

BY EDWARD JAY EPSTEIN

INQUEST

INTRODUCTION

By Richard H. Rovere

"No material question now remains unresolved so far as the death of President Kennedy is concerned," Harrison E. Salisbury wrote in his introduction to an edition of the Warren Commission Report published by *The New York Times*. "[The] evidence of [Lee Harvey] Oswald's single-handed guilt is overwhelming."

Less than two years after the Warren Commission closed its books, we are confronted by a report that challenges these words, and I find it my appalling duty to state that the words do not withstand the challenge. Edward Jay Epstein maintains that the "quest for truth in the Kennedy assassination" was also a quest for domestic tranquility. Mr. Salisbury said that the Commission spent "the better part of a year in exhaustive investigation." Mr. Epstein shows that the investigation proper lasted less than 10 weeks, that it fell far short of



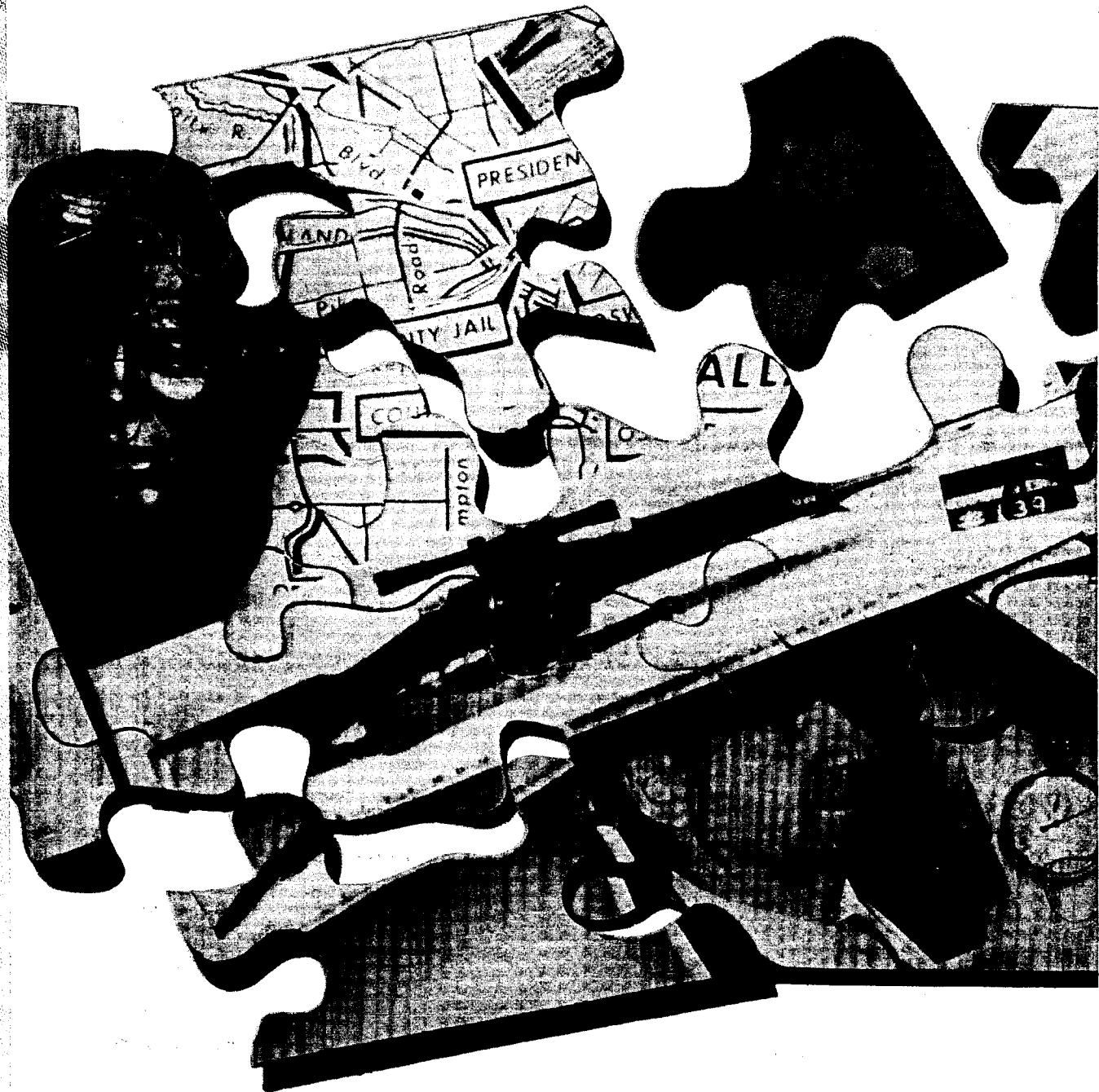
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being exhaustive, and that the Warren Commission as such played a minor part in the proceedings. Mr. Epstein discloses that the number of rifle shots fired at the Presidential party was never resolved. He believes that the case for Oswald's guilt was solidly established. But he insists that evidence of Oswald's "single-handed" guilt was incomplete.

Mr. Epstein, a brilliant young academician, is

not saying there *was* a second assassin. He is disentangling the evidence from the conclusions. "If there was no evidence of more than one assassin," he writes, "there was also no evidence that precluded the possibility." Mr. Epstein makes his case adroitly. That the case is impressive is borne out by the fact that the Warren Commission was itself divided.

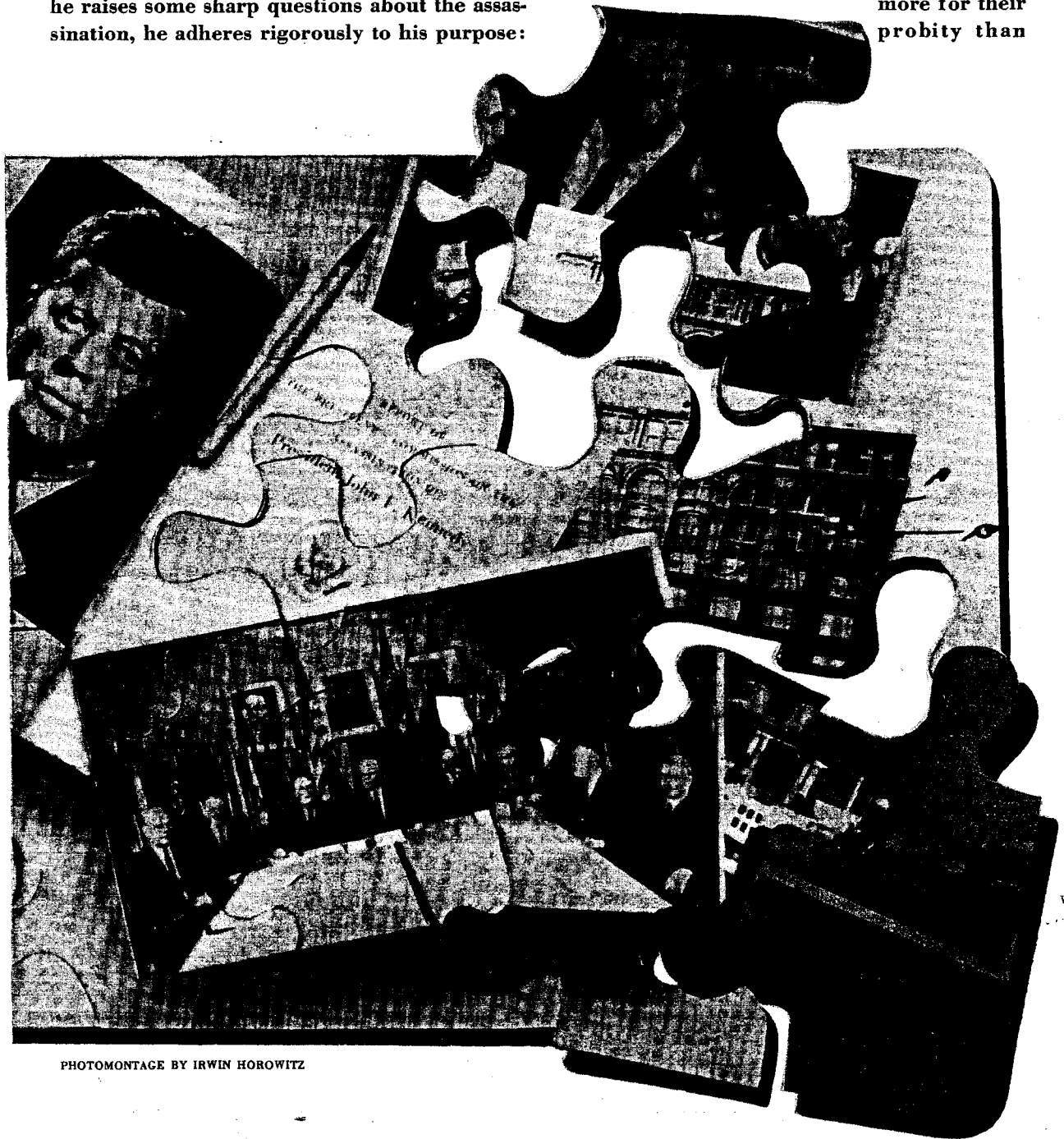
Mr. Epstein does not challenge the integrity



of the Commission or its staff. His concern when he undertook this study was with the processes of fact-finding employed by an agency having a complex relationship to the bureaucracy that brought it into being. "The primary subject of this book is the Warren Commission, not the assassination," he says. And although he raises some sharp questions about the assassination, he adheres rigorously to his purpose:

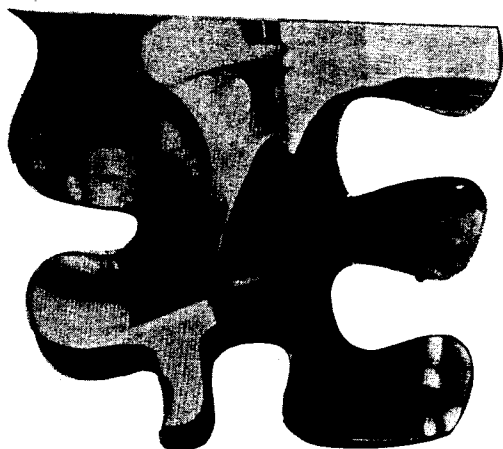
An examination of the way in which a group of Americans prominent in public and professional life carried out an assignment given them by their President.

