

ADDRESS DELIVERED TO THE SPRING MEETING OF THE
AMERICAN COLLEGE OF TRIAL LAWYERS
ON MARCH 16, 1964 AT MIAMI BEACH, FLORIDA

--by Leon Jaworski

Following the President's assassination there were a series of swift-moving events. An employee in the building from which the shots were fired was missing. His description was broadcast and a pick-up order issued. A cruising policeman who sought to interrogate a suspect fitting the description was slain. A suspicious acting man reportedly was seen entering a theater. He was observed to move about from place to place in the lower auditorium. Police surrounded the building--then entered the theater where the suspect was pointed out. Approached by the officers, he was told to stand up and as one of them undertook to search him, the suspect struck the officer with his fist--then reached for his pocket and drew a pistol. The gun was wrested from him but not until after the trigger had been pulled and the cartridge failed to fire. The suspect, shouting "police brutality" was removed from the theater, placed in a car with four officers. On the way to the police station, he repeatedly shouted: "What do you want with me? All you have on me is that I was in possession of a pistol." The suspect was identified as Lee Harvey Oswald, an employee in the building from which the assassin's shots were fired.

Quickly unraveling circumstances pointed to Harvey Oswald as the assassin. But at the time these circumstances were far from conclusive. When interrogated by the authorities he was surly, arrogant and scoffed at their efforts to discuss the assassination with him. "I know my rights," he sneered.

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Across the land, lawyers in particular, as well as some laymen who were following television and newspaper accounts of the investigation became perturbed. True, it appeared that Oswald may be the despised assassin, but what about his legal rights? Is an aroused and emotionally-charged public to forget that even a strongly-suspected assassin is to be accorded the legal rights guaranteed to an accused under our system of law? Would the authorities, in their eagerness to solve so great a crime, become unmindful of his rights under the judicial process?

Regrettably, much too much had already been telecast about the purported evidence that pointed to his guilt. Yet not a word had been said about this man being represented by counsel to advise him and to stand ready to resist any encroachment on his legal rights.

Leaders of the Bar became uneasy. "It must not be said that this man, although already hated and scorned, was denied his constitutional rights" thought leaders of the Bar. Here was a case that may well put to a test our system of equal justice under law. Action was taken to determine the facts.

In such a time of strain and stress, birth is given to many rumors and speculation runs rampant. Fortunately, in this instance, the true facts are available for your appraisal.

On his own initiative and implementing the suggestion of others, Louis Nichols, the then president of the Dallas Bar Association, called on Lee Harvey Oswald to ascertain the facts regarding his desire for the services of counsel. I have his report of what occurred, and I shall read to you the pertinent excerpts.

"On Saturday, the day following the assassination, I contacted the District Attorney to determine whether or not he knew if Oswald was then represented by an attorney. He advised me that so far as he knew, Oswald was not then represented by an attorney, nor had he made any demand or request that an attorney be appointed to represent him or made available to him.

"I then contacted a Captain on the City of Dallas Police Force to determine whether or not Oswald was represented by an attorney or whether he had made any demand for an attorney. This Captain, who is an administrative assistant to the Chief of Police, advised me that so far as he knew, Oswald was not then represented by an attorney, and that he had made no request of the Police that an attorney be made available to him or that he be permitted to call any attorney. . . . The Captain then advised me that I was perfectly welcome to come down and see Oswald and determine myself whether or not Oswald desired an attorney.

"On Saturday afternoon, I went to the City Hall and to the office of the Chief of Police. The Chief said that he was glad to see me and he personally took me to the jail where Oswald was located. The Chief introduced me to Oswald and offered to make available a place for me to talk to Oswald, but I advised him that the cell would be satisfactory. The Chief then stepped back so as to permit me to converse with Oswald without any interference on his part.

