

## GUILTY: DAVID BELIN DEFENDS THE WARREN REPORT

(The lawyer who is his own attorney has a fool for a client)

(Review of "November 22, 1963: You Are the Jury," by David W. Belin, Esq.)  
(Quadrangle/The New York Times Book Co., xiii + 523 pages, 1973, \$12.50)

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As the Watergate case unfolds, those of us who remember the most notorious coverup of the last decade recognize some of the many lawyers in the news. Gerald Ford, one of the few beneficiaries of the new post-Watergate morality, was a member of the Warren Commission; he later wrote a book about Lee Harvey Oswald which was distinguished only by quotations from a still unavailable Top Secret transcript. Leon Jaworski, the Special Watergate Prosecutor, was Special Counsel to the Texas Court of Inquiry on the assassination in 1964; he served as liaison with the Warren Commission, helped turn off their investigation into allegations that Oswald had worked for the FBI, and concurred in a Texas report clearing Dallas of all blame. One of the people considered in May 1973 to be Special Prosecutor was William T. Coleman, who as one of the senior counsel for the Warren Commission investigated Oswald's foreign activities, including the sensitive issue of the State Department's handling of his case. Albert Jenner, who headed the investigation of Oswald's background and possible motive, has been named Republican counsel for the House Judiciary Committee investigation into impeachment. Charles Shaffer, one of John Dean's lawyers, served on the Warren Commission staff while employed by the Justice Department. On December 5, 1973, as Fred Buzhardt was falling from favor, it was reported that Arlen Specter was talking with the White House about joining the Watergate defense team. As senior counsel for the Warren Commission, Specter had developed the "single bullet theory" in an attempt to reconcile serious contradictions in the basic physical and medical evidence; thus, he may be the only lawyer in the country with the required experience to come up with an explanation for the 18-minute buzz on a Watergate tape. Joseph Ball is the attorney for John Erlichman in the California proceedings on the Ellsberg psychiatrist break-in; he was the senior Warren Commission counsel in "Area 2," the identity of the assassin. Now Ball's junior partner, David Belin, has reappeared, with perhaps the most unsavory and difficult client of all: the Warren Report itself.

Belin's thesis is that the assassination controversy should return to an assessment of the basic evidence, which he claims forms a conclusive case that Lee Harvey Oswald shot President Kennedy and Dallas police officer J. D. Tippit. This book is openly what the Warren Report was in fact: a prosecutor's case against Oswald. At the end, Belin asks the reader to bring in a verdict. It is still customary, however, for a criminal trial to include cross-examination and presentation of witnesses by the defense. None but the most credulous readers will be tempted to return a verdict after hearing one side of the evidence. In fact, the case which Belin presents here was vigorously and effectively attacked from the moment the Commission published it. (Perhaps the most effective dissection of the case against Oswald, based on a critical reading of the Commission's own published evidence, is Sylvia Meagher's 1967 book, "Accessories After the Fact." Other early books, including Harold Weisberg's "Whitewash" series and Mark Lane's "Rush to Judgment," are still valuable.) What Belin is left with is a case that looks good only until it is studied. Belin would like to have it overwhelm us - as it apparently overwhelmed him - by its sheer bulk. Could all those witnesses be wrong? A lot of them can be mistaken, at least, and "hard" evidence may be deliberately falsified. After ten years, the public is much less willing to accept an official version of something as important as a political murder. Belin's book shows no sign that he is aware of this long overdue skepticism. For Belin, publishing this kind of book, at this point in history, is like issuing an unintended self-indictment - a revealing and damaging look at his own contribution to a coverup.

The history of Belin's writings on the assassination clarifies his attitude

towards his critics. On August 13, 1971, the Texas Observer published a critical article by Sylvia Meagher, with a reply by Belin. Meagher's piece, based entirely on Commission evidence, focused on the testimony of Charles Givens, a fellow employee of Oswald's at the Texas School Book Depository. The Warren Report credited his testimony that he encountered Oswald on the sixth floor shortly before noon (about half an hour before the assassination), after he had gone back upstairs to fetch a pack of cigarettes. Meagher discovered that, as Belin knew when he interviewed Givens, Givens' original story omitted this fact, but rather included an encounter with Oswald on the first floor. A Dallas policeman told the FBI that he thought Givens would change his story for money. Yet when Belin took Givens' deposition, and first was told of the sixth-floor encounter, he made no attempt to explain the contradiction with the earlier account. Meagher asked, "Did Belin this passively and by omission become a party to collusion, perjury, and the suborning of false testimony?"