If Mr. Epstein's analysis is sound, one of the major failings of the Warren Commission arose because the seven Commissioners were chosen more for their probity than



PHOTOMONTAGE BY IRWIN HOROWITZ

Some pieces of the puzzle would never fit neatly into place



for their mastery of probative techniques. And the Commissioners, lawyers without exception, hired a staff of lawyers chosen as much for their professional standing as for their experience relevant to the problem at hand.

Lawyers serve clients as doctors serve patients. Technically, the Commission's client was Lyndon B. Johnson; its official title was the President's Commission on the Assassination of President John F. Kennedy. All that the President asked of the Commission was the truth, and truth was what the Commissioners sought. But the Commission's structure, its procedures, and the peculiar atmosphere in which it worked hampered its search.

Nothing Mr. Epstein reveals is quite so shocking as the fact that this great investigation was carried out by men who could not give their full attention to it and who were in a desperate hurry to get it over with.

Chapter One OVERVIEW

On November 22, 1963, President John F. Kennedy was assassinated. The burst of shots came at 12:30 p.m. as his motorcade passed through downtown Dallas. The President was shot twice and fatally wounded. Governor John B. Connally of Texas, seated in front of the President, was also wounded. The President died at Parkland Hospital at 1 p.m.

Less than one hour later, Lee Harvey Oswald was arrested in connection with the murder of Dallas policeman J. D. Tippit. Oswald, a 24-year-old ex-

Marine, who had once defected to the Soviet Union and who worked in the building from which the shots were believed to have come, was immediately suspected of being the assassin. Then, on November 24, he himself was shot by Jack Ruby, a Dallas nightclub owner.

On November 29, President Lyndon B. Johnson appointed a commission "to ascertain, evaluate, and report on" the facts of the assassination. Earl Warren, Chief Justice of the United States, was chosen as chairman, and from its inception the commission was generally known as the "Warren Commission."

To complete the Commission, Johnson chose six men who had distinguished themselves in public life. Two were senior Senators: Richard B. Russell, Democrat of Georgia, and John Sherman Cooper, Republican of Kentucky. Two were leaders of the House of Representatives: Hale Boggs, Democrat of Louisiana, Majority Whip of the House; and Gerald R. Ford, Republican of Michigan, chairman of the House Republican Conference. Two members were international lawyers: Allen W. Dulles, former director of the Central Intelligence Agency; and John J. McCloy, former United States High Commissioner for Germany and former President of the World Bank.

On December 5, 1963, the Warren Commission held its first meeting. Allen Dulles later said, "Although we faced a difficult and perhaps unprecedented task, each of us had had a lifetime's experience in dealing with extraordinary problems, and we knew what had to be done." The Commission decided that "the public interest in insuring that the truth was ascertained could not be met by merely accepting the reports or the analyses of Federal or State agencies." All the members agreed that the Commission would hold its own investigation.

On December 8 Warren called J. Lee Rankin, a former Solicitor General of the United States, and asked him to be general counsel for the Commission. Rankin would organize the investigation and be its "executive director" as well as its counsel. Rankin left New York for Washington the next day and devoted the next 10 months to Commission work.

Neither Rankin nor the Commission realized how demanding the job would be. Rankin not only supervised the investigation and the writing of the Report, but also examined most of the important witnesses who appeared before the Commission; he adjudicated the disputes that constantly arose among the staff lawyers; and he acted as liaison between the Commission and other government agencies.

On December 9 the FBI, which President Johnson had ordered to conduct a complete investigation immediately after the assassination, submitted its Summary Report to the Commissioners. The four-volume report was considered "of principal importance" in the formulation of the investigation.

Although the investigation was to be "independent," the Commission decided to rely on federal agencies. Rankin explained that it would have been impractical for the Commission to attempt to recruit its own investigative force. The Commission decided to review

thoroughly the material on which the FBI had based its Summary Report. Because this imposing task required assistance, Rankin was authorized to organize a staff of independent lawyers to help in analyzing these thousands of reports and sorting out the issues. The Commission then planned to hold hearings to examine the more important witnesses and evidence.

The FBI investigative reports began arriving at the Commission's offices on December 20. With the reports came Howard P. Willens, a young and energetic Department of Justice lawyer who was to play an important role in shaping the investigation. Willens took charge of the administrative function; he divided up the work among the staff, made schedules, requested assistance from other agencies and "kept the investigation moving."

Rankin chose Norman Redlich, a New York University law professor, as his special assistant. Redlich had the asset of tremendous energy; when necessary, he could work from 8 a.m. to 3 a.m., seven days a week. Redlich, however, tended to be a "perfectionist," which engendered some friction among the lawyers.

In late December, Rankin selected the "senior counsel" for the staff. He said the Commission wanted a "balanced" staff drawn from all parts of the country—lawyers whose reputations would add weight to the Report. Rankin thus chose lawyers held in high esteem.

From New York City, Francis W. H. Adams, a former police commissioner; from California, Joseph A. Ball, a member of the United States Judiciary Conference Advisory Committee; from Philadelphia, William T. Coleman, Jr., a consultant with the United States Arms Control and Disarmament Agency, and one of the best-known Negro lawyers in America; from



New Orleans, Leon D. Hubert, Jr., a former United States attorney and professor at Tulane University; from Chicago, Albert E. Jenner, Jr., vice-chairman of the National Joint Committee for the Effective Administration of Justice.

The criterion of professional eminence led to the selection of extremely busy lawyers. When Norman Redlich was asked how such men could have given up nine months of their practice, he answered, "Very simple. They didn't." Some of the senior counsel

worked for the Commission for only a few days and lent their considerable reputations but not their time.

The bulk of the work devolved on the "junior counsel"—lawyers in their early thirties who had had distinguished law-school records and private practices. Willens, who selected most of the junior counsel, said, "We wanted independent lawyers, not government men, who had been at the top of their class and who could work 16 hours a day."

Melvin A. Eisenberg, a 29-year-old New York corporation lawyer, was chosen by Redlich as his assistant. Arlen Spector, a former assistant district attorney of Philadelphia, was the next lawyer selected. Samuel A. Stern, a former law clerk to Chief Justice Earl Warren, and Burt W. Griffin, a former assistant United States attorney for the Northern District of Ohio, were selected by Willens. David W. Belin, an Iowa trial lawyer, and W. David Slawson, a Denver lawyer, were both recommended to the Commission. Finally, Wesley



J. Liebeler, a former Wall Street lawyer, was recommended to Willens by the dean of the University of Chicago Law School.

The three weeks from December 21 to January 10 were critical in the formulation of the investigation. On December 28 Howard Willens drew up a memorandum which proposed that the investigation be divided into five separate areas. A senior and junior lawyer would be assigned to each and would resolve its minor problems. The first area was to be concerned with the basic facts of the assassination itself; the second area would narrow down its focus to the identity of the assassin. The third area would deal with Oswald's background and motives, while the fourth area would be concerned with possible conspiratorial relationships of Oswald. The fifth would deal with Oswald's death.

After the lawyers were organized into teams, the initial phase of the investigation began. Willens divided the more than 20,000 pages of investigative reports furnished by the FBI and Secret Service into areas and parceled them out to the teams. The teams then analyzed the reports, sorting out matters that required further investigation.

At the first formal staff meeting, held in late January, Rankin told the [Continued on page 129]

INQUEST

[Continued from page 37]

lawyers, "Truth is your only client." He instructed them to gather the facts without forming conclusions and not to accept the FBI Summary Report as final.

The staff was faced immediately with a serious problem stemming from the movie film of the assassination. This film was taken by Abraham Zapruder, an amateur photographer, and graphically shows virtually the entire assassination. In 10 seconds of color film, the President is shown waving and smiling, then suddenly reaching for his throat and slowly slumping over. About a second later, Governor Connally is apparently hit. About three seconds after that, the fatal shot visibly strikes the President's head.

It became apparent, from a frame-by-frame analysis of the film, that the shots were not evenly spaced in time. In fact, the first two shots seemed to hit Kennedy and Connally within a period of one and a half seconds. The proximity of these two shots raised doubts as to whether an assassin could possibly fire a bolt-action rifle two times in one and a half seconds.



The purpose of the Commission was never fully stated in its Report. The executive order which created the Commission listed the "purposes" as examining evidence, conducting further investigations, evaluating the facts and circumstances, and reporting the findings to the President. This order told what things the Commission was to do, but not *why*.

Chief Justice Warren gave only the formal purpose when he stated, "This Commission is, of course, eventually to make known to the President and to the American public everything that has transpired before this Commission."

But the circumstances surrounding the Chief Justice's appointment to the Commission suggest the underlying purpose. Anthony Lewis, then *The New York Times* Supreme Court correspondent, reported that when Warren was first asked to serve, "he flatly said no." President Johnson then called Warren to the White House and spoke to him "about patriotism, about the new President's urgent need to settle the assassination rumors, about the special trust people in foreign lands would have in an investigation over which he presided." Warren thereupon agreed to serve.

