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NYT memo 2/10

VIEWERS of television talk shows are no doubt wondering whatever happened to Mark Lane, Mort Sahl and other assassination specialists who periodically used to make revelations about the "secret evidence" that New Orleans District Attorney Jim Garrison had, evidence which supposedly revealed a politically inspired conspiracy behind the assassination of President Kennedy. They may be wondering about Garrison himself, who said on the Johnny Carson "Tonight Show" (Jan. 31, 1968), "There is no question, as a result of our investigation, that an element of the Central Intelligence Agency of our country killed John Kennedy and that the present Administration is concealing the facts," but who declined to disclose

EDWARD JAY EPSTEIN has written two books about the Kennedy assassination, "Inquest: The Warren Commission and the Establishment of Truth" and "Counterplot," which deals with the Garrison investigation.

the evidence he claimed he had before the case of Clay Shaw came to trial. When that case finally came to trial this year, Garrison failed to produce any evidence to support the numerous conspiracy charges he had made over a two-year period. Clay Shaw, the businessman he had accused of conspiring to murder President Kennedy, was acquitted by a jury in less than an hour, and Garrison's publicists, who had so freely

spoken about the "secret evidence" before the trial, disappeared from the talk shows.

In the wake of Garrison's flash-in-the-pan efforts, the press has tried, somewhat understandably perhaps, to forget the entire affair as quickly as possible. Newsweek, for instance, reported the verdict in a succinct epitaph:

"Acquitted: By a jury in New Orleans, exactly two years to the day after his arrest on charges of con-

spiracy to murder John F. Kennedy, retired businessman, Clay L. Shaw, 55.

"Convicted: By a case that collapsed at every seam, District Attorney Jim Garrison, 47, of incompetence and irresponsibility as a public official."

UP until the time of the trial itself, newspapers and commentators were more accommodating about allowing Garrison the sort of prominent coverage he so eagerly sought. To be sure, it is in the best tradition

The Final Chapter in the Assassination Controversy?

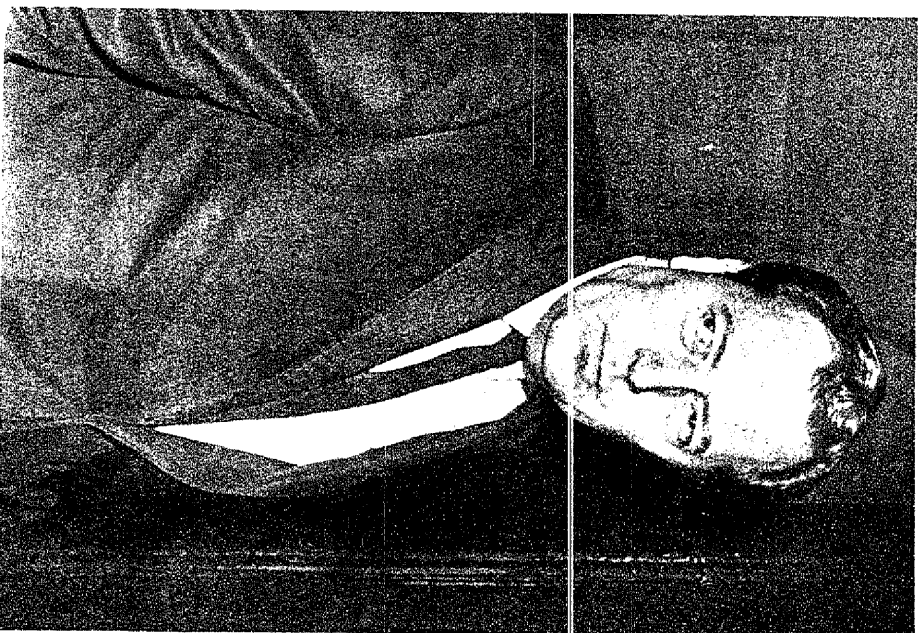
By **EDWARD JAY EPSTEIN**



MORT SAHL, comedian, encouraged the controversy on television . . . blamed the Establishment when his TV show was dropped . . . became a Garrison "investigator."



