

This Magazine is in two parts. Part II is a special section devoted to the performing arts and Lincoln Center.

The New York Times Magazine PART I

SEPTEMBER 11, 1966

• SECTION 6

EDWARD JAY EPSTEIN

Inquest

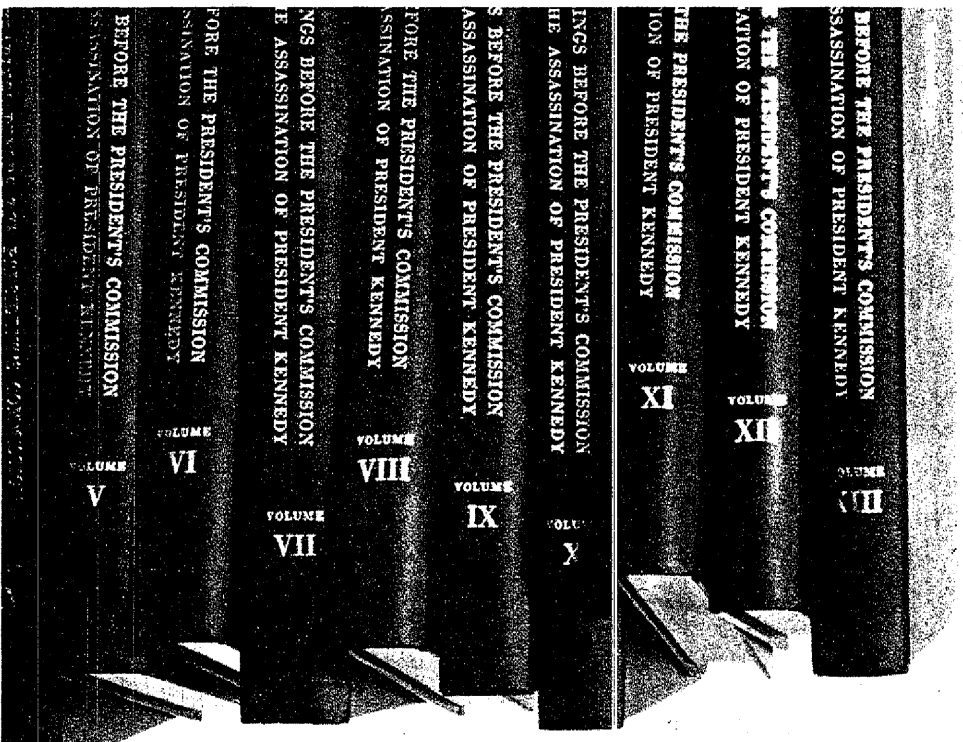
THE WARREN COMMISSION
AND THE
ESTABLISHMENT OF TRUTH

INTRODUCTION BY *Richard H. Rovere*

Mark Lane

Rush to
Judgment

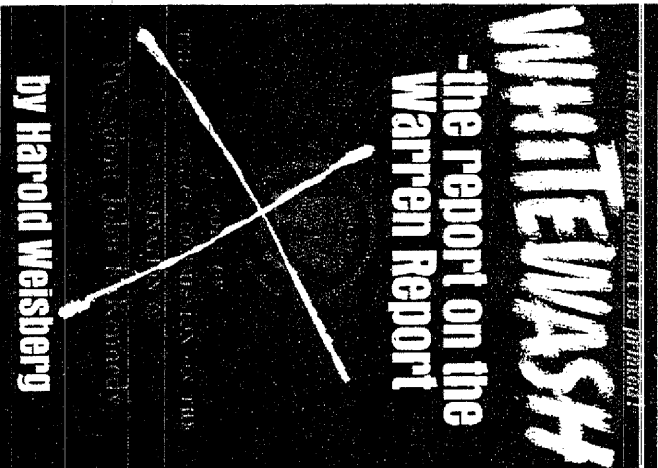
A critique of the
Warren Commission's
inquiry into the
murders of
President John F. Kennedy,
Officer J.D. Tippit and
Lee Harvey Oswald
Introduction by
Hugh Trevor-Roper



"The present critics of the
Warren Report must be
careful that they do not, in
opening the popular mind
to doubt, open it also to
fear and hysteria."