There was thus a dualism in purpose. If the explicit purpose of the Commission was to ascertain and expose the facts, the implicit purpose was to protect the national interest by dispelling rumors.

These two purposes were compatible so long as the damaging rumors were untrue. But what if a rumor damaging to the na-

tional interest proved to be true? The Commission's explicit purpose would dictate that the information be exposed regardless of the consequences, while the Commission's implicit purpose would dictate that the rumor be dispelled regardless of the fact that it was true. In a conflict of this sort, one of the Commission's purposes would emerge as dominant.

The Commission was, in fact, faced with just such a conflict at its meeting on January 27.

Three days earlier Chief Justice Warren and J. Lee Rankin had met secretly with Texas Attorney General Wagoner Carr and Dallas District Attorney Henry Wade. The Texas officials related a story alleging that Oswald had been working for the FBI as an informant since September, 1962; that Oswald was on the FBI payroll at \$200 a month on the day he was arrested; and that Oswald had been assigned an informant number, 179. The source of the story seemed to be Alonzo Hudkins, a Houston newspaper reporter.

Neither Carr nor Wade knew whether the story had any basis in fact, but Wade, a former FBI agent, had some reason to believe that there might have been a connection between Oswald and the FBI. Wade had apparently heard that Oswald's address book contained the telephone number and license-plate number of Dallas FBI agent James Hosty. The Commission had received the list of names in Oswald's address book in a December 21, 1963, FBI report, but Agent Hosty's name had been omitted from that list by the FBI. Wade also had heard that a government voucher for \$200 was found in Oswald's possession. In addition, a Western Union employee had claimed that Oswald was periodically telegraphed small sums of money. Also, Wade thought that Oswald's practice of setting up postal-box "covers" each time he moved—a practice Wade himself had used as an FBI agent—was an "ideal way" to handle undercover transactions.

The Commission heard the full allegation at its January 27 meeting. Commissioner Ford observed: "The Commission itself had not grounds at the moment for rejecting or accepting [the rumor]. Members simply knew that the whole business was a most delicate and sensitive matter involving the nation's faith in its own institutions and one of the most respected federal agencies."

J. Lee Rankin presented the problem to the Commission in no uncertain terms, stating: "We do have a dirty rumor that is very bad for the Commission, and it is very damaging to the agencies that are involved in it and it must be wiped out insofar as it is possible to do so by this Commission."

Clearly, the problem was the "dirty rumor." It was considered "dirty" not because it was known to be untrue but because it was known to be "damaging" to the government. The solution proposed was to "wipe out" the rumor. This would satisfy the implicit purpose of the Commission.

If the rumor was true, making the truth known might very well result in irreparable damage to the FBI and might heighten suspicions and speculations about the assassination itself. On

the other hand, dispelling the rumor, even if true, would protect the national interest. Ford stated aptly that "the dilemma of the Commission" was how to approach this problem.

Allen Dulles observed that the allegation was "a terribly hard thing to disprove," because written records were not always kept on undercover agents. "If this be true," Hale Boggs responded, "[it] make[s] our problem utterly impossible, because you say this rumor can't be dissipated under any circumstances." Again, the problem was seen as one of dispelling rumors.

The Commission's approach to the problem had to be consistent with the national interest. Ford wrote that the Commission "would not be justified in plunging into the matter in some irresponsible manner that might jeopardize the effectiveness of an important agency's future operations." This precept suggests a limiting case for the Commission's explicit purpose of making the truth known; would the Commission be justified in exposing information that would most certainly damage the future operations of an agency as important as the FBI?

J. Lee Rankin proposed that the Commission permit the FBI to investigate the matter and "clear its own skirts" before the Commission investigated it. He suggested that he personally should speak to J. Edgar Hoover and "tell him this problem and that he should have as much interest as the Commission in trying to put an end to any such speculations, not only by his statement . . . but also if it were possible to demonstrate by whatever records and materials they have that it just couldn't be true." Rankin said that he would also tell Hoover that the Commission would reserve the right to investigate the matter further "if it found it necessary, in order to satisfy the American people that this question of an undercover agent was out of the picture."

Although apparently there was considerable support for this course of action, two Commissioners were not entirely satisfied by it. Senator John Sherman Cooper suggested an alternate approach in which the Commission would apprise Hoover of the facts but at the same time pursue its own independent investigation into the rumor. Cooper said that the Commission was "under a duty to see what Hudkins says about it, where he got that information." Senator Richard Russell agreed, saying: "Of course, we can get an affidavit from Mr. Hoover and put it in this record and go on and act on that, but if we didn't go any further than that, and we don't pursue it down to Hudkins or whoever it is, there still would be thousands of doubting Thomases who would believe this man was an FBI agent."

Thus two approaches were proposed. Rankin had suggested that Hoover be given the opportunity to disprove the rumor before the Commission investigated it; Senators Cooper and Russell had suggested that the Commission fully investigate the rumor while informing Hoover of its course of action.

The Chief Justice then concluded: "We must go into this thing from both ends, from the end of the rumor-mongers and from the end of the FBI, and if we come into a *cul de sac*—well, there we are, but we can report on it."

Warren's concern for "security" was possibly reflected in a statement he made to newspaper reporters less than a week after the meeting. On February 4 a reporter asked him if the full report was to be made public; Warren replied: "Yes, there will come a time. But it might not be in your lifetime. I am not referring to anything especially but there may be some things that would involve security."

Although the Commissioners' discussion of this problem gives some insight into the Commission's dominant purpose, conclusions cannot be based on what are, in fact, selected and possibly out-of-context statements. Certainly the purpose of dispelling rumors was evident in the dialogue, but great concern was also shown by Senators Russell and Cooper for investigating the matter fully. The dominant purpose becomes clear not so much from the dialogue as from the Commission's subsequent course of action.

The day following the Commission meeting, Rankin discussed the allegation with J. Edgar Hoover. Hoover immediately assured Rankin that "Oswald had never been an informant of the FBI." On February 6 Hoover submitted an affidavit to the Commission, stating that a search of FBI records disclosed that Oswald "was never an informant of the FBI, was never assigned a symbol number in that capacity, and was never paid any amount of money in any regard." A week later Hoover sent the Commission the affidavits of 10 FBI agents who had had contact with the Oswald case; each denied that Oswald was ever developed or used as an informant. On February 27

Special Agent Robert Gemberling submitted an affidavit explaining why the FBI, in its December 23 report, had deleted the name of FBI agent James P. Hosty from the list of names in Oswald's address book. According to Hoover, this was done because "the circumstances under which Hosty's name, et cetera, appeared in Oswald's notebook were fully known to the FBI."

On May 6 Alan H. Belmont, assistant director of the FBI, appeared before the Commission and offered to leave Oswald's file with the Commission. Rankin advised the Commission to retain the file, although the staff would *not* be permitted to examine it. This was ordered so that "the Commission could say in its report, 'We have seen everything that they [the FBI] have.'" Warren, however, refused to accept the file, saying: "The same people who would demand that we see everything of this kind would also demand they be entitled to see it, and if it is a security matter we can't let them see it." The file was returned to the FBI, and, according to Samuel Stern, the lawyer in charge of the area, no independent check was ever made of it.

Finally, on May 14, J. Edgar Hoover testified before the Commission and again categorically stated that Oswald had no connection with the FBI.

Although this was an authoritative denial of the allegation, it amounted to no more than taking the FBI's word that Oswald did not work for them. Certainly, if the rumor was true, it was possible that the FBI would have admitted it. But, since such an admission might severely shake "the nation's faith in its own institutions" and jeopardize the future effectiveness of the FBI, it was in the national interest, as well as the FBI's interest, to deny this allegation.

Despite the fact that the Commission had agreed to hear Alonzo Hudkins, the source of the story, Hudkins was never called as a witness or questioned by the staff. Instead, Leon Jaworski, Special Counsel for the State of Texas, was asked to speak informally to Hudkins. According to Rankin, Jaworski reported back to the Commission that "there was absolutely nothing to the story" and that it was "sheer speculation based on nothing but Hudkins' imagination."

There was, however, other evidence that suggested that Hudkins *did* have an actual source for his information. On January 24, three days prior to the Commission meeting, the Secret Service submitted about 30 investigative reports to the Commission. One of these reports contained a Secret Service interview with Hudkins. Hudkins told the Secret Service agents that his information came from Allan Sweatt, chief of the criminal division of the Dallas sheriff's office. According to Hudkins, Sweatt stated: "Oswald was being paid \$200 per month by the FBI in connection with their subversive investigation [and] Oswald had informant number S-172."

Allan Sweatt was never questioned by the Commission or its staff. The Commission apparently never attempted to ascertain Sweatt's source for the information or whether he had direct knowledge of the FBI's subversive investigation in Dallas. In addition, no effort was made to clarify the nature of the FBI's subversive investigation or to determine whether there was any relationship between the Cuban exile groups which Oswald had been trying to infiltrate and the similar groups which interested the FBI.

The Commission thus did exactly what it agreed *not* to do in its meeting; it relied entirely on the FBI to disprove the rumor. However, the important question is: How did the Commission choose to deal with a potentially damaging rumor?

Two courses of action were open to the Commission. It could have investigated the rumor itself and called as witnesses the persons known to be the immediate sources of the rumor. This approach quite probably would have exhausted the rumor, but it *might* have revealed information damaging to the national interest.

On the other hand, the Commission could have turned the whole matter over to the FBI.

This approach would not only have served to dispel the rumor, but would also have ensured that no damaging information would be revealed in the process unless the agency concerned itself chose to reveal it.

