

Palmprint.

Accessories After The Fact

The Warren Commission,
The Authorities,
and The Report

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What is the status of the ammunition clip described in the Warren Report and pictured in the Exhibits? (CE 574-575) The assertion that the clip was in the rifle found in the Book Depository is completely unsupported by testimony or documents.¹² The citations in the footnote are specious. There are no contemporaneous references to any ammunition clip, or references at any time prior to the Warren Report. No link between the clip and Oswald has been established—by purchase, possession, fingerprints, or other methods.

Few people would be ready to convict a man of murder on the basis of such incomplete investigation or such a dishonest presentation of "evidence." Those who would not send a living man to his death on such a basis must ask themselves whether Oswald should be assigned to history stigmatized as an assassin on grounds that would be inadequate if he were still alive.

The Palmprint on the Rifle

We learn from the Warren Report (WR 122-123) that a few minutes after the discovery of the rifle in the Book Depository, Lieutenant J. C. Day examined it with a magnifying glass and later applied fingerprint powder to the side of the metal housing near the trigger, noticing traces of two prints. [Neither Day nor any other police officer seems to have checked the rifle when it was discovered for signs—such as traces of fresh gunpowder inside the barrel—indicating that the weapon had actually been fired that day; FBI Expert Robert Frazier, who examined the rifle early the next morning, when asked if there was metal fouling in the barrel, replied, "I did not examine it for that." (3H 395)] At 11:45 p.m. on Friday, November 22, the rifle was released to the FBI, and on Saturday morning it was examined at the FBI Laboratory in Washington, D.C., by FBI fingerprint expert Sebastian F. Latona. Latona told the Commission that when he

¹² A former assistant counsel who asked that his name not be disclosed told me over the telephone that the footnote (to the Report's assertion that an ammunition clip was in the rifle when it was found) was indeed erroneous. He was unable to cite testimony or documents substantiating this assertion. But he was not perturbed; he believed it possible that three shots could have been fired in five and a half seconds even without a clip. If several cartridges were inserted in the space provided to house a clip, he suggested, the cartridges would still feed automatically into the chamber, because the rifle contained a spring while the clip did not.

Nothing in the literature suggests such an outlandish possibility. Cartridges must be inserted into the chamber manually, a time-consuming operation that would rule out three shots in only five and a half seconds, or they must be placed into an ammunition clip which would feed them automatically and rapidly into the chamber. Moreover, if the counsel's theory was viable, it would be all the more disturbing that the Warren Commission's evidence includes an unauthenticated ammunition clip which one had been led to believe was indispensable for the perpetration of the crime within the specified time period. It is no answer to say, when it is pointed out that the presence of the ammunition clip in the rifle found in the Book Depository is not supported by evidence, that the ammunition clip is not, after all, essential to the Commission's theory of the crime. The answer needed is whether the ammunition clip can be authenticated, and why the Commission has put the clip forward as verified evidence without first properly verifying its discovery and the chain of possession. This answer is needed all the more when the best available information indicates that an ammunition clip is indispensable to the alleged assassin's ability to fire three shots in about five and a half seconds, and that ability in turn is indispensable to the Commission's conclusion that Oswald was the lone assassin.

received the rifle, "the area where prints were visible was protected by cellophane." He examined these prints "as well as photographs of them which the Dallas police had made" but concluded they were valueless. Latona then processed the complete weapon but developed no identifiable prints. "He stated that the poor quality of the wood and the metal would cause the rifle to absorb moisture from the skin, thereby making a clear print unlikely."

But, the Report next informs us, Lieutenant Day of the Dallas Police had lifted a palmprint from the underside of the gun barrel before surrendering the rifle to the FBI just before midnight. "The lifting had been so complete in this case that there was no trace of the print on the rifle itself when it was examined by Latona" nor was there "any indication that the lift had been performed." Nevertheless, "Day, on the other hand, believed that sufficient traces of the print had been left on the rifle barrel." Day therefore did not release the lifted print until November 26, when he was told to send everything to the FBI. The lifted print arrived at the FBI Laboratory on November 29, 1963 and was identified as that of Lee Harvey Oswald's right palm.

