

THE WARREN COMMISSION

Why We Still Don't Believe It



JACK BEERS/DALLAS MORNING NEWS

Above: Jack Ruby, gun drawn, about to kill Lee Harvey Oswald. Right: Chief Justice Earl Warren handing his commission's report to President Lyndon B. Johnson on Sept. 24,

1964. Other members of the panel, from the left: John J. McCloy; J. Lee Rankin, counsel; Richard B. Russell, Gerald R. Ford, Allen W. Dulles, John Sherman Cooper and Hale Boggs.

By David W. Belin

THE TRUTH IS that Lee Harvey Oswald was the lone gunman who murdered President John F. Kennedy and Dallas Police Officer J. D. Tippit on that tragic Friday afternoon, Nov. 22, 1963, in Dallas.

Yet 25 years after the event, a majority of the American public does not believe the truth. Rather, polls have shown that most Americans believe President Kennedy was assassinated as an outgrowth of a conspiracy.

Over the years, conspiracy theories have ebbed and flowed. During the late 1960's, claims focused on an alleged conspiracy by so-called right-wing conservatives. In the 1970's, the conspiracy buffs concentrated on the Central Intelligence Agency. More recently, the dominant theme has been that the Mafia was in some way involved, with Jack Ruby as the "hit man." A common effect of many of these allegations has been to tarnish

the name of the late Chief Justice Earl Warren and to create the conviction that the Warren Commission was a "blue ribbon cover-up."

Having served as counsel to the Warren Commission investigating the assassination of President Kennedy, and as executive director of the Rockefeller Commission investigating the C.I.A., in which capacity I had access to all C.I.A. files relating to the Kennedy assassination, I know that the right-wing conspiracy theories, the C.I.A. conspiracy theories and the Mafia conspiracy theories are pure fiction. Why are they believed by a majority of the American public? How can it be that an investigation headed by Earl Warren — a man whose in-

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tegrity was above reproach — has failed to gain the public's confidence?

The easy answer is that there is a general mystique about conspiracy — a mystique encouraged by the shooting of Lee Harvey Oswald by Jack Ruby on Nov. 24, 1963. In fact, when I first went to Washington to serve as counsel to the Warren Commission, I felt that the killing of Oswald by Ruby, a man with underworld connections, might have been some sort of a "hit" ordered to silence the President's assassin.

Of course, common sense would dictate otherwise; as a practical matter, so-called Mafia "hit men" do not choose an area where they are surrounded by the police and immediately apprehended. But apart from this, exhaustive investigation by the Warren Commission proved that Jack Ruby was not conspiratorially involved. Not only was this finding corroborated by a polygraph exam taken by Ruby, at his own request and against the advice of his lawyers, but a happenstance independently confirmed this conclusion.

Oswald was scheduled to be transferred from the city jail, in the police station, to the county jail several blocks away shortly after 10 A.M. on Sunday, Nov. 24. Before the transfer, he was to undergo the third of a series of interrogations by Capt. J. Will Fritz, head of the homicide section of the Dallas Police Department, and representatives of the Secret Service and the Federal Bureau of Investigation.

If no one else had joined the group, Oswald would have been transferred long before Jack Ruby ever got downtown. But at the last minute, Postal Inspector Harry D. Holmes — who had helped trace the money order Oswald used to purchase the rifle with which he killed President Kennedy — joined the group.

Holmes told the Warren Commission: "I had been in and out of Captain Fritz's office on numerous occasions during this two-and-a-half-day period.

"On this morning I had no appointment. I actually started to church with my wife. I got to church and I said, 'You get out, I am going down and see if I can do something for Captain Fritz.'

"So I drove directly on down to the police station and walked in, and as I did, Captain Fritz motioned to me and said, 'We are getting ready to have a last interrogation with

Oswald before we transfer him to the county jail. Would you like to join us?'

"I said, 'I would.'"

Holmes's inclusion extended the interrogation by at least half an hour.

Ruby shot Oswald at 11:21 A.M., approximately five minutes after Ruby left the nearby Western Union office, where at 11:17 A.M. he had wired funds to one of his nightclub employees. Had Holmes continued on to church with his wife that morning, Jack Ruby would never have had the opportunity to kill Oswald.

Nevertheless, many of the television shows being shown this November, as well as "Libra," the recent "historical novel" by Don DeLillo; and recent "nonfiction" books — including "Contract on America," by David Schein, and "The Plot to Kill the President," by G. Robert Blakey — all focus on Jack Ruby's alleged role as the Mafia hit man who killed Oswald.

