

The Lingering Shadow

Critics of Warren Report Do Not Cite All Evidence

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Write as Prosecutors, Say
Survey Authors

EDITOR'S NOTE—The defendant is a book. So is the prosecutor. One trial is the Warren Commission Report, indicated by men whose own books find it guilty; guilty of haste. Guilty of bias. Guilty of a coverup. But neither critic nor commission is the jury. The public is. It, ultimately, will find where it thinks truth lies. But before considering its verdict, the public must ask for the facts. All the facts. Has it heard them? All of them?

By **BERNARD GAVZER**
and **SID MOODY**

(Associated Press Newsfeatures Writers)
PROLOGUE

The one slain has not died.
Doubt will not let him.

Doubt asks: "How did you fall? By whose hand?" Doubt has heard an answer — "Lee Harvey Oswald did it" from doctors, lawyers, government; from police, friends, foe.

But doubt does not believe.
Not quite.

Doubt knows the stature of the seven somber men of the Warren Commission, the breadth of their investigation, the depth of their report. But doubt is not appeased. Not quite.

Doubt has heard of the rifle, the shells, the fingerprints, the handwriting, the blunted bullets, the people who said they saw. But doubt is not assured. Not quite.

Why is this so?

Because doubt was denied the certainty of a trial. Because not all is known. Because not all is answered and may never be. And because there have been other seekers than the commission. They have seen what the commission did not see: different shots from different places; plots where the commission saw none; design where the commission saw chance; doubt where the commission saw fact.

Are these seekers scavengers, as Texas Gov. John B. Connally has called them? Or are they impassioned skeptics, refusing to take "it is most likely" for an answer. Are they creators of doubt? Or are they creatures of it? It is not always clear.

But if the Warren report is now doubted by many, it is because of the books written by these few seekers. If their number is small, their impact is not. The very existence of a printed page has an aura of authenticity above and beyond what it states. As the critics' books are increasingly read, they are increasingly believed. It is far easier to read one book from a shelf by a single critic than a whole shelf of books by a commission. So doubt takes root. The shelf lies fallow.

One could protest the whole argument is macabre—ghoulish. John F. Kennedy is gone. Talk won't bring him home. But this was a president. The people he led have a right—nay, an obligation—to know what struck

him down, and why. It was not just a death in the hearts of the nation. It was murder at the heart of the national structure. Assassination unsolved is assassination at large, possibly free to strike again, certainly free to poison and corrode by suspicion, mistrust, fear.

So it is not mere curiosity, not just to add a footnote to history, to ask who killed Kennedy. To preserve the absolutely vital trust of the people in their leaders and institutions, the question must be answered and stay answered.

The quest may be long. It is still asked: Who killed Lincoln? John Wilkes Booth is not the answer to all seekers. Nor is Lee Harvey Oswald. Lincoln, however, is for the archivist. The wound from Dallas is still red. It is tender to questions of who, or why. It may ever be.

Or, perhaps, the wound may have been salved all along. Perhaps the first investigation need be the last.

Or, perhaps, the pain of doubt may throb the less if one were to ask the doubters of their proof, ask of the askers: What have you found, what news can you bring us?

I—THE CRITICS THE COMMISSION

The critics of the Warren Commission Report have made grave charges. They have made uncertainty. They have made money.

Have they made a case?

Have they proved that the most extensive murder investigation in the nation's history, directed by some of its foremost citizens, was wrong, dead wrong? Was the commission guilty of haste, of bias, of a coverup and Lee Harvey Oswald innocent of murder? Do events such as those recently in New Orleans indicate justice has not been done?

Polls suggest increasing numbers of people think so.

Book after carefully footnoted book say so. The Warren Report was once on the best-seller lists. Now Mark Lane's "Rush to Judgment" is.

Commission Doesn't Answer Critics

Which has spoken truth? The critics say they have. And the commission has stood mute.

Mark Lane has said: "As long as we rely for information upon men blinded by the fear of what they might see, the precedent of the Warren Commission Report will continue to imperil the life of the law and dishonor those who wrote it little more than those who praise it."

And the commission has stood mute.

Leo Sauvage, in "The Oswald Affair," has said: "It is logically untenable, legally indefensible and morally inadmissible to declare Lee Harvey Oswald the assassin of President Kennedy."

And the commission has stood mute.

