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## Man at large

### ALISTAIR COOKE re-examines the evidence on the assassination of President Kennedy

IT seems to me that anyone who now challenges the findings of the Warren Commission on the assassination of President Kennedy and the murders of Police Officer Tippit and Lee Harvey Oswald ought to make clear his early association with the event and his first conclusions about the commission's judgment. For a lot of early doubts (Buchanan, Bertrand Russell, and a pack of the foreign press who invaded Dallas) were either snatched from misinformation or rooted in a deep hatred of America disguised, often from the hater himself, as a passion for justice.

Most of us, at the start, were profoundly shaken by the murder itself and outraged at the bewildered and sloppy behaviour of the Dallas police. After that we divided sharply into those who were relieved by the executive order that let the FBI take over and those whose chronic distrust of the FBI or fondness for conspiracies quickened their susceptibility to the plague of rumours. Once President Johnson appointed the commission, the first group was further reassured by the distinction of most of the appointees and by the unquestionable integrity of Chief Justice Warren. The sceptics, fighting now a rearguard action against the Establishment, held blindly to the rumours or shrugged off the whole thing as an inevitable whitewash. Ten months later you had your choice of reluctantly conceding that the whitewash had been done with herculean labour (one fat report and 26 volumes of supporting documents, exhibits, and testimony) or succumbing with a sigh to such a massive dose of tranquilliser.

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As a working correspondent who often attached himself to the White House press corps to cover the political travels of President Kennedy, I had put myself down to go to Fort Worth and Dallas. But the trip came at the wrong time for my newspaper: the first story could appear only on Saturday, and since we had no Sunday newspaper the next story would be stale. Moreover, it was to be

a wearisome chore for the President (he had to be strongly persuaded to go) of pacifying a Texas political feud between the Vice-President, Governor Connally, and two opposing partisans who, just to confuse things, bore the same name. I decided to stay in New York, a decision that saved me from the agony of the press corps' long ordeal when it found itself stranded in the luncheon gathering which the President was to address. For the next 48 hours two of us watched three television networks do an incomparable if desperate job.

It is curious, in retrospect, how some of the lasting doubts were planted in the first few hours. One of them was the precise identification, by three policemen who searched the sixth floor of the Texas School Depository building, of the murder weapon as a German "Mauser 7.65 bolt action, equipped with a 4/18 scope." The bullets could not have come from it, and the police later changed their minds and decided it was an Italian carbine, which somehow had been found later in the building and which Oswald, or someone else, had bought from a mail-order house under the pseudonym of "A. J. Hidell." From the first, the fishiest item was the miraculous wrapping down on Oswald, a mile or two away in a movie theatre, as the only suspect in all of Dallas, on the rough description of a bystander at forty yards who later failed to identify Oswald in the police line-up and who proved to be a very changeable witness. The murder of Officer Tippit was then, and remains with me today, a mystery which only by huge credulity, and the suppression of good witnesses, can be attributed to the Lee Harvey Oswald we know.

However, while thirty years of reporting have taught me that even bishops and Prime Ministers can err, I am myself temperamentally inclined to trust the Establishment at the first howl of a beatnik. And these early misgivings, and the

... subsequently and stridently elaborated by Buchanan (and now by Harold Weisberg in his privately printed "White-wash"), only served to tantalise my hunger for the Warren Report. Like, I should guess, most members of the commission, I did not read the whole 27 volumes, only the report itself. So—the doubts were explained away (or, it now appears, the evidence that would inflame them was damped down); the police found no ejected shells on the suspicious grassy knoll by the railroad overpass; even Marina Oswald thought her husband was guilty; Mark Lane was dashing all over insisting on the murkiness of the commission's motives; Oswald was dead; Ruby was in gaol; the investigation had taken ten months (actually, only ten weeks); hundreds of witnesses had been re-examined. It remained, however, for Edward Jay Epstein, a young academician, to interview five of the commission's seven members and most of its legal staff.