In Belin's reply, he took the offensive. "Like the proverbial person who is so close to the forest that he cannot see the trees, the assassination sensationalists have talked about cigarette packages, fictitious puffs of smoke from smokeless gunpowder and chicken bones. What they have not talked about is the heart of the physical evidence and key witnesses such as Johnny Calvin Brewer, whose testimony I took before a court reporter in Dallas on April 2, 1964." Belin went on to ignore Meagher's specific charges. The Observer noted that Belin's comments were important, being the first written reply to the critics by a Commission staff lawyer, and aptly described his article as "the slick, irrelevant reply of a lawyer who doesn't have much of a defense to present." In a subsequent letter to Meagher, Belin was reduced to frantic accusations that she was unwilling to discuss Johnny Brewer and other matters irrelevant to the charges she had made. It seemed foolish for Belin to reply at all, if that was the best he could do. Surprisingly, Belin repeated his argument in an article published in the New York Times on the eighth anniversary of the assassination. That article consisted of a summation of the case against Oswald, assertions that it was established beyond a reasonable doubt, and a few nasty comments about the assassination sensationalists.

His article received a peculiar kind of endorsement from an odd source: the CIA. I was corresponding with the Agency about various requests under the Freedom of Information Act relating to Oswald's mysterious visit to Mexico City in September 1963 - such as various photographs of a man who was erroneously (and, we are told, accidentally) identified as Oswald, and records relating to an overheard conversation between Oswald and personnel of the Soviet Embassy. The CIA was relatively helpful in providing information to me; this was a time when the Agency was cleaning up its image by being more open about its overt work, while hiding the covert activities better. At the end of one letter, the Executive Director wrote "Since you are obviously a student of the whole Warren Commission problem, I am enclosing for your files an article from The New York Times of 22 November 1971, which you may not have seen previously." Naturally, I was puzzled; I said in reply that I was sure that the CIA's analysts could recognize Belin's article as a smokescreen. I still have no idea why anyone in the CIA wanted to appear to be recommending Belin's work to the critics.

Now, for the tenth anniversary of the assassination, Belin has come up with this book. It is, in fact, little more than an expansion of his 1971 articles, consisting in large part of excerpts from the published testimony. The first thing I noticed, on examining the index, was that Belin does not mention Sylvia Meagher at all - much less her charges about Givens. This is absolutely shameless. I could accept his avoidance of her charges in the Texas Observer article - after all, we have come to expect that kind of behavior from lawyers, and there is rarely a case that cannot attract one to defend an indefensible proposition. But to write a book which pledges (on the jacket) an "exposé of the techniques of the assassination sensationalists" and then to ignore the most serious criticism of the Warren Report is something else. After reading the whole book, I decided that it is worse than just an intellectually dishonest defense of the indefensible: Belin really believes in it! One of the key lawyers of the Warren Commission has revealed a degree of incompetence

that even the Warren Report did not indicate.

I wondered if Belin's decision to ignore Meagher's specific charges was due to some psychological block that kept him from admitting to himself that her book - with its devastating critique of the Report - existed. That must be part of the explanation, but there seems to be a simpler cause. There is no reason to believe that the bulk of this book was compiled more recently than 1967. Only two of the earliest critics - Mark Lane and Edward Epstein - are mentioned. Belin doesn't even comment on the easy targets, such as Jim Garrison. He has a chapter on the medical evidence, quoting at length from the testimony of the autopsy surgeons, without even mentioning the 1966 Naval Medical Staff Report (released early in 1973), the 1968 Panel Review, the examinations of the autopsy material by Dr. Lattimer and Dr. Wecht, or the damaging testimony of Dr. Finck at the Shaw trial. Belin seems to have updated the Warren Report's account only by referring to his request in 1972 to Senator Kennedy, asking that the autopsy material be made public. (That was an unrealistic and pointless suggestion, since the major issue has always been access by qualified non-government experts, not the general public.) One could just as well discuss Watergate by quoting only from the trials of the original seven defendants.

The absence of new material raises questions about Belin's reasons for publishing at this time. He acknowledges Harrison Salisbury of the Times as the "catalyst" in his undertaking to write the book. Salisbury was in charge of the Op-ed page when Belin's 1971 article was published there; he did not respond to the anti-Belin material in the Texas Observer. The New York Times chose to publish this book, which consists primarily of excerpts from testimony published in 1964, and now sells for \$12.50; it has an emotional and inaccurate introduction by Harrison Salisbury. The Times also carried a review of this book - largely an attack on the critics - by Priscilla Johnson and George McMillan. (Nov. 18, 1973) As Jerry Policoff has pointed out (Realist, Oct. 1972), much of the Times' coverage of the assassination has been biased and propagandistic.

