

Four Books on the Warren Report:

The Sumner of Misconduct

by Sylvia Naylor

In rapid succession, four books challenging the Warren Report appeared in the bookshops between June and September. The first, Inquest by Edward Jay Epstein (Viking Press, New York, \$5.00), launched something of a furor—page one headlines, radio and television coverage, articles in the mass circulation magazines. The furor gained momentum with the appearance of each of the next three books—Harold Weisberg's Malicious (Weisberg, Hyattstown, Maryland 20734, \$4.95), Mark Lane's Rich in Judgment (Holt, Rinehart, and Winston, Inc., New York, \$5.95), and The Oswald Affair by Leo Sauvage (World Publishing Company, Cleveland and New York, \$6.95).

Perhaps only a handful of people in the whole country—the so-called assassination buffs (formerly designated as "demagogues," "whistle-blowers," and "nerotics")—really could appreciate the dramatic transition from taboo to dialogue. The Warren Report, from its publication in September 1964 to its sudden downfall in June 1966, enjoyed virtual immunity from criticism, even from discussion—at least in "respectable" forums. The case was closed. It had been closed first with impatient haste by the Dallas police; scarcely two weeks later, by the sacrosanct FBI; and finally by the august Warren Commission, abetted by the rapturous applause of the opinion-makers. They had it made.

But this case refused to stay closed, for good reason. It fell to a graduate student of government, Edward Jay Epstein, to deliver a galvanizing shock to American complacency. In a slender, dispassionate, understated book, Inquest (outgrowth of what was intended only as a master's thesis on the way in which the Warren Commission had initiated, organized, and directed its full-scale investigation, and on the scope and depth of the investigation), Epstein provided a sobering look behind closed doors. Personal interviews granted him by five members of the Commission and ten of its lawyers elicited a startling picture of confusion, controversy, scandal, and panic. Above all, Epstein discovered, there was an overriding commitment to the preconceived conclusion that Oswald was the lone assassin

--a commitment against which more facts were no match, when those facts could be concealed, obscured, or distorted. The investigation was superficial and rushed (at least one important inquiry was still in progress when the Report went to press), with little participation by some of the seven Commissioners and part-time services at best from most of the senior counsel. Inquest reveals how the Lawyers subordinated honest judgment to arbitrary orders from above ("...the Commission judged it an easy shot, and I work for the Commission..."); how considerations remote from fact-finding dominated ("...we do have a dirty rumor...very damaging to the agencies that are involved...and it must be wiped out..."); and how the simple imperative of justice was sacrificed time and again to what Epstein calls "political truth." It might also be called "America First!" or, more accurately, "American Reputation, Consensus, and Staying Que First."

When the Commission's Lawyers protested that certain witnesses were liars or lunatics, they were overruled by the Chairman's decision to believe them. One lawyer was ordered to abandon his investigation into a question he deemed vital--Ruby's means of access into the police basement where he murdered Oswald--because he was taking too long. The lawyers were forbidden to cross-examine certain "friendly" witnesses; in other instances, given discretion (and they used it!) to "prepare" witnesses in dry runs before formal testimony. In short, they enjoyed all the prerogatives of a prosecution, without any of the corresponding obligations imposed by an adversary procedure. The Commission had excluded participation by any semblance of a defense, whether by an outsider or from within. (The afterthought that introduced Walter Craig of the American Bar Association into the picture, "in fairness to the alleged assassin," is too ridiculous in concept and in practice for serious discussion.)

Those revelations in Inquest, by themselves, might not have caused much of a ripple. But there was a real blockbuster in the book, and that is what launched public debate. Epstein published two hitherto-unseen FBI Reports (the first had gone unnoticed when it was quoted earlier by Vincent J. Salandria in The Minority of One, April 1966) which conflicted diametrically with the autopsy report on which the Warren Commission based itself. The FBI reports described the wound in the President's back as situated below the shoulders, while the autopsy report (and the Warren Report) placed it in the back of the neck. The FBI said that the bullet had penetrated only a finger's length and fallen out of the body through the entrance hole,

while the autopsy report said that it had penetrated the body completely and exited at the Adam's apple. The Commission, taking it from there, said that the same bullet had then proceeded to strike Governor Connally and inflict all his wounds.