In the end, the Commission took the second approach. The entire matter was turned over to the FBI, to affirm or deny, and the Commission relied solely on the FBI's word in concluding that "there was absolutely no type of informant or undercover relationship" between Oswald and the FBI.

The way the Commission dealt with this problem cannot be explained simply in terms of its explicit purpose of making

known to the President and the American public everything that went on before it. Nowhere, not even in the "Speculations and Rumors" appendix, does the Report mention the allegation that had so preoccupied the Commission. Nor does the information Carr and Wade furnished on January 24 appear anywhere in the Commission proceedings. Furthermore, the Secret Service interview with Hudkins has been withheld even from the National Archives. And details of the problem were kept secret from the staff lawyers. Quite clearly, the Commission handled the problem in such a way that it would *not* be made known.

The Commission's treatment of this problem was, however, consistent with the purpose of dispelling damaging rumors. If the Commission had called Hudkins and Sweatt as witnesses and fully investigated the allegation, the result very well might have heightened doubts and suspicions. If the Commission had disclosed the information furnished by Wade, Carr, and the Secret Service reports, the disclosure most probably would have led to new rumors and speculations. The surest and safest way to dispel the rumor was *not* to investigate it, but to keep secret the allegations and publish only the affidavits of denial. The Commission's course of action in this case can thus be explained only in terms of the purpose of dispelling damaging rumors. The fact that the Commission chose this approach, despite its earlier rejection of it, indicates the pervasiveness of this purpose.



By early February, 1964, it became evident that it was possible for a lone gunman to have accomplished the assassination only if President Kennedy and Governor Connally were hit by the same bullet. "To say that they were hit by separate bullets," a Commission lawyer stated bluntly, "is synonymous with saying that there were two assassins." This conclusion stemmed from an analysis of the movie film of the assassination.

A frame-by-frame analysis of the Zapruder film shows three distinct moments of reaction: frame no. 225 (President Kennedy raises his hands to his throat); frame no. 235 (Governor Connally slumps forward); and frame no. 313 (bullet strikes the President's head). By this analysis, only 10 frames, or about one-half second, elapsed between the time both men were first apparently wounded.

It is possible that both men had delayed reactions to the shots, but even in this case the maximum time between the first two shots could still be fixed. Since an oak tree's foliage obstructed the line of fire between frames 166 and 207 and other evidence shows that the President could not have been shot before frame 166, the Commission concluded that the earliest point that the President could have been first hit was frame 207. Medical experts established with certainty that Connally was not in a position to be hit after film frame 240. Thus the maximum time that could have elapsed between the times both men were first shot was 33 film frames or about 1.8 seconds.

However, it was also established that the minimum time in which the assassination weapon could be fired twice was 2.3 seconds (or 42 film frames). This minimum figure was based on the length of time required to open and close the bolt of the rifle (and did not include the aiming time).

Thus, it was physically impossible for the assassination rifle to have been fired twice during the time period when the President and Governor Connally were first wounded. Either both men were hit by the same bullet, or there were two assassins.

The answer to the crucial question of whether it was possible for both men to have been hit by the same bullet depended on the findings of the autopsy, conducted on the night of the assassination at Bethesda Naval Hospital in Maryland. If the autopsy had found that the bullet which struck the President in the back had exited from the front of his body, then it was possible that the bullet continued on to hit Connally, who was seated in front of Kennedy.

Although "certain preliminary draft notes" relating to the autopsy were subsequently destroyed, the Commission published what purported to be the original "Autopsy Report" as an appendix to the Warren Report. This autopsy report says:

The missile contused the strap muscle of the right side of

the neck, damaged the trachea [windpipe] and made its exit through the anterior surface of the neck.

The Commission's autopsy report clearly states that the bullet exited from the front of the President's neck, and thus it was possible for the same bullet to have hit Governor Connally. (The Warren Report explained that a previous theory that the bullet lodged in the President's strap muscles and later fell out onto his stretcher was disproved and rejected "during the autopsy.")

The Commission's autopsy report, however, differs substantially from earlier reports. On December 18, 1963, more than three weeks after the autopsy, the *Washington Post* reported that the autopsy had found that the bullet did *not* exit from the President's neck, and that the throat wound was caused by a fragment from a third shot which had hit the President's head. Similar versions of the autopsy findings appeared in most of the major newspapers and medical journals. *The New York Times*, citing a source familiar with the autopsy report, stated:

The first bullet made what was described as a small, neat wound in the back and penetrated two or three inches. . . .

The pathologists at Bethesda, the source said, concluded that the throat wound was caused by the emergence of a metal fragment or piece of bone resulting from the fatal shot in the head.

If this version was in error, it was not immediately corrected. As late as January 26, 1964, *The New York Times* reported that investigators were satisfied that the first bullet hit the President in the back and that "that bullet lodged in his shoulder."

These newspaper accounts cannot be accepted as evidence, but they do raise a question as to whether the autopsy report published in the Warren Report was in fact the *original* one.

There is one document, however, which casts considerably more light on this question: the FBI Summary Report. Immediately after the assassination, President Johnson ordered the FBI to conduct a complete investigation and report its findings to him. In early December, J. Edgar Hoover submitted to President Johnson through the Attorney General a four-volume report summarizing the FBI's investigation. On December 9 these volumes were submitted to the Commission; a fifth volume, subtitled "Supplemental Report," was sent to the Commission on January 13, 1964. Considered "of principal importance" by the Commission, the FBI Summary Report (with the supplement) was an authoritative and official summary of the facts as of January 13, 1964, before the Commission began its work.

The Summary Report says unequivocally that the bullet in question had not exited from the front of the President's body; it implies that the bullet had fallen out onto the President's stretcher while he was in the hospital in Dallas.

The Warren Report thus directly contradicts the FBI Summary Report on the autopsy findings. The possibility of a clerical error or misinterpretation in the December 9 Summary Report is diminished by the FBI Supplemental Report, dated January 13, which states:

Medical examination of the President's body had revealed that the bullet which entered his back had penetrated to a distance of less than a finger length.

"Medical examination of the President's body" can have referred only to the Bethesda autopsy of November 22; before the autopsy, the bullet hole was not discovered; and after the autopsy, there was no further medical examination. The FBI Summary Report and the Supplemental Report thus say, in short, that the autopsy revealed that the bullet did *not* exit from the President's neck, and that it penetrated the President's back to the depth of only a few inches. How can such a contradiction on such an essential point be explained?

There can be no doubt that the autopsy findings were known to the FBI when it prepared the Summary Report. Two FBI agents were present at the autopsy. The autopsy report was forwarded to the FBI. Moreover, at the time the autopsy was performed, the FBI was the only agency charged with ascertaining all the facts of the assassination.

Arlen Specter, the Commission staff lawyer who developed the autopsy evidence, explained that the doctors were unable at first to find the bullet's path through the President's body. At this point, he said, both FBI agents "rushed out of the room" and telephoned the result to their Maryland field office. Meanwhile, according to Specter, the doctors found the path, but by the time the agents submitted their reports the FBI Summary Report had "gone to press."

There are a number of problems inherent in this explanation.

First of all, there exists Secret Service testimony that one FBI agent remained in the room at all times. Second, two Secret Service agents, who were also in the room throughout the autopsy, indicated in their testimony that no path was found through the body. Third, the December 9 FBI Summary Report could not possibly have gone to press until at least 11 days after the autopsy of November 22.

Clearly the FBI Summary and Supplemental Reports and the Warren Report give diametrically opposed findings regarding the President's autopsy. This presents a dilemma. On one hand, if the FBI reports distorted such a basic fact of the assassination, doubt is cast on the accuracy of the FBI's entire investigation; indeed, the Commission's investigation and conclusions were, in the final analysis, predicated on the accuracy of the FBI reports.

The second horn of the dilemma is even more painful, for, if the FBI's statements on the autopsy are accurate, then the autopsy findings must have been changed after January 13. This would mean that the document in the Warren Report which purports to be the original autopsy report is not.

This dilemma cannot be resolved in terms of what one considers to be "inconceivable." To some it would be "inconceivable" that the FBI would make a repeated error of this magnitude and import in its final report to the President; to others it would be inconceivable that the Warren Commission would substantially alter the basic facts. The answer may, however, be found in the evidence surrounding the autopsy.

Consistency with the evidence does not necessarily prove validity, but inconsistency *does* prove invalidity. The FBI Summary and Supplemental Reports and the Warren Report give diametrically opposed versions of the autopsy; both versions can be measured against the evidence to determine which is invalid.

The FBI Summary and Supplemental Reports claim the autopsy revealed that: (1) the first bullet entered "just below [the President's] shoulder," (2) it penetrated "less than a finger length," and (3) "there was no point of exit." The Warren Report claims that the autopsy revealed that the first bullet: (1) entered the "rear of the neck," (2) passed completely through the neck, and (3) exited through the throat. Each of these three points can be tested against the evidence.

I. ENTRANCE. The decisive question here is: Was the entrance wound in the back above or below the "exit" wound in the throat? The Commission established that the bullet was traveling downward and was undeflected. The entrance wound therefore had to be *above* the exit wound, i.e., at or above "throat" level. But the FBI Summary Report states that the bullet entered "just below his shoulder . . . at an angle of 45 to 60° downward." If this were the case, this bullet could not have exited from the throat.

The Warren Report states that the bullet entered the "rear of the neck," a position which would permit the bullet to exit through the throat wound. Commander James J. Humes, the Navy pathologist who had conducted the autopsy and signed the Commission's autopsy report, testified that the conclusion that the bullet had exited was based mainly on the fact that "the wound in the anterior portion of the neck [was] physically lower than the point of entrance posteriorly." Humes supported his assertion with two schematic drawings of the President—profile and back—which show the purported point of entry in the back of the neck. These schematic drawings were offered as evidence in lieu of the photographs and x-rays of the autopsy, which were "unavailable."