Edward Jay Epstein, in "Inquest," has said: "the conclusions of the Warren Report must be viewed as expressions of political truth."

And the commission has stood mute.

It considered its first words, published in 27 volumes in the fall of 1964, to be its last. It has disbanded.

The public, in the jury box, may wonder at the commission's work. But it must also ask after the critics'. Is it true where the commission's is not? Are the critics innocent of the guilt they charge the commission: of distortion, sly selection of convenient fact, editing of truth?

Mark Lane wrote that the commission "cited evidence out of context, ignored and reshaped evidence and—which is worse—oversimplified evidence."

Did he?

Little New Evidence Has Been Produced

Lane and the other critics have produced little in the way of new evidence. What they have done is use what the commission provides in its 26 volumes of testimony and exhibits—but to different conclusions. The critics' case rests on the same bedrock as the commission's—the Warren Report.

How have the critics used, or abused, it?

On page 199 of the hardcover edition of "Rush to Judgment" Lane mentions an Illinois ballistics expert, Joseph D. Nicol. Nicol testified before the commission on Oswald's pistol; the shells found at the scene of the slaying of officer J. D. Tippit and bullets recovered from Tippit's body.

Lane says Nicol "appeared less than certain" the shells came from Oswald's gun. There is a footnote in the passage referring to Volume III of the hearings, Page 511. Few readers have the volumes much less the time to check Lane's thousands of citations. A pity.

On Page 511, Volume III Nicol is asked by commission counsel Melvin Eisenberg if he was "certain in your own mind of the identification" of the shells.

Nicol replied: "Yes; the marks on the firing pin particularly were very definitive. Apparently this firing pin had been subjected to some rather severe abuse, and there were numerous small and large striations which could be matched up very easily."

Yet Lane says Joseph D. Nicol appeared "less than certain."

Oswald's Shooting Ability Questioned

In his book Epstein questions the commission's conclusion that Oswald was a good shot. He mentions the shot at Maj. Gen. Edwin A. Walker which missed. He mentions the testimony of Nelson Delgado, a fellow Marine who had watched Oswald on the firing line. Oswald, Delgado testified, got a lot of "Maggie's drawers"—complete misses.

Delgado said something else.

On the rifle range he said Oswald "didn't give a darn. He just qualified. He wasn't hardly going to exert himself."

And Walker himself testified that his assailant "could have been a very good shot and just by chance (the bullet) hit the woodwork (of a window). There was enough deflection in it to miss me."

Don't these passages have some bearing on Oswald's marksmanship? Epstein evidently didn't think so. They don't appear in his book.

Lane devotes several pages to the testimony of a former Dallas patrolman, Napoleon J. Daniels, who said he saw a man resembling Jack Ruby enter police headquarters just before he shot Oswald. Lane takes issue with the commission for deciding Daniels' testimony "merits little credence."

But nowhere does Lane mention that Daniels was given a lie detector test. Daniels was asked if he had told the complete truth. He said yes. He was asked if he had deliberately made up any of his story. He answered no. The lie detector indicated both responses were "false." He was asked if he thought the person he saw enter the building was Jack Ruby. He said no. The test indicated this response was "true."

Is such evidence relevant to why the commission felt Daniels merited little credence? Lane evidently thought not.

Epstein Considers Autopsy Key Point

One of Epstein's major points concerns the report of the autopsy on Kennedy. It concluded he had been shot in the back of the neck and the back of the head. An FBI report submitted Dec. 9, 1963 contradicted the doctors in several important areas. Epstein makes much of the difference.

Inquiry by the writers, however, has established that the FBI wrote its original report before getting that of the doctors, which reached the agency Dec. 23, 1963. The FBI nonetheless stuck to its original version in a supplemental report Jan. 13, 1964. The agency felt duty bound not to alter a report by its agents—its customary policy—even though other reports might contain other facts.

It was the commission's task to choose between the FBI agents—laymen who reported what they had overheard the autopsy doctors say—and the doctors themselves who were making the one authorized examination and full report. It chose the doctors.

Shouldn't a critical appraisal of the commission have made such an inquiry? If Epstein did, it is not recorded.

Such lapses of the critics do not prove or disprove that Oswald murdered. But do these lapses, and many others to be cited later, have some bearing on the objectivity the critics claim for themselves and deny the commission?

Did the critics, not the commission, "cite evidence out of context, ignore and reshape evidence?"

They did.