MARK LANE, lawyer and early champion of Oswald . . . author of a best-seller questioning the assassination evidence . . . worked with Garrison for two years . . . predicted his findings would shake "the foundations of this country."



JIM GARRISON, New Orleans District Attorney, hinted at a murder plot involving the C.I.A. and Johnson Administration . . . arrested 11 persons in a two-year investigation . . . lost case when he failed to produce any significant evidence.

POLICE REPORT—The Dallas Police Department's record of President Kennedy's assassination. "There is no formula for adding up inconsistencies and arriving at the truth. That questions about the assassination remain does not necessarily mean that answers can be found for them."

of objective journalism to report the news and give equal space to both sides in a controversy, and no doubt many reporters, who were personally skeptical about Garrison's motives, saw it as their duty to report the official statements (or mimeographed handouts, as they often were) of a duly elected district attorney, even if it meant providing a public forum for a demagogue.

But more important for the purposes of assessing the present state

of the assassination controversy is the fact that Garrison was aided by a number of critics of the Warren Commission as well as by publications which had taken what amounted to an editorial policy against the Warren Commission. In evaluating the validity of the various charges which have been leveled against the commission, it is worthwhile to consider the extent to which those who made the charges aligned themselves with Garrison and the New Orleans fiasco.

The Warren Report critics have had their day, and it is now clear that the credibility of evidence is inseparable from the credibility of investigators.

The example of Mark Lane, the New York lawyer who, by dint of his one-man crusade in defense of Lee Harvey Oswald, has deservedly claimed chief credit for having drawn public attention to questions about the assassination, is an instructive case in point.

A MONTH after the assassination, well before the Warren Commission had even begun to examine the evidence, Lane published a 10,000-word defense brief in Oswald's behalf in The National Guardian. Then, assuming the role of lawyer for Oswald's ghost, Lane became something of a latter-day Lyceum type, addressing ever-increasing audiences in night-clubs, theaters, college lecture halls and the like, drawing ominous inferences and posing puzzling questions about the evidence. After the publication of the Warren Report in September, 1964, Lane expanded his defense brief into a book, "Rush to Judgment," which he promoted on

the talk-show circuit and which became a No. 1 best seller around the time that Garrison started launching his own investigation in December, 1966. Soon after, news of Garrison's probe became public and Lane went to New Orleans to consult the district attorney and to compare notes.

Shortly after that, in a speech before the Young Men's Business Club of New Orleans, Lane declared that Jim Garrison had "presented his case to me detail by detail, incident by incident" and that it was an "iron-clad case." He went on to say that Garrison "knew who fired the shots that killed President Kennedy," "how the plans were initiated," "that a force that is a part of the American structure is involved," and he confidently predicted on the basis of his knowledge of Garrison's "secret evidence" that "the very foundations of this country will be shaken when the facts are disclosed in a New Orleans courtroom." For the next two years

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POLICE DEPARTMENT

HOMICIDE REPORT

CITY OF DALLAS

First Name **John F.** Middle Name **W M** Last Name **47** Residence of Person Killed **Washington, D. C. (White Horse) 5-10-63**

Reported By **John F. Connally** Title of Relationship **President of U. S. S.** Date **11/23/63** Sex **M** Age **47** Address of Person Reporting **Washington, D. C. (White Horse) 5-10-63**

Offense Reported **MURDER** After Investigation Changed to **MURDER**

Street and Number of Intersection **1501 W of Houston** District **H&R** Precinct **2** East **101** Officer Making Report **1. D. No. 698** Name **ON Dhority**

Date of Occurrence **11/22/63** Time of Day **12:30PM** Date Reported **11/23/63** Time Reported **5:10PM** Report Received By **Mayo** Received—Time **5:10PM**

Coroner Notified **Joe B. Brown** Name of Coroner Attending—Time of Arrival **A.M. P.M.** Name of Prosecutor Attending—Time of Arrival **A.M. P.M.**

Physician **Dr. Kemp Clark, 1PM, Parkland Hospital** Address **Parkland Hospital** Person With Whom Attended **Lined or Associated**

DETAILS OF OFFENSE (Give Circumstances of Occurrence of Offense and its Investigation) Use Both Sides of This Sheet.