That theory--the single-missile theory--was the only recourse by which the Commission could reconcile the evidence with its determination to "find" that Oswald was the lone assassin. The time-span between the wounding of the President and the wounding of the Governor was too short to permit two shots to be fired by the assassination rifle. Therefore, if the Governor was hit by a separate bullet, it had to come from a second rifle.

Epstein was disturbed because the Commission had not resolved (nor even acknowledged) the conflict between the FBI Reports and the autopsy findings. Much of the evidence supported the FBI description of a bullet wound well below the neck--the observations of the Secret Service agents, the holes in the President's clothes, and even a diagram made by the autopsy surgeon during the post-mortem. Evidence existed that could have resolved the conflict but the Commission had never looked at it--undeveloped photographs and x-rays taken at the autopsy and handed over to the Secret Service. Their present whereabouts are unknown. Although suggestions are being made that the photographs now should be produced and examined (an idea put forward by JFK's speechwriter, Richard Goodwin, and others) no one has been able to find out who has them.

Those photographs, if they were made available, might of course vindicate the Warren Commission--or they might prove once and for all what the researchers and critics have long believed, that the Commission's report is a fraud, that the lone assassin is a myth, and that the assassination was exactly what the whole world (including Earl Warren) thought it was in the hour of its awful newness--the work of a conspiracy motivated by political hatred or ambition.

Epstein obviously believes that the FBI description of the wound is authentic and that the autopsy report is not. But, he says, even if the FBI is mistaken ("mistaken" about evidence of such unrivaled importance?) the Warren Report is in trouble, for almost all its "fact-finding" depended on FBI investigation and FBI expert testimony.

After the publication of Inquest the FBI made several ambiguous comments through anonymous spokesman but, significantly, it has never formally retracted or repudiated its Reports. Even more significantly, no spokesman has extricated the Warren Commission from the vice, much less produced the autopsy photographs in vindication of its Report. Somehow,

one suspects that the photographs would have been produced long before there was an Inquest, had they corroborated the official autopsy findings.

But no serious rebuttal of the charges in Inquest has been offered. Thus, one can read in the London Observer in August 1966 what would have been unthinkable in August 1965: "Today it is the majestic Warren Commission itself that is in the dock, rather than the lonely Oswald." Paradoxically (and perhaps pleasingly) Epstein has not seen fit publicly to reconsider the issue of Oswald's guilt. He says that the Commission has presented overwhelming evidence against Oswald (in the Tippit murder, at the very least), forgetting that he himself has demonstrated that the Commission, or the FBI, presented unreliable or spurious autopsy findings and that, in either case, the whole Warren Report is discredited.

If Epstein pays lip-service to the Commission's purity-of-heart, no conciliatory offerings are to be found in the books by Savage, Weisberg, and Lane. In each book mention of the scandalous autopsy conflict has been tacked ^{on} or hastily ^{to} an already-finished work in which the author had reached the independent ^{own} conclusion, ^{without} benefit of the revelations about the FBI autopsy findings, that the Warren Report was a shameful travesty and that Oswald was innocent, or might well be. Weisberg and Savage furthermore believe that the assassination was the work of a political conspiracy in which a false Oswald—a man who resembled Oswald and impersonated him—laid an incriminating trail before the assassination that would create an overpowering illusion of his guilt.

Leo Savage has served for almost two decades as the American correspondent for Le Figaro; he is a graduate of the Paris Law School. In The Oswald Affair he uses the rapier of his exceptional intelligence, insight, and logic to cut into mince-meat the Dallas investigation, the Warren Report, and the clique led by such prominent opinion-makers as Harrison Salisbury, Louis Nizer, and Max Lerner for their "orgy of aggressive and ecstatic conformism" and their attempt to stifle in advance any criticism of the Commission's findings. (In fairness to Lerner, it should be said that he has recently ~~developed~~ ^{that he has developed} admitted publicly some doubts about the Warren Report.)