Other evidence, however, indicated that the entrance wound was well below the point shown in the schematic drawings and, in fact, was *lower* than the throat wound. The face sheet of the autopsy report was prepared by Commander Humes during the autopsy. The face sheet shows front and back diagrams of the President's body. On the front diagram the throat wound is just below the collar line; on the back diagram the entrance wound is much farther below the collar line. Thus, although Commander Humes testified in March that the entrance wound was above the throat wound, during the autopsy he marked the entrance wound below the throat wound.

There is further evidence that the entrance wound was well below the collar line. Secret Service Agent Clinton Hill, who was called into the autopsy examination for the express purpose of observing the position of the wounds, testified that he "saw an opening in the back, about six inches below the neckline. . . ."

Secret Service Agent Glen A. Bennett, who was in the car immediately behind the Presidential limousine, stated that he saw a "shot hit the President about four inches down from the right shoulder." Two other Secret Service agents who were present at the autopsy repeatedly described the wound as a "shoulder" wound.

The FBI Supplemental Report includes photographs of the President's jacket and shirt which graphically show the entrance holes. These photographs, which were omitted from the Warren Report and the 26 volumes of supporting evidence, show that the bullet hole in the jacket is $5\frac{3}{4}$ inches below the collar and the bullet hole in the shirt is $5\frac{1}{4}$ inches below the collar. This position virtually coincides with the FBI's description of the wound. It is, however, obviously inconsistent with the position of the entrance wound described in the Commission's autopsy report.

It is possible that President Kennedy's jacket was in some manner raised more than six inches, so that the hole in it coincided with the purported entrance wound in the "back of the neck." (The Zapruder film, however, gives no indication of this.) It was, however, virtually impossible for the hole in the shirt to have coincided with an entrance wound in the "back of the neck." This could only have happened under either of the following two conditions: (1) the entire shirt, collar included, was raised six inches; or (2) a portion of the shirt was raised over the collar line (and thus doubled over). Obviously a *closed* shirt collar could not have been raised six inches on the neck, and therefore, for the shirt hole to have coincided with the purported entrance wound (which was above the collar line), the shirt would have to have been doubled-up over the collar. Since only one bullet hole was found in the back of the shirt, this could not have been the case. Thus, according to the FBI photograph of the President's shirt, the bullet entrance hole in the President's back was *lower* than the throat wound. This is clearly inconsistent with the statement in the Commission's autopsy report.

2. PATH. Did the bullet pass completely through the President's neck? The FBI Summary Report says the autopsy revealed that it did *not*; the Warren Report claimed the autopsy revealed that it did. It is a law of forensic pathology that if a bullet passes through a body it must leave a discernible path. Dr. Milton Helpern, Chief Medical Examiner of New York City and one of the foremost experts on forensic pathology, explained that "there is no such thing as a rifle bullet's passing through a neck without leaving a path." Dr. Helpern estimated that a 6.5mm. bullet passing through the President's neck would leave a track approximately $\frac{1}{4}$ inch in diameter. Evidence indicates that no such track was found.

Secret Service agent Roy Kellerman testified: "There were three gentlemen who performed this autopsy. A Colonel Finck—during the examination of the President, from the hole that was in his shoulder, and with a probe, and we were standing right alongside of him, he is probing inside the shoulder with his instrument and I said, 'Colonel, where did it go?' He said, 'There are no lanes for an outlet of this entry in this man's shoulder.'"

Lieutenant Colonel Pierre A. Finck is a nationally known expert on forensic pathology and wound ballistics. It is extremely unlikely that he would make such a definite statement if there could possibly have been a "lane for an outlet."

Agent William Greer also testified that the autopsy doctors could not find a path for the bullet. One doctor told Greer that the bullet could very well have fallen out through the entrance wound if heart massage had been applied by the Dallas doctors. When asked if "anything [was] said about any channel being present in the body for the bullet to have gone on through . . ." Greer replied: "No, sir; I hadn't heard anything like that, any trace of it going on through."

Commander Humes testified that the autopsy doctors were unable "to take probes and have them satisfactorily fall through any path at this point." Humes testified that he had not discerned a path for the bullet but had deduced its path from the entrance and the assumed exit wound, and from a slight bruise on the right lung. Thus the autopsy surgeons were unable to find a path for the bullet.

Although the failure to find a path is consistent with the FBI Supplemental Report's statement that the bullet "penetrated to a distance of less than a finger length," it is inconsistent with the Warren Report's statement that the bullet passed through the President's body.

3. EXIT WOUND. The FBI Supplemental Report states that the autopsy revealed that the bullet did not exit from the President's body; and it implies that the throat wound was caused by a "projectile" from a third bullet that had hit the President's head. The Warren Report states that the autopsy revealed that the bullet exited through the throat wound.

The throat wound was not seen by the autopsy surgeons because a tracheotomy operation, performed in Dallas immediately after the shooting, had obliterated the outlines of the wound. Only a few Dallas doctors actually observed the wound. Dr. Malcolm Perry, who performed the tracheotomy, described the wound as a small puncture wound approximately 5 millimeters in diameter. The bullet, however, was 6.55 millimeters in diameter, and the relatively small size of the wound suggested that it was caused by a fragment.

The Commission's version of the autopsy held that a whole bullet had exited from the throat. However, the doctors who actually observed the throat wound specified that a whole bullet could have exited through the throat wound only under certain conditions. Dr. Ronald Jones testified that he thought such a small throat wound could have been caused by a whole bullet only if it was traveling at an extremely low velocity, "to the point that you might think that this bullet barely made it through the soft tissues. . . ." This would present a problem: a nearly spent bullet most probably could not have continued on to cause all Governor Connally's three wounds, and therefore it could not have been found on Connally's stretcher. Nor, if the bullet exited from President Kennedy's throat, was it probable that it was found on his stretcher. Yet a nearly whole bullet was found on one of the two stretchers in the Dallas hospital. It is possible that the bullet found on the stretcher came from the second shot, but this would necessarily mean that, if the first bullet to strike the President exited from his throat, it escaped the limousine and was never found. Thus, although it is possible that the throat wound was an exit wound for a whole bullet, the probability of this is severely diminished by other circumstances.

Furthermore, the testimony of Secret Service Agent Roy Kellerman makes it extremely doubtful that the throat wound was caused by the first bullet to strike the President. Kellerman, who was in the front seat of the President's limousine, testified that he distinctly heard the President say, "My God, I am hit," after the first shot. Since the projectile that caused the throat wound also punctured the windpipe, it is medically highly improbable that the President could speak after he received the throat wound. This fact would be consistent with the FBI's version of the autopsy, which implies that the throat wound was caused by a fragment from a later bullet, but inconsistent with the Commission's version, which holds that the first bullet to hit the President exited from his throat.

CONCLUSION. The Warren Report and the FBI Summary and Supplemental Reports give diametrically opposed versions of the autopsy findings on the crucial question of whether or not the first bullet to hit the President exited from his throat. The Commission published an autopsy report that said it did; the FBI said that the autopsy revealed that the bullet "penetrated to a distance of less than a finger length" and did not exit from the front of the body. One of these documents changed a central fact of the assassination.

At the very least, the Commission failed to resolve an important contradiction. Although the Commission sent a questionnaire to the FBI which asked the FBI to explain other points in the FBI Summary and Supplemental Reports, no questions were asked about the FBI's version of the autopsy. If the FBI Summary and Supplemental Reports were inaccurate, it was incumbent upon the Commission to explain how an error of this magnitude could have occurred.

The evidence, however, indicates that the FBI reports are not erroneous. The photograph of the President's shirt is in itself cogent evidence that the bullet entered the President's body below the collar line, which is consistent with the FBI Summary Report's description of a wound "just below his shoulder." It is inconsistent, however, with the Commission's description of a wound in "the rear of the neck." If a bullet fired from above the President entered six inches below the collar line and was undeflected, it is inconceivable that it exited through the throat. The fact that the autopsy surgeons were not able to find a path for the bullet is further evidence that the bullet did not pass completely through the President's body.

And the evidence surrounding the exit wound, although not conclusive, strongly indicates that it was caused by a fragment from a subsequent bullet. If the FBI reports are accurate, as all the evidence indicates they are, then a central aspect of the autopsy was changed more than two months after the autopsy examination, and the autopsy report published in the Warren Report is not the original one. If this is in fact the case, the significance of this alteration of facts goes far beyond merely indicating that it was not physically possible for a lone assassin to have accomplished the assassination. It indicates that the conclusions of the Warren Report must be viewed as expressions of political truth.



The critical problem in government investigations is inherent in the evaluation, not the accumulation, of data. The fact that the government can amass a virtually unlimited amount of information on any given subject only intensifies the problem. Each increment of data requires a proportionate increment of man-hours of reasoned judgment for evaluation. However, reasoned judgment is a limited commodity. This tends to be especially true in a government inquiry, because those men with sufficient authority to sit in judgment are almost invariably men occupied by other important responsibilities. The more important the inquiry, the more responsible the judges must be, and thus the more limited their available time. In a high-level inquiry the inevitable gap between the almost unlimited data and the extremely limited amount of evaluation time can be bridged only by a staff. The staff's function is to organize the data, sorting out the important from the unimportant facts, so that the data can be evaluated by the judges in the limited time available.