Until the appearance of Mark Lane's book ("Rush to Judgment," Bodley Head 42s), and Epstein's cool and alarming account of the way the commission went about its work ("Inquest," Hutchinson 30s), there was little cause to fret. No longer. From now on, I'm afraid, the burden of proving Oswald's lone guilt must fall, as it ought to have done in the beginning, on the prosecutors; that is to say, on the FBI and on the commission, which from start to finish appeared to have a perverse preference for testimony that was contradictory or unreliable or cowed or perjured. From first to last, the commission clung to the FBI's four-volume report like a Fundamentalist to the Old Testament.

In the days of our innocence, every time we read that "the commission" had concluded this or that, we reflected that this was the considered judgment of the upright Chief Justice (himself once a skilled district attorney in California), of John McCloy, once the High Commissioner for Germany, of a former head of the Central Intelligence Agency, and of a former Solicitor-General of the United States. Behind them was a body of life-long lawyers, so high-priced that most of them had little time to desert their practices. They came to bear much the same relation to the commission's work as the letter-head bigwigs on a charity ball appeal do to starving children or Israeli refugees. Of the commissioners themselves, only Justice Warren attended almost all the sessions. The rest turned up a half, or a third, or a fifth, of the time. A young corporation lawyer on the staff described their function as that of a board of directors. Joseph Ball, an experienced criminal lawyer assigned to study the identity of the assassin, concluded that "the commission had no idea what was happening, we did all the investigating, lined up the witnesses, solved the problem and wrote the report."

Assuming for the moment that these strictures might be residual scars from the inevitable personality clashes of the commission and its frantic staff (the writing and publication deadlines had constantly to be advanced, to the Chief Justice's distress), let us look at the procedure the commission agreed to adopt. Hardly knowing where to begin, in a task that had no precedent in Presidential commissions, they parcelled out the "investigation" according to topics and issues in a very orderly fashion. This division of labour was such as would be followed by an eminent law firm as the proper way to amass testimony before trial, testimony which would be digested into evidence by the trial lawyer and his staff in court. But there was no such master mind, and the method guaranteed that the distinguished commissioners by

their frequent absences, and the galley slaves by their separate preoccupations, would be alienated from a view of the whole case.

But if the commission did not end with a comprehensive view, it started with one. It soon found that it had no time for independent investigation. It trusted to the five volumes of the FBI report (which contained 25,000 separate items), an almost irresistible document if read alone. So the commission proceeded under a mischievous, but self-imposed, handicap. It referred always to the testimony of the Dallas police and the FBI's final version of its interviews as the case to disprove, and when it was in doubt it retained its faith. The procedure dangerously resembled that whereby a district attorney's office dedicates itself to a single end: the procuring of an indictment from a grand jury at all costs. A grand jury is the creature of the DA; and that is why his required obsession to prosecute must be repulsed by the defence lawyer and tested in the trial.

But there was no trial, and no case for the defence. It is what Mr Lane has tried to provide. Admittedly, it is an advocate's case, and while he tends to impugn the commission's motives as reliably as the commission impugns the doubters of its single-bullet, single-assassin theory, his case is a damning one.

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So, the commission's report amounts to the published transcript of a vast grand jury hearing. Its revealed inadequacy, not to say injustice, is that having heard an exhaustive case for the prosecution it proceeds at once to a conviction and a retrospective sentence of death. It is not, it now appears, that the commission was devious or slothful. Its method of procedure was fatal to any whole view. And its defined aims were fatal to a true one. For it accepted in good faith the President's order to "ascertain, evaluate, and report on" the true facts; but it at once added to this the further aim of "lifting the cloud of doubts that had been cast over American institutions"; in a word—to dispel the darkness it was the commission's duty, if not its brief, to penetrate. At an early meeting it was confronted by a bomb. There was a rumour (brought to the commission's notice, incidentally, by Mark Lane, simply an attorney and citizen) that Oswald had been, or still was a paid FBI informer. The subsequent inquiries disclosed much disturbing stuff about sworn contacts and Government cheques. The commission's general counsel warned that what had been unearthed would be "bad for the commission... damaging to the agencies that are involved." In spite of Allen Dulles' admission that this allegation "was a terribly hard thing to disprove," it was mercifully rejected on the single assurance of J. Edgar Hoover that there was not "a scintilla" of evidence.

