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On "Closing Doors, Not Opening Them" or,  
The Limits of the Warren Investigation

by

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Oswald's marksmanship has been the subject of controversy but no one can deny that Edward Jay Epstein is an expert—he has just shot down the Warren Report for all time, and with it a number of eminent reputations. The debate about the validity of the Warren Report and the probity of its authors has been resolved, by Epstein's book Inquest: The Warren Commission and the Establishment of Truth. The "amateurs" and "mischief-makers" who have tried to warn a deaf and complacent public that Lee Harvey Oswald was not a "lone assassin" and that the Warren Report was not an honest document have been vindicated.

The paradox is that Epstein did not set out to challenge the Warren Report or to indict its authors—not at all. As a student of Government at Cornell University, Epstein undertook to write a master's thesis with the stated purpose of finding out how the Warren Commission went about "searching for such an elusive and many-faced quarry as the truth."

In his exposition of the methodology of a governmental fact-finding investigation that had to proceed without benefit of a model, Epstein has succeeded admirably. He has filled a vacuum in the historical record, since the Warren Report necessarily is reticent—or silent—on the processes by which it derived form and substance.

But Epstein has achieved far more than the task he set himself. Almost as a by-product, he has uncovered the utter bankruptcy of the so-called fact-finding investigation into the assassination of President John Fitzgerald Kennedy, and the speciousness of the hysterically-acclaimed Warren Report.

Epstein, who has limited himself strictly to reporting and documenting unambiguous facts hitherto unknown and unsuspected, cannot be ignored or dismissed. As Richard Rovere points out in his introduction to Inquest, the scholar has done the job that the press, in its dangerous drift from the basic function of journalism, left undone.

The study incorporates the results of six months of personal interviews with five of the Commission's members (Chairman Warren and Senator Russell presumably were not willing to discuss the investigation) and with most of the fifteen lawyers on the staff, including general counsel J. Lee Rankin and his special assistant Norman Redlich. Epstein's other sources were the Warren Report and the accompanying twenty-six volumes of Hearings and Exhibits; those of the unpublished investigative reports which have been declassified and made available in the National Archives; and the working papers of the Commission, "supplied by a member of its staff."

#### The Purpose of an Investigation

The personal interviews yielded significant information about the dominant purpose which animated the Warren Commission. Epstein shows that the Chairman and the members conceived of that purpose "in terms of the national interest" and prestige. One of the members, John J. McCloy, put it in a nutshell when he told Epstein that "it was of paramount importance to 'show the world that America is not a banana republic, where a government can be changed by conspiracy.' "

It appears, then, that the Commission's stated function as spelled out in the Warren Report—"to uncover all the facts concerning the assassination of President Kennedy"—was conditional on a "paramount" consideration which ruled out in advance a finding of conspiracy, whether or not the evidence to be gathered and evaluated justified a "no conspiracy" finding.

Since Inquest is based exclusively on information obtained from the Commission, the Commission has been hoist high by its own petard, and its shrilly-proclaimed "probity" lies in ruins. Epstein, let me hasten to add, says nothing of the sort in his book. He probably would disassociate himself from the very notion. He seems to regard the defects of the investigation as due to preoccupation with the national interest and reputation, interacting with some ineptitude and imperception and with an understandable predisposition to believe that Oswald was guilty, as well as to mismanagement, inadequate manpower, self-imposed restraints, time pressure, and similar errors or obstacles.

But the factual evidence that Epstein has uncovered, presented as it is with extraordinary lucidity and almost superhuman detachment, seems to me to lead inevitably to a different ultimate and fateful judgment—that the Warren Commission consciously and deliberately perverted the evidence and

The Commission may have succeeded temporarily in persuading the world that America was not a banana republic where a government had been changed by conspiracy. Epstein has now provided reason to wonder if we are not something worse; a country where the government can be changed by conspiracy and where illustrious men stand ready to cover up the truth.