The Warren Commission probably represents an extreme example of this problem. The seven members of the Commission were all busy as well as eminent men whose time was severely limited by other pressing responsibilities. For example, Chief Justice Earl Warren had agreed to serve on the Commission only on the condition that it would not interfere with his work on the Court. And the Supreme Court is one of the most time-consuming jobs in government; every brief must be read by each justice, and none of this work can be delegated. Thus, Warren could devote only the time left after he had attended to his court duties. The other members, possibly to a lesser degree, had the same problem.

The amount of data the Commission received was prodigious; 28 government agencies furnished more than 300 cubic feet of paper. The FBI alone sent the Commission 25,000 reports. Obviously this mass of data had to be reduced to manageable proportions before the Commission could evaluate it.

The task of organizing the data was delegated to the legal staff. The lawyers took testimony from 418 witnesses, staged reconstructions, developed expert testimony, made inquiries to federal agencies about inconsistencies in their reports, and, in short, conducted the basic investigation and critical reassessment of the evidence for the Commission.

The threshold question for the Commission was: Was there more than one assassin? If Oswald acted alone, the investigation had no more to do than substantiate the case against him and explore his life history for possible motives. If, however, more than one person was involved in the assassination, the nature and scope of the investigation would be radically changed; new evidence and new hypotheses would have to be sought, new suspects found, new indictments rendered. Once across the threshold, the investigation would enter a new dimension of uncertainty; no one could know where it would lead, when it would end, or what would be its ramifications.

Was the investigation exhaustive not only in exploring Oswald's life history but also in searching for evidence of a second assassin? This question takes on crucial importance in light of the Zapruder film of the assassination and the FBI Summary and Supplemental Reports. It will be recalled that the film showed that President Kennedy and Governor Connally were hit almost simultaneously, and it was later established that

the murder weapon could not be fired twice within this time period. The FBI reports precluded the possibility that both men were hit by the same bullet. There was thus a *prima facie* case of two assassins.

If there had been other evidence that precluded the possibility of a second assassin—for example, if all the bullets had been ballistically matched to the murder weapon—the Commission could reasonably have assumed that somehow the analysis of the film was fallacious. However, although the evidence identified Oswald as one assassin, it did not rule out the possibility of a second assassin. One bullet, which possibly was the fatal bullet, was too fragmented to be matched to Oswald's rifle by means of ballistics. Thus the possibility of a second rifle existed. One identifiable but unidentified palm print was found on the "sniper's nest," and thus the possibility of an accomplice remained open. The fact that Oswald was able to escape from the murder scene suggested that a second assassin could also have escaped undetected.

The Commission reasoned that if a conspiracy had existed some evidence of it doubtless would have come to the attention of the federal investigative agencies. Since no such evidence had come to light, the Commission concluded "on the basis of evidence before the Commission" that "Oswald acted alone."

This argument is compelling only if all pertinent evidence found by the federal agencies was brought before the Commission. This was not the case. For example, there was eyewitness evidence of a possible second assassin—evidence that never reached the Commission, despite the fact that it was submitted by the FBI.

On December 4, 1963, less than two weeks after the assassination, two FBI agents interviewed Mrs. Eric Walther, an eyewitness. She told them that she was standing across the street from the Texas Book Depository immediately before the assassination and that she saw a man with a rifle in an upper-story window of the building. She stated: "In his hands, this man was holding a rifle with the barrel pointed downward, and the man was looking south on Houston Street. The man was wearing a white shirt and had blond or light hair."

The FBI report continued:

The rifle had a short barrel and seemed large around the stock or end of the rifle. Her impression was that the gun was a machine gun. She noticed nothing like a telescopic sight on the rifle or a leather strap or a sling on the rifle. She said she knows nothing about rifles or guns of any type, but she thought the rifle was different from any she had ever seen. This man was standing in or about the middle of the window. In the same window, to the left of this man, she could see a portion of another man standing by the side of this man with a rifle. The other man was standing erect and his head was above the open portion of the window. As the window was very dirty, she could not see the head of the second man. She is positive that the window is not as high as the sixth floor. This second man was apparently wearing a brown suit coat, and the only thing she could see was the right side of the man, from about the waist to the shoulders. Almost immediately after noticing this man with the rifle and the other man standing beside him, someone in the crowd said, "Here they come. . . ."

Seconds later the Presidential motorcade passed Mrs. Walther, and she heard shots.

What happened to Mrs. Walther's account? On December 5 FBI Report DL 89-43, containing Mrs. Walther's statement, was filed in Dallas. It was submitted to the Commission on December 10 and became part of "Commission Document No. 7." It was, however, never brought to the attention of the Commission. Mrs. Walther was not called as a witness. She was never questioned by the staff lawyers, and no requests were made for further FBI investigation of her statement. In short, Mrs. Walther's account was never evaluated.

In view of the mass of investigative reports confronting the staff, it would be reasonable to expect that accounts containing major contradictions might be disregarded without further investigation. Mrs. Walther's account, however, contained no such contradictions. The fact that Mrs. Walther thought the rifleman was on the fifth rather than on the sixth floor was a common mistake among witnesses. The mistake stemmed from the fact that there were no windows on the ground floor of the book depository, and thus witnesses counting upward tended to mistake the sixth-floor window for the fifth-floor window. Mrs. Walther's description of other details,

such as the window and the rifleman's clothes, hair and position, was consistent with the descriptions given by all other witnesses who saw a rifleman prior to the assassination.

There was another witness who partially corroborated Mrs. Walther's statement—Arnold Rowland. Rowland, the only witness to identify the rifle correctly (as a rifle equipped with a telescopic sight) before it was found, testified that he had seen a rifleman in a sixth-floor window and that he had also seen a second person on the same floor. The Commission rejected the latter part of Rowland's testimony partly because of "the lack of probative corroboration."

If the staff had questioned Mrs. Walther it might have found that her statement was inaccurately transcribed by the FBI agents, that her eyesight was poor, or that she had an overactive imagination. On the other hand, it might have found that she knew further details to corroborate her story. The point is that, without having questioned Mrs. Walther, the Commission had no basis whatsoever for evaluating her eyewitness statement that a second man was standing next to the assassin. Yet, since the Commission stated categorically that none of the witnesses "testified to seeing more than one person in the window," quite obviously it failed to take Mrs. Walther's statement into account. A key question to understanding the workings of the Commission is: Why?

Many critics of the Commission contend that the Commission controlled the investigation for its own purposes, that it carefully and purposefully selected witnesses who supported its preconceived findings and called no witnesses whose testimony might damage its case.

Such a view has the appeal of simplicity, but the working papers of the staff show that they were free to call any witnesses they chose. Of the more than 400 requests for witnesses whom the lawyers wished to interview, not one request was denied. Witnesses were selected from more than 30,000 separate investigative reports. Thus there is no basis in fact for a conspiracy theory as to why certain witnesses were called and others were not.

Mrs. Walther was not called, not because the Commission feared or suppressed her statement, but most probably because the staff overlooked it. If it is difficult to accept this explanation, that is only because of the common misconception that the Warren Commission's investigation was the most massive and thorough in history, and that no stone was left unturned in the quest for truth. This picture, painted so effusively by the mass media immediately following the release of the Warren Report, was based not on analysis of the investigation but on faith in the individual members of the Commission.

Rather than being "exhaustive," however, the Commission's investigation was actually an extremely superficial investigation limited in terms of both time and manpower, and consequently limited to the more prominent evidence.



It will be recalled that the legal staff was divided into six panels of lawyers; each panel consisted of a "senior" and "junior" lawyer; and each panel was assigned a specific area to investigate.

Only the first two panels, however, were directly concerned with the assassination itself. Panel I was assigned the task of establishing the basic facts of the assassination; its senior lawyer was Francis W. H. Adams, a former New York City police commissioner, and its junior lawyer was Arlen Specter, a young assistant district attorney from Philadelphia. Panel II was assigned the task of identifying the assassin; both its senior lawyer, Joseph Ball, and its junior lawyer, David Belin, had had extensive trial experience. The four other panels were concerned with peripheral areas.

The first limitation on the investigation was time. There was a June 1, 1964, deadline for the lawyers to make their investigation, interview witnesses, and submit their draft chapters. The start of the investigation, however, was delayed until March 14 by the Ruby trial. Thus only 10 weeks actually remained for the investigation to be held.

The second limitation was manpower. Francis Adams, the senior lawyer assigned the task of ascertaining the basic facts, came to Washington only "a few days" during the entire investigation. Adams said that although he had a different concept of the investigation—he thought the FBI Summary and Supplemental Reports should have been verified immediately—the reason he left was that his law firm needed his services.

Joseph Ball, the senior lawyer on Panel II, was also a senior partner in a large California law firm, and he found it necessary to "commute" back and forth from California almost weekly. Administrative assistant Howard Willens said, "The lawyers would fly back to Los Angeles or Des Moines between every assignment. That was no way to run an investigation. What we needed was 40 law drones, fresh out of law school, not a handful of high-priced consultants."

Instead of being handled by 40 full-time lawyers, the entire task of ascertaining the basic facts of the assassination fell upon one lawyer—Arlen Specter. Ascertaining facts is a time-consuming and arduous process. Specter had to be selective. He recognized this, commenting that he had to allocate most of his time to a limited number of major problems.

Whereas a positive premise can be proved by establishing only the major facts, a negative premise can be proved only by establishing *all* the relevant facts, even the insignificant ones, and testing all the possibilities. Specter was faced with such a negative premise: to prove Oswald had had no assistance.

Specter began his field investigation on March 16, 1964, with a specific assignment from the Chief Justice. Warren told Specter that it was of the utmost importance "to clear up the confusion" over Kennedy's throat wound. One troublesome rumor was that the doctors in Dallas had identified the throat wound as an *entry* wound, and this suggested that Kennedy had been shot from the front.

