New Statesman 19 March 1965

Letters to the Editor

Sir,

Lord Devlin rightly distinguishes between the standards of evidence required for legal conviction and for historical assurance. In the case of the assassination of President Kennedy this distinction is particularly important. Judicially, as one of the lawyers employed by the Commission has already argued (in the American Bar Association Journal), Oswald could never have been found guilty on the evidence obtained by the Warren Commission. Historically, it may well be that that evidence suffices. Since the debate, then, is historical, not judicial, I may with impropriety dissent from Lord Devlin's summing-up.

First, I would point out that Lord Devlin has summed up the Warren Report alone. But that report is in itself a summary, and some people think that it is an imperfect summary, of much more extensive material. A full examination should therefore include a study of the relation between the Report and the evidence--that is, the 26 volumes of Hearings and Exhibits--on which it is based. Lord Devlin, in his long article, makes no reference to this matter. He says nothing of the limitations of the Report as a report on the evidence. These limitations are, however, important.

For if we study the Report in its context, we see that the Commission was in effect guided throughout by the FBI. In February 1964, when the Commission began its work, the FBI had already reached the conclusions which the Commission would afterwards endorse. Indeed, the Director of the FBI, Mr. Hoover, told the Commission bluntly, at that time, that only a lunatic would reach different conclusions. After that, the material submitted to the Commission was basically controlled by the FBI. The Commission itself lacked the means, perhaps also the time, to look outside the witnesses and the material which had already been selected as relevant by the FBI. It re-examined those witnesses and that material and, not unnaturally, came to the same conclusions. But there are other witnesses, who have been named, and there are clues, even in the evidence supplied to the Commission, which might have been pursued. Since Lord Devlin allows that the Commission's eye-witnesses of the two essential episodes (the murder of the President and the murder of Tippit) cannot be relied upon--thus conceding more than any previous defender of the Report has done--it seems unfortunate that the Commission did not avail itself of this further testimony.

The human testimony being admittedly defective, we have to depend on other evidence. Lord Devlin states that the real evidence against Oswald is entirely technical: the assurance of FBI "experts" that those bullets could only have been fired by that revolver or that rifle, that the rifle was satisfactorily identified, the palm-print satisfactorily discovered, etc. I agree entirely that if we can depend on these assurances, then the complicity (though not necessarily the sole guilt) of Oswald is established. We can then forget about the conflicting human testimony, only admiring the remarkable efficiency of the Dallas police, who pounced on Oswald, and on no one else, before they had any evidence pointing towards him. But can we depend on these "expert" assurances? We have the right to be critical even of police statements: and in a critical mind the technical statements of the FBI do not always inspire full confidence.

There is prima facie evidence that in certain respects "expert" conclusions were adjusted to meet changing circumstances. For instance, the head of the FBI in Dallas, Mr. Shanklin, was reported by the New York Times to have made certain "expert" statements about powder-stains and fingerprints indicating Oswald's guilt. These statements afterwards proved to be untrue. It is possible that these and other such statements were wrongly reported. But to dissipate distrust, and ensure confidente in the technical evidence finally put forward by the FBI, it is necessary that the matter be cleared up. In fact this has not been done. The FBI, which selected the witnesses and the exhibits for independent examination by the Commission, preserved itself and its methods from too close a scrutiny. Certain material was never released from its files.

Thus, according to Dr. Humes, who carried out the autopsy, the X-ray photographs of the President's body, which were taken for that purpose, were withheld from him by the FBI. Mr. Shanklin was not examined by the Commission on his alleged statements: indeed, surprisingly, this important figure was not examined at all. His subordinate, Mr. Hosty, who imprudently admitted to a policeman that Oswald was known to the FBI as a communist, was penalised by his superiors on that account. And when the Commission ventured, on the strength of that admission, to touch very lightly on a possible error by the FBI, Mr. Hoover himself exploded in unprecedented public denunciation. Such secretiveness brings its revenge. It weakens the force of expert testimony and leaves us uncertain whether it is really stronger than the admittedly feeble and conflicting testimony of unreliable eye-witnesses.

This, I submit, is the general weakness of the Report. Out of the mass of evidence, a logical structure can be built; but when the essential links of that structure are pressed, its fragility appears. Lord Devlin dismisses those who press it as superficial critics who "clamber about the surface" and "chip away at the exterior." But is not this the way in which any such structure must be tested? To demand high-explosive is to demand too much. I have never suggested that the Warren Report should be blown up: only that its weakness should be appreciated.

I have no positive thesis. On the basis of the evidence I can conceive of several possibilities. Conveivably, in spite of its omissions, the conclusions of the Report are correct. Conceivably Oswald was guilty, as the technical evidence would show, but had accomplices whom the Commission failed to reach. Conceivably, if the technical evidence is unsound, Oswald was an innocent man framed and the FBI, in its eagerness for a positive solution, was the dute of its imperfect technique. It is easy for experts to overtrust their scientific methods when they seem to lead to a convenient conclusion. At present it seems to me that any of these interpretations could be true. I would be ready to accept the first of them if the other two were ruled out. But to rule them out requires further study of the evidence which the Commission did not pursue.

One remark by Lord Devlin surprises me. He says, "the inability of an accused to testify is not always to his disadvantage," thus implying that the unavailability of Oswald did not necessarily harm his cause. But the purpose of the Commission, as he himself states, was not to prove Oswald guilty: it was to establish the truth. Is the evidence of an accused man irrelevant to such a

purpose? If Oswald had been available for trial, he might indeed, if guilty, have convicted himself. But he would have been able, through his counsel, to cross-examine as well as be cross-examined. If innocent, or merely the accomplice in guilt, he might have put a different sense on some of the evidence accepted by the Commission. In either case we would be nearer to the truth than we feel on reading the Warren Report.

HUGH TREVOR-ROPER

Oxford

New Statesman
Great Turnstile
London, W C 1