the demands of justice toward him, not the need of the society to know and understand its past, and perhaps learn from it. To the end of attaining a rather narrow, but hopefully exact, kind of justice, the criminal process is surrounded with the safeguards of the adversary system. Procedural regularity is ensured by subjecting the conduct of the trial to review, in tiers upon tiers of courts, if necessary, for as long, sometimes, as the 12 years that it took to settle the Caryl Chessman case. Factually, the verdict itself will be reviewed only for the grossest kind of error, the grossest kind of lack of conformity to the evidence presented; and it will be reopened and reconsidered only in response to the discovery of new evi-

dence. Finality of judgment is insisted upon in this respect, because given procedural regularity at the first trial, and the same style and limitations that inhere in the system at the second one, there is no reason to believe that another jury would on the same evidence reach a different verdict — except by a chance to the benefit of which no defendant should be entitled.

But the Warren Commission, naturally enough, conducted no duly safeguarded adversary trial. It was no part of any continuous process for which the next case waits. It answered to a different public interest, and was consequently asked a broader question than the single, limited one that is put to a criminal trial. And it is not at all true that any new inquiry must necessarily be of the same sort and style as the Warren Commission's, and conducted by the same sort of people. Hence it is not to be assumed that, except by chance, another investigation, like another jury, is unlikely to come to different conclusions, or to support the same ones more soundly.

There are other reasons, however, why a new investigation should not be lightly undertaken. To begin with, the initial investigation was presided over by men, not least of all the Chief Justice of the United States, most of whom render other, distinguished public services. The prestige, the professional reputation, if not the good name, of each of these men are in some measure engaged in the Report of the Warren Commission, and must in some measure, however slight, be affected if the case is reopened. To be sure, the public interest should, in the end, override any concern for individual reputations, but there is a public interest also in fairness to valued public men, who were drafted to perform a thankless task, and in avoiding the risk, however minor, that the usefulness of these men in the discharge of their other public functions will be impaired. Second and more important, the very announcement of a new inquiry aimed at stilling doubt would initially reenforce and create doubt, of both the rational and irrational varieties. This is especially true in Europe, where the Warren Report has been received with incredulity by reasonable people, but also by irrational people gripped in all sorts of obsessions.

In responding to these arguments, one starts with the proposition, which was President Johnson's in November 1963, that it is the nation's responsibility, to itself and to its posterity, and as an act of piety to the fallen President, to know the truth "as far as it can be discovered," and to make it known, "to the American people, and to the world." It would seem clear, therefore, that weighty as some of the arguments against a new inquiry may be, they are decisively outweighed if we conclude that the essential truth has not been made known, officially, by our government, with the necessary precision and conviction. That is the

heart of the matter. If important legitimate questions are asked that are answerable but are unanswered in the report, then, even for those who may find the answers implicit, or who reach them for themselves by an imaginative leap or by an act of faith, a fresh investigation is not merely desirable, it is as imperative as the first one was.

Putting aside wild speculation and surmise, the questions that have been raised about the Warren Report are generally of two kinds. First, there are all sorts of peripheral doubts; then there is the central issue: who committed the assassination, how and why? Peripheral puzzles are numerous, and recent books, such as those by Mark Lane and Leo Sauvage, put heavy emphasis on them. Why, for example, did the police officer who first discovered a rifle in the Texas School Book Depository Building think it was a Mauser, when Oswald's rifle was a Mannlicher-Carcano? Just how could the Dallas police have obtained and broadcast on the police radio a description of Oswald, however vague, within minutes after the assassination, and how could such a vague description have caused Officer J. D. Tippit, cruising some distance from the scene of the crime, to stop Oswald? And if he thought he was stopping a suspect, why did Officer Tippit approach Oswald without exercising caution? But why otherwise would he have stopped him? Was it Oswald Officer Tippit stopped, and did Oswald kill him?

Again, there is some unexplained evidence that Oswald, or someone mistaken for him, was seen in the weeks before the assassination at times and places inconsistent with the supposed movements of the actual Lee Harvey Oswald. Some of these incidents could be pursued further. But instances of mistaken identity and other marginal mysteries may be expected to cluster about such a totally notorious crime as the assassination of a President, and given what we do know about Oswald, they would not justify a new inquiry. The same is true of the question whether Oswald, as his wife believed, took a potshot at Major General Edwin A. Walker, in April 1963.

On the central issue of the assassination, the Warren Commission concluded – over the dissent on this point, we now know from Edward Jay Epstein's researches, of three of the seven commissioners – that Oswald, shooting from a sixth-floor window of the Texas School Book Depository Building, hit President Kennedy in the lower neck with a bullet that exited just below the Adam's apple and proceeded to wound Governor Connally in the chest, wrist and thigh. (This bullet, which left some tiny fragments in Governor Connally's wrist and thigh, fell out of his thigh onto a stretcher in Parkland Hospital in Dallas, the Commission said, and was recovered from that stretcher.) Another, fatal shot by Oswald then hit President Ken-

edy in the head. These conclusions have been questioned, most notably by Mr. Epstein, on the ground that certain FBI reports, as well as the evidence of the President's clothing, cast doubt on the location of the wound President Kennedy received in his back, and on the possibility that a bullet entering there could have exited at his throat; on the ground that it is not proven that the bullet recovered in Parkland Hospital came out of Governor Connally's thigh and from his stretcher; and on the ground that that bullet, wherever it might have come from, was altogether too whole to have inflicted Governor Connally's wounds, leaving in them the fragments that were left.