Critics Are Not Objective Judges

They have sat in judgment of the Warren Commission and found it wanting. But they are not judges. They have been prosecutors, making a case. Where fact has served, they have used it. Where it has not, they have not.

If they have read all the evidence, they have not quot-

ed it all. They have taken evidence to form theories, to launch speculation. But they have not taken all the evidence.

They have said "perhaps" and "it seems" and "it is likely." But they must say more. They must say here is the evidence. And as yet, such evidence has not been forthcoming.

The irony of the Warren report is that it is based on the same evidence as the books that attack it. The commission provided in the 26 volumes of testimony and exhibits and additional matter in the National Archives the results of its investigation. And this is the heart of the critics' case. Their witnesses were the commission's. Their evidence was the commission's. But, again, not all of it.

A doctor said Kennedy was shot from the front. A man saw a puff of smoke from some trees ahead of the motorcade. The man, and others who saw smoke, were commission witnesses. The doctor, and others who thought Kennedy's throat wound was one of entrance, were commission witnesses. And they appear for the critics.

But not always in the critics' books does one read of the people who saw a rifle in the window of the Texas School Book Depository. Not always does one read the doctors' testimony that their first interpretation of Kennedy's wounds was not their final one.

The commission presented all the evidence it could find. The critics did not. As a group they have found the commission wrong on almost anything but the fact of assassination itself.

(One critic, George C. Thomson, doesn't even agree on that. He claims five persons were killed that day in Dallas. None of them was John F. Kennedy who Thomson says is alive and last winter attended Truman Capote's famous masked ball).

Space does not permit a footnote analysis of the critical books, although this was done with several of them in preparing this report. (The notes made on Mark Lane's book alone run to 50,000 words).

Plan Is to Focus on Key Issues

The intention, rather, is to focus on several key issues in contention and compare what the commission volumes said with what the critics said they said. Such comparison is often illuminating. Such a comparison may not convince the two-thirds of those questioned in a recent poll who said they doubted the commission's conclusions.

But, at the least, it may serve to have asked of the critics what they have asked of the commission—the facts. All of them.

Surely, one can fault the commission. Why didn't it call this witness, investigate more deeply in that area? When there was doubt, too often the commission spoke needlessly, in more positive language than the facts allowed. Maybe it should have behaved more as a court than a commission.

Maybe it would have been better for Oswald to have been represented posthumously by counsel. Maybe the commission did have an eye on the political clock in turning in its report while some investigation was still under way. Maybe. Maybe. Maybe.

Without question the commission was not infallible. But it has too long been the target of critics who have not received the same scrutiny they gave the Warren Report. This does credit to no one.

Recent Books Attack Critics

But recently books have begun to appear attacking the critics, one by Charles Roberts of Newsweek magazine and another by Richard Warren Lewis, a magazine writer, and Lawrence Schiller, a photo-journalist.

And while the commission, albeit disbanded, has not spoken as an organization in its defense, many of its staff lawyers are now willing to do so. The writers interviewed 11 of the commission's 15 senior counsels.

They spoke of the contradicting eyewitnesses: those who thought the shots came from the Texas School Book Depository and those who didn't; those who didn't agree on what Tippit's slayer was wearing or what he looked like.

"I've had a lot of trial experience," said one of the key members of the commission staff. "I know witnesses don't agree. If you have testimony that has uniformity, you have to look out for perjury."

The staff lawyers talked of some of the puzzling testimony that may never be resolved: the gunsmith who said he fixed a gun for some one named Oswald, the men who saw some one who looked like Oswald at a firing range, the persons who saw Oswald driving a car (the

commission decided he couldn't drive), the woman in Dallas who said Oswald had been introduced to her as an anti-Castroite who thought Kennedy should be shot, the people who thought they saw Oswald in Jack Ruby's night club.

"We were beneficiaries of fraud," said one of the senior attorneys without mentioning any specific examples. "The thing that shocked me was the people who wanted to get involved in this great event. I do appreciate this can happen, but I thought people would have too much regard for the nature of what we were trying to do."

Why Commission Makes No Defense

They talked of why the commission had not defended itself.

"If we were to answer the Lanes and the Sauvages, who would believe us? We had all kinds of suggestions. One was that (Chief Justice Earl) Warren, himself, come out in defense of the report.

