

Critique: Edward Epstein's Investigation of six cardboard boxes

by Shanker Ghosh

"To read the press accounts of my investigation—my 'circus,' I should say—I'm a cross between Al Capone and Attila the Hun," says Jim Garrison, "ruthlessly hounding innocent men, trampling their legal rights, bribing and threatening witnesses and in general violating every canon of legal ethics." There is no denying that much of the press and television attacks on his probe, and often on his character, has been unfair and unjust, as typified by Edward Epstein's 25,000-word assault in "The New Yorker" of July 13, 1968. Garrison is a duly-elected public prosecutor trying the Crime of the century. That he has a strong case is evident partly from the rulings of a grand jury, a district court, and the State Supreme Court, all of which have upheld his investigation, and partly from the concerted efforts being made to prevent him from presenting his case in an open court.

Epstein tries to give the impression that he had free access to all the evidence relating to the trial of Clay Shaw, when, in fact, his access was limited to only six cardboard boxes, containing some of Shaw's personal belongings that have little value as incriminating material. Moreover, he saw Garrison only in mid-April 1967, and this was only a couple of months after the New Orleans probe was announced. Some 15 months have since passed and during that time the District Attorney seems to have amassed evidence to which Epstein does not appear to have had any access. With this scant knowledge of the evidence, he rehashed all the things already said against Garrison. To try to build a case like this is bad enough, but what is even

worse is to deliberately conceal some of the most vital pieces of evidence which the District Attorney has presented.

One such example is Epstein's complete silence on what Garrison said on NBC's *Tonight Show*. Garrison told Johnny Carson (*New York Times*, Feb. 1, 1968) that he had obtained a written statement from Julia Ann Mercer, stating that she sighted Jack Ruby and another man with a rifle at the grassy knoll, hours before the President's murder. Miss Mercer told the District Attorney that on the morning of November 22, 1963, as she drove to the triple underpass, she saw a man leave a truck carrying a rifle, while Ruby remained behind the wheel. The truck was illegally parked half on the curb at the base of the knoll, while the other half protruded into the street, blocking her car. Miss Mercer was forced to stop her car and wait until the lane to her left was cleared. She told Garrison that during that time she had exchanged glances with Ruby twice. On the very day she signed an affidavit for the Dallas Sheriff's office, giving a detailed description of this incident. (*Rush to Judgment*, Fawcett Ed., p.22) She was also shown four pictures of Ruby, one even with his name on the back. Two days later, when she saw Ruby shoot Oswald on the television, she immediately recognized him as the man who sat behind the wheel of the truck and with whom she exchanged glances.

Surprisingly, she was never questioned by the

Warren Commission or any of its lawyers, and not a word about her experience appears in its report, either. The Commission, however, published her affidavit which merely stated that she could not see the face of the driver of the truck, even though she was parked next to it, and that the other man carried "what appeared to be a gun case." But Miss Mercer told Garrison that this affidavit was a spurious document, since her signature on it was forged. She said that she very clearly told the sheriff's office that one man got off the truck carrying a rifle, while the other, whom she later recognized as Ruby, remained behind the wheel, adding: "I looked right in his face and he looked at me twice. This is why I was able to recognize him when I later saw him shoot Oswald on television." Despite this startling disclosure, Epstein typically glosses over it, and instead, mentions the

photographs of some of the men arrested immediately after the assassination, which Garrison also produced on the Carson show. He then comments that what the District Attorney "presented to the public was not actually new evidence" but a new and "totally unsubstantiated interpretation of old evidence." If this is the way he sets out to examine the New Orleans probe, one wonders how valid is his attack.