I first read Savage's book in the original French, published in March 1965 by Les Editions Minuit, Paris, with the assistance of a French-English dictionary. Now, well more than a year later, it has finally become available in English. The original edition was a tour de force—in print barely four months after the belated release of the Warren Commission's 26 volumes of Hearings and Exhibits but nevertheless taking account of much

of the testimony which cast doubt on the Warren Report and on the case against Oswald. Indeed, Sauvage attacked the case in terms very similar to a 28-page memorandum written by one of the Commission's assistant counsel--the Liebeler memorandum, which came to light in Inquest--before the Warren Report went to press. He demonstrated the weakness of the rifle evidence, the fingerprints, and the marksmanship attributed to the alleged assassin and, like Liebeler (as it later turned out), Sauvage found the cruelest kind of bias against Oswald governing the selection and presentation of the so-called evidence.

The aficionado may complain that The Oswald Affair makes no sensational new revelations, and that perhaps is true. What it does do, and do superbly well, is to apply the acid of a truly logical uncompromising intelligence to the clutter of rot and red herring obscuring the facts, and in dissolving the foul-smelling debris, the book leaves the hard white bone of the evidence against Oswald exposed in all its poverty.

Sauvage is particularly devastating when he deals with the circumstantial evidence--for example, Oswald's whereabouts right after the shooting of the President. A policeman, M. L. Baker, and the Depository superintendent, Roy Truly, had encountered Oswald almost as the last of the shots were fired, supposedly from the sixth floor of the building. He was standing at a coca-cola vending machine in the lunchroom on the second floor--with a coke in his hand, according to the original story. But, as Sauvage relates, Roy Truly told him later that because Baker, the policeman, blocked his view of Oswald, he did not know whether or not he held anything. Still later, Truly testified to the Warren Commission that Oswald had nothing in his hand, no coke, nothing at all. And Baker said the same.

But Sauvage has turned up a document in which Baker, through a Freudian slip, betrays himself and unwittingly reveals the truth--Oswald was holding a coke, and that is inimical to the official reconstruction of his movements--a reconstruction that leaves Oswald cokeless and that resorts to unconscionable manipulation in order to rob the accused assassin of his legitimate and strong alibi. Sauvage exposes and condemns the devious means which the Commission used so that, at the end, it could in effect proclaim triumphantly that Oswald had a margin of at least one second to run down to the second floor and into the lunchroom before Truly, trailed by the policeman, ran up.

The Commission conducted two reenactments by stopwatch in which a stand-in for Oswald ran downstairs from the sixth floor to the second
 and

and Baker ran up. Thus, from the word go, the Commission was loading the dice against Oswald, for it was Truly, not Baker, whose time he had to beat, since Truly had already started to mount the stairs to the third floor when Baker reached the landing "and caught a fleeting glimpse of a man walking in the vestibule toward the lunchroom." Savage personally retraced Baker's route and is able therefore to say authoritatively that the Commission's diagram of the second floor completely misrepresents Baker's location when he "observed Oswald in lunchroom." And, according to Savage, from where Baker really was—some 20 feet from the vestibule door—"it would require a rare combination of circumstances to see anyone go from the Vestibule into the lunchroom." He does not exclude the possibility of such an occurrence but he does argue—and very convincingly—that ^{since} Oswald reached the second floor, ~~before Truly~~ before Truly, he should have been beyond the field of vision through the vestibule door by the time Baker reached the landing.

Even though the Commission's reenactments were completely unfair in that they paired Oswald, to his disadvantage, with the wrong man, the results do not necessarily incriminate Oswald. The Commission has chosen to interpret them as showing that Oswald could have been at the sixth floor window and reached the inside of the vestibule on the second floor with at least one second to spare. But, as Savage icily reminds the Chief Justice and his colleagues, the reenactments (undertaken only after Savage noted pointedly in a magazine ~~that~~ such tests had not been performed) were susceptible to another interpretation. If the maximum time for running down was paired with the minimum for running up, "Oswald would have arrived three seconds after Baker. In other words, Oswald would have had an alibi."

To deprive Oswald of a legitimate benefit of the doubt produced by the tests, as the Commission did, was bad enough. But that was not all. For, as Savage points out, the tests were further rigged against Oswald by virtue of the fact that policeman Baker, as he himself testified, walked in his first reenactment test, whereas on November 22nd, he ran. And it is the first test that is invoked by the Commission to "prove" that Oswald had no alibi.