**No Conspiracy, But—
Two Assassins, Perhaps?**

BY HENRY FAIRLIE



Books critical of the Warren Report have become a subindustry of the publishing business. Above, three current examples.

IT is uncomfortable to live with uncertainty, but it seems time to acknowledge that we—and perhaps even future generations—may never know the truth, certainly not the whole truth, about the assassination of President Kennedy.

"The Vulnerability of Facts" is a chapter heading used by Edward Jay Epstein, one of the current critics of the report of the Warren Commission. He might have added another: "The Inaccessibility of Truth." I do not suggest that, because the truth may be inaccessible, inquiry should stop. Merely that, if further inquiry does not get us very far, we should not be surprised, and should not feel tempted to construct our own elaborate explanations.

The report of the Warren Commission is now under severe and, in some cases, persuasive attack. It is hard to disagree with the general judgment of its critics that it did a hurried and slovenly job. It seems to have been less than thorough in the

HENRY FAIRLIE is an English political commentator who is now a temporary resident of Washington, D. C.

examination of some key witnesses, less than skeptical of some of the official evidence with which it was supplied, less than careful to consider in detail every possible explanation of the assassination other than Lee Harvey Oswald's sole guilt. Even so, it is worth adding, the apparent slovenliness may be in the written report rather than in the actual investigations of the commission. It still seems to me possible that the report does not do justice to its own inquiries.

Nevertheless, doubt has been aroused, and there are signs that in the next few months this doubt may become an obsession in at least some quarters—perhaps eventually in the popular mind, which has so far been resistant. Neither in Europe nor in America, in fact, have I hitherto found much popular interest in the possibility that the Warren Commission reached the wrong conclusions.

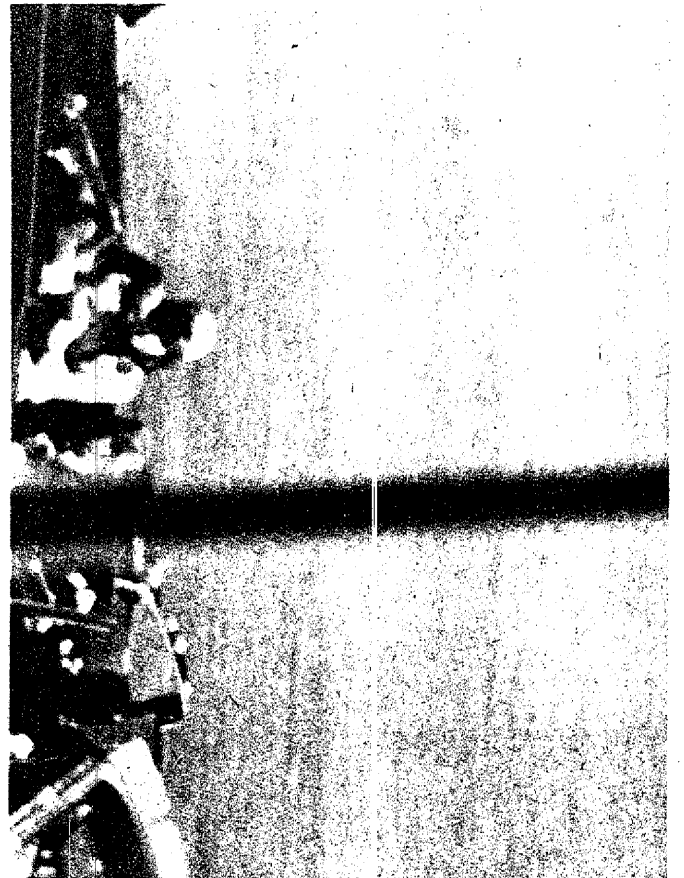
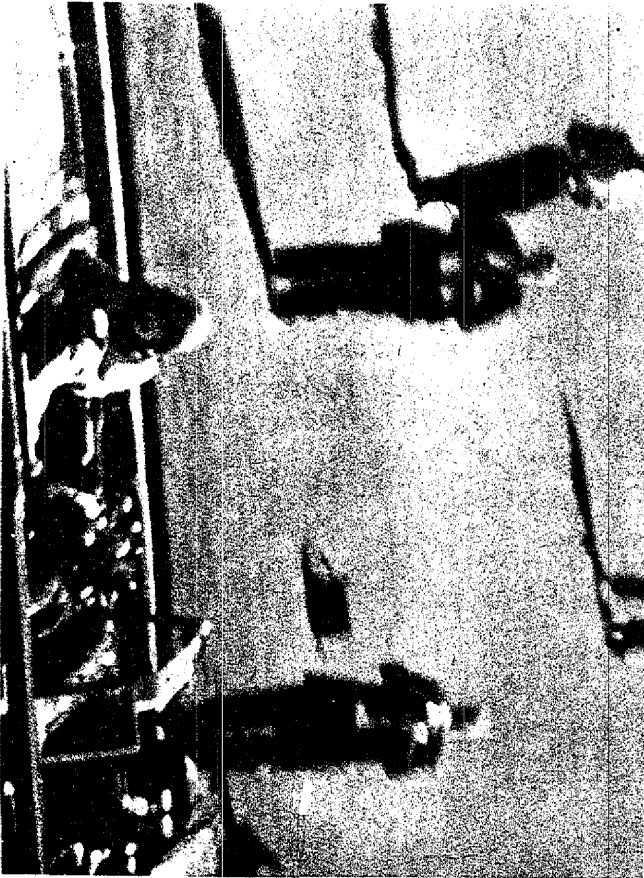
IT is true that some of the earliest questionings of Oswald's guilt, or his sole guilt, came from Europe. But they made very little impression on most people. When Hugh Trevor-Roper delivered his main attack on