If Oswald did not shoot both President Kennedy and Governor Connally with a single bullet, as the commission concluded, the question of a second assassin must be faced, because on the commission's findings as to the timing of Oswald's hits – findings based on a reconstruction, and on a bystander's film of the assassination – there would not have been time between the moment when the President received his first wound and the moment when he received his last one for Oswald to have fired three shots, hitting the President once, Governor Connally with a separate shot and finally the President again, fatally. If three shots were fired in the interval posited by the commission, two riflemen must have been shooting. It is possible the commission was wrong in its conclusion about the timing of the hits, and that Oswald wounded President Kennedy first earlier than the commission assumed. This hypothesis, however, raises some difficulties of its own, and in any event, neither it nor its difficulties were explored.

Now these are serious doubts, not academic questions about just how the assassination was committed, but questions about who committed it. That Oswald participated in the assassination, that he fired at the presidential limousine, and even that he found his target – all this the commission established soundly enough. But did the commission establish in the same fashion that only Oswald was involved, and that only

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reviews the poems and
autobiography of
Louis MacNeice

Oswald fired? On the other hand, could a new inquiry be expected, at this late date, to resolve the central issue of the assassination any more satisfactorily?

No second investigation is likely to produce a great deal in the way of fresh physical evidence or new factual testimonial evidence. One important exception is new evidence that should be examined but obviously not published—the photographs and X-rays of the President's body taken during the autopsy. These photographs, if not the X-rays, could verify the findings of the autopsy on the location of the President's back wound. The members of a new inquiry commission, having examined them with the assistance of independent experts in forensic medicine, should publish, not the photographs, but their own findings from them on the location of the wound.

The next task of a new commission would be, putting the matter succinctly, to exclude the possibility of a second assassin—or, of course, to pursue the possibility, and find him, if that is the direction in which the inquiry should point. (The utmost secrecy would have to be maintained about such a second suspect, in order to ensure that he could have a fair trial.) The Warren Commission never really tested theories of how the assassination might have been accomplished other than its own hypothesis concerning the timing of the hits, and the initial wounding of both President Kennedy and Governor Connally with a single bullet. A new investigation could posit and test other theories. For example, if Oswald first hit President Kennedy separately, earlier than the commission assumed, he would have had to get off a shot through an opening in a tree that for a few seconds blocked his view of the motorcade from his sixth-floor perch. Examining this possibility and the difficulties it raises (why did the bullet so fired, if there was one, penetrate only about a finger's length into the President's back? Could it have hit a branch first? Could it have been defective?) is not so much a matter of gathering new factual evidence as of reassessing known facts with the aid of ballistics and other experts.

Other theories may also suggest themselves as alternatives to the Warren Commission's one-bullet hypothesis. Nor is it inconceivable that the single-bullet hypothesis itself could be rehabilitated. Here some new testimonial evidence would be essential. Not all the persons connected with the stretchers used at Parkland Hospital were examined. If they now are, it may be possible to trace the bullet found in Parkland Hospital to Governor Connally's stretcher with some assurance. It might also be possible, with the assistance of experts, to determine that the Parkland Hospital bullet could in fact have inflicted Governor Connally's wounds. After all, the fragments left in Governor Connally were quite minor. The Warren Commission, in

attributing all of Governor Connally's injuries to this bullet, is subject to criticism, not because it thus came to an utterly impossible conclusion, but because it simply ignored, and did not bother to refute directly, expert testimony to the contrary. Possibly that testimony can be convincingly refuted. Moreover, if it should turn out that all other hypotheses face insuperable difficulties, that in itself would give a sort of support to the single-bullet theory which it does not now have, since the commission did not explore other possibilities.

The Type of Commission Needed

What sort of a body should be entrusted with the task of conducting a reinvestigation? Another commission of prominent and prestigious dignitaries, busily engaged in the performance of their regular duties, would be unlikely to do a substantially better job than the Warren Commission did. What is called for is a small group of independent, experienced and responsible men, who can give their full time to the task—perhaps three or five federal and state judges on leave from their regular offices. Each commissioner would devote to the task the intense and exclusive concentration of a trial judge hearing a case without a jury. He would, for the time being, be immersed in the evidence, and in nothing else. Members of the Supreme Court, indispensable and irreplaceable as such, should not be asked to put all else aside, as Mr. Justice Jackson did when President Truman asked him to be the American prosecutor at the principal Nuremberg trial. But it ought to be possible to spare a few of the several hundred federal lower-court judges. They would need subpoena power, and the resources to hire their own investigators and experts. One of the Warren Commission's difficulties was that it used established federal investigative agencies (chiefly the FBI), which were not subject to its control, and whose work it could not direct or supervise. Staff and investigators and experts must in the closest way possible be extensions of the persons of the commissioners themselves.

Not another commission and not another three commissions can put a stop to all further speculation. But the Warren Report is more vulnerable than it needed to be. It has left many perfectly rational people unsatisfied. It is because of the existence of the central area of rational doubt that every wild surmise and every peripheral speculation now also gets a hearing, both in this country and in Europe. The central questions about the assassination can be answered more fully and more persuasively than the Warren Commission was able to answer them, and if that is done, further irresponsible speculation may not be stopped, but it will be discredited and muted. — end