The Oswald Affair is very successful also in dissecting the chicken remains found at the so-called sniper's nest, in demonstrating the appalling contradictions and gaps in the testimony describing Oswald's capture in the Texas Theater (by a police officer who, Sauvage concludes, ~~was~~ had three hands instead of two), and in exposing the many other defects in the prosecution case. He shows that there is only a slender margin of difference between the Commission's travesties and those of the Dallas police, making it self-evident that the universal disgust and opprobrium heaped on the original Dallas "investigators" is deserved no less by their successors. And Sauvage does not hesitate to say so unambiguously, with style and a flair for language which in itself is a delight. Because his personal dignity, professional stature, and lack of self-interest are unmistakable, and because he is trenchant and incisive in demolishing the official case, Sauvage's book makes a ruinous impact on the credibility of the Warren Report and the reputations of the authors and the sycophants who sanctified their shoddy work.

Mark Lane is surprisingly restrained in his view of the Commission *that denied* and it has earned him good marks even from those predisposed to distrust and dismiss him. ~~HE~~ I was charmed by a reviewer who wrote in the St. Paul Dispatch after reading Lane's Rush to Judgment.

"He seemed either obsessed or as some of us believed cynically in search of the dollar...when the Warren Report was published there was some hope that he would go back under the rock from which he had come. I cite this background to demonstrate the personal perspective for this: Lane, in a book called Rush to Judgment, has created serious doubts about the Warren Report and the investigation. As difficult as it might have been, he should have been listened to previously."

From a detractor, that is superlative praise.

Lane, like Murray Kempton before him and others, regards the Warren Report as a case for the prosecution—a prosecution none too scrupulous. He has therefore written what is widely regarded as the case for the defense and as such criticized in some quarters as slanted in favor of the accused. Perhaps there is some slanting—some shading—but those who are

that denied from the report is ...

first to make the charge were strangely undisturbed by the blatant slanting that deforms the Warren Report. When the whole terrifying power of the State is pitted against one obscure creature—his life already stamped out while he was literally in the arms of the police (he was not so obliging as to hang himself in his cell)—zeal in the cause of his exoneration is understandable. The more so when exoneration would compel a search to bring the real assassins to justice.

Rush to Judgment, like its companion-books, catalogues the Commission's innumerable liberties with the facts and its continuous transformation of evidence to make it consistent with its thesis of the lone assassin. Whatever one's bias against Mark Lane, it is hard to deny that Chief Justice Warren did him a serious injustice when he opined to the press that Lane had lied about a tape of a conversation in which Helen Louis Markham had described Tippit's killer in terms incompatible with Oswald's appearance. Lane later gave the tape to the Commission, ignoring the danger of prosecution for disclosing it voluntarily (the Commission had refused to subpoena the tape and thus to grant Lane immunity, but the Chairman nevertheless openly insinuated that Lane had lied about the tape). In sending the tape, Lane asked Warren "merely to state that after he heard the recording he no longer doubted the truthfulness" of Lane's claims—a rectification for which he is still waiting.

Yet it must be said also that if Lane's commitment to determining the truth about the assassination overrode personal risk in the case of the Markham tape, it was somewhat ambiguous in the case of the famous "meeting" at the Carousel Club. Lane claims that a tip from newspaperman Thayer Waldo led him to an unnamed witness who told him that exactly one week before the assassination he had observed a conference at the Carousel between Jack Ruby, J. D. Tippit, and Bernard Weissman (a right-winger instrumental in publishing the notorious black-bordered "Welcome Mr. Kennedy" ad). Lane declined to tell the Warren Commission the name of the witness, having promised not to disclose his identity without permission and unable to obtain his consent. (Apparently the witness refused to trust the Commission to keep his name confidential, since its haphazard housekeeping already had resulted in the leak of important documents and information to the press.)

It is self-evident that if there really was a meeting between Ruby, Tippit, and Weissman, it constituted prima facie proof of conspiracy in the murders of the President, Tippit, and Oswald. Surely Lane could have used his imposing power of persuasion to convince the mysterious

witness to subordinate personal considerations (he was at the Carousel Club because of an extra-marital involvement which he wished to remain secret) to the interests of justice and the apprehension of those who had murdered the President.