the conventional explanation of the assassination, the general attitude, I remember, was to wonder how the Regius Professor of Modern History in the University of Oxford, a man not given to causes, had got himself mixed up with this one.

Since then, in Britain, the issue has been dead. I can recall no important article in any British publication which has raised the subject since the flurry after the publication of the Warren Report. I sat with a British journalist the other day, and we could not remember any conversation either of us had had in Britain during the past 18 months in which the circumstances of the assassination had drawn more than a passing reference.

Some Americans—mostly intellectuals—give the impression that they no sooner land at London Airport than they are assaulted by questions and theories about the assassination. They may move in circles I do not know, but there are perhaps two other explanations.

To one kind of intellectual, a mysterious assassination, such as that of President Kennedy, provides an irresistible temptation to play "private eye." I (*Continued on Page 54*)





NOV. 22, 1963.—According to this movie sequence, running from the first shot to Mrs. Kennedy's climb onto the rear deck of the car, no more than 1.8 seconds elapsed between the time the President was first hit (top left) and Governor Connally was wounded (top right). But tests showed Oswald's rifle could not fire twice in less than 2.3 seconds. The conclusion: the theory of a "single bullet" and one assassin.

'... It seems to me possible that the report does not do justice to its own inquiries ...'



PUBLIC MURDER—While millions watched on television, unbelieving, Dallas nightclub owner Jack Ruby (back to camera) shot Lee Harvey Oswald as he was escorted through a corridor of police headquarters. To some critics of the Warren Report, the second slaying was part of one conspiracy.



PUBLIC INQUIRY—With the prime suspect dead, President Johnson appointed the Warren Commission: From left, Representatives Gerald Ford and Hale Boggs, Senator Richard Russell, Chief Justice Earl Warren, Senator John Sherman Cooper, John McClary, Allen Dulles and Lee Rankin, counsel.

This, today's critics would say, is a fault in the American people; that they are merely closing their eyes to uncomfortable facts or possibilities. But, like all true Tories, I have a considerable faith in popular wisdom, and I do not believe that, if there was the smell of a genuine conspiracy in the land, the ordinary people of America would be acting with such a lack of fear and hysteria. Rumors would have spread, and the popular imagination been fired. But it has not happened.

If I am right in this estimate of popular attitudes, then it seems to me that the present critics of the Warren Report must be careful that they do not, in opening the popular mind to doubt, open it also to fear and hysteria. I am not arguing, let

me make it clear, that they should not continue to search for the truth or press for a further inquiry. I am arguing only that from their various viewpoints, interested or disinterested, they should avoid elaborating theories of conspiracy which are based on evidence quite as selective, and argument quite as tendentious, as they claim the Warren Report to be.