Another example of Epstein's unfair criticism is his belittling of Garrison's charge that the FBI had a prior knowledge of a plot to assassinate President Kennedy and yet allowed him to travel in an open car in Dallas. The District Attorney claims that on November 17, 1963 Oswald sent a cable to FBI Director Hoover warning him of the plot. What Epstein, however, does not say is that Garrison possesses a sworn statement, in writing, from William Walter (New Orleans State Item, Feb. 1, 1968), who was in charge of security at the FBI's New Orleans office at the time, stating that the agency alerted each of its Southern regional offices that an attempt would be made to kill the President in Dallas on November 22, 1963. Is this sworn statement valid? It is not for Epstein or the like to determine if the statement is valid or not; it is for the court to decide whether such evidence is admissible. In fact, it is quite within the jurisdiction of an elected prosecutor to present the kind of evidence he wants to produce in support of his case, but it is up to the court to judge whether or not it is valid; the public has no right to pass judgment on it as long as the judge does not give a ruling.

There are scores of such gross misrepresentation of facts, but let me point out some of the glaring ones. Garrison has been accused of making a preposterous charge that the CIA has suppressed a picture taken by it outside the Cuban Embassy in Mexico City, showing Oswald and one of its agents together. As a matter of fact, it was Epstein who wrote in "Inquest" (Bantam Ed., p.76) that Wesley Liebler, a Commission lawyer, was told by the CIA that the picture was taken by a secret camera located across the street from this embassy, and that the person was identified by a confidential source in the embassy as Oswald. Yet, today, after Garrison charged the CIA with suppressing this picture, Epstein in an effort to discredit his investigation reversed his own position when he said that the lawyer later told him that it was taken not outside the Cuban Embassy but the Soviet Embassy in Mexico City. If Liebler now says that the picture was taken outside the Soviet Embassy, why did he in the first place say it was the Cuban Embassy? Neither he nor Epstein answers this question. Since both contradict their own statements, it is difficult to tell which of the two is telling the truth, or which of their versions is accurate, and

consequently they themselves stand discredited to some extent.

On the other hand, the New Orleans District Attorney does not contradict himself when he says: "It is perfectly clear that the actual picture of Oswald and his companion was suppressed and a fake photo substituted because the second man in the picture was working for the CIA in 1963, and his identification as a CIA agent would have opened up a whole can of worms about Oswald's ties with the agency." To prevent this, he adds, the CIA "presented the Warren Commission with fraudulent evidence." He also says that this agent is now dead, but asserts that he "knows who he is and what he looks like."

Epstein dismisses this accusation as baseless, but there is enough ground for support of Garrison's charge. According to the Warren Report (Bantam Ed., p. 340), the picture was "taken by the CIA outside the United States," and that the unidentified man was at first thought to be an associate of Oswald: The

Commission does not, however, say that Oswald was also in the picture, obviously because it received a cut-out photograph of the man. The Report says that before the FBI submitted the CIA picture to the commission, it cropped it "along the contours of the body of the man shown, resulting in a photograph without any background." But it explained that the cut was made to "prevent the viewer from determining precisely where the picture had been taken." Why, one may well ask, was it necessary to remove the picture's background if the photograph merely showed the Soviet Embassy and a man, as Liebler says? It is not hard to guess why. It was either a fake picture, or it showed Oswald and the CIA agent together, as Garrison charges. In either case, the removal of the background helped conceal the fact as to where the picture was actually taken and whether or not a CIA agent accompanied Oswald to Mexico. Perhaps for this reason, the Commission did not identify the man when it published his picture in one of its 26 volumes of supporting evidence. How then could Epstein assert that Garrison is contriving an "ominous" piece of evidence which is not "simply 'missing' but nonexistent"?

The rejection of Garrison's claim that an overwhelming number of witnesses believed that some of the shots had originated in the grassy knoll area is not borne out by facts. There were more than 400 witnesses at the scene of the assassination, 266 of whom were known to the Commission (**Rush to Judgment**, Fawcett Ed., p. 28). Strangely enough, the Commission asked only 90 of these 266 witnesses where the shots came from (Ibid). Even so, two-thirds or 58 of the 90 witnesses who were asked about the origin of the shots indicated that at least one had

come from the knoll area, while 32 persons thought that the shots came from the Texas School Book Depository (Ibid). Hence to dismiss the testimony of the majority of the witnesses—when the commission did not conduct any experiment to determine as to whether or not the theory of bouncing echoes was valid—would be the height of absurdity. And this is exactly what Epstein does.