The expired was riding in motorcade with wife and Governor John Connally, and his wife. Witness heard gun shot and saw the expired slump forward. More shots were heard and the expired fell in his wife's lap. Governor Connally was also shot at this time. Car in which they were riding was escorted to Parkland Hospital by Dallas Police Officers.

Witness Taken into Custody **Address** Witness Taken into Custody **Address**

All witnesses affidavits are in Homicide Office.

The final chapter?

(Continued from Page 31)

Lane continued to work intimately with Garrison as a freelance "investigator" and continued making apocalyptic revelations on radio and TV, based on his access to the "secret evidence."

OTHER outspoken critics of the Warren Commission followed Lane's route. These included Harold Weisberg, who, after suing the Federal Government on a charge of ruining his poultry farm with low-flying Air Force helicopters, privately published the "Whitewash" series of books advancing the thesis that the Warren Report was a C.I.A.-F.B.I.-Secret Service cover-up; William Turner, a former F.B.I. agent and writer on the assassination for Ramparts magazine; * Penn Jones, the crusading editor of the Midlothian (Tex.) Mirror and author of a group of booklets entitled "Forgive My Grief," the most celebrated feature of which was a death count of persons who were even peripherally connected with the assassination; Richard H. Popkin, a professor of philosophy at the University of California at San Diego and author of "The Second Oswald," a conjectural essay originally published in The New York Review of Books, which suggested that the assassin was not Oswald but a double, and television comedian Mort

Sahl who used his television show to promote Mark Lane and the controversy, subsequently blamed the "establishment" (not the ratings) for the loss of his program and became an "investigator" for Garrison.

Like Lane, each of the critics claimed to have access to at least part of Garrison's "secret evidence," and on this basis they warned the public that the Johnson Administration would face the consequences if Garrison were ever allowed to bring his evidence to court. For his part,

*Turner was also involved in a suit against the Federal Government over his discharge from the F.B.I., which stemmed from his refusal to admit that he was a few pounds overweight. Lane, too, had a tussle with New York City over 19 parking tickets he had acquired.

6 In view of the discredit he brought them, it is not surprising that now some disgruntled critics have advanced the theory that Garrison himself was a C.I.A. agent provocateur. 99

Garrison paid homage to the critics and their theories in most of his own appearances and sought to confirm the validity of their speculations by incorporating them into his case. When Garrison was challenged to reveal the grounds for his allegations, he would characteristically reply, as he did on the Johnny Carson show, "I am not allowed, as an attorney, to come up with evidence until the case comes to trial." The mysterious "secret evidence" never materialized in court and these critics of the Warren Commission, who had claimed to have access to it, were left holding the bag.

GARRISON'S cause was also championed by far-out periodicals like The Los Angeles Free Press and the white citizens' Council as well as journals like The New York Review of Books and Ramparts. These publications had previously rejected the conclusion of the Warren Commission ostensibly because they had found the commission's investigation defective (not for "political" reasons, i.e. because it had been issued under the auspices of the Johnson Administration) yet these same magazines embraced the New Orleans investigation wholeheartedly, choosing to pass by its glaring mistakes and Garrison's own transparent flimflammy.

The New York Review, which, for its first book-publishing venture, brought out Popkin's theory about the "second Oswald" in a separate paperback edition and whose editor,

Robert Silvert, helped arrange a forum on the assassination at the Theater for Ideas in New York, sent Popkin to New Orleans, where he was given, by prior arrangement, access to the prosecution's key witness and other "secret evidence." Popkin then wrote a lengthy defense of Garrison, attacking the press for its skepticism and insisting that the district attorney at least deserved his "day in court," admittedly a curious tack for liberals to be taking in defense of a prosecutor. Ramparts put Garrison's portrait on the cover of its January, 1968, issue and in an accompanying editorial declared that "staff writer William Turner's nine-month investigation into the case of New Orleans D.A. Jim Garrison has convinced us that something is terribly, and even unusually, rotten in Washington. Turner has had full access to Garrison's files, and has logged 80,000 miles double-checking every factual assertion in Garrison's astonishing reconstruction of President Kennedy's murder, told for the first time in this issue. It fulfills, sadly, many of our most paranoid nightmares about the C.I.A., the Minutemen, Dallas fascists and the American Nazis. It also raises ultimately serious questions about the responsibility of this Government and the honesty of our current President." (Popkin had also cited in The New York Review of Books rumors that President Johnson was somehow suspect because of defects in the Warren Report.) The "double-checked" evidence never showed up at the trial of Clay Shaw, making the



The Kennedys and Governor Connally at the start of the tour through Dallas. Critics of the Warren Commission focused on its theory that a single rifleman fired the bullet that struck both the President and the Texas Governor.