The Report then assures skeptics that they have no cause for suspecting the evidence was fabricated: "The print's positive identity as having been lifted from the rifle was confirmed by FBI Laboratory tests which established that the adhesive material bearing the print also bore impressions of the same irregularities that appeared on the barrel of the rifle."

This is very soothing, until one examines the testimony and documents. For such scrutiny raises considerable doubt about the actual authenticity of the palmprint, the role of the Dallas police and of Lieutenant Day in particular, and the purposes and competence of the Warren Commission; this evidence shows that if the palmprint is genuine, it is genuine against all the odds.

The Vanished Traces

The primary problem is how the traces of the lifted print disappeared between Dallas and Washington, although the print was under the wooden stock of the rifle and could not be disturbed unless the weapon was disassembled. Day testified that when he released the rifle to the FBI at 11:45 p.m. on Friday, he thought that "the print on the gun . . . still remained on there. . . . There were traces of ridges still on the gun barrel." (4H 261-262) In fact, when the rifle arrived at the FBI Laboratory, there was no trace whatever of a print or of the lifting of a print.

The Warren Commission made no attempt to ascertain how the traces of the print could have vanished so completely. The need for such an inquiry should have been obvious from the testimony of FBI hair-and-fiber expert Paul Stombaugh. Stombaugh told the Commission on April 3, 1964 that he had examined the rifle when it arrived on Saturday morning, before it was examined for fingerprints:

I noticed immediately upon receiving the gun that this gun had been dusted for latent fingerprints prior to my receiving it. Latent fingerprint powder was all over the gun. . . . (4H 81)

If the fingerprint powder was "all over the gun" on its exterior—testifying to the care with which it had been transported from Dallas to Washington—it is almost impossible to understand how the same fingerprint powder and the dried ridges could have disappeared from the gun barrel under the stock, which provided secure protection against any disturbance.

Absence of Other Evidence

FBI Expert Latona testified that when he received the rifle he noted an area where traces of prints had been protected by cellophane. He had also received photographs of those same prints, located on the exterior of the rifle.

In the case of the latent palmprint under the stock, not only was there no trace of the print or the fingerprint powder, there was no cellophane, no photograph, and no verbal or written notification by Lieutenant Day calling attention to it.

What explanation was given for these peculiar omissions? Lieutenant Day explained that he had taken the rifle to the Dallas police building and had tried to bring out the two prints he had seen on the side of the weapon at the Book Depository.

Day: They were still unclear. Due to the roughness of the metal, I photographed them rather than try to lift them. I could also see a trace of a print on the side of the barrel that extended under the woodstock. I started to take the woodstock off and noted traces of a palmprint near the firing end of the barrel. . . . On the bottom side of the barrel which was covered by the wood, I found traces of a palmprint. I dusted these [traces] and tried lifting them, the prints, with scotch tape in the usual manner. A faint palmprint came off.

I could still see traces of the print under the barrel and was going to try to use photography to bring off or bring out a better print. About this time I received instructions from the chief's office to go no further with the processing, it was to be released to the FBI for them to complete. . . .

Belin: Did you do anything with the other prints or partial prints that you said you thought you saw?

Day: I photographed them only. I did not try to lift them. (4H 260-261)

In response to another question Day said that he had taken the photographs of the partial prints on the exterior of the rifle at about 8 p.m. He had already explained that he did not photograph the latent palmprint because of orders from Chief Curry "to go no further with the processing." But in an FBI interview (CE 3145) Day said that he received those orders from Curry *shortly before midnight.*

Apparently, then, Day had almost four hours available after taking photographs of the exterior prints and before receiving Curry's order to suspend his work of examining the evidence, yet he did not photograph the palmprint.

Moreover, as already mentioned, he did not cover the latent print with cellophane, because, he said, he saw no reason for wrapping the print with a protective covering "since it was protected by the woodstock when fully assembled

and . . . it was not necessary to use . . . protective coating as it would have been on the exposed prints." (CE 3145)

The Cart Before the Horse

Here is the testimony of FBI Expert Latona on a pertinent question: Which usually comes first, the photograph or the lift?