It was a close shave. But from then on, the half-conscious but flagging aim of the commission was to present a solid front, to soothe the public discontent, to accept the truth when it flourished only under blue skies. The "informer" scare had been an object lesson. What would the public mood have been if the commission had honestly confessed that the unanimous finding of the Dallas doctors of a small entry wound in the throat (before the emergency tracheotomy had distorted and enlarged the wound for the later autopsy by the navy doctors) for ever blasted the theory that all the bullets were fired from behind, and therefore destroyed far beyond a reasonable doubt the whole theory of a single assassin?

We are coming close to a mood of righteous anger, which can be just as

... serving as any other liberal emotion if the end in view is a noble motive

rather than action. The question is, where do we go from here?

I believe the case should be re-opened by a commission that would first appoint a body of independent investigators whose only duty would be to the commission; that the testimony of the police and the FBI should be assessed like any other; that a legal staff should prepare the case for the defence; and that the commission should then call all the witnesses the defence counsel considers "vital" including those on whom Mr Lane bases his rebuttal, and all the testimony—most especially that of Sylvia Odio—that supports the theory of an active conspiracy with Cubans in which Jack Ruby, the known Oswald, and the physically similar Oswald who laid so many upsetting clues may have been involved. The essential witnesses would have to include the majority of bystanders who were sure the bullet sounds had come from the wooded knoll by the overpass; all the people in the Book Depository who claimed to have seen one Oswald or another; the people who failed to identify Oswald in the line-up but who subsequently, after visits from FBI or "reconsideration," then identified him; the cab driver who booked Oswald's cab-ride at a time when Oswald should have been raising his rifle; the man who actually put in the police call over Tippit's radio car, and not the man the commission "believed" had done it; all the people who knew Tippit and also knew Ruby; the woman on the bus who owed rent to Oswald and was his only identifier on his long and irrational journey home; and many more who Messrs Lane and Epstein convince me ought to appear.

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The awful blend of outrage and patriotism that shook the country in the months after the assassination has dissipated. The risk that all the old witnesses have by now hardened into anecdote the confusion of first impressions is worth taking. The fear that the institutions of American government would topple before the truth is no longer lively. LBJ is there to prove it. It should be possible now to see the thing steadily and see much more of the whole.

Probably there was not (as the new President Johnson was the first to fear) a Cuban or Right-wing plot against the American executive branch (several of the Cabinet were up in that plane on their way to Japan). Perhaps there was no conspiracy at all, and the Dallas police are blameless to a man. Perhaps Oswald's incredible marksmanship can be made credible. Perhaps some seer can be found to explain the inexplicable Tippit episode. Perhaps it will come to light how a bullet which went through one back and body into another back and out through the wrist into a thigh retained the fragments that were found in the bodies. Perhaps it was merely a gruesome coincidence that the only two reporters who went to Ruby's flat just after he shot Oswald were murdered, one in Dallas, one by a police officer in California. Perhaps there was no other assassin.

The general court-martial that tried the so-called conspirators for the assassination of Abraham Lincoln was plainly told its duty by, I believe, the Assistant Secretary of War: "You must not allow your judgment and decision in this case to be troubled by any piddling technicalities of the law or by any pedantic regard to the customary rules of evidence. Second and most important, you must not permit yourselves to be influenced by that obnoxious creation of legal nonsense—reasonable doubt."

The unavoidable charge against the commission must be that if it had taken a similar vow very many more of its findings would be understandable. As it was, it fulfilled its second aim: to dispel a welter of alarming rumours and protect the Republic. It signally failed in its first aim: "to ascertain, evaluate, and report on" the truth deducible from the facts. Sooner or later, it will have to be done. It would be better, for the bruised condition of American justice, that it should not be left to historians who will be allowed to see the deposits in the National Archives 75 years after November 22, 1963. This President, or the next, should convene another commission. Twenty-seven volumes are not enough.