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"paranoid nightmare" seem an apt description for what remained unsubstantiated.

That these magazines accepted Garrison's claims on blind faith leads one to wonder whether the Warren Report was not simply rejected in blind contempt for the President who succeeded Kennedy for reasons more political than evidentiary. In any case, by appearing virtually empty-handed at the trial, Garrison exposed a bluff larger than his own; he left many critics who were instrumental in discrediting the Warren Report looking like something less than the disinterested factfinders they pretended to be. And in view of the discredit he brought them, it is not particularly surprising that now some

disgruntled critics have even advanced the theory that Garrison himself was in fact a CIA agent provocateur. Surely there was among many critics a measure of gullibility at the least, of outright dishonesty at most. But not everyone who registered reservations about the Warren Commission's methods and conclusions rallied to Garrison's defense. To consider the validity of doubts still lingering in the minds of those critics of the commission who also openly and categorically dissociated themselves from Jim Garrison and his cause, to ask what questions about the assassination of President Kennedy still do remain unanswered, it is worthwhile to recall the history of the controversy and its nature as a historical problem.

WHEN the Warren Report was published in 1964, it was generally thought to have been the product of a long and exhaustive investigation into the circumstances surrounding the assassination. Assuming that the Warren Commission had found and evaluated all the relevant evidence, that it had conducted a faultless investigation, there were only two logically possible positions: (1) The report was correct and Oswald was the lone assassin; or (2) he had been part of a conspiracy and the commission had knowingly falsified evidence. In other words, to posit a conspiracy required an *ad hominem*

attack on the members of the commission. Although Mark Lane and a number of other dedicated assassination buffs stanchly maintained the latter position, the mass media refused to give the notion currency and Lane and his followers were dismissed as troublemakers and whatever controversy there was belonged mainly to the underground.

MY own master's thesis on the Warren Commission, published under the title "Inquest," was partly responsible for widening the scope of the controversy. After examining the internal workings of the commission, I argued, basically, that the assumption of an exhaustive investigation was invalid. I found that the commission's investigation had been severely limited both by bureaucratic pressures from within and by the time condition imposed from without and, at certain crucial points, was little more than an exercise in the clarification of superficial evidence. In reconsidering the case, in terms of the work actually accomplished by the commission, a number of prominent reviewers—including Harrison E. Salisbury (who had written the introduction to one edition of the Warren Report), Richard Goodwin, Alexander Bickel, Max Lerner and Lord Devlin—agreed that the commission's investigation may not have been exhaustive; may indeed have been inadequate; however none of them accepted a conspiracy theory. Yet, if the insufficiency of the commission's investigation left open the possibility of unevaluated evidence,

there was at least a possibility of a conspiracy—and the mass media could no longer deny the critics the right to present their interpretation of the assassination to the public.

The "Today Show" arranged a debate between Mark Lane and a commission lawyer, the hosts of local talk shows across the country began to provide exposure for the critics and doubters, and the demonologists got busy (many had books, as well as conspiracies, to advertise). Mass circulation magazines, including Life and The Saturday Evening Post, not unaware of the growing public interest in the assassination controversy, demanded a new investigation in editorial as well as cover stories. These, in turn, encouraged the District Attorney of New Orleans to set off on his own fishing expedition. (Simultaneously with the opening of his investigation into Oswald's activities in New Orleans, Garrison proposed an "exchange of information" deal with Life which amounted to giving the magazine exclusive coverage.)