Inquest documents many instances of perversion of evidence, like a series of sobering electric shocks. In sum, Epstein demonstrates conclusively that the Commission had in its hands strong evidence that Oswald was not a lone assassin (indeed, there were also indications of a calculated long-term effort to impersonate and incriminate Oswald) which the Commission never confronted. Evidence in Oswald's favor, or incompatible with the official hypothesis, was misrepresented, ignored, or suppressed; and the Commission proceeded unrelentingly with its mission--the establishment of what Epstein terms "political truth."

Three of the principal witnesses against Oswald were Marina Oswald, Howard Brennan, and Helen Louise Markham. Epstein shows that the Commission's own lawyers regarded them as outright liars or hopelessly unreliable. The lawyers were aghast at the news handed down from above by Rankin (there was no communication between the Commission and the staff except through him) that the Commission intended to accept and cite the testimony of those three witnesses. The news produced a near-insurrection.

One lawyer protested in writing against the use of Marina Oswald's testimony, charging that she had lied repeatedly to federal agents and to the Commission itself. Another lawyer threatened to resign when the Commission ruled out cross-examination of Marina. There was a de facto resignation by a third lawyer (his name was not removed from the roster), although it is not clear which of the Commission's travesties of "fact-finding" provoked his departure.

Despite the protests of the lawyers, the Commission, or its Chairman at least, decided to "believe" all three witnesses. Warren brushed aside cogent arguments with the pompous reminder that he was a good judge of human nature--and that was that. Whether Rankin adequately presented to Warren the objections made by the staff lawyers is a moot question. At another stage of the investigation, important new evidence was brought to Rankin by one of the lawyers. Rankin's irritated reaction was that "we are supposed to be closing doors, not opening them"--which is hardly suggestive of a ferocious commitment to uncovering the truth.

As Epstein reveals, the Commission was in possession of two FBI Reports (dated December 9, 1963 and January 13, 1964 respectively) in which the President's back wound was described. The FBI description was completely different from the findings in the undated autopsy report which became public only when the Warren Report was issued at the end of September 1964. The FBI Reports were suppressed by the Commission (the December 9, 1963 Report has recently been declassified and made available in the National Archives). The autopsy report, which diverged radically from the FBI statements on the back wound—and which (as Epstein reveals) is contested by an outstanding forensic expert as incompatible with established scientific knowledge—was incorporated in the Warren Report. In thus legitimizing an undated and suspect document, the Commission uttered no whisper of the contradictory findings made by the FBI.

#### Oswald and the FBI

Another scandal which Epstein brings to light concerns the still-unresolved mystery of the actual relations between Oswald and the FBI. Soon after the Commission began to organize its work, high Texas officials held a secret meeting with Chairman Warren and general counsel Rankin, at which they related that they had received information indicating that Oswald, at the time he was arrested, was on the FBI payroll at \$200 a month, in the capacity of an "informant." They gave details which seemed to bear out that Oswald was a clandestine FBI operative, an allegation which had already appeared in the press.

Despite the reputable source and the serious nature of the information discussed at that secret meeting, Rankin characterized it at once, before inquiry of any kind, as "a dirty rumor that is very bad for the Commission ...very damaging to the agencies that are involved in it and it must be wiped out insofar as it is possible to do so by this Commission."

In fact, the allegations were never investigated in any real sense of the word. The Commission dismissed them solely on the basis of FBI disclaimers—exactly what the Commission had agreed not to do because, as the members acknowledged in discussing how to handle the "dirty rumor," the FBI would scarcely admit such a compromising fact even if true.

At about the same time as the secret meeting with high officials from Texas, the Commission received a Secret Service report bearing the control number 767 which contained new independent evidence greatly strengthening the claim that Oswald was on the FBI payroll. That document, the

existence of which is revealed for the first time by Epstein, was suppressed, not from the public alone, but the details "were kept secret even from the staff lawyers."