"I introduced myself to Oswald and advised him that I was President of the Dallas Bar Association and had come up to determine whether or not he had an attorney to represent him or whether he desired that the Dallas Bar Association do anything toward obtaining

an attorney to represent him. Mr. Oswald stated that he desired to be represented by an attorney named John Apt or Abt of New York City and asked me if I knew this lawyer. I told him that I did not. He then asked me if I knew any Dallas lawyer who was a member of the American Civil Liberties Union. I told him that I did not. He then stated that he was a member of the American Civil Liberties Union. I again asked him whether he desired that either I or the Dallas Bar Association do anything at that time toward getting him an attorney to represent him. He stated that if he could not get the New York lawyer or if he could not get a lawyer who was a member of the American Civil Liberties Union to represent him, and if there was an attorney in Dallas who believed as he did, and believed in the things he believed in, and believed in his innocence as much as he could, that he might call on us in the following week about getting such a lawyer. I again asked him if he wanted anything done at this time. He stated that he did not, but that I might contact him during the following week and he would let me know whether or not he desired the Dallas Bar Association to do anything.

"After satisfying myself that he knew what he was doing and that he did not appear to be in a position of being deprived of his rights to counsel, and after satisfying myself that he did not desire that either I or the Dallas Bar Association do anything at that time, I then left.

"At no time while I was in with him did he indicate that he had been deprived of an opportunity to call a lawyer or to otherwise seek legal advice, nor did he indicate to me in any way that

he had been mistreated.

"My personal reaction was that Oswald was in full control of his faculties, and was neither belligerent nor did he appear to be frightened or subdued and that he did not desire the Dallas Bar Association to provide him counsel, but felt that if he did not get a lawyer of his own choosing to represent him, that an attorney would be made available if requested by him."

This was Saturday afternoon, the day after the assassination and the day before Oswald was slain. On that same day-- Saturday--Oswald's wife Marina, his mother Marguerite and his brother Robert asked the authorities for permission to visit with Harvey Oswald. Permission was granted and each of them visited with him. Each of them he assured that he was not being mistreated. "Do not worry about me--I am all right," he said.

The next day--Sunday noon--Oswald was shot to death. He had talked with the President of the Dallas Bar Association, he had talked with his wife, mother and brother. He had not asked that counsel be obtained for him. Why not? I have my opinion, and you will form yours. But I think we can agree that he was not denied the right to be represented by counsel.

When Jack Ruby was charged with the murder of Oswald, a hearing on his right to bail appeared imminent. There was basis for suspecting that the hearing would be televised. Canon 35 of the ABA's code of ethics is not followed in Texas. The taking of pictures in the courtroom as well as television coverage is left to the discretion of the judge presiding over the trial. The underlying reason for this unsatisfactory practice in our state

revealed by the investigation would be improper. But the procedures that have been utilized may be discussed. At least in my capacity as special counsel to the Attorney General of Texas on the matter of the investigation, I face no barrier in discussing the investigative work of the Texas authorities and the modus operandi in coordinating our efforts with those of the Warren Commission.

Following the graveside services of President Kennedy, at a conference held at the White House with the Attorney General of Texas, it was determined that it would be advisable for a Texas Court of Inquiry to be called to determine the facts of the assassination and accordingly public announcement to this effect was made. Under Texas law, a Court of Inquiry, which the Attorney General has the right to call, is invoked for the purpose of discovering facts. Its powers are limited to fact-finding. At the time of this decision, the appointment of a Presidential Commission was not indicated but because of subsequent events, such a Commission was considered advisable. Soon after its appointment was announced, to be presided over by Chief Justice Earl Warren, the Attorney General of Texas and his special counsel met with the Chief Justice and others to discuss the desirability of avoiding conflicts and to coordinate all investigative efforts. A mutually helpful agreement was reached, the details of which can best be imparted by reading the following letter from the Chief Justice to the Honorable Waggoner Carr, Attorney General of Texas, the publication of which was authorized.

"All of the members of the Commission are aware of the deep interest of Texas in the tragic event which occurred there and with respect to which all of us are exercising the responsibilities

laid upon us. We share your view that it is desirable to have state officials do everything possible to uncover all the facts, and are appreciative of the availability of these facts to the Commission.

"As you know, at this time the Commission is organizing its procedures and we do not yet have available the comprehensive report of the FBI or of other investigative agencies, both Federal and State. While we expect to receive this material soon, it will take time to analyze it thoroughly, and I am sure you will agree that there may remain matters which will require further investigation before we feel we are in possession of all of the relative data upon which to make evaluation and judgment. We are most anxious, as I am sure you are, to take no steps which could impede investigation or which could lead the public to mistaken conclusion based upon partial factual information. In addition the Commission, as well as the Texas Court of Inquiry, must be extremely careful not to prejudice in any way the trial in Texas of Jack Ruby.