There is no point in trying to respond to all of Belin's case here. The reader should have (for example) Meagher's book on hand, to get some perspective on the witnesses which Belin presents, largely without critical comment, adequate comparison with other evidence, or even citations to the 26 volumes of the Commission's Hearings. Belin puts forth his evidence in the form of a prosecution case: "As you jurors can see ...." (P. 81) Nobody should be naive enough to accept the evidence on its face. Belin's own personal attitudes demonstrate that especially because someone like him was doing the investigation, the absence of cross-examination is a fatal flaw.

Whether out of ignorance or as part of a lawyerly style, Belin seems completely dissociated from the weaknesses of the factual evidence. Perhaps one reason is his relative separation from the internal disputes that came up as the Commission put the Report in final form. The internal records show that many of the staff were well aware of the weak spots in the chain of evidence, and that the Report was very carefully written to make the best possible case, deemphasizing or ignoring the flaws. Belin does not seem to realize this. For example, he presents with a straight face the testimony of Helen Markham, whose "positive identification" of Oswald was so worthless that even the Report said only that it was of "probative value." (She is supposed to have identified Oswald as the killer of Tippit, but when she testified before the Commission about the lineup, she insisted that she had never seen Oswald before. Her identification was reduced to a desperate question by Joe Ball - "Was there a number two man in there?" - and Mrs. Markham's answer - "Number two was the one I picked.") Commission counsel Wesley Liebeler was strongly critical of the reliance on Markham in a late draft of the Report - "Mrs. Markham is nicely buried there (in the discussion of Tippit witnesses), but I predict not for long." Liebeler was right (the critics immediately drew attention to her), but now Belin has resurrected her. (Pp. 69-82, 112) This comment by Liebeler was in a 26-page

memo dated September 6, 1964, on the chapter of the Report covering the Ball-Belin area. (I do not say 'the Ball-Belin chapter', since according to Edward Epstein (Inquest, p. 130) the Ball-Belin draft, which Belin worked "day and night" to finish before the birth of his child (P. 424), was rejected in late June 1964 as totally inadequate and rewritten by Norman Redlich.)

We can understand why Belin tells us so little about the process of putting the Report together. He said in his 1971 Times article that he served as an independent lawyer from Des Moines, and that "there is not a person in the world who could have made me write any portion of the report if I disagreed with its ultimate conclusion." Evidently that was not necessary. In the two months when the final Report was being put together, Belin was paid for only ten days of work. (This is for the period of July 1 to September 12, 12 days before the issue date of the Report.) Ten days is less (by a factor of two) than any of the other junior counsel, and less than any of the senior counsel except Francis Adams (who had effectively quit) and Belin's senior partner, Joseph Ball, who served only two days in that two-month period. (It is possible that Ball and Belin worked more without pay, or that they returned after September 12; I have not yet checked the records at the Archives.) As far as I know, Belin's contribution to the revisions of the Report was two letters (totalling 12 pages) sent from Des Moines on August 26 and September 3. Belin, therefore, may never even have seen Liebeler's September 6 memo.

There are many other things Belin evidently has not seen, such as the complete version of Jackie Kennedy's testimony. He quotes it at some length, making no comment on what must be the most widely known single line in the Warren Commission hearings: "Reference to wounds deleted." Naturally, there was immediate criticism of this when the Hearings were published. One citizen who inquired was told by the Commission that "the reference was a very brief statement that merely described how bad they (the wounds) looked to her at the moment of impact." (Ref.:#49X.12) The actual testimony was made public by the Archives in May 1972, when I appealed a previous denial under the Freedom of Information Act. The deleted section is nearly incomprehensible and of no special significance: "I was trying to hold his hair on. But from the front there was nothing. I suppose there must have been. But from the back you could see, you know, you were trying to hold his hair on, and his skull on." What is more interesting is the testimony that the Commission changed (or allowed someone to change) without any indication: Mrs. Kennedy said that she thought that if she had pulled the President down after the first shot, the second shot "would have gotten Governor Connally"; this was discreetly changed to "would not have hit him." Similarly, the last four words were removed from "Governor Connally screamed like a stuck pig." This kind of alteration raises questions about the Commission's procedures. Belin himself objects to the deferential treatment of politically important witnesses, but clearly he did not know that the full testimony of Mrs. Kennedy is now available, and he was not bothered by the deletion enough to comment on it.