Lane asserts that he was honor-bound not to reveal the man's name against his express wishes and that "if the Commission had wanted his name, it need only have asked one of its witnesses, Thayer Waldo..." That does not seem fair, since the record does not indicate that Lane told the Commission that Waldo had led him to the witness in the first place. (He may have done so in his private session with the Commission on March 4, 1964, but he does not say that he did.)

Lane is quite correct, on the other hand, when he points to the defective and almost farcical way in which Jack Ruby was questioned about the alleged meeting, by the Chief Justice himself as well as by general counsel J. Lee Rankin and later by an FBI polygraph (lie-detector) operator. Not once, even by inadvertence, did they pose the question accurately. It is no credit to the Chief Justice that, as Lane points out, he made no less than six errors in presenting the allegation to Ruby; nor that the Chief Justice told him,

"...I did feel that our record should show that we would ask you the question and that you would answer it, and you have answered it."

But Ruby had not answered, and he had to remind the Chairman of the Warren Commission that "he didn't want anything to be run over lightly."

Yet lightly they did run over the whole affair of the alleged meeting at the Carousel Club, obviously disinclined to believe Lane or his unnamed informant. The Commission does not come off well in this episode; but neither does Lane come off completely well. The story of the meeting seems to have a serious internal flaw. The anonymous witness was a Dallasite; he may have recognized J. D. Tippit from a previous encounter with him, or identified him from photographs published after he was murdered. Ruby, everyone knew. But how did the witness know that the third man at the alleged meeting was Bernard Weissman? He was a stranger in Dallas and his photograph was not published so far as is known at any time before the mysterious witness told his story to Waldo or to Lane.

In spite of such loose ends, Rush to Judgment makes a definite contribution to the diagnosis and dismantling of the Warren Report. Lane has earned the right to be a pall-bearer at the funeral of this massive, taxpayer-financed edition of political truth.

Finally there is Harold Weisberg's privately-printed book Whitewash, "the book that could not be printed," as Weisberg calls it in a four-page chronicle of rejections from publishers who, in his opinion, feared the subject. (Savvage indicates a similar experience, but in one sentence.) There was, before the summer of 1966, a reprehensible lack of interest—perhaps even fear—which caused publishers to reject Whitewash and other books on the assassination. Now that the tables have turned, it must be hoped that some house will issue an edition of Whitewash easier on the eyes than the crowded small print of the original. That should be done because Whitewash is an important and effective attack on the Warren Report, ~~on the basis of~~ ^{demonstrating} its constant collision with the accompanying 26 volumes of testimony and exhibits.

Weisberg, ^{a former Senate investigator and newspaperman,} has turned his exceptionally sharp eye on the contradictions in the evidence, on minor as well as major points, and, like Savvage, he completed his analytic study remarkably soon after the 26 volumes were released—a prodigious achievement. All the critics of the Warren Report are as one in challenging certain of its fundamental elements—the source of the shots, the autopsy, the marksmanship, and the stretcher bullet, for example. Each has contributed singular insights into defects of detail, identifying an ever-growing body of deformities, omissions, and misstatements which betray the sheer incompetence and staggering unreliability of the Warren Report, and raise irresistible doubts about the integrity of the authors.

Weisberg has been very acute in uncovering devastating weaknesses in the official presentation—for example, the paper bag in which the rifle allegedly was concealed and carried into the Depository. The Report is irritatingly vague about when, where, and how Oswald supposedly fashioned the paper bag, in secrecy, and using wrapping materials obtained in the Depository—it merely makes the sweeping claim that he made it, and that he used those materials. But, as Weisberg (alone among the critics) points out, the tape with which the paper bag was gummed together comes out of the Depository dispensing machine already wet. That crucial information is found in the testimony of the wrapping clerk, Troy West,

but is carefully suppressed from the Warren Report. Weisberg writes,

"Having proved that the tape on the bag had been dispensed by the machine, the Commission thus established beyond any question that the tape was wet when dispensed and had to be used immediately, if not at the bench, at least very close to it. And the man who was always there established that Oswald never was."

In discovering this very serious defect in the Commission's already dubious evidence (which attempts to link Oswald to the paper bag and thus to the rifle), Weisberg deals a fatal blow to a fundamental premise in the Warren Report.