Specter departed for Dallas that evening, and during the next eight days he interviewed 28 doctors and other medical personnel at Parkland Hospital. With one minor exception, these interviews comprised Specter's entire field investigation of "the basic facts of the assassination."

Specter resolved the problem of the throat wound. All the doctors who saw the wound agreed that it could have been either an *entry* or an *exit* wound. Specter traced the rumor that it was an *entrance* wound to an answer Dr. Malcolm Perry had made to a hypothetical question. Doctor Perry admitted to Specter that he had no basis for telling whether it was an *entrance* or *exit* wound, and he testified that he had only said it *could* have been an *entrance* wound.

If a lawyer was required to spend about two-thirds of his entire field investigation on a single problem, as Specter had to do, other problems had to be investigated with less thoroughness. Specter apparently preferred to allocate his limited time to problems that could be resolved. This meant that a number of the more difficult problems were treated superficially. For example, the very important problem of where "bullet 399" was found was never resolved.

THE STRETCHER BULLET. Bullet 399 is a nearly intact bullet that ballistically was matched to the murder weapon. It was found on a stretcher at Parkland Hospital and turned over to the Secret Service. Although the question of whether it was found on President Kennedy's or Governor Connally's stretcher may have seemed insignificant at the time, it later assumed vital importance. If the bullet had come from Kennedy's stretcher it could not have passed through his body, and therefore Connally could only have been struck by a separate bullet; thus the inescapable possibility of a second assassin was raised. On the other hand, if the bullet had come from Connally's stretcher, it would be consistent with the theory that both men were hit by the same bullet.

The question of where bullet 399 was found first arose at the March 16 Commission hearing, while Specter was questioning Commander James Humes, the autopsy surgeon. Allen Dulles was apparently under the impression that the bullet had been found on Kennedy's stretcher—a reasonable assumption in the light of the FBI Summary Report and Secret Service testimony. Dulles asked if there had been further evidence on this question, and Specter replied: "There has been other evidence, Mr. Dulles. If I may say at this point, we shall produce later, subject to sequential proof, evidence that the stretcher on which the bullet was found was the stretcher of Governor Connally."

Specter, however, was being less than exact in his statement to Dulles. At this time Specter had not yet gone to Dallas, and all the FBI and Secret Service reports indicated that the bullet had *not* been found on Connally's stretcher. Specter's assertion was apparently based not on the evidence, but on his expectation of what the evidence would show. Dulles then asked what happened to the first bullet that had hit Kennedy, and Specter replied, "That is the subject of some theories I am about to get into."

Specter then developed the hypothesis that both men were wounded with the same bullet (bullet 399) and that therefore the bullet had been found on Connally's stretcher.

Four days after Specter told the Commission "the evidence will show that it was from Governor Connally's stretcher that the bullet was found," he went to Dallas and questioned the witness who had actually found the bullet, Darrell Tomlinson. Tomlinson, an engineer who was employed by the hospital, said that he thought that the bullet had *not* come from the stretcher identified as Connally's. Despite a number of confusing questions put to him by Specter, Tomlinson maintained that, although he was not "positively sure," he believed that the bullet had come from the stretcher parked in front of Connally's in the emergency room.

Specter said that he had "deductively proved" that the bullet had come from Connally's stretcher by precluding the possibility that the other stretcher was Kennedy's. Two reasons were given for eliminating Kennedy's stretcher as the source of the bullet. First, Kennedy's stretcher was wheeled into "trauma room number 2" immediately after the body was removed from it. Second, two nurses said that the sheets were removed from Kennedy's stretcher; whereas Tomlinson claimed that there was a sheet on the stretcher from which the bullet had fallen.

The fact that Kennedy's stretcher was moved into trauma room number 2, which connected with the corridor in which the bullet was found, in no way precluded the possibility that the stretcher was later wheeled into this corridor. Was Kennedy's stretcher returned before or after the bullet was found?

The fact that two nurses recollected, four months after the event, that all the sheets were removed from Kennedy's stretcher hardly eliminated the stretcher as the source of the bullet. Also, Tomlinson's memory of a sheet on the foot of the stretcher could be inaccurate, or it was possible that, since the stretcher was parked near the linen hamper, a sheet could have been subsequently dropped on the stretcher.

There was, however, definite evidence that precluded the possibility that bullet 399 had come from Connally's stretcher. Lt. Col. Pierre A. Finck, the expert on forensic medicine, was asked if bullet 399 could have caused Connally's wrist wound. He replied flatly, "No, for the reason that there are too many fragments described in the wrist." Since the Commission had established that all Connally's wrist and chest wounds had been caused by a single bullet, Colonel Finck's testimony excluded the possibility that bullet 399 had wounded Connally. Therefore bullet 399 could not have passed through Connally and been found on his stretcher.

Colonel Finck's testimony on this point, which was fully supported by the other doctors, cannot be dismissed merely because it collided with the hypothesis that bullet 399 was found on Connally's stretcher. Since Finck's categorical statement that this bullet could not have caused Connally's wrist wound was never challenged, disputed, or corrected, it can only be concluded from the evidence that bullet 399 did not come from Connally's stretcher.

The investigation of the stretcher bullet was by no means exhaustive. Two major witnesses were never questioned. After Tomlinson noticed the bullet, he called over the hospital's security director, O. P. Wright, who then picked up the bullet and turned it over to a Secret Service agent. Wright very well might have been able to corroborate Tomlinson's story or to identify the stretcher that the bullet had come from, but he was never asked. Another witness who was never questioned was David Sanders, the orderly who wheeled Kennedy's stretcher out of the trauma room.

An investigation in which expert testimony was ignored, two out of the three major witnesses were never questioned, and the working hypothesis was maintained despite the development of contradictory evidence can only be considered superficial. The case of the stretcher bullet illustrates the limits of the investigation; in 10 days, or even in 10 weeks, a single lawyer could not exhaust all the facts and possibilities in such a broad

area as the "basic facts of the assassination." Arlen Specter spent only about 10 days on his investigation in Dallas; obviously he had to concentrate on the major problems and neglect some of the minor ones.

THE FOURTH SHOT? At the time of the assassination a bystander, James Tague, was wounded by a minute fragment. Although it is possible that this fragment came from one of the three established shots, it is also possible, especially in view of the distance involved, that the fragment came from a fourth shot. A fourth shot would not in itself indicate that a second assassin was at work—Oswald had sufficient time to fire a fourth shot after the fatal one—but it would cast new light on such problems as Connally's wrist wound, the dent in the chrome of the Presidential car, and the sequence of events. It would also raise a question as to why only three cartridge cases were found in the Texas Book Depository.

Immediately after the assassination a number of witnesses reported that a bullet had struck the pavement and a bystander had been slightly wounded by the ricochet. In February Specter apparently asked the Secret Service field office in Dallas to investigate the matter. The special agent in charge, Forrest Sorrels, reported that no bullet mark could be found on the pavement, and he added, "I did not see how it could have been possible for any fragment of any of the three bullets that were fired to have hit this concrete slab." No further effort was made at the time to find the person who was hit by a fragment or to locate the bullet mark.

There was, however, a photograph of the bullet mark which failed to reach Specter's attention because of the "division of labor." Tom Dillard, a Dallas newspaper reporter, reported to the FBI that he had taken a photograph of the bullet mark. The FBI report of the Dillard interview was passed on to Ball's panel because it dealt primarily with the identification of the assassin. Although Ball questioned Dillard, he apparently didn't realize the relevance of the Dillard photograph.

In July the Dillard photograph finally was forwarded to the Commission. Rankin immediately requested the FBI to locate the bullet mark, and he sent Wesley Liebeler, the junior lawyer on Panel III, to Dallas to interview James Tague, the bystander. Tague told Liebeler that he had received a minor cut on his face after the second or third shot, and immediately afterward he and a deputy sheriff had located the bullet mark. Liebeler then interviewed the deputy sheriff, who corroborated Tague's account.

In August the FBI established through spectrographic analysis that a bullet fragment had definitely struck the curb about 260 feet from the President's car at the time of the third shot. Thus, while the final draft of the Report was being written, the FBI laboratory confirmed that the mark on the curb had been caused by a bullet fragment.

However, the chapter on the basic facts of the assassination had already been written, and at this late date there was apparently no interest in reopening the investigation. Instead, a paragraph was inserted in the report, stating:

... the mark on the south curb of Main Street cannot be identified conclusively with any of the three shots fired.

Under the circumstances it might have come from the bullet which hit the President's head, or it might have been the product of the fragmentation of the missed shot upon hitting some other object in the area.

The report failed to admit that the mark also might have come from a fourth shot.

An exhaustive investigation would have tested each of these three possibilities against the known facts. Was it ballistically possible for fragments from the head shot to travel 260 feet and strike the curb with sufficient kinetic energy then to strike Tague? Ballistics experts could have been called to testify on the probability of this happening. Did a shot, in fact, miss? If these two possibilities were precluded, then a fourth shot must have been fired.

The reason why the problem of the fourth hit was not dealt with by the investigation was, quite simply, that mention of this hit was lost in the shuffle of investigative reports, and it did not come to light until after Specter had completed his investigation. This occurrence suggests that possibly other facts came to light after the June 1 deadline or were "lost in the shuffle."

The investigation of Area I was, to some degree, supplemented by the investigation of Area II, "the identity of the assassin." There was, however, an important conceptual difference

between the two investigations: whereas the first investigation was charged with ascertaining *all* the basic facts of the assassination and therefore had to be exhaustive in scope, the second investigation was charged with establishing a single positive fact, the identity of the assassin.