Unlike the other critics, Garrison could make news at will by arresting people. In acting out his (and other critics') theories, turning his office into a sort of Living Theater, he proceeded to arrest or file charges against more than a dozen persons. And the D.A.'s newsmaking potential was something that couldn't be overlooked by the mass-circulation magazines, facing the problem of "lead time" and having to plan newsworthy articles months in advance of publication. In a memorandum to Hugh M. Hefner, the publisher of Playboy,



Penn Jones, Midlothian (Tex.) editor, lent weight to the conspiracy theory with his "death count" of persons even remotely connected with the assassination.

a senior editor summed up the reasons for publishing a 26-page interview with Garrison (which was partly written by Garrison himself) as follows:

"Even if he's wrong (which is possible), even if he's insincere (which I doubt), even if the accusations about his impropriety are true (which seems not to be the case), Shaw is going to trial in October [1967] and the interview (coming out two or three weeks before it begins) will be very big news!"

MUCH of the rhetoric on the talk shows and in magazine interviews was not designed to enlighten the public. Mark Lane made a practice of introducing pseudoscientific evidence, such as paraffin tests (misinterpreted to "prove" Oswald's innocence), which could only confuse audiences not versed in the nuances of forensic science. Jim Garrison characteristically dwelt on missing evidence, which was being kept "secret" by the Government but of which he miraculously seemed to know the contents. For example, noting that four frames of the famous film of the assassination taken by the spectator Abraham Zapruder — numbers 208-211 — were missing from the frame-by-frame reproduction of the film in the testimony and evidence published by the Warren Commission, Garrison claimed in his Playboy interview that these missing frames "revealed signs of stress appearing suddenly on the back of a street sign" and that "these signs of stress may very well have been caused by the impact of a stray bullet on the sign." But the "missing" frames into which Garrison glibly read stray bullets, while missing from the Warren Report volumes, are not missing from a copy of the film held by Life magazine, which bought the film, and these frames, which were published after the Play-

boy interview, show no signs of "stress" or stray bullets.

A third technique, of obfuscatory rhetoric, which Harold Weisberg frequently employed in his talk-show appearances, was that of citing irrelevant coincidences prefaced by "Isn't it strange—?" He would demand to know why the commission hadn't investigated the coincidences he postulated. Although this technique no doubt stimulates curiosity, it produces confusion in the audience. It can, moreover, be turned in any direction. Isn't it strange, one might ask for example, that Harold Weisberg himself once worked for the lawyer Oswald had asked for when he was apprehended in Dallas? Isn't it strange also that Weisberg's stepbrother once treated David Ferrie, Garrison's prime suspect, for a disease that caused his hair to fall out? Such rhetoric, common among street agitators, can excite imaginations but provide no answers.

Somewhat obscured by the ef-

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forts of the headline seekers and proselytizers for Garrison's cause were a number of serious attempts to clarify problems in the Warren Commission's evidence by critics such as Sylvia Meagher and Prof. Josiah Thompson Jr., who clearly disassociated themselves from the antics of Garrison and his followers. These serious critiques must be considered on their own merits. Mrs. Meagher's book ("Accessories After the Fact") and Thompson's ("Six Seconds in Dallas") contain, as far as I can see, only two substantial arguments that, if true, would preclude the possibility that Oswald fired all the shots.

First, there is the argument that the commission's single-bullet theory—that President Kennedy and Governor Connally were both hit by the same bullet—is controverted by the evidence. The importance of this theory lies in the fact that the commission's staff concluded, from an analysis of the Zapruder film, that there was not time, between the earliest point on the film at which the President could have been first hit and the latest point at which the Governor could have been hit, for a single rifleman to have fired two shots. Therefore, it was argued, either both men were hit by the same bullet or there must have been two riflemen firing.

But this line of attack, on which many of the critics fastened, was severely weakened by a subsequent analysis of the film by C.B.S. News, which went much further than the Warren Commission in determining the sequence of the shots. Assuming that three distinct blurs on the film corresponded to Mr. Zapruder's reaction to the reports from three rifle shots, and working backward from the third shot, which clearly struck the President's head, C.B.S. analysts found that the first shot was fired well before the time that the commission fixed as the "earliest possible

time" the President could be first hit. Indeed, in reconsidering the commission's analysis, it appears that the entire logic of the single-bullet theory rested on a very dubious assumption

about the earliest point at which Oswald could have fired the first shot. A re-enactment by the commission's staff, nearly six months after the assassination indicated that the foliage of an oak tree came between the gunman's line of sight and the President for a brief period of time, and it was then deduced that the first shot could have been fired only after the President's limousine cleared the oak tree's foliage. The Warren Report states that "agents ascertained" that in the reconstruction of the event, the oak tree's foliage "was approximately the same as on the day of the assassination."