Weisberg makes another important insight when he discusses the testimony of Abraham Zapruder, the by-stander who made the now-famous amateur film of the assassination. Zapruder filmed the motorcade as it made the turn into Elm Street and moved toward the underpass. As the car approached Zapruder's position, it was concealed from the sixth-floor window of the Depository by ~~immense~~ tree foliage, emerging into view from that window only at frame 210 of the film. But, just as the President became visible to a sniper in that window, he simultaneously disappeared behind a road sign which obstructed him from Zapruder's camera.

If the assassin was shooting from the sixth floor of the Depository, he had no view of the President until the car emerged from behind the tree and could not have fired the first shot until sometime after frame 210. According to the Commission, the first shot struck the President sometime between frames 210 and 225, when he was concealed from Zapruder by the road sign.

Yet, as Weisberg points out, Zapruder testified that he "saw the first shot hit the President! He described the President's reaction to it. Had the President been obscured by the sign, Zapruder could have seen none of this. Therefore, the President was hit prior to frame 210..." and while he was invisible to anyone in the sixth floor window! Here is "very persuasive evidence" (to steal the Commission's phrase) that the shots came from another location, supporting much other evidence which leads to the same conclusion.

The least that one can say after reading the books by Sauvage, Lane, and Weisberg, is that the Commission not only has failed to prove Oswald guilty—it has all but proved him innocent.

What about the Commission's innocence? Of the four writers, only Epstein abjures an outright condemnation of its performance, preferring to let us read between the lines in which he states that the Commission failed to take cognizance of "very substantial evidence" of a second assassin, and that its dominant purpose was to "reassure the nation and protect the national interest." That Epstein implied endorsement of that purpose—of the sacrifice of justice and truth to the dirty imperatives of politics—is scarcely possible. Why Inquest, in that case? But Epstein has been excessively delicate and equivocating in confronting the moral issues which attend the Warren Report, in his public statements as well as in Inquest. Perhaps that was the price for securing an introduction from the prestigious Richard Rovere, and a hearing from the most respectable branches of the Establishment.

In contrast to that diffidence, Weisberg bluntly charges the Commission with suppression of vital evidence, failure to undertake essential inquiries, silence "on the known destruction, mutilation, and manipulation of evidence," and whitewashing the incredible botching of the case by the Dallas police and federal agencies.

Lane accuses the Commission of disregard for the principles of law and the rules of evidence. In his words, "the Commission covered itself with shame."

And Sauvage says that the scandal that attended the investigation, first in Dallas and then in Washington, did not end with publication of the Warren Report.

"On the contrary, the Report made it permanent, for it proved that the Commission, on the pretext that it was a board of inquiry and not a court, had ignored not only the rules of procedure but also the principles of justice
...The Commission does not reach a verdict; it merely

states a fact. The distinction is very subtle, it is also very hypocritical."

Savage explains why he wrote The Oswald Affairs

"Before publication of the Warren Report, there was the irresistible reaction against the audacity of those who loudly proclaimed the dead man's guilt but asked those who had doubts to keep silent. After the Report, there was something even more irresistible: the feeling that, in this case, silence would give consent to injustice."

There has been the beginning of an end to the silence, with the books discussed here and with the belated attention now being bestowed on earlier criticisms ignored when it was first published. Those who, from the beginning, have refused by silence to give consent to injustice were few in number. Their ranks are growing now. But it remains for the country as a whole to refuse hand-outs of managed truth such as the Warren Report, and to use its moral and political power to secure the truth about the assassination, about the Government and its lackeys, who gave us such expansive and insulting lies, and about the brutal spill of blood at home and abroad which is making "American" an obscure word all over the world.

Between 1961 and 1964 we have seen assassinated Patrice Lumumba, Ngo Dinh Diem and Ngo Dinh Nhu, and John Fitzgerald Kennedy. Only those indentured to the Establishment or irreversibly brainwashed will continue to insist on the sordid fiction of the random "lone assassin" even as they gaze ^{upon} the trinity. And, since they remain in the majority, it is certain that the slaughter will continue, at home and in the little countries we "protect."

In Dallas after November 22, 1963 the chic remark at cocktail parties was "we should have invited him sooner." It is later than we think.

8/30/66