At a later stage in its work, the Commission again received unsolicited and unwelcome evidence (revealed, again for the first time, in Inquest) that Oswald was a hopelessly ineffectual marksman. The new dilemma was resolved by means similar to those employed to dispose of the "dirty rumor": the unsolicited information was suppressed, and the Commission solicited testimony—which was irrelevant, if not incompetent—to support the insupportable claim that Oswald was proficient enough as a rifleman to have fired the shots.

In contemplating the way in which those and similar predicaments were "resolved" by the Commission, all of whose members must take personal responsibility, it is nevertheless interesting to remember that in the view of most of the staff lawyers the Chairman, Earl Warren, "was the Commission." Asked what the Commission as such had contributed to the investigation, one of the lawyers told Epstein, "In one word, 'Nothing.' "

J. Lee Rankin, the general counsel, was supposed to keep an over-all command of the investigation as it progressed and to ensure the coordination of findings. He was assisted by Norman Redlich, who provided symbolic "liberalism" on the staff side, as Warren himself provided the semblance of political balance among the Commission members. Rankin and Redlich placed themselves completely at the service of the Chairman and, through him, at the service of the lone-assassin thesis. That thesis was to prevail despite the fact that the investigation—chaotic and superficial as it was—produced forceful evidence of conspiracy.

The Warren Commission refused to place its investigation under the restraints of an adversary proceeding. While excluding the participation of a defense counsel, the Commission did not hesitate to take advantage of the prerogatives proper to a prosecutor. It called experts on such vital items of evidence as handwriting, hair and fibers, films and photographs, and forensic pathology, whose findings were never tested or challenged by counter-experts. It sanctioned the preparation of witnesses in advance of formal testimony, but denied its own lawyers the right of cross-examination even when they urged that it was necessary!

#### The Single-Missile Theory

The staff lawyers experienced a shock when one of their number,

Arlen Specter, came forward with an astonishing single-missile theory. It had been conceded from the beginning that if Governor Connally was shot less than 2.3 seconds after the first shot that hit the President, then there had to be two assassins at the least. (The assassination rifle could not be fired twice in less than 2.3 seconds. That is the minimum time to operate the bolt of the rifle and does not include aiming time.) The Zapruder film showed that the Governor was hit about half a second after the President.

Specter inherited the almost-insoluble problem of reconciling the medical, autopsy, film, and ballistics evidence with the "working hypothesis" that all the shots had been fired by Lee Harvey Oswald from the sixth floor of the Depository in a span of about five and a half seconds.

His resourceful answer was that the President and the Governor had been hit by the same bullet, and that a "delayed reaction" by the Governor (for which he was unable to obtain an iota of supporting medical testimony) accounted for the appearance of a later shot. He announced in advance that he would develop evidence that a bullet found at Parkland Hospital, first thought to have come from the President's stretcher, actually had come from the Governor's. (The single-missile theory was not viable without such evidence, since a bullet which had passed through the President's neck and struck the Governor could not, in the natural course of events, find its way to the President's stretcher.) When Specter later went to Dallas and tried to elicit the promised evidence, he failed. But he maintained the single-missile theory just as if he had succeeded.

The lawyers were incredulous when they first heard Specter's idea but gradually they grew to accept it. It had, after all, the supreme virtue of "explaining" how Oswald acting alone had managed in less than six seconds to shoot two men full of holes, using no more than three bullets (one of which missed) to make nine bullet entrance and exit wounds, to say nothing of a smashed rib, a fractured wristbone, and a shattered skull. And if that was the only virtue of the theory, it was still enough, notwithstanding the categorical testimony of one of the great forensic experts that the bullet in question could not have inflicted the Governor's wounds; nor, therefore, come from his stretcher.