Belin's unawareness extends to areas directly relevant to his own emphasis on the Tippit killing. For example, shortly after the Report came out, George and Patricia Nash (in *The New Leader*) named several Tippit witnesses (including Acquilla Clemmons and Frank Wright) who said they had never been contacted by the authorities. Alfred Goldberg, the Commission's historian, thought the article was important enough to forward to the FBI. Belin does not mention the Nashes or the missing Tippit witnesses.

In some cases it is hard to believe that Belin's omissions are due to simple ignorance rather than malice. For example, he strongly criticizes Mark Lane for arguing in his movie that the Commission was "forced" to conclude that the paraffin test (for gunpowder residues) is unreliable, because the tests on Oswald indicated that he had not fired a rifle. (P. 19) Full of righteous indignation, Belin explains that in February his first report discussed the need to determine the significance of the paraffin test. He implies that this flowed

from the staff's critical attitude, and was typical of an independent examination of all the evidence, not based on the assumption that Oswald was the assassin. Perhaps Belin did not know it, but Lane had pointed out that the paraffin test appeared to clear Oswald well before Belin's report; he sent his widely publicized "defense brief" for Oswald to the Commission on December 17, 1963. (CE 2033)

Belin's presentation of witnesses is generally one-sided; we can expect this kind of distortion from an advocate presenting a case. However, his handling of some straightforward factual evidence is grossly lacking in perspective and accuracy - so bad that one wonders if this manuscript was ever read critically. Take the problem of the bullet fragments left in Gov. Connally. Belin is aware that only a few grains of metal were missing from the "magic bullet," CE 399. Several of the doctors who treated Connally gave estimates of the deposited fragments which were on the order of a few grains. Responsible critics, while noting that the testimony made it unlikely that the fragments all came from CE 399, were well aware that the doctors' testimony about the weights could not be expected to be precise. Belin, however, discusses only the testimony which gives low estimates for the weights. He emphasizes the testimony of Dr. Charles Gregory, who estimated that the fragments "would be weighed in micrograms which is a very small amount of weight.... It is the kind of weighing that requires a microadjustable scale, which means that it is something less than the weight of a postage stamp." (4H120) Here is Belin's summary: (p. 324) "... The testimony of Dr. Gregory and Dr. Shires was unequivocal on the amount of bullet fragments that remained in Governor Connally's wrist and in his thigh. The amount was infinitesimally small - a measurement in micrograms, which are thousandths of a grain - there are 7000 grains in an ounce.... (W)ith the weight of the fragments measured in micrograms - thousandth parts of a grain and less than the weight of a postage stamp - it was obviously possible that all of the damage to Governor Connally could have come from the bullet, Exhibit 399." This sounds good, but there are two factual errors and some gross misinterpretation. There are 7000 grains in a pound, not an ounce. A microgram is a thousandth of a milligram, and thus not a thousandth of a grain but 0.000015 grains - only 1.5% of Belin's figure. The weight of a postage stamp - which apparently Belin never figured out - is on the order of one grain. A grain is a lot of micrograms - 64,799, to be precise. Gregory's talk of a postage stamp in terms of micrograms totally invalidates his reference to the fragments in terms of micrograms. Any competent investigator would have checked this out before relying on the testimony of someone who would not be expected to be expert in estimating small weights.

Belin places considerable emphasis on the scientific testimony of expert witnesses; he does not seem to be aware of how much such experts, appearing on sides in a trial, can contradict each other. Belin takes pride in his attempts to understand the scientific basis for ballistic identification before taking the testimony of those witnesses. Of course, even with the best of attorneys that is no substitute for adversary cross-examination. Belin's grasp of technical terminology, at least, is less than perfect. For example, he refers several times to the sharp turn made by the President's car at Elm and Houston Streets as a "reflex angle" turn. That is an angle greater than 180°; Belin is talking about an angle between 90° and 180°, for which the correct term is "obtuse angle." That is "obtuse," as in "lacking astuteness or discernment, slow to apprehend or perceive."