"The Commission would not wish to interfere in any way with you or other state authorities in the conduct of matters which are your responsibilities, and in which, as you point out, the State of Texas has a proper and important interest. At the same time, it is the view of the Commission, for the reasons stated above, that a public inquiry in Texas at this time might be more harmful than helpful in our mutual search for the truth. Recognizing that the timing of this Inquiry is your responsibility and your decision, we cannot refrain from the suggestion that you consider the wisdom of postponement of this Court.

"It would be the Commission's desire that you and your

Special Counsel, or either of you, participate in the Commission's work, and counsel with it, it being the Commission's wish that you as the representative of the State of Texas be fully advised of the progress that is made in the course of the Commission's investigation and advance such suggestions as you consider helpful to the accomplishment of the Commission's assignment. It may develop that the Commission would deem it advisable that testimony of certain witnesses residing in Texas should be taken before a Texas Court of Inquiry and, in that event, we would expect to call upon you to render this additional assistance.

"Let me assure you of the desire of the Commission to work most closely with you and of our conviction that in a spirit of close cooperation we can responsibly meet our independent obligations."

The Attorney General and his Special Counsel were convinced that the investigative authority of the federal government was being used intelligently and energetically to the fullest extent. Therefore, pursuant to the Commission's request, it was our considered judgment that the Texas Court of Inquiry, if held at that time or in the then immediate future, might bring about an interruption in the continuity of the nation-wide investigation.

The Attorney General of Texas then issued this statement: "It is my conclusion and decision that the convening of the Texas Court of Inquiry should, for the present time, be withheld. At the same time that I announced this decision, I also accepted the invitation of the Warren Commission in which they asked my Special

and me to attend their hearings and assist with the Commission's important task.

"It is clearly understood by all concerned that if, after we have assisted the Commission in this work, we feel the necessity of additional investigation to disclose further facts, we will then have no hesitancy in calling for the Texas Court of Inquiry.

"Only one thing is uppermost in our minds. Every possible fact concerning these tragic events must be sought out and established. Then, and only then, will the public confirm that justice has been accomplished."

The arrangement thus made has proved to be a sound one. The Commission has the Herculean task of ferreting out the facts from a maze of rumors and conjectures. In addition, it has to contend with exhibitionists and opportunists. So far as I have been able to perceive, no stone is being left unturned in a dedicated search for the truth. I have been at times both concerned and amused at the fantastic statements and innuendo contained in some newspaper and magazine articles purporting to give the facts. The best course for the public to follow is to take these with a grain of salt until the findings are announced.

There has been a close and harmonious cooperation between the Commission and the Texas authorities. Much of the evidence to be sifted and weighed by the Commission emanates from Texas. The police authorities in Dallas and other parts of Texas have been most helpful in their phases of this investigation.

I should add that Robert G. Storey of Dallas, a Fellow, is also

serving as Special Counsel and has aided materially in providing helpful liaison in Dallas in addition to other functions.

It has been my privilege to attend a number of the Commission's sessions. The Attorney General, Dean Storey and I alternate in attending these hearings. I have been impressed by the thoroughness of the work performed by the staff serving the Commission. Two of our Fellows, Joe Ball and Bert Jenner, are serving on this staff.

Only one who has some knowledge of the piles of exhibits, the numerous reports that need to be studied and analyzed, the many witnesses that need to be heard and the tedious task of separating the grain from the chaff can appreciate the length of time this undertaking will consume. It is hoped that in the end the public at large and lawyers in particular will find that they can give their approval to this important undertaking.

Now I realize that some of you had hoped that in these remarks there would be a disclosure of some of the results of the investigative work done so far, including perhaps some conclusions that might have been reached. From that standpoint, at least, my comments have been a failure. In that regard my situation is no different from that of the boy who brought home a miserable report card. He not only failed every subject but made the lowest possible grade that could be given in each. His disheartened father read the card over and over again and shaking his head finally said: "Well, one thing is certain. He sure as hell didn't cheat."