Eisenberg: Is it normal to take a photograph of a print before it is lifted? *Latona:* If it is fairly visible, yes. . . . The purpose of the lift is simply to insure the probability of getting a good record of the print, because a lot of times when you photograph a print, you have to go through the process of having it developed and then printed and at the same time by lifting it you may, that would be an additional security that you are getting the best results. Then you take your choice as to which result turns out best. . . . Primarily our recommendation in the FBI is simply every procedure to photograph and then lift. (4H 41)

That the FBI recommendation in every procedure is first to photograph and then to lift becomes all the more interesting when we learn from Lieutenant Day that he attended "an advanced latent-print school conducted in Dallas by the Federal Bureau of Investigation." (4H 250) Day learned his lesson well so far as the exterior prints were concerned; those he photographed, then covered with protective cellophane. Indeed, Day admitted that "it was his customary practice to photograph fingerprints in most instances prior to lifting them." (CE 3145)

The evidence does not provide any satisfactory reason, from Day or any other source, for his failure to follow his customary practice in the case of the palmprint on the rifle barrel.

The Contemporaneous Record

Against all the odds, Lieutenant Day neglected every possible procedure by which proof would have been provided for the existence of the palmprint on the rifle barrel on the day that he claimed to have found and lifted the print. The rifle then went to the Washington FBI for scientific examination. It was returned to the Dallas police (the return was their precondition for releasing the weapon in the first instance) on November 24, 1963. Presumably the FBI notified the Dallas police on returning the rifle that the FBI had been unsuccessful in developing or identifying any print whatever on that weapon.

At that point, Day should have been spurred to action, for on Friday night he already believed that the latent palmprint he had lifted was that of Lee Harvey Oswald. Yet he did nothing further with the latent palmprint until November 26, 1963, when all the physical evidence was transferred—this time permanently—to the Washington FBI. (No one has explained why the lift of the palmprint did not arrive until November 29, whereas the other prints—from cartons in the Book Depository—arrived and were examined on November 27.)

After this list of frustrated opportunities to establish a contemporaneous

record of the lifted palmprint, it will come as no surprise that no witness can corroborate the physical act of the lifting of the print. Day told the FBI that "he had no assistance when working with the prints on the rifle, and he and he alone did the examination and the lifting of the palmprint from the underside of the barrel." (CE 3145)

Did Day at least tell anyone that he had made the lift and had tentatively identified the print as matching that of Lee Harvey Oswald? He claimed that he told two people—Chief Curry and Captain Fritz. Day could not remember the exact time at which he had identified the print as Oswald's or the exact time at which he advised Curry and Fritz of his identification, but it was before 11:45 p.m., when he released the rifle to FBI Agent Vincent E. Drain. (It is hard to understand why Day—having neglected to photograph the print or place any protective covering on it—did not at least tell Drain verbally that he had found it and tentatively identified it as that of the prime suspect.)

Is there any indication that Fritz or Curry was aware of the existence or tentative identification of the latent palmprint sometime before midnight on Friday, or during the next two days? During that period, both Curry and Fritz were reeling off an abundance of information—whether true or false—to the television cameras and microphones,¹³ yet neither ever mentioned the incriminating palmprint (see transcripts, CE 2141-2173). It was as if Day had told them nothing of what he said (though much later) he had told them.

Oddly enough, the first public mention of Oswald's palmprint on the rifle came from District Attorney Henry Wade at his Sunday night press conference (of which Mark Lane has said that Wade was not guilty of a single accuracy).

The Chicken or the Egg?