THE Warren Commission's conclusion that there was a single assassin is based on what has come to be known as the "single bullet" theory. In other words, that the first wounds which both President Kennedy and Governor Connally received were caused by a single bullet which passed through the back of President

Kennedy's neck and emerged at his throat before striking Governor Connally.

It is easy, as most of the critics have done, to show that this "single bullet" theory, on the evidence supplied by the commission itself, is weak. But the fact remains that the alternative explanations offered by the critics (such as the presence of more than one assassin, and the existence of a conspiracy) are equally easy to fault, and rely equally on improbable chances.

Anyone who has read most of the current debate—the books and the reviews, and one of the reviews, at least, is quite as important as the books—can choose between several attitudes, even if he accepts the

criticism that the commission did a slipshod job:

(1) Although the commission's arguments and its use of evidence may not seem an adequate support for its conclusions, these may yet be the right ones. This is an important point, because there may be a tendency to allow the faults in the commission's report to override a commonsense appreciation of its findings.

(2) Without deciding whether the commission's conclusions are right or not, he can simply agree that the weaknesses of its report make it desirable that a further independent inquiry should be established.

(3) He can decide that the arguments of the critics make it clear that Oswald did not act alone, without com- (Continued on Page 154)

Yale any student can drop in on any professor at any time, and usually does. At Harvard the normal procedure is to make an appointment through a professor's secretary, sometimes a week or more in advance (although a few professors, like Freund, are always available). Prof. Allen Dershowitz, who received his LL.B. at Yale and is said to be "a fresh wind blowing through Harvard," told his opening class that his door would always be open. "But now," one student complains, "you have to make an appointment to see him just like everybody else. I guess the lines were too long and he had no time to do any work on his own."

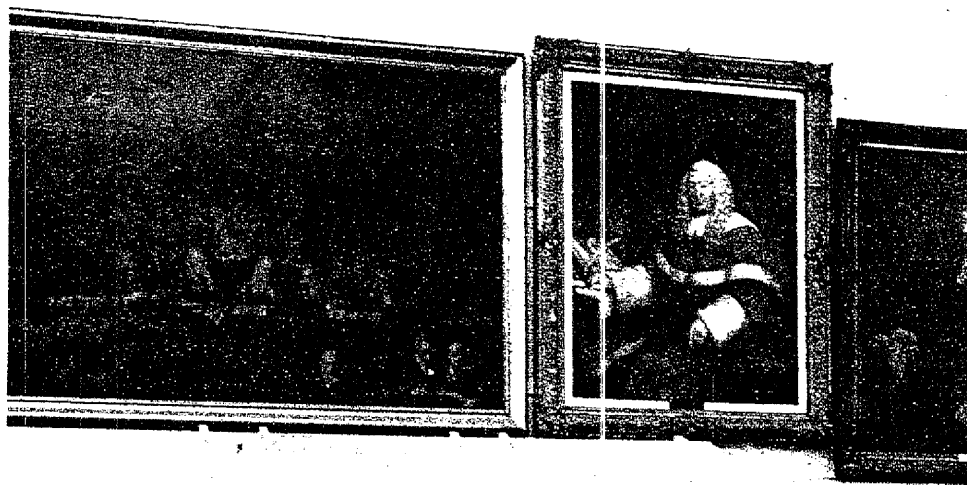
An extreme example of the lack of communication between student and professor is the case of the third-year student at Harvard, now a noted author, who didn't attend class all year (there are unlimited cuts at both schools) and when exam time came around forgot which section he had

signed up for and took the wrong exam. By the time the dean's office realized what had happened, the student was home in Connecticut studying for the bar exam. When the dean's office called and asked him what had happened, he replied, "Everybody knows that Professor A gives a harder exam than Professor B, so what are you complaining about? I just wanted to show I could do it." They let him pass.

Ironically, despite the brilliance and depth of the student body, after the first year the average Harvard Law student thinks of himself as a second-class citizen. This is because of the critical importance attached to a berth on *The Harvard Law Review*, which is awarded on the basis of grades only. (At Yale, it is possible to make *The Journal* by entering a written competition, although last year, of the 41 people who entered, only 14 actually turned in drafts and only one made it.) Consolation prizes are awarded afterward to runners-up in the form of membership in either the Student Board of Advisors or the Legal Aid Society, but the difference between Review and non-Review is the difference between officers and enlisted men.

