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# Warren Critics Cast Doubt In Kennedy Slaying

## Analyzing the New Books; Interesting Theories, But Still No Clear Rebuttal

WASHINGTON, D.C.

"... The commission has done what it could. But mysteries like this have a way of staying unresolved."

With those words, on Sept. 28, 1964, The National Observer closed its analysis of the Report by the Warren Commission on the assassination of President Kennedy. In recent weeks, a spate of books has confirmed those words. A considerable number of people remain unconvinced that the Commission Report was a definitive verdict.

Notable is a book called *Inquest*, by Edward J. Epstein, in which, for the first time, the basic functioning of the commission is called into doubt. Other well-researched books, using the same evidence used by the commission, make different analyses, which result in different conclusions.

As yet there is no outcry for further investigation in Congress or elsewhere. And there may be none. "We'll have to wait until the dust has cleared, until all the books are out, and everyone has a chance to digest them," says one congressman. "Then we'll see if anything else should be done."



The books have not shaken the men who formed the commission (which dissolved when its report was published). They are sticking, not surprisingly, to their conclusions. "I have my doubts on some of our statements," says one lawyer who worked on the commission's staff. "I think we might have avoided some trouble if we had handled certain parts of the evidence differently. But much of the criticism is based on obvious misreading of the known facts. It makes me angry that they can get away with that."

"There may be some inaccuracies in the report. But on the essential conclusions—that Lee Harvey Oswald, acting alone, killed the President, and wounded Governor [John] Connally—I have no doubts."

### 'Impeccable Credentials'

When the Warren Commission Report

appeared, Americans were disposed to believe it. Here was a group of leaders with impeccable credentials assisted by a staff of crack lawyers and the complete investigative facilities of Government providing a full and official verdict. To quote again from a not untypical reaction, The National Observer noted:

"The Warren Commission has reported and the first great reaction is: No surprises.

"But to stop there would be to do an injustice to a massive effort. For the commission was not assigned to write a mystery; it was assigned to clear up a mystery."

The commission's official conclusions were:

"The shots which killed President Kennedy and wounded Governor Connally were fired by Lee Harvey Oswald."

"The commission has found no evidence that either Lee Harvey Oswald or

any other person (domestic or foreign) was a part of any conspiracy to assassinate President Kennedy.

"The shots . . . were fired from the sixth-floor window at the southeast corner of the Texas School Book Depository."

The critics of this version have new weapons now. Instead of having to rely on newspaper clippings, television film clips, and their own erratic investigation, they have the commission's own 28-volume proceedings (available to anyone at \$6 a set). Those proceedings make for fascinating reading, and have spawned the new assault.

Besides *Inquest* there is *Rush to Judgment* by Mark Lane; *Whitewash*, by Harold Weisberg; *The Unanswered Questions about President Kennedy's Assassination*, by Sylvan Fox; and *The Oswald Affair*, by Leo Sauvage.

*Whitewash* was written by a free-lance author who finds the report lacking; it is overshadowed by better jobs from others more closely connected with the event. *Unanswered Questions* comes from a New York newspaperman; scholarship is lacking.

*Rush to Judgment* and *The Oswald Affair* are better. The latter is superior. It is not some wild creation by a Frenchman obsessed with conspiracy; for one thing Mr. Sauvage has lived in the United States for 18 years. It is a readable and usually reasonable analysis of the evidence; the book reaches conclusions at odds with the commission's.

### What Mr. Lane Argues

Mr. Lane's *Rush to Judgment* is an excellent defense lawyer's presentation. He doesn't, finally, refuse to accept Oswald's involvement, though he considers the case not well proven. He does argue that the assassination didn't happen as the commission said it did, and, at the least, others were involved.

Mr. Lane, who was hired by Oswald's mother to defend his interests, makes some good points and some weak ones. Like any good defense lawyer he uses a scattershot approach—to attempt to create

in the minds of judge and jury, as it were, a "reasonable doubt" about his client's guilt.

Most telling of all, however, is *Inquest*. Mr. Epstein starts with the advantage of being less suspect. He set out simply to write a master's thesis (for prominent Cornell University political scientist Andrew Hacker) on the workings of an extraordinary government body—its functions, not its conclusions.

Mr. Epstein has done two things. First he has interpreted the operation of the commission through interviews with five of its seven members and nine of its staff lawyers. He has studied its hearings and working papers. And he has concluded that the report is not the product of the monumental research that it was presumed to be.

Second, he has avoided the scattershot approach to drive hard at a handful of key issues in the report. In this way, he builds a considerable case for doubting the conclusions.

