

THE

American Scholar

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SPRING 1967 / PRICE \$1.50

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American Scholar

A QUARTERLY FOR THE INDEPENDENT THINKER

PUBLISHED FOR GENERAL CIRCULATION BY PHI BETA KAPPA

In the right state the scholar is *Man Thinking*
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Published quarterly since 1932 by the United Chapters of Phi Beta Kappa. Printed by The William Byrd Press, Inc., 2901 Byrdhill Road, Richmond, Virginia 23205. Second-class postage paid at Richmond, Virginia. Copyright © 1967 by the United Chapters of Phi Beta Kappa.

Send all change of address notices, undeliverable copies, subscription orders and other mail to *Editorial and Circulation Offices:* 1811 Q Street, N.W., Washington, D. C. 20009.

Subscription Rates: \$1.50 a copy, \$4.00 one year, \$7.00 two years, \$9.00 three years, foreign and Canadian \$.50 a year additional for postage.

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There is not the slightest indication that most of the "victims" have had anything to tell that they had not already told, and indeed the deaths seem concentrated among those who bore only the most peripheral relation to the assassination. When one stops to consider that almost each one of the "mysterious" deaths—presumably to cover up something the victim knows—requires the recruitment of at least one and often several new conspirators, it would seem that, like the pyramid club, the conspiracy would be getting bigger and bigger rather than smaller. One would think that seeing what had happened to those who knew too much, it would get very difficult to recruit new members into the conspiracy. Most important, however, it is hard to say why the supposed killers are taking whatever chances these murders entail when it is so obvious that, whoever the conspirators are, they have already gotten off scot-free.

In all probability, however, the biggest question raised by the third stage of inquiry into the assassination has nothing whatsoever to do with any of the points that have been discussed here. Rather the question is, considering their quality, why have the third-stage writings attracted the attention that they so clearly have?

To my mind it is only a partial answer to rely on the dictum of P. T. Barnum. As I see it, there are four more basic reasons. First, there really are doubts concerning the assassination of the President. This should hardly be surprising since even in a typical criminal case one cannot determine the guilt of a defendant beyond all possible doubt—this is why the jury is instructed that it need only be convinced beyond a reasonable doubt. But in the Warren Commission investigation there are other problems. Even if one concedes that Oswald was guilty beyond any reasonable doubt, there still remains a host of subsidiary questions as to just how he committed the crime and whether he had help. In the typical criminal trial these questions, of course, would often not be answered beyond a reasonable doubt. The jury might well be completely undecided as to which of three or four different means the defendant employed,

and yet perfectly rationally believe that, nonetheless, he had employed one of them to commit the crime.

Uncertainty about many issues is an inevitable by-product of any large-scale investigation, and, of course, where the issue is important, there will be disputes. The evidence for the one-bullet theory is ambiguous, and, as often happens when that is true, some people assert one possibility with fervor while others disagree with equal vigor. In all probability we will never know, not only for sure, but even with a very high degree of confidence, whether the one-bullet theory is correct. If this thought is upsetting in the abstract, it is all the more so when one realizes that a completely competent investigation immediately after the assassination (and before the Warren Commission had come into being) might have given us the answer. Unfortunately, however, no one even realized that the issue was raised until after both the Zapruder films and Oswald's gun had been closely examined. By that time the autopsy on President Kennedy had been finished and his body was permanently out of the hands of the surgeons; Governor Connally's wounds were well on the way to healing; and, through an incredible bungle, the Governor's clothes had been cleaned, thus destroying any light they might have shed on the mystery.

The second reason for the great furor caused by the third-stage writings is the fact that, although the Warren Commission investigation seems on the whole a competent one, the actual *Report* of the Commission shows two grave defects. First, it was obviously rushed out. Epstein gives a most plausible explanation why, and although we can understand the Commissioners' desire to get the *Report* published before the 1964 elections, their failure to have taken the necessary time shows up again and again in the quality of the *Report*. Thus, the index to the twenty-six volumes and the citation of exhibits in the *Report* are extremely inaccurate and incomplete (making all the more valuable the comprehensive index compiled by Sylvia Meagher—and published by the

Scarecrow Press—which has become the standard work for all investigations into the Commission documents), and there is a good bit of sloppiness which can be explained only by the pressures of time upon the staff. Despite the legitimate desire for speed, however, it was not necessary for the pressure to have compromised the work of the Commission. It would have made sense—considering the way in which the world awaited the *Report*—for the Commission to have put out what it did put out, or even something considerably more sketchy, as a preliminary report, just as administrative agencies often hand down tentative decisions. Then the Commission could have assembled its discussion of the evidence and its conclusions carefully and deliberately in the extra six or eight months this would have taken.

In all probability, however, another basic decision of the Commission was even more detrimental to the *Report's* ultimate value than merely the decision to get it out too quickly. This was the decision to write the *Report* not as an impartial historian but, in many places, as an advocate. When I say that the Commission too often was an advocate, I do not, of course, mean to charge it with the distortions and misrepresentations that have characterized the third stage of inquiry. What the Commission did was to put the best face on the evidence it wished to use. Thus in its discussion of the one-bullet theory the Commission marshalled most of the evidence in its favor, but alluded only slightly to the opposing evidence and not at all to the possible importance of the issue. How much better it would have been had the Commission discussed the alternatives and then decided on the one-bullet theory as the most likely of the possibilities, recognizing fully the fact that it was a likelihood, on the basis of all the evidence, somewhat on the order of four out of five rather than, as it implied, ninety-nine out of one hundred. Having done this, the Commission could have discussed how the evidence could be rationalized were the one-bullet theory not true, instead of relying on what is perhaps a technically accu-

rate but by no means obvious truth that the validity of the one-bullet theory was “not necessary” to any of the Commission’s major conclusions.

The Commission’s advocacy compromised its discussion of other issues as well. It attempted to prove that Oswald’s shots were not difficult ones, and concluded, on the basis of his Marine record and several not very successful tests with his rifle, that “Oswald had the capability with a rifle to commit the assassination.” It would have been more candid to have pointed out that Oswald had probably just gotten off two “lucky” shots.

The Commission’s advocacy is visible at yet another point. Although it had what would seem to be sufficient proof that Oswald had slain Officer Tippit, the Commission nonetheless supported its view with a purported eye-witness identification by one Helen Markham whose credibility had been badly tarnished during the hearings.

It is hard to assess the blame for the Commission’s failure to accord due respect to its historical role. Perhaps it lies in the fact that the majority of the Commissioners were lawyers and that lawyers, having reached a conclusion—even honestly and fairly—are accustomed to stating it in the form that most justifies their belief and that convinces onlookers. Perhaps it is due merely to the time pressures that ruled out the longer and more careful discussion that would have been necessary had every point been given full consideration. Perhaps Epstein was partially correct, and the Commission, having decided that no conspiracy existed, tried to fulfill both its duty to its own integrity and its role as an organ of state by writing what it felt to be the truth in the most convincing form.

Whatever the reason, however, it was a serious error, and if it is responsible for even a tiny part of the third stage, the Commissioners have suffered for it.

A third problem, which quite reasonably has worried a great many observers of the controversy, is the failure of the Commission to disclose the full contents of everything before it. To be sure, although certain