Which brings us to David Belin, Esq., himself. What kind of lawyer can come up with a book like this? First of all, Belin emphasizes that he, like the other Commission lawyers, is smart. The jacket tells us that not only Belin but his wife is Phi Beta Kappa. (He was also an official of Lawyers for Nixon-Agnew in 1968, a fact that is at least as relevant but is not in the book; it is in Who's Who.) Belin's brief biographical comments on the other staff members emphasize their academic achievements. (David Slawson was student body president at Amherst College. (P. 422)) For example, he describes Arlen Specter as having "the rare

combination of academic brilliance and down-to-earth common sense and judgment." (P. 306-7) Whatever brilliance the former Philadelphia DA has, it is not clear why it should be called "academic." (Specter was Phi Beta Kappa too, we are told.) I don't think Belin is all that smart, but what is relevant is the attitude towards academic authority that Belin reveals. I know from experience that academic honors do not tend to come to those who have the critical - even paranoid - attitudes that would be required for a successful investigation of this case. Belin is respectful of intellectual authority - his acceptance of expert scientific witnesses is just one example. When he breaks through to criticize Earl Warren and the FBI, he gives himself (and the system which allowed an independent lawyer from Des Moines to serve on a Presidential Commission) a pat on the back for doing so. (P. 503)

Belin's respect for academic and scientific authorities is typical of a general naivete. For example, anyone with the vaguest familiarity with the so-called assassination sensationalists knows that the most persistent scenarios have involved Cuban elements. Assistant Counsel Burt Griffin realized in 1964 that the "most reasonable situation" under which Oswald might have had conspirators involved pro- or anti-Castro adventurers. (Memo of 8/20/64) Much has been written about Oswald's ostensibly pro-Castro activities in New Orleans; his contacts with anti-Castro Cubans, including Sylvia Odio; Kennedy's crackdown on some anti-Castro activists after the 1962 Missile Crisis; Castro's anti-Kennedy speeches; and possible retaliation to or diversion of CIA attempts to assassinate Castro. What does Belin think of such matters? He does have something to say: "Oswald was a great admirer of Fidel Castro. I wondered if President Kennedy's handling of the Bay of Pigs incident could have had any influence on the actions of Oswald on Nov. 22." (P. 425)

Belin's exposition continually shows this kind of limited imagination. If he ever considered a detailed scenario which might have been an alternative to the case against Oswald, the book does not show it. He explains how the single-bullet theory arose from "an attempt on my part to prove that a second gunman was involved in the assassination." (P. 302) If the bullet which left Kennedy's neck did not hit Connally, he asked, where did it go? A reasonable question, but there are many alternatives that Belin and Specter avoided - such as falsified evidence. Belin had this kind of problem in assessing eyewitness testimony. His index entry for "contradictory testimony" tells us a lot; it says "See inaccurate testimony." It is much too easy to write off contradictions this way. They should be the starting point for a real investigation. Belin, however, seems almost reassured by them. He repeatedly emphasizes that witnesses can be mistaken, and that one should expect a number of contradictions in different descriptions of the same event. True, but witnesses can also lie, voluntarily or under coercion. Belin tells us that a bit of information which appears without explanation on a police radio broadcast is simply an "error": "As a matter of fact, this points up the authenticity of the entire investigation of the Warren Commission. Whenever there are eyewitness reports and in turn reports of eyewitness reports, there are always inaccuracies. That there are such inaccuracies is indicative that these facts came through the natural flow of human events. There was no manufactured case...." (P. 179) This is, of course, the grossest error in elementary logic; if a cause implies an effect, that effect does not imply the same cause. (It is not even "indicative" of it.) That is, there are other (in fact more likely) explanations for contradictory evidence, and any trial lawyer worth his salt would look for them.

Belin, of course, tells us that he is a good lawyer - smart, anyhow. But was he out of his field? The jacket tells us that he "has concentrated in the areas of corporation work and litigation, including constitutional issues." In his 1971 Texas Observer article, he described himself as an "experienced trial lawyer." He acts as prosecutor in the book, and does not suggest any lack of qualifications. But when Edward Epstein's book 'Inquest' was published in 1966, and Belin challenged it as "artificial scholarship" held together by "fabrication," he objected to Epstein's statement that he and Joseph Ball were "both experienced criminal trial lawyers." (P. 13) He told the Yakima (Wash.) Eagle that "Actually, I have been involved in only one criminal jury trial - and that was to defend a

client who was charged with driving a motor vehicle while intoxicated." (9/21/66)