On the first point, he notes that the average attendance time spent by the seven commissioners (Chief Justice Earl Warren, Sen. Richard Russell, Sen. John Sherman Cooper, Rep. Hale Boggs, Rep. Gerald Ford, Allen Dulles, and John McCloy) was 45 per cent, varying from Mr. Dulles' 71 per cent to Senator Russell's 6 per cent. He quotes one staff lawyer's answer to the question of what the commissioners did: "Nothing."

#### Busy With Other Things

He maintains that the five "senior lawyers" on the staff contributed little time or effort. The problem, he says, is that men of the stature of these lawyers and commissioners, chosen precisely because of their stature, were inevitably busy with other things.

Thus, he finds, most of the work fell on a staff of lawyers in their early 30s, admittedly bright but just as admittedly inexperienced for such a task.

Mr. Epstein concludes that the commission began slowly, was held up by the Ruby trial in Dallas, did most of its investigation in 10 weeks, and was constantly harried to publish the report. The deadline for copy was originally June 1; it was regularly pushed back until publication Sept. 27, 1964.

He finds that, because of the division of labor in its organization, many staff lawyers evaluated information that might have proven useful to other staffers but was discarded because it didn't fit their assigned slot. He makes much of the fact that the essential reconstruction of the assassination itself fell on one young lawyer, Arlen Specter, who is now district attorney of Philadelphia.

Commission staff lawyers deny much of this thesis. "As a practical matter, the commissioners were like members of a board of directors," says one. "They set the over-all tone and directed the conclusions. The work was done by a staff, as in any business or Government function."

A staff lawyer maintains that the investigation was much longer than Mr. Epstein suggests. "The commission began slowly in December but by January we were working hard and full-time. I worked six days a week continually and for the last month and a half seven days a week. Many of us did. The Ruby trial held up some field work in Dallas, but

there was always enough to do in Washington and elsewhere."

As for Mr. Epstein's comments that the staff frequently disagreed, a lawyer says that of course this was true. "Tempers are bound to get short under such pressure, and we had many difficult points to resolve," he said. "I hardly think that should be surprising."

One of Mr. Epstein's most serious charges concerns what he calls the "dominant purpose" of the investigation. He says:

"There was a dualism in purpose. 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."

"The 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 would 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."

He illustrates with the rumor brought early into the investigation that Oswald was an undercover agent for the FBI. The commission decided secretly to let the FBI "clear its own skirts" and at the same time to conduct an independent investigation of the charge.

"In the end . . ." writes Mr. Epstein, "the entire matter was turned over to the FBI, to affirm or deny, and the commission relied solely on the FBI's word."

"The surest and safest way to dispel the rumor was not to investigate it, but to keep secret the allegations and publish only the affidavits of denial. The commission's course of action in this case can thus be explained only in terms of the purpose of dispelling damaging rumors."

Again, the answer is a denial. "We did investigate this ourselves," a staff lawyer says, "from every possible angle. We found it untrue. We used to sit around at night and scare each other with questions like this, 'What would happen if we found out Oswald worked for the FBI?' But we never had to face that moral dilemma."

Mr. Epstein comes down hard on the crucial hypothesis that the same bullet that wounded but did not kill the President also caused Governor Connally's wounds. Motion-picture films establish incontrovertibly when Mr. Kennedy was hit and when it was impossible for either man to have been hit. These facts, coupled with the fact that a minimum 2.3 seconds was needed to operate the bolt on the rifle, establish that it is absolutely essential for both men to have been hit by the same shot if Oswald was the lone assassin.

#### Was the Governor Wrong?

This is a sticky matter. Governor and Mrs. Connally both say flatly that he was not hit by the same bullet; he says he heard the shot and started to turn around

before being hit himself. The commission says he is wrong, that he had a delayed reaction to his wounds.

The commission maintains that the bullet passed through the President's neck and into the governor's body. But, as Mr. Epstein sees it, there is doubt about whether any passage was found through Mr. Kennedy's body; there is testimony from doctors at Dallas that the neck wound looked like an entrance, not an exit, wound; the President had bullet holes in his jacket and shirt more than five inches below the collar, which would indicate a back not a neck wound; the bullet was found nearly whole near Governor Connally's stretcher despite the amount of damage it had done. All these leads might indicate that at least one shot came from the front, perhaps from behind a fence next to the Depository, where many persons thought they heard shots.

The report says: "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."

#### To Say Otherwise . . .

The first clause of that is indefensible. It is absolutely necessary to determine which shot hit the governor in order to reach this verdict, and to say otherwise is to blur the issue. And the phrase "very persuasive evidence" sounds unconvincing. (Some commission members wanted to say "compelling evidence" but they lost.) The commission's explanations, at least, are better than its conclusions.