At first blush, it's easy to cast the blame on this group, whom I call the assassination sensationalists, for deceiving the American public. Yet I do not believe they are primarily to blame. Rather, I believe that if there is a dominant reason why the Warren Commission Report has not been accepted by a majority of Americans, it is because all our investigative work was undertaken in secret.

It was far easier to work without the presence of the press. Yet if there had been open hearings, people could have watched on television, heard on radio and read in the newspapers what the key witnesses said as the investigation unfolded. By the fall of 1964, when most of the testimony and exhibits were published in the 26 volumes of the Warren Commission Report, the potential impact of daily reporting had been lost.

If the public had been included at the time, there would be little question, for instance, of whether the shots were fired solely from the southeast corner sixth-floor window of the Texas School Book Depository Building — which happens to be the fact — or also from an area known as the "grassy knoll." People would have heard the testimony of Howard Leslie Brennan, a 45-year-old steamfitter, who was sitting on a retaining wall across the street from the Book Depository and was looking around while he waited for the motorcade to arrive. And they would have learned that this testimony was corroborated by ballistics findings.

Brennan "observed quite a few people in different windows. In particular, I saw this one man on the sixth floor which left the window to my knowledge a couple of times."

Brennan then turned his attention to the approaching Presidential limousine. He watched it turn left at the corner in front of him and then go southwest along Elm and down an incline toward the freeway entrance and a railroad underpass.

"And after the President had passed my position, I really couldn't say how many feet or how far, a short distance I would say, I heard this crack that I positively thought was a backfire."

Belin: "Then what did you observe or hear?"

Brennan: "Well, then something, just right after this explosion, made me think that it was a firecracker being thrown from the Texas Book Store. And I glanced up. And this man that I saw previous was aiming for his last shot. ... As I calculate a couple of seconds. He drew the gun back from the window as though he was drawing it back to his side and maybe paused for another second as though to assure himself that he hit his mark, and then he disappeared. ..."

Ballistically, it was determined that Oswald's rifle was the gun that fired all of the shots that struck President Kennedy and Texas Governor John Connally. Unfortunately, the public never had an opportunity to learn first-hand how Oswald's rifle was found, how it was identified as the source of the bullets and how Oswald was also identified as the killer of Officer Tippit.

The secrecy problems of the Warren Commission were exacerbated by a very unfortunate decision made by Chief Justice Earl Warren at the request of the Kennedy family. The family persuaded the Chief Justice to withhold the X-ray and autopsy photographs of President Kennedy from introduction into evidence as exhibits. Not only was the commission deprived of seeing these documents first-hand, but the public was denied an opportunity to have them independently examined by anyone seeking to verify the conclusions of the autopsy physicians who testified before the Warren Commission.

The Warren Commission counsel with direct responsibility to interrogate these physicians was Arlen Specter, now a United States Senator from Pennsylvania. Spec-

ter, I, and almost all the other lawyers serving with the Warren Commission thought the decision was very inappropriate, but Earl Warren, out of deference to the Kennedy family, would not yield.

Subsequently, commission members Gerald R. Ford, later to become President, and John J. McCloy, the member with the broadest trial and corporate legal experience, agreed with our criticisms. In a letter to me in the mid-1970's, McCloy wrote: "I agree wholeheartedly with your criticism of the commission itself for failure to demand the original X-rays and photographs. ... The argument against their being viewed by the commission as part of the record was that the X-rays and photographs of the President's body did not in themselves carry as much weight as the interpretation of them by the experts. This together with what I thought to be the oversensitivity of the Chief Justice to the attitude of the family, resulted in a good bit of just criticism of the commission which in my judgment could have been avoided. ..."

In 1975, when President Ford appointed me executive director of the Rockefeller Commission, I was able to see these photographs and X-rays myself. We were investigating charges that the C.I.A. had been conspiratorially involved in the assassination and that shots had come from the front as well as from the rear of the motorcade. An independent panel of physicians helped to re-evaluate all the evidence. The photographs and X-rays were horrifying, but they showed beyond a reasonable doubt that all of the shots that struck Kennedy came from the rear; Governor Connally also was struck from the rear.