It is so easy to pick Belin's book apart that one might wonder what can be learned from it. What about the case against Oswald? Belin's response to these remarks would probably be to accuse me of not talking about Johnny Calvin Brewer. Belin's forest, which he says we critics cannot see, does consist of individual trees, many of which were chopped down years ago. Especially among critics with a legal perspective, there was a tendency to approach the evidence by looking for weak spots - points which would establish reasonable doubt. A criminal case with one missing link should not sustain a conviction. There is no question but that there is reasonable doubt at many points in Belin's case. The defense is not required to explain away all elements of the prosecution case. But there is a valid point behind Belin's single-minded selection of facts. If we are to understand what happened on November 22, we must know (for example) why Oswald was arrested at the Texas Theater. The single point which has been, in my opinion, hardest to explain in a scenario of conspiracy is how Oswald got his job at the TSBD. We must confront Belin's argument on this. Either Oswald was placed there, by persons unknown, and false testimony was given, or it was an authentic coincidence on which the frameup of Oswald rested. Many of Belin's other points can easily be explained under a conspiracy hypothesis; it does not seem too unreasonable to us now, as it did and still does to Belin, to check out the possibility of perjured testimony.

Belin's book does make it clear that he was not the person to do the kind of critical investigation that would be necessary to uncover such a conspiracy. There is a risk that trying to understand the failure of the Warren Report in terms of the limitations of the staff will appear to excuse that failure. Misfeasance, malfeasance, and obstruction of justice may be the most appropriate way to describe much of the Commission's work. One can even wonder if it is not to Belin's benefit to appear as a naive and uncritical investigator rather than an intelligent and therefore deliberately poor one. Belin's own criticism of the FBI focuses on the inaccuracy, incompleteness, and mistakes of their reports; in fact, the FBI's negative effects on the investigation came from deliberate manipulation, based in large part on the impossible posture of reporting but not evaluating evidence. Neither the FBI nor Belin should get off too easily.

In each of the six areas of the investigation, the staff was aware of important leads that had not been followed through - in several cases, because of a deliberate decision at higher levels of the Commission, or because of resistance by other agencies. For example, Specter's insistence on access to the autopsy photos was turned back; Hubert and Griffin made a request for the preservation of phone company and other records relating to Ruby which was rejected (understandably) as too broad; Griffin got in trouble for challenging the accuracy of Sgt. Dean's testimony; Liebelier knew that the Odio investigation was never really completed; Coleman and Slawson ran into CIA reluctance to explain the Mexico City photos of the unidentified man; Sam Stern did not get to see the FBI and Defense Department files on Oswald. Perhaps each lawyer was not aware of the problems his colleagues were encountering; for whatever reason, the staff did not collectively rebel against the restrictions.

Belin, unfortunately, tells us little new about the internal workings of the Commission. We do learn that he was not impressed by Sen. Russell, who attended few sessions and had little contact with the staff; and that he disagreed with the decision not to press for the autopsy material. He explains how one of his suggestions was rejected: he felt strongly that Marina Oswald should be asked to take a lie detector test. Belin's reaction to his defeat on this point is one of the few new bits of information in the book. He felt that Jack Ruby should be asked to take a polygraph test, but he knew (after the decision on Marina Oswald) that the Commission would not agree. So he went over the Commission's head, and reached Ruby himself through a mutual acquaintance, Rabbi Hillel Silverman. Belin pushed the idea that Ruby should insist on taking a lie detector test to prove his claims that there was no conspiracy in the shooting of Oswald;

Silverman, persuaded by Belin, talked to Ruby. When Ruby testified, he insisted, against the advice of his attorneys, on taking a lie detector test, and the Commission gave him one. Belin points to his action as proof of his dedication to the truth, regardless of the "political considerations" and the risk that the test would show that Ruby was lying even if he wasn't. If fact, this seems to be blatant interference with the attorney-client relationship between Ruby and his lawyers, and a remarkably stupid thing for Belin to do secretly and outside of channels.

Belin does not let his own experience with the constraints of the investigation shake his faith in its conclusions. ("Perhaps I should not have been so angry about this (refusal) because there were few requests that I made that were not ultimately granted." (P. 431)) His generally uncritical approach is more like that of most of the Commissioners and senior counsel than like his fellow junior staff lawyers. It is important to see how the man who was responsible for at least half of the basic work in the area of the identity of the assassin spent his time documenting the case against Oswald and evidently did not have enough critical judgment to check the many indications of fabricated evidence. We can easily see how Belin's investigation would have run into major problems if he had been less credulous.