DAVID RIESMAN, who was an editor of *The Review* and subsequently clerked for Justice Louis D. Brandeis, says that he frequently advises

would-be law students to consider the advantages of a smaller school like Yale because the chances of making the review (*Journal*) at Yale are far better than at Harvard. When Riesman was a student, he unsuccessful-



HARVARD—Dean Erwin N. Griswold of the Law School (with students in his classroom): "The real difference between Harvard and Yale is that Yale talks about it and we do it."

fully tried to persuade Felix Frankfurter, who was then on the faculty, to recommend non-Review men for Supreme Court clerkships.

"I even half-jokingly threatened to start a rival review," he recalls. "One reason I had no success was the solemnity with which those law students not on *The Review* accepted the verdict of the system. I have seen men of outstanding undergraduate attainment, Rhodes Scholars and Phi Betas, let mediocre grades in law school convince them that they were mediocre men. The difference of a few percentage points could ruin a life."

Lawrence Schilling, who is with the U.S. Attorney's office in New York and was graduated from Harvard Law in 1959, confirms Mr. Riesman's observation, saying, "I'll wager there's not a man in my class outside *The Law Review* people who today, 10

years later, doesn't still feel a pang of disappointment when he is reminded that he might have done a little better during his first year."

Competition remains as keen as ever. One student says, "You are always afraid a genius is lurking in the next row." And a man who made *The*

(Continued on Following Page)

No Conspiracy, But—

(Continued from Page 151)

putting himself to any conspiracy theory. The fact that more than one person is engaged in an enterprise does not necessarily make it a conspiracy. This is the leap which alarms me, and it is a leap (I do not wish to imply any conscious motive) which ambitious authors perhaps find a little too easy to take.

(4) He can accept the idea that there was a conspiracy, without necessarily feeling obliged to commit himself to one or other of the conspiracy theories which have already been offered, or which seem likely to be offered in the next few months.

It is, of course, the idea that there was a conspiracy which is intriguing, and of which I remain more than a little skeptical. I have always found some difficulty in assuming conspiracy in public assassinations. They depend far too much on coincidence and accident to be the work of determined political conspirators, and I therefore find myself demurring when Harold Weisberg, the author of "Whitewash," says that "by their

native assassinations usually involve conspiracy."

"Top" conspirators, it is true, can always know with some certainty where their victim will be, can even help to arrange that he will be there. The conspirators in the "July 20" plot knew where Hitler would be, and when. So did the conspirators against Julius Caesar, although it was, in fact, touch and go whether he would make it to the Senate that morning. Even so, it should be noted, the "July 20" plot, although carefully planned, went awry.

To plan dangerously then, and then to rely on a public appearance on a trip to Sarajevo, or the theater, or Dallas—this seems to me hardly in the nature of political conspiracy, although it may be in the nature of a fanatic, or two or three fanatics.

Art Buchwald, in his Paris days, once interviewed Miss Nancy Mitford. When he asked her what she liked to read, she replied that she loved history and biography, and was at the moment halfway through "The Day Lincoln Was Shot." "Of course," she went on, "I don't know anything about American history; I don't know

whether it is accurate. But it reads like a detective novel. Only one thing worries me. I'm terrified dear Mr. Booth goes to the wrong theater."

I can assure I can rather in the same frame of mind about assassinations as Miss Mitford. The chances seem to be too great, the coincidences too improbable, for serious political conspirators to rely on cheerful public occasions for their deeds.

ONE of the current critics of the Warren Report goes to great trouble to describe the elaborate way in which, he suggests, the conspirators went about the business of duplicating the known Oswald by a "second Oswald." Such preparation! Such detail! Yet, with it all, these determined and imaginative conspirators chose to place the actual assassins at a point on a route which President Kennedy might not take, in a city which he might not even visit, and where, although the shot was easy enough, there was only a brief time in which to hit him.

But there are other improbabilities in a conspiracy theory of the assassination. If there was a conspiracy, not only would more people be primarily involved, but also more people, such as gun dealers, would be secondarily involved. In a country such

as America—and Americans of sense and commonsense have put this point to me many times in recent weeks—someone would have broken.