"I don't think that means anything. If I were in the press. I wouldn't take this. You'd be fools if you did. But the press has an obligation to examine each book as it comes out and present it to the public as a searching for truth. And I think this might go on for 50 or 100 years. As long as people can make a half-million dollars, we're going to have these books.

"The mass media devote time to the Lanes and the Epsteins because it sells. Coming up with the establishment viewpoint doesn't have much mileage."

One staff member talked of the charge that the commission entered the investigation with a preconceived belief of Oswald's guilt. "Nonsense. We looked for the incredible as well as the credible. A lot of us were young lawyers. What greater feather could it be in our caps to prove the FBI was wrong?"

Would Adversary System Have Worked?

A senior counsel discussed the wisdom of having used an adversary system in the investigation, with a prosecution against and a defense for Oswald. "It would have been most unequal; the government all on one side. The report WOULD have sounded like a brief for the prosecution.

"The staff was instructed to proceed in each instance on the possibility that Oswald was not involved. If they didn't want to proceed on that basis, the commission didn't want them to continue."

One lawyer, Wesley J. Liebeler, talked of Oswald as a marksman. "I took the position that you, well, you couldn't tell. The evidence that Oswald was able to shoot the President was that he did. He was lucky. Oswald had something in his sights that he knew he was never going to have again. I suspect he was up for it."

Liebeler talked of the "grassy knoll" where Lane and others think shots came from, in part because people ran in that direction after the gunfire.

"Would people do this? Would you if you knew or thought someone was firing from there? It depends upon instantaneous reaction. I might run after the motorcade. I might run for cover. But I'm sure most people would run to get out of the way."

Staff Member Discusses Rifle

Joe Ball, another staff member, talked of the rifle found on the sixth floor of the depository building which police first identified as a Mauser. Later it was determined to be a Mannlicher-Carcano, an Italian weapon. Critics have implied this switch suggests the weapon was planted.

"Evidence shows that Seymour Weitzman who found the rifle never handled it and saw it from five feet away. Weitzman and Deputy Sheriff Eugene Boone both testified it seemed to them to be a Mauser.

"Let's make it clear. It is a Mauser. It is built on German patents and the Mauser refers to the bolt action. But Lane never dares to go so far as to say that Weitzman or Boone in any way suggest this is not the gun which was found on the sixth floor and which has been found beyond all doubt to have fired the bullets."

This is not quite accurate. Lane, on Page 120 of the hard-cover edition of "Rush to Judgment" writes: "Boone, unlike Weitzman, was shown the Mannlicher-Carcano which he was unable to identify as the weapon Weitzman had found."

Boone said no such thing. He was shown the rifle and testified: "It looks like the same rifle. I have no way of being positive."

And why wasn't he positive? Because he said he never handled the rifle.

Ball talked of Epstein.

"He said I said Norman Redlich, one of the staff, used 'a turgid law review style.' I wrote Epstein's publisher and said I never used the word 'turgid' in my life. I had to

go the dictionary and look it up.

"His statement that the lawyers worked as part-time consultants is a lie. I made my residence in Washington, D.C., permanently from January to July 1964. I was allowed to come to my home in Long Beach, Calif., once a month, and I did. Epstein quotes me 39 times and I didn't talk to that man for over half an hour and that was in a New York hotel lobby."

Epstein Charged With Misstatements

Nine of the 10 staff members quoted by Epstein that these writers interviewed charge him with misstatements. Several of them wrote letters of protest to his professor for whom he wrote what became "Inquest" as a master's thesis. The professor replied to one that "experience has shown that all too often when a person is shown his own words on paper he is inclined to state that he did not make those remarks."

Experience showed this in Epstein's case, anyway.

Liebeler talked of finger and palm prints.

Oswald's palm print found on the rifle had little probative value, said Lane, "especially since local and federal police officials who issued inaccurate statements . . . were alone with Oswald and the weapon." The implication seems obvious.

"Well," said Liebeler, "we had to consider that in view of the performance of the Dallas Police Department, God rest their souls, were they so devilishly clever that they could have taken Oswald's print and planted it on the rifle and then taken it off again, or that they could have handed the rifle to Oswald to get the print? Of course, that would involve the judgement of Oswald, and do you think any one could have gotten Oswald to touch that rifle with a 10-foot pole? Of course not."