Yet, the testimony referred to in the footnote reveals that this was assumed, not "ascertained," by the F.B.I. and Secret Service agents. If the foliage was just slightly different on the day of the assassination, a single rifleman could have fired the first shot earlier than the commission had assumed was possible, and thus had time to fire a second shot at the Governor. In other words, the President and the Governor could have been hit by different bullets by a single assassin. The C.B.S. analysis, which persuasively suggests that this indeed was the case, renders the single-bullet theory irrelevant.

A SECOND argument asserts that the Zapruder film reveals that the President's head, when hit, moved forward for a split second, then sharply backward. Professor Thompson concludes from a "micranalysis" of the film that this change of direction was caused, first, by a shot hitting the President's head from behind (as the Warren Commission concluded), then a tenth of a second

later by another bullet, which hit the President's head in the front. This would obviously mean that there were two assassins.

Deducing a cause from an effect (i.e.—the motion of the President's head as it appears on film) presents some difficulties. Other causes—the acceleration of the President's car for a split-second or a neurological reaction—could account for the effect. If the President was indeed hit almost simultaneously by two riflemen firing from two different directions, as Thompson argues, one would expect to find evidence of this in the X-rays and photographs taken at the President's autopsy. This material, however, had not been examined by the commission or its staff—it was turned over to the Kennedy family which, in turn, consigned it to the National Archives with the condition that it could not be open to examination for five years (that is, until 1971).

This means that the key to the mystery of the head movement was thus unavailable to Thompson when he wrote his book in 1967. Recently when pressed for the autopsy material by Garrison (who claimed it was relevant to his case), the Justice De-

No substantial evidence indicates that there was more than one gunman

partment released an evaluation of it by two respected forensic pathologists. Both doctors concluded that X-rays and photographs indicated that the President's head was hit from only one direction—from behind.

THERE are still a great number of inconsistencies, as Mrs. Meagher points out in her book, between the assertions in the Warren Report and the data in the accompanying 26 volumes of testimony and evidence, and unresolved questions about Oswald's life and activities before the assassination. (Many of the questions left outstanding by the commission, however, were resolved subsequently by Elmer Gertz in his book, "Moment of Madness," which dealt with Rudy's activities, and by Professor Thompson in the appendix to his book.)

Unfortunately, there is no formula for adding up inconsistencies and arriving at the truth. For example if hundreds of errors and inconsistencies were found in the report of a commission formed to determine whether the earth was round or flat, it might mean that the commission was hasty or sloppy in performing its task or, if all the errors went in one direction, tendentious, but it would not in itself prove that the earth is flat. Nor, given the contingent nature of reality, can it be

assumed that what was probable happened. And that questions about the assassination remain does not necessarily mean that answers can be found for them.

When it was shown that the Warren Commission had conducted a less than exhaustive investigation, a great many people assumed that a new investigation, not predisposed to the single-assassin theory, would uncover new evidence. Garrison, however, assisted initially by Life magazine and later by many critics of the Warren Report, searched for two years without finding any relevant new evidence of a conspiracy. At present there are no leads outstanding, nor is there any substantial evidence that I know of that indicates there was more than one rifleman firing.

It is, of course, possible that new evidence may yet develop to challenge the single-assassin theory. The lesson that Garrison has made abundantly clear is that the credibility of evidence cannot be divorced from the credibility of the investigator who presents it. Since there seems to be little prospect of a new investigation in the near future, and many of the critics have been discredited as investigators by the New Orleans episode, it appears likely that Garrison may be the final chapter in the Assassination Controversy. ■



Harold Weisberg privately published a series of books to show that the Warren Report was actually a cover-up for the C.I.A., F.B.I. and Secret Service.