There are at least two magazines which would be willing to spend a small fortune for a clue to a conspiracy. Yet, in two and three-quarter years, none has been forthcoming. Some magazines have been engaged in tireless investigations of their own, employing what Time magazine engagingly likes to call "task forces" of their own correspondents. Yet, in two and three-quarter years, they have turned up not a hint of conspiracy.

From the time of the assassination, Lee Harvey Oswald's mother pursued the possibility of his innocence; and Mark Lane, through all these years, has kept the issue and his own investigations alive, yet his final report, "Rush to Judgment," reveals no real evidence of a conspiracy. Other private investigators have bored their way through the available facts, yet only one of them, to my knowledge, claims to have identified even one conspirator, even one other man who was in collusion with Oswald. In two and three-quarter years, this is a remarkable amount of non-evidence.

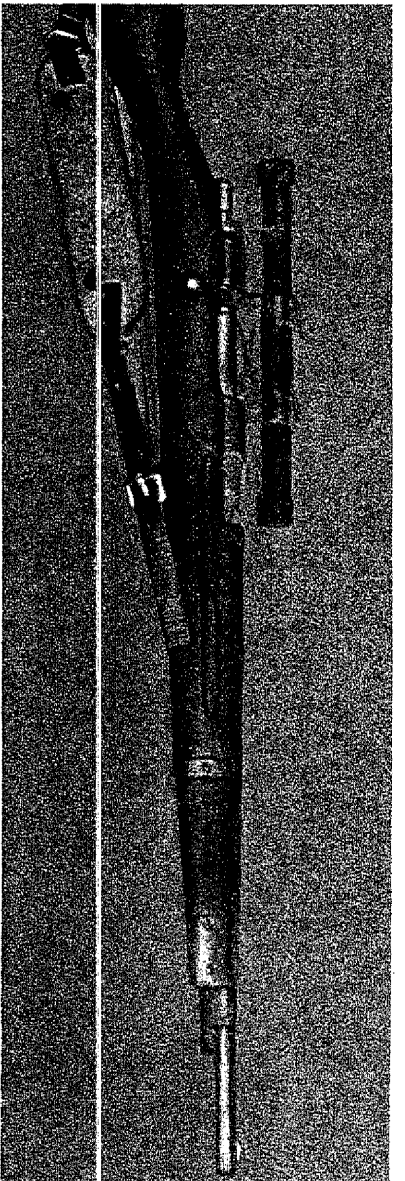
Moreover, if there was a politically

(Continued on Page 157)

EXHIBIT 399

Like the ripples from a stone dropped in a pond, the doubts about the report of the Warren Commission surround a moment of sudden impact: Did a single bullet, labeled Exhibit 399 by the commission, hit John F. Kennedy in the back of the neck, pierce a hole in his throat and then severely wound Governor John Connally of Texas who was sitting on a jump seat in front of the President? For though this was not the assassination bullet (of the two other shots the report says were fired that day, one "probably" missed the car and the other shattered Kennedy's head, killing him), it is over Exhibit 399 and the "single bullet theory" that the argument hinges.

One reason is mathematical. According to movie film taken at the scene by an amateur and later studied by commission investigators, the maximum time that could have elapsed between the wounding of the President and of the Governor was 1.8 seconds. Yet tests on Oswald's bolt-action rifle showed it could not fire twice in less than 2.3



WEAPON—Oswald's Mannlicher-Carcano rifle, with telescopic sight.

seconds. Hence, the "single bullet theory." Coupling this with the premise that Oswald fired the gun, the commission arrived at its basic conclusion: Oswald was the lone gunman and the President's assassin. "To say that they were hit by separate bullets is synonymous with saying that there were two assassins," one staff lawyer declared.

The mathematical evidence was substantiated to the commission's satisfaction by studies of the trajectory of bullet 399 and, more significantly, by an autopsy performed at Bethesda Naval Hospital

hours after the shooting. The medical testimony published by the commission described the path of the bullet through the President's neck and ballistics tests showed it could have kept going with enough velocity to hit Connally.

Against this weight of evidence, Edward Jay Epstein, a Cornell graduate student who wrote "Inquest" as a master's thesis in government, weighed in with newly discovered documents that challenged the Warren Commission's theory of a single bullet and a single assassin. Epstein dug up two recently declassified F.B.I. reports which contradicted the

Bethesda autopsy. The reports stated that the nonfatal bullet entered President Kennedy's right shoulder and did not bore through his body.