Although the conclusions of the autopsy physicians who testified before the Warren Commission have been supported by every panel of physicians that has examined the materials since — an independent panel appointed by Attorney General Ramsey Clark in 1968, the independent panel appointed by the Rockefeller Commission in 1975 and the panel appointed by the House Select Committee on Assassinations in 1978 — the public is really not aware of these facts.

CERTAINLY, ANOTHER important factor contributing to widespread disbelief of the Warren's Commission's findings is the increased public dis-

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trust of our national Government, as an outgrowth of Vietnam, Watergate and revelations of misconduct by the C.I.A. The Rockefeller Commission, on which I served, uncovered a wide range of unlawful C.I.A. activities, including the opening of mail in direct violation of Federal statutes, unlawful spying on American citizens, assassination plots directed against foreign leaders in peacetime and the withholding of evidence from the Warren Commission — in particular, evidence that the C.I.A. was engaged in assassination plots against Fidel Castro. This was relevant to the Warren Commission's work, because one of the key areas of investigation concerned whether Fidel Castro was in any way involved in the assassination of President Kennedy in response to the anti-Castro rhetoric and deeds of the Kennedy Administration, including support for the Bay of Pigs operation.

But another important reason why the Warren Commission conclusions are not believed today relates to the 1976-78 investigation of the House Select Committee on Assassinations. In December 1978, the committee members were reviewing drafts of their report. After nearly two years' work and the expenditure of \$5.8 million, they had concluded that Lee Harvey Oswald, acting alone, had assassinated President Kennedy, wounded Governor Connally and killed Officer Tippit. There was no conspiracy.

But less than three weeks later, a major flip-flop occurred. The 600-plus-page report was rejected, and on Dec. 29, 1978, a majority of the committee approved a seven-page "Summary of Findings and Recommendations," which concluded that although Oswald was the assassin, there was a conspiracy involving an unseen second gunman. This invisible person supposedly fired a single shot from the elevated portion of land known as the grassy knoll, to the right front of the passing Presidential limousine. According to the committee summary, this shot missed Kennedy and everyone else, and even missed the Presidential limousine, barely 100 feet from the invisible gunman.

The committee's abrupt turnabout was caused by the mid-December testimony of two acoustic experts, Mark Weiss and Ernest Aschkena-

sy. They said they were 95 percent certain that the oscillating waves on a Dictabelt recording of police channel communications from the Presidential motorcade indicated the presence of a second gunman firing a fourth shot from the grassy knoll.

Members of the committee staff said the tape came from a microphone, stuck in the "on" position, attached to a motorcycle driven by Dallas Police Officer H. B. McLain.

Several members of the committee dissented from the summary, including Representative Harold S. Sawyer, a Republican of Michigan. In his dissenting opinion, Representative Sawyer wrote that Officer McLain "together with other police officials located near the Presidential limousine at the time the shots were fired in Dealey Plaza all agree that sirens were activated, and motorcycles and other vehicles were subjected to emergency acceleration within not more than a few seconds following the shots' having been fired. No change in the rhythm or intensity of the motorcycle noise appears anywhere on the relevant Dictabelt. There is no audible sound even resembling sirens until a full two minutes following the last of what is interpreted by the acoustical experts as the shots."

Three years later, the acoustical-evidence testimony was refuted in a 96-page report by the committee on ballistic acoustics of the commission on physical sciences, mathematics and resources of the National Research Council. The committee, headed by Norman F. Ramsey, Higgins Professor of Physics at Harvard, included other professors and representatives from corporate research centers such as Bell Telephone Laboratories, Xerox and the International Business Machines Corporation.

In its executive summary, the committee stated: "The acoustical analyses do not demonstrate that there was a grassy knoll shot. . . . The acoustic impulses attributed to gunshots were recorded about one minute after the President had been shot and the motorcade had been instructed to go to the hospital.

"Therefore, reliable acoustic data do not support a conclusion that there was a second gunman."

Nevertheless, the refuted 1978 acoustical evidence is still being cited as authority

today in books accusing the Warren Commission of a cover-up.

THE PUBLIC HAS IN some areas been misled, but in others it has simply ceased to remember. Most Americans have forgotten about the murder of Officer Tippit, which took place at approximately 1:15 P.M. on Nov. 22, about 45 minutes after the assassination of President Kennedy. Six eyewitnesses who saw the murder itself or saw the gunman fleeing the scene of the crime while he was reloading his pistol positively identified Lee Harvey Oswald as the killer.

