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'What is truth?' said the Warren Commission, and would not stay for an answer

ACCESSORIES AFTER THE FACT: The Warren Commission, the Authorities, and the Report. By Sylvia Meagher. Bobbs-Merrill. 477 pp. \$8.50.

By Edward J. Epstein

After the publication of the Warren Report, the Kennedy assassination seemed to be an open and shut case. Then came the barrage of criticism which seriously undermined confidence in the probity of the Report. Now that the wave of criticism has passed and public indifference has once more had time to set in, a fresh challenge to the reliability of the official version of the President's death appears. *Accessories After the Fact* has uncommon force and objectivity. It is too bad that it may not find the receptive audience some of its predecessors did, for it is perhaps the most valuable report on the Report yet.

The fact that there was no index to the vast amount of material the Warren Commission dealt with during *Edward Epstein is the author of Inquest: The Warren Commission and the Establishment of Truth.*

its investigation created serious difficulties for the lawyers who wrote the Report. To understand why the lack of an index was such an obstacle, it is necessary to understand the extraordinary circumstances that surrounded the writing of the Warren Report. Most of the lawyers who conducted the field investigation — interrogating witnesses, studying FBI reports and sorting the relevant from the irrelevant — had returned to their private law practices before the Report was written. So it was necessary to bring in a second team of lawyers — many of whom were then clerking for the Supreme Court — to finish the writing and check statements in the Report against the tons of testimony, exhibits, FBI reports and other evidence scattered throughout the Commission's headquarters.

The task of checking each statement was complicated by the fact that most of the new lawyers had little direct knowledge of the investigation, and by the unremitting pressure to complete the Report before President Johnson's deadline. One of the newly recruited lawyers wrote in a memorandum: "Eight months' work of the Commission and staff is in serious danger of being nullified because of the present impatience to

publish." Under these circumstances it was impossible for the editors and writers to make certain every statement in the Report was consistent with every particle of evidence.

Sylvia Meagher, an independent researcher, was up against the same problem that confronted the writers of the Report. To evaluate its statements systematically, comparing them with the body of "supporting evidence" (published in 26 additional volumes), it was first necessary to collect the scattered bits of evidence relating to each assertion in the Report. So Mrs. Meagher devoted a year to the task of indexing the 26 volumes of testimony and exhibits. In March 1966 she published a preliminary book, the 150-page *Subject Index to the Warren Report* (Scarecrow Press, Metuchen, N. J.).

Having provided herself with a tool the Commission had not possessed, Mrs. Meagher undertook a study that is the most exhaustive and objective evaluation of the Warren Report yet. *Accessories After the Fact* is more than a mere compendium of errors; it is a definitive analysis of the Warren Report. Other books have attempted to catalogue errors. (Continued on page 3)

(Continued from page 1) notably Mark Lane's *Rush to Judgment*, but they cannot compare with Mrs. Meagher's. Lane's book is organized on the principle of advocacy — he considered himself the defense lawyer for the ghost of Lee Harvey Oswald — and aims at casting the maximum doubt on the case by any means available. Lane's legdemann and tenacity are a marvel, but his book can hardly be read as anything but a brief for the defense. Mrs. Meagher's book, on the other hand, is organized on the principle of objectivity, by which I mean only that she takes into account facts and arguments that run counter to her thesis. I do not mean that she is impartial, for her book certainly argues that the evidence in the 26 volumes supports neither the major assertions of the Warren Report nor its conclusions.

Mrs. Meagher focuses on inconsistencies — instances where the Report relies on the testimony of one witness and fails to cite the testimony of other witnesses with contradictory testimony. She seems to have uncovered many such unresolved contradictions — 27 in the few pages of the Report that deal with the autopsy. Though such contradictions do not necessarily prove that the facts cited by the Commission are incorrect, they do mean that many statements in the Warren Report can be correct only if the second set of statements, cited by Mrs. Meagher, are false. Unfortunately, as Mrs. Meagher shows, in many cases the contradictory evidence was not considered or evaluated properly. In other cases it was simply dismissed. Rather than confronting witnesses who gave contradictory accounts, using lie detectors or impaneling independent experts, many of the discrepancies were resolved merely by fiat. My own interviews with the staff and Commissioners indicate that the problems Mrs. Meagher cites were seldom passed on to the Commission for evaluation.

But the question remains: were the pieces of evidence selected by the lawyers true or false? The fact that contrary evidence was not properly evaluated makes it impossible to answer. Even if the lawyers used intuition in deciding which evidence to rely on, there is no way to prove intuition wrong. Nor is there any calculus for adding up bits of evidence and arriving at the truth. Thus the unresolved contradictions Mrs. Meagher has found, although they indict the Commission's methods

and objectivity, do not indicate whether the Report's version of the facts is correct or incorrect.

But Mrs. Meagher's purpose has been to show that the Commission's conclusions are wrong. To do this she advances three arguments intended to show that Oswald could not possibly have been the one assassin. First, there is the argument based on the Commission's analysis of the Zapruder film. It established the earliest possible time President Kennedy could have been hit and the last possible moment Governor Connally could have been hit. Because there was not enough time between these two points for Oswald's rifle to have been fired twice, the Commission's staff concluded that either both men were hit by a single bullet or there must have been a second rifleman. Mrs. Meagher persuasively demonstrates that the single-bullet theory is contravened by the evidence. In so doing she raises the specter of the second assassin. This line of attack, however, is weakened by new evidence produced by the recent CBS investigation of the assassination: CBS found that the three shots appear to coincide with three distinct blurs found in a microscopic analysis of the film. One blur corresponded perfectly with the shot that hit Kennedy in the head and another with the bullet that hit Connally. However, the remaining shot — the first, according to this analysis — was fired well before the point which the Commission fixed as the "earliest possible time."

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If the CBS analysis is correct, Oswald had plenty of time to fire three shots, even if President Kennedy and Governor Connally were hit separately.

Mrs. Meagher bases her second argument on the content of films of the assassination, and asserts that they show that the President's head moves backwards, not forwards, when hit. Therefore, the argument runs, at least one bullet was fired from in front. This would mean that there were at least two riflemen, one in front of the President and one behind. The difficulty here is in deducing a cause from an effect. The head could have been pushed back by the impact of the bullet, but the movement could have been caused by acceleration of the car or a neurological reaction. The fact that the Commission did not explain the phenomenon does not mean there is no explanation. Photographs and X-rays taken during the autopsy may hold the answer and tell whether or not President Kennedy could have been hit from the front. But this vital evidence has yet to be analyzed by competent experts.

Finally, Mrs. Meagher attempts to show that the Commission's conclusions are weakened by implausibilities. Her argument, however, ignores the contingent character of facts. Hannah Arendt points out that facts "could always have been otherwise, and . . . therefore possess by themselves no trace of self-evidence or plausibility for the human mind." For the outstanding characteristic of all events is the element of unexpectedness. Because the events depicted in the Warren Report do not measure up to one's expectations of how these events should have happened does not mean that they are falsely reported.

Mrs. Meagher does not succeed in breaching the epistemological barrier between the world of the Warren Report (with all its flaws and contradictions) and the world of real fact (with all its contingencies), but this does not detract from the historical value of her book. In a sense it completes the Warren Report by supplying the contradictory evidence the Commission ignored or missed.