The autopsy did disclose a passage; the doctors at Dallas were more interested in trying to save Mr. Kennedy's life than studying his wounds. As for the bullet holes, five inches down the jacket and shirt isn't as far down as it might seem. The jacket curves over the shoulder and can ride up with any normal movement. A bullet coming down from a building could have hit that spot, passed through the body, and emerged from the bottom of the neck. The bullet would have had to stay whole to do as much damage as it did. The sound of the shots confused people because of the echo effect of the nearby triple underpass.

There is evidence, made much of by Mr. Lane and Mr. Sauvage, that Oswald couldn't have fired the rifle as fast as necessary, 5.6 seconds elapsing between the two shots that hit, because experts who tried it had trouble matching his time and accuracy, and Oswald, according to Marine Corps records, wasn't such a great shot. But it is mathematically possible for him to have fired twice in 4.6 seconds. Also, since three shots were fired and one missed, if the miss was on the third shot (of the first, less likely), then he actually took more than 5 seconds between the ones that hit.

Another of the serious criticisms is that the commission relied so heavily on the testimony of two eye witnesses, Howard Brennan, who said he saw Oswald at the window, and Mrs. Helen Markham,

who saw me snooting 45 minutes later of Officer J. D. Tippit, also said to have been murdered by Oswald. Both of their stories, are full of holes, on the record, both changed their stories during the investigation.

"I personally would have rather relied more on the physical evidence, which was much stronger," concedes one staff lawyer. "But the commission decided otherwise."

Critics of the report say that testimony of witnesses the commission chose not to believe is discredited while those it did

believe is built up. On the record, this appears to be so.

But, in defense, commission staffers contend that "the bare bones of the record" are not the whole story. "One of the foundations of the American judicial system is that a judge and jury are not only hearing what the witnesses have to say but studying their demeanor," says one. "That's why appellate courts get in trouble if they try to evaluate evidence from the record alone. We saw these witnesses, and questioned them. Some of them were simply more believable than others."

Both Mr. Lane and Mr. Sauvage argue that the commission seemingly directed almost all its attention to proving a case against Oswald, without searching for other involvements. For one illustration they cite a combination of unusual circumstances all of which allegedly occurred in the few weeks before the assassination. There was testimony, sometimes corroborated, to all of the following events.

First, a man who gave his name as Lee Oswald went to an auto agency, test-drove a car 60 m.p.h. on a freeway, said he soon would have "some money coming in," and said he might have to go to Russia to buy a car. Second, a man looking like Oswald turned up at a rifle range, mysteriously collected spent shell casings, and made himself noticeably unpleasant. Third, a man took a rifle into a repair shop to have a telescopic sight mounted, giving the name Oswald. Fourth, a man identified as Oswald visited a Cuban woman in Dallas to discuss anti-Castro activity.

The commission writes all these things off, quite plausibly, by showing how the witnesses could have been mistaken; for example, Oswald didn't know how to drive a car. Mr. Lane and Mr. Sauvage say, in effect: So what? Assume it wasn't Oswald. Wasn't it worth serious investigation to see if someone else was trying to make it seem to be him—a frame, in other words? There is no commission discussion on this point.

The commission answer is, simply, that

many things like this were in fact investigated. "We didn't turn up any evidence of a conspiracy," says a lawyer. "This isn't the same as saying we proved there was no conspiracy, but we looked for and didn't find any."

Mr. Lane and Mr. Sauvage also contend that their argument is not weakened by the charge that they don't provide an alternate assassin. That isn't my problem, Mr. Lane says in effect. He argues that the case against Oswald is weak enough so that other solutions should have been investigated more thoroughly.

Finally, Mr. Sauvage makes the

thoughtful point that although eminent commentators have criticized the commission, they invariably conclude the faults are not all that serious because Oswald was guilty. Why? he wants to know.

Referring to one professor's criticism, Mr. Sauvage says: "If I understand him correctly, he thinks that the commission's 'anomalous position' is dangerous in principle, but that no harm was done in fact this time because, happily, Oswald was guilty anyhow. How does [he] know this? Because the commission says so? . . . [How can] those Americans not blinded by adoration . . . explain how they manage to reconcile their devastating criticism with their final approbation?"

One rapid answer to that is that most critics of the report aren't nearly as "devastating" as Mr. Sauvage. But the answer, finally, must be the same one that has been given all along: The Warren Commission was composed of honorable men, who guided the work, and capable lawyers and investigators, who did the work, dedicated to finding the truth. There are holes in their account, owing, among other things, to the confusion of the event, the bungling of the Dallas police, and a series of stunning but plausible coincidences.

Under the circumstances, the report still rings true as a reasonable, careful solution. But the matter will never be resolved to the satisfaction of some people, and for many there will forever be a lingering doubt.

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