The question is, where did Wade learn about the palmprint? When he testified on June 8, 1964 he said that Captain Fritz had told him on Friday night that "they had a palmprint or a fingerprint of Oswald on the underside of the rifle and I don't know whether it was on the trigger guard or where it was but I knew that was important, I mean, to put the gun in his possession." (SH 220) However, Wade did not mention the palmprint in his many television interviews on Friday night and Saturday (CE 2142, 2169-2173), even when he was asked by the reporters if fingerprints had been found on the rifle. He waited until the Sunday night press conference, of which the Warren Report states: "The police refused to furnish Wade with additional details of the case. Wade nonetheless proceeded to hold a lengthy formal press conference that evening." (WR 236)

If Wade, Fritz, and Curry knew about a palmprint on the underside of the rifle as early as Friday night, all three of them exercised extraordinary self-restraint in regard to this important clue, while liberally advertising other items of alleged evidence together with the conclusions they had already reached.

¹³ J. Edgar Hoover told the Commission (SH 115) that he had had to send a special emissary to Chief Curry to express concern about the inconstant and promiscuous statements concerning the evidence being made by police spokesmen.

Nevertheless, the Commission made no serious effort to establish contemporaneous proof of the palmprint's existence.

The Authenticity of the Palmprint

The problem here is not whether the print was Oswald's but whether it was lifted from the rifle. Here is a passage from the testimony of FBI Expert Sebastian Latona.

Eisenberg: Now, Mr. Latona, as I understand it, on November 23, therefore, the FBI had not succeeded in making an identification of a fingerprint or palmprint on the rifle, but several days later by virtue of the receipt of this lift, which did not come with the weapon originally, the FBI did succeed in identifying a print on Exhibit 139?

Latona: That is right.

Eisenberg: Which may explain any inconsistent or apparently inconsistent statements, which I believe appeared in the press, as to an identification? *Latona:* We had no personal knowledge of any palmprint having been developed on the rifle. The only prints that we knew of were the fragmentary prints which I previously pointed out had been indicated by the cellophane on the trigger guard. There was no indication on this rifle as to the existence of any other prints. The print which indicates it came from the underside of the gun barrel, evidently the lifting had been so complete that there was nothing left to show any marking on the gun itself as to the existence of such—even an attempt on the part of anyone to process the rifle. (4H 24)

Eisenberg: So that you personally, Mr. Latona, did not know anything about a print being on the rifle which was identifiable until you received, actually received the lift, Exhibit 637?

Latona: On the twenty-ninth of November.

Eisenberg: Seven days after the assassination. And in the intervening period, correspondingly, the FBI had no such knowledge?

Latona: As far as I know.

Eisenberg: Mr. Latona, could you tell us what portion of the palm of Lee Harvey Oswald you identified that print as being?

Latona: Yes. Here again I have a photograph that will show the approximate area involved, which is the ulnar side of the lower portion of the palm . . . down near the base of the palm toward the wrist . . . the right palm.

Eisenberg: As it was in the case of the paper bag, Exhibit 142?

Latona: Yes, sir.

Eisenberg: Could you display that photograph, please? This is a photograph which you took of the inked print which was furnished to you by the Dallas office? . . . This photograph shows a red circle around the portion which you identified—

Latona: That is right.

Eisenberg: As being the latent found on the lift, is that right?

(Discussion off the record.)

Latona: Yes.

(4H 24-25)

Latona then proceeded to compare photographs of the latent print lifted from the rifle by Lieutenant Day and the inked print taken of Oswald's right palm—"made on purpose for purposes of recording the ridges." (4H 26-27) Latona enumerated no less than 12 points of identity between the lift and the inked print. No questions were asked. (I shall return to this matter soon.)

Latona gave that testimony on April 2, 1964. Lieutenant Day testified three weeks later, on April 22, 1964, at which time he recounted the sequence of events on the day of the assassination and his own actions—or non-actions—which had resulted improbably in the *de facto* concealment for seven days of the existence of the lifted palmprint. Lieutenant Day was not cross-examined nor was there any evidence that the Warren Commission entertained any skepticism about his strange story.

Moreover, the Commission made no attempt at that time to ascertain from Latona or any other source whether there was any way to authenticate the claim that the palmprint had been lifted from the rifle barrel. Of necessity, the Dallas police had come under *some* suspicion generally—after all, Oswald had been shot to death while in police custody, by a police hanger-on, and many aspects of the Dallas authorities' handling of the case appeared suspicious. And here, in Day's incredible account of the lifting of the palmprint, was a case of possible fabrication of prima-facie evidence against the accused by his custodians.