The casual reader of the Warren Report may take away the impression that the Commission concluded that one bullet had struck both men and that the experts had supported that finding. Neither statement is true. The

Report is worded cunningly so as to create such an impression, distorting or omitting entirely what the experts had really said. Not one of them endorsed the single-missile theory. The most that could be wrung from them was that it was conceivable or possible; some said outright that it was inconceivable. But the Report so skillfully employs half-truths, or even literal truths, in order to mislead the reader, that the public has been completely bamboozled about the merit of the single-missile theory.

Inquest corrects and clarifies the record so that the data, which is confusing and sometimes highly technical, becomes easily understandable, as does the process by which it was transformed so that it would appear to "support" a contrived and untenable claim. As the book reveals, some members of the Commission resolutely refused to buy the single-missile theory. A "battle of adjectives" ensued which ended in a compromise--to state in the Report that there was "very persuasive evidence from the experts" that the bullet that exited from the President's throat had struck the Governor and inflicted all his wounds.

The dishonesty of the agreed phraseology can be measured by the fact that the Commission months before had received the FBI Summary Report of December 9, 1963 and the FBI Supplemental Report of January 13, 1964, both of which said flatly that the bullet that struck the President in the back did not exit from his body. Epstein asserts that the FBI had received the autopsy report before it submitted its own findings. (That is borne out by internal evidence in the FBI Supplemental Report of January 13, 1964.) As Epstein says with unanswerable logic, that is strong prima facie evidence that "a central aspect of the autopsy was changed more than two months after the autopsy examination, and the autopsy report published in the Warren Report is not the original one."

The alternative is that the FBI was wildly inaccurate, in both its reports, in describing the wound. If the FBI made an error of that magnitude on a crucial issue of evidence, in a crime of such supreme gravity, the whole Warren Report--resting as it does almost entirely on FBI investigative and scientific findings--comes into question.

But Epstein considers that the evidence "indicates that the FBI reports are not erroneous" and that the President's shirt "is in itself cogent evidence that the bullet entered the President's body below the collar line,

which is consistent with the FBI Summary Report." If the FBI is indeed correct, that proves not only that the unedited "official" autopsy report is a fabrication and the single-sigillic theory a fraud, but that there were at least two assassins. The Commission surely understood that. It had to make a painful choice--to give up the ghost of the lone assassin, or to invalidate the FBI findings. It chose, instead, to perpetrate a monumental deception by suppressing the FBI Summary and Supplemental Reports. The Warren Report says nothing about those documents except that they were received. We are therefore all the more indebted to Epstein for including in his book extensive excerpts from the two FBI Reports.

In answering his <sup>central</sup> ~~fourth~~ <sup>identifying the Culprit</sup> question--how the Warren Report was written--Epstein draws a vivid picture of the anguish that attended the effort to compose a record in which the evidence constantly had to be harmonized with a fixed hypothesis which it contradicted rather than substantiated. The drafting and re-drafting continued to the brink of the final deadline (earlier deadlines had been abandoned one after the other, to the Chairman's displeasure, because the "case" simply wasn't ready). Some chapters had to be re-written as many as twenty times! When it seemed at last that the job was finished, a new crisis arose.

The problem centered on chapter four of the Report, titled "The Assassin." The staff lawyer who prepared the first draft of that chapter, Joseph Ball, had been charged with the investigation of the identity of the assassin. Ball told Epstein, with breathtaking candor, that his task as he envisaged it "required basically the same process that a lawyer uses in 'building a case'; a chain of evidence had to be forged which indisputably linked Oswald to the assassination and also showed that Oswald had the

opportunity to commit the act." Ball's conception seems to go beyond what even the most zealous public prosecutor might define as his objective in a homicide <sup>are</sup> ~~trial~~, since Ball <sup>does not give so much as</sup> ~~fails to give even~~ lip service to the presumption

of innocence which supposedly is one of the mighty pillars of our jurisprudence. *Ball was supposed to be an impartial fact finder, not a lawyer building a case.* I find myself wondering just how to interpret his statement that a chain of evidence had to be forged.