Epstein's conclusion: The F.B.I. reports are correct and the Bethesda autopsy report published in the Warren Report was altered between the time of the assassination and the time of publication to conform to the "single bullet theory." "It indicates," said Epstein, "that the conclusions of the Warren Report must be viewed as expressions of political truth"—that is, that the single assassin, assumed to be Oswald, had been found.

In two and three-quarter years there has been a remarkable amount of nonevidence

(Continued from Page 154)

determined conspiracy there must have been a politically determined motive. One critic of the Warren Report, having reconstructed the conspiracy which he believes may have caused President Kennedy's death, at least recognizes this difficulty. "The political or economic nature of the conspiracy," said Richard H. Popkin in *The New York Review of Books*, "must be purely speculative at this stage."

Just how speculative, he then makes clear in three wildly speculative sentences. "Maybe Oswald met some far-right extremists when he went to hear General Walker on Oct. 25. Maybe some right-wing Cubans involved him in a plot when he was in New Orleans. Maybe he got involved with some leftist plotters in New Orleans, Mexico City or Dallas." That gives us quite a lot from which to choose.

Popkin, in the end, is true to his predispositions, managing to suggest a right-wing conspiracy without offering any supporting evidence. "A conspiracy to defame the President was going on in Dallas among a handful of rightists. Why was this possible, but not a conspiracy by others to shoot him?" No reason at all, except that no one has yet turned up any evidence of an organized conspiracy fired by "political or economic" motives.

SUCH a conspiracy would, presumably, have a political motive beyond the mere assassination of the President. Yet, having had such a striking success in its first action, it never acted again, and never acted during those terrible first days when conspiracy was a real fear in the minds of the American people and their Government. No plans to prevent a peaceful transfer of power, no plans to change men or policies: What an abbreviated conspiracy!

For two and three-quarter years, we are asked to believe, a conspiracy which organized the death of a President has lain silent and dormant, while his successor has pursued much the same policies, often with the same men. It seems more than unlikely. I am not denying that there may have been more than one assassin—the available evidence seems to me confusing—but, even if one makes

this supposition, it still does not justify making the long leap to a conspiracy theory of the assassination.

Conspiracy is a term which should be allowed to keep a little distinction. A political conspiracy—and it is this which we are being asked to consider—must have, at least in the minds of the conspirators, some of the justification of "reasons of state." Whether left-wing or right-wing, the object of a conspiracy is to subvert the state; and there is a sense, in fact, in which a state may be considered ready for conspiracy, as Marx said it can be ready for revolution.

The German state was in such a condition in 1944.

In spite of all the patient reading I have done, I can find not a tittle of evidence that subversion of the state—an abrupt change in the political forces governing the country—was one of the motives of President Kennedy's assassination.

Again, it is Popkin who approaches the problem with at least some political nous, who recognizes the difficulty. He scrapes his way out of it by indicting a whole society, and any reader of pamphleteering political literature will recognize this passage as familiar:

"The American press, as well as others in positions of responsibility, would not, and could not, dream of a conspiratorial explanation. In a world in which conspiracies are going on all of the time—in business (the anti-trust cases), in crime (the Mafia), in foreign affairs (the C.I.A.)—it somehow was still not imaginable that two or more persons could decide to assassinate the President of the United States." And it is from there that he proceeds to hint at a "far-right" conspiracy.

So it is to this, to a politically angled attack on a whole society, that the apparently objective and painstaking exposure of political conspiracy in the end reduces itself. Even the Inquisition would have marveled at such audacious dissembling of the truth.

Popkin even resurrects the tittle-tattle—"in rumors I have often heard"—that the President's assassination may have been organized by his successor. It is the suggestiveness of "in rumors I have often heard" which is hard to forgive.

None of this, I must repeat, is to

deny that there may have been two or more people involved in the assassination—although, the greater the number suggested, the less credible the proposition seems. I am merely arguing that it is possible to regard such people as fanatics or nuts and nothing more, not involved in any serious political conspiracy and not reflecting any organized subversive interest, or even any organized political passion, within the body of society.