The Warren Commission knew that the rifle had been returned to the Dallas police on November 24, and had remained in their hands until November 26, 1963. The Commission knew that a palmprint identified as that of Oswald's right hand had been found on a carton in the Book Depository. The Commission knew that it had only Day's word and no corroboration from any source, in testimony or documents, of the authenticity of the lift of the palmprint from the rifle barrel. In his testimony, Latona volunteered no information to confirm that the print had been lifted from the rifle—he merely identified the lifted print as Oswald's. No witness volunteered or was asked to provide any theory to account for the disappearance of all traces of the lifted print between Dallas and Washington.

The salient problem for the Commission to resolve, then, was whether the palmprint could have been or was in fact faked. At no time before September 1, 1964 did the Commission appear even to consider that question—although all the so-called hard evidence against Oswald which came from or through the Dallas police would have had to be re-evaluated for evidence of fabrication had the Commission determined at any early stage that the lifted palmprint was indeed suspect.

On September 1, 1964, when the Commission first showed awareness of the delinquency apparent in the matter, its conclusions were long since formulated and its Report was almost ready to go to press. On that very late date the Commission wrote to the FBI requesting certain additional information about the lifted print (the actual letter does not appear in the Exhibits).

On September 4, 1964, J. Edgar Hoover replied, stating that the palmprint lift had been compared with the assassination rifle in the FBI Laboratory, and that the laboratory examiners had positively identified the lift as having come

from the assassination rifle on the basis of a comparison of irregularities on the surface of the metal of the barrel with the impressions of those irregularities as shown in the lift. (CE 2637) The authentication was obtained not in sworn testimony, but in a letter, and no inquiries were made to determine whether those "irregularities" could have been imposed or superimposed on the lift.

Obviously, the authenticity of the lift cannot be taken as proved unless the possibility of the imposition of the rifle markings can be ruled out. The possibility of fabrication clearly still exists—and becomes all the more apparent on returning to Latona's testimony and his 12 points of identity between the lift and the inked palmprint.

An arrested person having his fingerprints and palmprints taken holds his inked hand flat, on a police record form. A person who handles a rifle curls his hand around the barrel. The curving of the hand would almost certainly, it seems to me, distort the lines and loops so that the resulting print would differ markedly from a print made by the flat of the hand.

Nothing in Latona's testimony suggests that the lifted palmprint had any characteristics indicating that the print was made by a curved hand. On the contrary, Latona found 12 points of identity between the lift and a palmprint made by a hand in flat position.

The photographs of the latent or inked palmprints in the Commission's Exhibits are practically useless to the researcher for the purpose of seeking differences, or similarities; they are dark, blurred, and unclear. (CE 638-640)

If answers to all the outstanding questions were supplied, they might remove the last cause for suspicion of fabrication and show beyond doubt that the lifted print was authentic. Be that as it may, how is it possible to justify the way in which the Warren Commission refused to ask the questions which demanded investigation, and then finally at the eleventh hour before the Report was issued accepted as conclusive proof a form of evidence which remains questionable?

Was the Commission concerned to rule out fabrication of evidence offered against the alleged assassin or concerned only to rule out the appearance of fabrication? To that question, at least, the answer is crystal clear.

It should be added that Burt Griffin, former assistant counsel to the Commission, recently was asked during a public discussion of the Warren Report whether, if the Dallas police or the FBI had forged evidence, it would have been possible to detect the forgery. Griffin replied haltingly, "It would be very, very difficult." (WBAI-New York, radio broadcast December 30, 1966 of the Theater for Ideas forum of September 30, 1966.)

The Rifle in the Closet

Of the hundreds of witnesses who gave testimony to the Warren Commission and the thousands who were interviewed by federal investigators, only one person other than Marina Oswald ever claimed to have seen the alleged assassi-