(Lane also suggests it is "curious" that a Dallas police officer found a print on the rifle and "lifted" it off the weapon

and that an FBI expert was unable to find any trace of the print on the gun several days later. The reader might also find it curious that Lane does not mention that subsequent FBI photographs of the lifted print showed minute gaps. They exactly matched nicks and pitting in the metal of the rifle from which the print was taken.)

Another staff member talked of Lane's book.

"He attempts to discredit the commission on hundreds of counts and to suggest such an enormous level of incompetence or dishonesty as to make his entire argument ridiculous. Had someone set out to design a commission of the incompetence Lane attributes to it, I doubt very seriously that it could ever have been done. Had he focused upon some weaknesses of the commission or the report, he might had had an area of argument."

Staff Agrees There Were Weaknesses

And the staff agrees there were weaknesses. Some were of omission: the commission most certainly could have called to testify witnesses who had only given statements to law officials. Some weaknesses were of commission: the report could easily have been more explicit about the autopsy conflict. Some were inevitable: no one will ever be able to say with absolute certainty which bullet produced the fragments that were found in Kennedy's car or just what struck a bystander in the cheek or why Oswald did it or even, perhaps, if he did it unaided.

But to read the report, all of it, is to appreciate the depth of the investigation. Perhaps the commission should have had its own investigatory staff, regardless of the huge expense. But that is to suggest that the FBI and the Secret Service and other investigative agencies on which it relied were somehow not to be trusted.

Some critics suggest that they were not trustworthy: either

subconsciously they sought to defend their professionalism by charitably treating evidence and witnesses or, far worse, they were involved in a super-plot. If the latter were the case, it would mean, because of the intricacy and range of the investigation, a conspiracy of almost universal dimensions. As yet, there is no such evidence.

The report volumes themselves are an irritating thing. The first 15 are testimony, most of it taken by the commission staff. The remaining 11, which lamentably have no central index, are as tidily packed as a beatnik's duffle bag. There is little or no order. A search for a specific statement or affidavit can take hours. One of the intense coterie of assassination buffs, Sylvia Meagher, has made an index on her own. But it, too, is fallible.

Yet the volumes, particularly the testimony, have a certain fascination. The range of characters is Tolstoyan. There is the President of the United States, the secretary of state. And a prostitute. There is a dashing, Russian-born oil man who knew both Oswald and Jacqueline Kennedy and whose amatory troubles with a Latin beauty are truly comic. And there is a laborer who told the august members of the commission in blunt terms of the locker room what he thought when he heard a rifle go off above his head in the depository building.

Critics of Report Are Also Diverse

The critics are equally diverse. There is Harold Weisberg, a Maryland poultryman who was once National Barbecue King and claims his "Geese for Peace" campaign got the Peace Corps its first good publicity break. Weisberg, who knows the report as an evangelist knows his Bible, has published two books, "Whitewash" and "Whitewash II", is planning a third and thinks there were two Oswalds, one a look-alike stand-in.

Sauvage, a French journalist, argues with Gallic logic, no index and membership in

the "perhaps" and "it seems" school. He raises some pointed questions in areas where uncertainty is and may remain forever.

Epstein makes much of the doctor-FBI autopsy discrepancy. It is answerable. He makes a criticism of many of the commission's methods. This is arguable. Both ways. But he raises his questions from facts in the commission's volumes. Sometimes not all the facts. And sometimes not facts at all.

Lane — Lane's name predominates. He has made a movie based on his book and given numerous lectures here and abroad. At the very end of his book he files a disclaimer explaining why he accepted material contrary to the commission's conclusions and rejected material that supports it. So, on almost his last page, Lane identifies himself: he is a prosecutor, using the defendant commission's own witnesses and testimony. But not all of it.

"I haven't found anything of theirs that even makes a positive contribution," said one of the senior commission counsels of the critics.

One can assume the commission staff would stand by its work. Its statements should be considered with that in mind. One, however, should approach the critics with similar dispassion. Read them. But read what they criticize as well. If it is ironic that the report is their foundation, it is also convenient. One can read and compare.

Epstein presumably read. He found the commission had uttered "political truth." It sought to dispel rumor and keep America clean, not to determine fact.

But neither Edward Jay Epstein nor Earl Warren is the jury. The public is. And there is more to the case for the government than the public may have heard.

The public may know of the single bullet theory. It is a chain of circumstance, linked by assumptions. It is a chain that leads to Lee Harvey Oswald as the assassin. But it is vulnerable, as all chains. If one of its links breaks, it does not hold. . . .