The draft of chapter four prepared by Ball in collaboration with his team-mate, Daniel Belin, was regarded as the crucial chapter of the whole Warren Report, since it set forth the evidence that identified Oswald as the assassin. Ball's draft was rejected as completely inadequate and Norman Redlich then undertook to rewrite it. He spent ten weeks on that task, and the new version of chapter four was then circulated.



Wesley J. Liebeler, the staff lawyer charged with elucidating Oswald's background and motivation (his chapter on that subject was rejected as "too sympathetic" to Oswald) read the galley proofs of Redlich's chapter four on the weekend of September 5, 1964, three weeks before the Warren Report was made public. Liebeler then wrote a 26-page critique attacking the chapter point by point and warning that Redlich's kind of "selection" from the record jeopardized "the integrity and credibility of the entire report."

Liebeler argued in his long memorandum that there was no evidence that the rifle was in the Paine garage before the assassination or that Oswald had carried the weapon to Dallas on the fatal morning. He charged that inconclusive scientific testimony had been quoted out of context and presented as conclusive. He challenged the fiber and fingerprint evidence and, above all, the evaluation of Oswald's marksmanship. He made the accusation that the chapter "created a fairy tale that Oswald was ~~an expert~~ a good shot and had accomplished an easy shot" when in fact Oswald was a poor marksman and the feat was extremely difficult.

Redlich's retort was that he had written the chapter exactly the way the Commission wanted it written--"The Commission judged it an easy shot, and I work for the Commission."

If I take issue at all with Epstein, it is on his attempt to justify Redlich's performance. Epstein writes,

"In the final analysis, Redlich did 'work for the Commission.' That he is a man of high personal integrity only adds to the poignancy of the situation. In his role as editor, he had to select evidence that supported the Commission's judgments. As contradictory evidence and inconsistent details therefore tended to be omitted, the selection process tended to make the Commission's judgments self-reinforcing."

I question the view that Redlich (or anyone else) "had to" select evidence that supported the Commission's "judgments." Redlich agreed to do a job of work, not to prostitute himself. Liebeler at least tried to protect the integrity of the Report; but in the last analysis he endorsed it, keeping to himself any misgivings he may have continued to feel about the slanting of the evidence.

There are no heroes in this piece, only men who collaborated actively or passively—wilfully or self-deludedly—in dirty work that does violence to the elementary concept of justice and affronts normal intelligence. The lawyers who protested the Commission's arbitrary decisions eventually submitted in silence; the one lawyer who withdrew did not disassociate himself publicly from the investigation; even the experts and eyewitnesses, who must have noticed the misleading or false accounts of their testimony in the Warren Report, remained mute.

Although Epstein does not sit in judgment on the Chairman, the Commission members, or the staff (he musters considerable "understanding" for the difficulties they experienced), the fact remains that those who collaborated in the Warren Report are morally compromised—above all, the man who gave it his name. Warren is the Dorian Gray of this sordid affair, and its moving spirit. Yet he is the man who said in eulogy of the murdered President, on November 24, 1963,

If we really love this country, if we truly love justice and mercy, if we fervently want to make this nation better for those who are to follow us, we can at least abjure the hatred that consumes people, the false accusations that divide us and the bitterness that begets violence.

The means ~~xxxx~~ which have been used by eminent men, as Epstein has revealed them, can only arouse revulsion in those who refuse to be lied to. Glib and timid men, men who justify ugly deeds in the name of the State—the Fatherland: haven't we reviled and executed such men who bore another nationality? Let us confess, Goebbels had no monopoly on the big lie. A "great American" has emulated, refined, and improved on the technique.

It is time we set out in earnest to establish the truth about Dallas. If we let sleeping dogs lie, as we shall undoubtedly be urged to do even

in the aftermath of Epstein's book, then we are willing accomplices in the escape of the assassins, and perhaps even in other crimes--whether committed to conceal the truth, or in fulfillment of the assassination's ultimate purpose.

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