To an outsider, as he sinks himself slowly into American society and politics, nothing is more alarming (even though he may have half expected it) than the prevalence of conspiracy theories of political power and political behavior. By the time he has submerged himself no more than ankle-high, he no longer needs Richard Hofstadter's brilliant guide to the "paranoid style" in American politics to remind him that such theories run far back in American history.

But what amazes him most is that those—who pooh-pooh the familiar McCarthyite theories of left-wing conspiracy are themselves ready to

(Continued on Page 159)

(Continued from Page 157)

construct almost as fanciful theories of right-wing conspiracy. Moreover, whereas those on the right who indulge in fantasies of Communist conspiracy are usually on the far right, those on the left who indulge in fantasies of right-wing conspiracy are often paraded, and parade themselves, as level-headed liberals.

THUS there is a second conspiracy which is being discovered in the current debate: a conspiracy on the part of the Warren Commission to suppress, or distort, the truth. It must be said that this theory has not yet gained much ground. But it is explicit in all Weisberg's attributions of malevolence, and it is implicit, although in the most sophisticated way, even in Epstein's otherwise careful, otherwise level-voiced, book, "Inquest."

Epstein's main criticisms are of the slovenly way in which he believes that the commission worked. But his first and last explanation of this slovenliness is that it was eager to find an explanation of the assassination which would restore American prestige abroad, and the prestige of American institutions at home. In short, he suggests that the "Establishment" assumptions and inclinations of its members made their findings inevitable.

I was, although I do not now often

like to admit it, responsible for making the phrase "the Establishment" part of our current political vocabulary. The occasion was an article in *The (London) Spectator* in 1955, in which I gently suggested that Guy Burgess and Donald Maclean had not needed any cover, either for their activities or for their eventual disappearance to Russia, simply because they belonged—and here I first used the word—to "the Establishment."

From this half-serious, half-mocking suggestion that, because of their connections, they were always given the benefit of the doubt, the phrase "the Establishment" caught on like wildfire, and I have been troubled by its success ever since. I began to be troubled when I realized that the phrase could be used, and was being used, as a sophisticated version of a conspiracy view of politics, instead of a rather jolly way of describing a curious English phenomenon.

Exactly the same process of exaggeration is to be found in Epstein's book. Although he himself provides several convincing explanations of why the commission did such a hurried and slipshod job, he in the end leans to a conclusion which has the smack of conspiracy about it: "In establishing its version of the truth, the Warren Commission acted to reassure the nation and protect the national interest."

This is to make a judgment of motive, even conspiratorial motive, and it is the hint of conspiracy, of one kind or another, which has become the hallmark of all the theses pro-

duced by the critics of the Warren Report.

THE American people are, as I have said, open to conspiracy theories, and it seems to me to be to their credit, and not merely evidence of their complacency, that they have so far refused to be stampeded into imagining conspiracy, either left-wing or right-wing, in the assassination of President Kennedy. Those who are today purveying their conspiracy theories appear to be bent on producing precisely the kind of hysteria which, requiring only doubt and never proof, begins a witch-hunt, either on the left or on the right.

At some point, it is clear, there will have to be another independent inquiry. But, even if this is agreed, it is by no means equally clear that

“To an outsider, as he sinks himself slowly into American society and politics, nothing is more alarming than the prevalence of theories of political power and political conspiracy.”

the time for such an investigation is now. A portion of the investigative reports in the United States National Archives is not yet declassified. The whereabouts of other important evidence have still not been ascertained. In these circumstances, the chances of a further inquiry producing a report which would carry conviction are slight.

To set up another independent body, with no promise that it could succeed, would be to agitate public doubt without being certain that it could, in the end, settle it. Popular fear and hysteria are dangerous weeds to excite, and Weisberg, for one, makes it clear that he is willing to excite them. In his conclusion, he makes the flesh creep:

“A crime such as the assassination of the President of the United States cannot be left as the report of the President's commission has left it, without even the probability of a solution, with assassins and murderers free, and free to repeat their crimes and enjoy what benefits they may have expected to derive therefrom. No President is ever safe if Presidential assassins are exculpated. Yet that is what this commission has done.”

It is my judgment that the American people today are in a remarkably unhysterical frame of mind, even in the middle of a difficult and controversial war. Certainly, they are showing every sign of resisting the temptation to further witch-hunts. It would be a tragedy if articulate makers of opinion led them into another.