As an example, let us look closely at a point he emphasized in his 1971 New York Times article. He said that the Tippit murder "strikes at the heart of the claims of the assassination sensationalists who seek to prove that Oswald was in some way 'framed.'" They allege that Oswald was innocent of the murders and that the reason for his arrest had nothing to do with either killing." Belin quoted a somewhat careless critic's summary of the problem, that the Dallas police "instantly pounced on Oswald." Belin then explained that Oswald was arrested at the Texas Theater because "an alert citizen," Johnny Calvin Brewer, saw him acting suspiciously and had the theater cashier, Julia Postal, call the police.

Belin's presentation completely misses the point of the critics' claims. Although the record relating to Brewer's actions, and how they led to the actual arrest, is not as complete as it should be, there has been little argument that he did bring Oswald to the attention of the police as he said he did. At issue is how the police "pounced" on Oswald when they reached the theater. For example, the arresting officers testified that they were after a suspect in the Tippit murder; however, both Brewer and Postal testified that they had heard policemen indicate that they thought Oswald had shot the President. (Meagher, pp. 87-88)

Also suspicious is the way the police pounced on Oswald when they learned he was missing from the TSBD. Belin wisely tells his reader about Oswald's arrest before explaining that the police were already looking for him (by name); he does not suggest that there are serious problems with that story. The various accounts of what happened at the TSBD are contradictory. Sylvia Meagher assessed the published evidence in her book: "Roy Truly (Oswald's supervisor at the TSBD) encountered Oswald less than two minutes after the shots were fired, under circumstances so clearly eliminating Oswald from suspicion that Truly did not hesitate to vouch for him, in effect, to Officer M. L. Baker. (Truly and Baker met Oswald on the second floor as they were going upstairs.) Hence, Truly seems to have over-reacted to Oswald's absence shortly afterward.... Captain Fritz (chief of the Dallas Police Homicide Division), in turn, over-reacted to Truly's report. Though not clairvoyant, Fritz 'felt it important to hold that man' and 'left immediately' with the intention of going 'to the house at Irving' (outside Dallas).... In this setting (the President having just been shot), Fritz put aside everything to go outside the city limits searching for a missing working man - not the only one missing, for Charles Givens was absent too, and perhaps others as well - a man already encountered and let go by a police officer.... Indeed, Fritz' own account of his actions is very curious if one believes that he had never heard of Oswald before he was reported missing." (Pp. 88-89)

A related matter suggesting that the police were up to something when they started their manhunt for the assassin is the unknown origin of the description put out over the radio. The Commission concluded that the description "was



based primarily" on the observations of Howard Brennan, and that his description, given to the authorities, "most probably led to the radio alert at 12:45 p.m." (WR 144, 649; see Meagher, p. 10.) Brennan was the only witness who claimed to have seen Oswald firing at the President. Even the Warren Commission had difficulty accepting his identification of Oswald, since he declined to make a positive identification when he first saw Oswald in a police lineup. The Commission concluded that "at the least, Brennan saw a man in the window who closely resembled Lee Harvey Oswald, and that Brennan believes the man he saw was Lee Harvey Oswald." (WR 160) In his 1971 Times article, Belin carefully cited not Brennan's identification of Oswald, but "the similarity of Oswald's appearance with the description of the assassin by the key eyewitness, Howard Brennan." (Belin did not cite any evidence placing Oswald on the upper floors shortly before the shooting, perhaps in recognition of Meagher's demolition of the Givens testimony.)

Belin goes beyond the Warren Report, claiming that "there is no doubt that Brennan gave the Dallas police a description of the man he saw in the window. This description was broadcast several times over the Dallas police radio. We have transcripts of the radio broadcasts." (P. 136) He also says, later, that Brennan was "most probably" the primary source of the description broadcast by J.H. Sawyer, "but we cannot be sure" since Sawyer "did not remember the name of the person who gave him this description." (P. 180) Meagher's book pointed out various inconsistencies: e.g., Sawyer did not recall talking with Brennan. Belin did respond to one of her observations: Brennan said that he gave the description to Secret Service agent Forrest Sorrels, who did not arrive at the TSBD until well after the radio broadcast. Belin's reaction is that "Brennan was mistaken in his identification of the Secret Service agent that he talked to." (P. 130) Belin must have forgotten the Report's conclusion that Sorrels was the first Secret Service agent to return to the scene of the assassination. (WR 52; see Meagher, p. 25) The assassination "sensationalists," but not Belin, have shown some interest in this and other evidence that people were impersonating Secret Service agents, but that is another story. Belin does not respond to Meagher's observation that shortly after the description was sent out, Sawyer told the police radio dispatcher that "it's unknown whether he is still in the building or not known if he was there in the first place." This is inconsistent with a description coming from Brennan of a man he saw in the sixth-floor window.