Epstein also talks a lot about Perry Raymond Russo, Gordon Novel, William Gurvich, Walter Sheridan, Richard Townley, and others. Regardless of what he says about Russo, at a preliminary hearing a three-judge panel unanimously ruled that Garrison had produced enough evidence to justify the trial of Shaw—a decision later upheld by the district court and the State Supreme Court. Judge Bernard Bagert, one of the three judges, said that in the final analysis Shaw's attorney's were never actually able to "destroy" Russo (N.Y. Post, March 20, 1967). As far as Novel is concerned, the New York Times (May 26, 1967) quoted his lawyer as saying that his client worked for the CIA in early 1961. Novel himself once vaguely hinted (New York Times, April 4, 1967) that there might have been a plot when he told an Ohio judge that he planned to return to New Orleans voluntarily but "I did not intend to do that because of this Cuban..." Before he could finish his sentence, his lawyer interrupted and silenced him (Ibid). However, he was eventually ordered to go to New Orleans, provided Garrison did not question him about the assassination but about an ammunition burglary in which he was implicated. Soon after, he suffered a shoulder wound during a barrage of five shots while he was sitting in a WKDA news wagon in Nashville, according to the Times (May 22, 1967).

As for the accusations of Gurvich and other critics of Garrison, it will be worthwhile to note what Albert LaBiche, the grand jury foreman, had to say: "We have heard no evidence that would confirm the allegations made by the critics of Mr. Garrison's office." (New York Times, June 29, 1967) Likewise, the charges of Sheridan and Townley have not only been found false, but the two men were even denied.

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(New York Times August 29, 1967) a request by a federal judge to enjoin Garrison from prosecuting them on charges of bribing a key witness in his investigation.

By now it should be quite apparent to everybody that Epstein has based his attack more or less on the criticism of Garrison's opponents, not on the actual evidence that was presented before the grand jury and the district court. How can he criticize the New Orleans probe when the State courts believe that the District Attorney has produced sufficient evidence to justify the trial of Clay Shaw? Even Chief Justice Earl Warren hesitates to comment on this probe, saying: "I want to skirt this very carefully, because the case could someday come before the Supreme Court." But Epstein, whose knowledge of the evidence was restricted to only six cardboard cartons containing some of Shaw's personal belongings, feels free to

debunk the investigation, even though the case has not yet been decided in a court of law. Even if one were to assume that the Garrison investigation is bogus, would it not be wise to hold one's breath until the Shaw trial opens and watch it collapse like a pack of cards?

Clay Shaw, I might add, is innocent until Garrison proves otherwise. If the evidence against him is fraudulent, the District Attorney would be exposed at the trial, and this would be the end of him. Whatever methods he has employed, fair or foul, the defense lawyers will get ample opportunity to test them. Since he is an elected official, with a brilliant record of achievements, and since he has taken his case to an open court, he ought to be given a chance to prove his case. To condemn him before he has this opportunity would be a defeat for all the democratic values the United States stands for. Had Garrison tossed about his wild accusations without leaving any legal

recourse for Shaw, all the criticisms that are being leveled against him now would have been justified.

The very fact that Shaw has refused to face the charges in an open court for over eighteen months suggests that he is afraid to stand the trial for one reason or another. Instead of fighting out his case in a court, he has been filing motion after motion for barring Garrison from prosecuting him. Ever since the grand jury ruled that the District Attorney had produced enough evidence to justify the trial, Shaw has tried to get a State criminal court, where the case is to be heard, and the State Supreme Court to halt the Garrison investigation permanently. But when these courts refused, he appealed to a federal district court, which ordered Garrison to temporarily stop the probe. Later, however, while dismissing the appeal, a panel of three judges ruled: "As a matter of law, plaintiff Shaw's request for relief in the federal court is premature, for under our system of federalism, in the circumstances presented here, he must first seek vindication of his rights in the State courts as to this pending prosecution."