William W. Scoggins, a cab driver, typifies their testimony. He was sitting in his cab around the corner from the murder scene. He saw Tippit stop his police car and get out, heard the shots and saw the policeman "grab his stomach and fall."

The gunman then passed within 12 feet of Scoggins: "I saw him coming kind of toward me. . . . I could see his face, his features, and everything plain. . . . kind of toping, trotting. . . . He had a pistol in his left hand."

Oswald was arrested a short time later, after running inside the Texas Theater, where he pulled out a concealed weapon as he was approached by police officers. That revolver, ballistics evidence later showed, was the Tippit murder weapon.

The Tippit murder provided the essential link to the assassination. Oswald, it turned out, had purchased the revolver that killed Tippit through the mail under the same alias he had used to purchase the rifle he used to kill President Kennedy. Once these facts were established, all the other evidence came into clear perspective.

Yet Americans still have doubts, fueled by the speculations of assassination sensationalists. In his letter to me, John McCloy, the Warren Commission member, wrote:

"I never cease to be amazed at the willingness of so much of the public to accept the statements of the charlatans and the sensationalists rather than the facts and record. The media and the reviewers were really fatuous; if not worse, but what really astounded me was the doctrinaire approach which so many of our colleges and universities took toward the commission's conclusions. . . . It was actually thought 'liberal' to be convinced

that President Kennedy had been shot as a result of a conspiracy by a group of Texas millionaires or chauvinists and that it was quite 'liberal' to think that he had been assassinated solely by a little 'punk' who perhaps had some personal Communistic leanings."

YET ANOTHER REASON WHY most Americans don't believe the

Warren Commission Report is that our investigation involved hundreds of witnesses and thousands of exhibits. As every experienced trial lawyer knows, natural inconsistencies arise within the testimony of different witnesses to an incident. This is particularly true of a sudden and traumatic event.

Even in mundane matters, the hon-

est recollections of witnesses differ. James Jarman Jr., who worked every day with Lee Harvey Oswald, swore under oath that Oswald "never hardly worked in a shirt. He worked in a T-shirt." Troy Eugene West, who also worked with Oswald every day, swore under oath, "I don't believe I ever seen him working in just a T-shirt. He worked in a shirt

all right, but I never did see him work in a T-shirt."

One of the early, better-selling books contending that more than one gunman was involved relied heavily on the notion that President Kennedy had said after the first shot, "My God, I am hit." The Warren Commission found that the first bullet had exited President Kennedy's throat and had struck Governor Connolly, who was sitting directly in front of him. But the opposing theory held that since the President had spoken after being hit, he couldn't have been wounded in the throat; the bullet, then, had taken a different path and Connolly had been struck by a different bullet, fired by a second gunman.

Certainly there was evidence to support the claim that President Kennedy spoke, for this is exactly what Secret Service Agent Roy H. Kellerman testified. He was riding in the front seat of the limousine.

Yet the author never told his readers what the other four passengers in the limousine remembered.

Sitting next to Kellerman was the driver, Secret Service Agent William R. Greer. Asked whether the President said anything after he was hit, Greer testified: "I never heard him say anything, never at any time did I hear him say anything."

There were three other witnesses in the limousine.

Governor Connally said: "He never uttered a sound at all that I heard."

Mrs. Connally said: "He made no utterance, no cry."

Jacqueline Kennedy said: "I was looking this way, to the left, and heard these terrible noises. You know. And my husband never made any sound."

The key to understanding what really happened on Nov. 22, 1963, is first to recognize that the facts of the assassination are distillations of hundreds of recollections and pieces of physical evidence — any of which, ignoring the overall record, could produce a persuasive conclusion, albeit a false one.

If the television networks were to give the same amount of time to the testimony of Brennan, Scoggins, Holmes and others that they have to wild speculations, I believe it would go a long way toward convincing the American public.

One of the reasons I care so much about the truth is that if we can be deceived on these issues, we can also be deceived by a small cadre of people about matters that are far more directly related to the survival of our country — matters of war and peace.

The Warren Commission analyzed all of the evidence, including that from witnesses who disagreed with one another. The overall record showed beyond a reasonable doubt that Lee Harvey Oswald, acting alone, killed President Kennedy and Officer Tippit.

Any American who takes the time to examine the overall record will agree that the Warren Commission was right. Each and every attempt to prove otherwise can be refuted. The truth has a long fuse, and ultimately it prevails. ■

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