The Commission's unpublished files reveal that the critics were not the only ones troubled by the problem of the source of the description. On November 2, 1964, over a month after the report was published, General Counsel J. Lee Rankin signed a letter (drafted by Alfred Goldberg) to the FBI, suggesting that "the establishment of a complete chain of information from Brennan to the Police dispatcher could be most helpful in rounding out an account of this event." In reply, Hoover wrote on November 12 that "it is not felt recontact with the Dallas Police Department would be justified at this late date." Hoover referred Rankin to his letter of January 14, 1964, when he responded to "substantially the same matter." It turns out that the Commission had been told that the source was not Brennan at all! In January, Hoover reminded Rankin, "you were informed the Dallas Police Department advised the broadcast was initiated on the basis of a description furnished by an unidentified citizen who had observed an individual approximating Oswald's description running from the Texas School Book Depository Building immediately after the assassination." (Ref.: my #425.5-6, A20.1) This story may or may not be true; someone other than Oswald may have been seen running from the building, or perhaps the unidentified source gave Oswald's description to the police without having seen anybody. In any case, the police did not follow this report up by pursuing anyone who had been seen leaving the area.

With all this evidence pointing to misbehavior by the Dallas police (and there is much more), the Commission should have studied carefully the limited

police department records that it did find out about. Belin refers to the tapes of the police radio broadcasts as "independent documentary evidence" that the police did not "want" Oswald "within a few minutes after the assassination." (P. 178) In fact, the purported verbatim FBI transcript (CE 1974) is not verbatim at all, but a slightly corrected version of a very inadequate Dallas Police transcript. The FBI transcript was made in July and August 1964 from original recordings that had become, in the FBI's words, "badly worn." (Ref.: Hoover letter of August 21) Only a week after the assassination, the Secret Service had obtained a copy and sent it to Washington for filtering, re-recording, and transcription. (CD 87, SS 324) Those tapes can not be found, either by the Secret Service or the National Archives, and there is no accurate official transcription available. (Unofficial copies of the tapes, apparently authentic, do exist.) A proper examination of these tapes might still resolve some questions about the authenticity of several transmissions which purport to explain Tippit's movements but which do not appear on early extracts of 'relevant' transmissions. Perhaps it would be possible to find out why the originals are badly worn, and if a gap in the transmissions was really caused by a transmitter button stuck open rather than by a more sinister force.

The Watergate case has shown how competent lawyers, supported by their political superiors and by the press, can carry out a proper investigation. Unfortunately, the Warren Commission critics who have gotten the most public attention over the last few years are those who have lost their concern for factual accuracy and (in the case of "Executive Action") seem to be suggesting that a semi-fictional solution is the best that can be done. Jim Garrison and Sherman Skolnick have made the Warren Commission's investigators look good. It is true that many of the Commission staff had good critical abilities; they knew as well as the early critics what was wrong with the Report. Nonetheless, their investigation was a failure. It might still be possible to solve the case; the failures of some of the critics should not be an excuse for indifference. The value of Belin's book is in reminding us just how bad the Warren Commission investigation was.

Paul L. Hoch  
January 9, 1974

#### MISCELLANEOUS NOTES:

I have prepared a list of 26 memos and letters in the Commission's files by Belin (alone or with Ball). I have 9 of them.

I bought the book on 12/7/73 at Doubleday in S.F. Nobody else had heard of it; it was not in Forthcoming Books. I have the tape of Belin on ABC-TV, 11/21/73.

I am advised that it is a bit pretentious for a lawyer to call himself "Esq." Sort of like "Dr. Carlos Bringuier."

Salisbury intro, p. xiii: interesting to see that the NYT study never got past 'preliminary findings.'

P. 361: the behavior of the military officers at the Kennedy autopsy calls for a stronger and more specific conclusion than civilian control of the military.

Policoff has written a good letter to More about the NYT's handling of Belin and Priscilla Johnson.

In the list of Watergate names on p. 1, I could add Rose Mary Woods' lawyer, Charles Rhyne. Wonder if he can defend her interests better than Oswald's.

P. 10: Belin mentions 'State Department' reports used by LBJ to get Warren to head the Commission. This is the first report I have seen of that; I suspect Belin is wrong.

It would be amusing to see what fraction of this book is just extracts from the testimony.