Joseph Ball, the most experienced trial lawyer on the staff, said that his investigation of Area II required basically the same process that a lawyer uses in "building a case;" a chain of evidence had to be forged which indisputably linked Oswald to the assassination and also showed that Oswald had the opportunity to commit the act.

First Ball and his junior lawyer, David Belin, reviewed the investigative reports and isolated the "chain of evidence." Most of the key witnesses were interviewed informally in Dallas, and on March 20 Ball held an "off-the-record" reconstruction of the assassin's movements. The purpose of this reconstruction was to prove that Oswald had had the opportunity to commit the assassination and then escape.

The first question dealt with was how Oswald had descended from the sixth to the second floor undetected. Three witnesses on the fifth floor had indicated to the FBI that they had had a view of the stairs after the assassination and that no one had gone down them. This at first led to the theory that Oswald had used the elevator, but this proved impossible because both elevators were found on the fifth floor with their doors open immediately after the assassination. In the reenactment Ball determined that the three witnesses, in fact, could not have seen the staircase at all times, and thus it was possible for Oswald to have descended the stairs undetected.

Since a policeman had encountered Oswald on the second floor shortly after the last shot was fired, there was also a question of time. Could Oswald have descended from the sixth to the second floor in the time it took the policeman to rush up to the second floor? In the reconstruction, Ball clocked both the assassin's and the policeman's movements with a stopwatch and thereby showed that it was possible for Oswald to have been the assassin.

To prove that Oswald was the assassin, Ball relied mainly on scientific evidence. This "hard" evidence was developed by Melvin Eisenberg before the Commission itself.

Bullet fragments found in the President's car were definitely matched by ballistics experts to the rifle found in the Texas Book Depository. The rifle was traced to Oswald, and handwriting experts helped confirm that Oswald had ordered and paid for the gun. In addition, fingerprint experts identified as Oswald's a palm print taken from the rifle, and thus it was established that Oswald had had possession of the rifle. In short, the chain of evidence indisputably showed that Oswald's rifle was used in the assassination.

The fact that Oswald had the opportunity to be the assassin and the fact that his rifle was used in the assassination in themselves made a *prima facie* case for Oswald's involvement.

Although the Area II investigation fulfilled, with reasonable thoroughness, its mission of identifying Oswald as the assassin, it tended to disregard possible evidence of accomplices. For example, Ball cited Oswald's palm prints on the book cartons used by the assassin as evidence that Oswald was at the scene of the assassination. However, other unidentified palm prints were found on these cartons, which could have indicated the presence of an accomplice. Ball and Belin did not try to have these prints identified, and it was only at the insistence of Wesley Liebeler, in August, that the FBI identified most, but not all, of the other prints.

There were also problems that fell between Area I and Area II, and were not dealt with by either investigation. A case in point is "the grassy knoll." In March, Ball was asked by Warren to clear up a rumor that the shots had come from the railroad bridge over the triple underpass the President's car was approaching. Ball, assisted by other lawyers, questioned witnesses who were standing on the railroad overpass at the time of the assassination, and the rumor proved baseless. However, six out of seven of these witnesses who gave an opinion as to the source of the shots indicated that the shots had come from a "grassy knoll" located between the overpass and the Texas Book Depository. One witness testified, "I definitely saw the puff of smoke and heard the report from under these trees [on the knoll]."

The grassy knoll, however, did not fall within the bounds of Area II, and Ball and Belin did not question the witnesses who were standing on the knoll. And Specter apparently did not

have time to attack this problem. Yet, according to the investigative reports, of the 10 witnesses who were standing between the knoll and the President's car, nine thought the shots had come from the knoll directly behind them. Only one of these witnesses, Abraham Zaprunder, was questioned by the staff, and he was called to determine not the source of the shots, but the terms under which he had sold his film of the assassination to *Life* magazine. Eight witnesses were standing across the street from the knoll; all eight said they thought the shots had come from the knoll. Only three of these witnesses were questioned.

Despite the fact that almost all the witnesses on the knoll, or with a view of the knoll, who expressed an opinion as to the source of the shots said that the shots had come from the knoll, no thorough investigation was made of this area.

If there was no evidence of more than one assassin, there was also no evidence that precluded the possibility. The conclusion that "Oswald acted alone" was predicated on two assumptions: first, that all the pertinent evidence was brought *before* the Commission for its evaluation; and second, that the staff's investigation had tested all possibilities.

In fact, only the more prominent problems were investigated, and many of the crucial problems were left unresolved—as was the case with the stretcher bullet. And although the investigation clearly delineated the chain of evidence linking Oswald to the assassination, it disregarded possible evidence of an accomplice in its handling of testimony involving the grassy knoll.



The Commission conducted an independent investigation without independent investigators. Although the Commission relied mainly on the FBI, the investigation in theory was independent. J. Lee Rankin said, "Our lawyers were the only independent investigators that we needed."

The legal staff thus had a dual role; it was the Commission's "independent investigator" as well as its counsel. In its investigative role, the staff was expected to analyze all the FBI reports for inconsistencies and gaps, and then to investigate and resolve these problems. In its legal role, the staff was expected to develop testimony and to examine witnesses before the Commission. In performing this dual function, however, the "independent investigators" were confronted with three problems that tended to limit the effectiveness of their investigation: communications with the FBI, limitations on interrogation methods and time pressure.

Although the Commission borrowed lawyers from the Department of Justice, accountants from the Internal Revenue Service, and historians from the Department of Defense, it did not include FBI or other investigative agents on its staff. Instead of having direct access to the FBI agents, the lawyers had to make each separate request for information and assistance through "channels." For example, Joseph Ball said that on his first trip to Dallas he called the FBI field office for assistance in a problem. He was told that the request must come from FBI headquarters in Washington. Three days later Ball was notified by the Dallas field office that his request had been approved, but by this time Ball had resolved the problem and was ready to return to Washington.

Wesley Liebeler said that, although the FBI was extremely efficient in answering questions submitted in writing, the agents would not develop any information that was not specifically requested of them. The practice of adhering to specific questions is probably the only way for an organization which conducts hundreds of thousands of interviews a year to function efficiently, but in the case of the Commission this method also had the effect of restricting the investigation to the more protrusive facts. For example, one witness, Arnold L. Rowland, testified before the Commission that he had told the FBI agents who interviewed him of a second person on the same floor as the rifleman a few minutes prior to the assassination. Rowland indicated that the FBI agents lacked interest in this second person.

Because of the enormous quantity of FBI reports, the staff initially assumed that the FBI had carried out exhaustive research in the areas of its main investigation. Liebeler, however, later

found that "the most disquieting thing about the FBI investigation was that it was less thorough than it appeared to be." For example, although Marina Oswald had been repeatedly questioned and continually investigated over a nine-month period by the FBI, Liebeler found in August that she still possessed evidence, which had an important bearing on Oswald's trip to Mexico, that had never been brought to the attention of the Commission.

Thus the quantity of the FBI's investigative material did not guarantee that all the important facts were reported. One staff lawyer estimated that 90 percent of the reports were not immediately relevant to the assassination. The high proportion of irrelevant papers was caused in part by the FBI's policy of submitting reports on all the crank letters and "weird allegations" received by FBI field offices. J. Edgar Hoover explained that, even when an allegation could not possibly have a basis in fact, a report on it was submitted to the Commission "for the record."

Furthermore, the FBI system of investigating all names mentioned produced thousands of pages on people who were only remotely connected with Oswald. The quantity of FBI reports thus may have had the unintended effect of obscuring relevant information.

The staff had only very limited assistance from the Central Intelligence Agency. Wesley Liebeler was one of the few staff lawyers who had direct contact with CIA agents; his experience illustrates the general problem "outsiders" (as the lawyers were considered to be) encountered in dealing with a highly secret intelligence organization. Liebeler, in attempting to identify a heavyset man in a CIA photograph, found that the photograph itself had a curious history. On November 18, 1963, the FBI received it, together with a report on Oswald's September 27, 1963, visit to the Cuban Embassy in Mexico City, and forwarded both to its Dallas field office. Coincidentally, the file arrived in Dallas on November 22, the day of the assassination.

Liebeler asked the FBI to identify the man. The FBI replied that it was a CIA photograph, taken outside the country, and that they had no further information about it. Liebeler next wrote to the CIA, asking who the person in the photograph was and why it was sent to the FBI less than a week before the assassination. Weeks later the CIA still had not replied, and Liebeler consulted the CIA liaison with the Commission, R. G. Rocca, who told him that the matter was still being investigated. Later a CIA agent called Liebeler and said that the CIA had thought at the time the photograph was sent to the FBI that the person in the photograph was Lee Harvey Oswald. When Liebeler pointed out that the person did not resemble Oswald at all, the CIA agent said that he would investigate further and call back. Despite persistent inquiries, Liebeler heard nothing more.

The CIA submitted only about 45 reports, mainly on investigations conducted abroad. The Secret Service provided agents for specific assignments, though it had neither the manpower nor the facilities to conduct a general investigation. The staff was thus mainly dependent on the FBI.

Although the FBI conducted a massive investigation into the assassination and into the backgrounds of the principal persons involved, the communications problem between the staff and the FBI, and the narrow criteria of the interviews, served to restrict the flow of information.

The Commission required that all its processes be consistent with the "high judicial standards of its members." This requirement led to the fair and judicial treatment of witnesses, but it also had the unintended effect of restricting the depth of the staff's investigation.

Forensic interrogation is the lawyer's only means of extracting concealed information from a witness; it includes such tactics as cross-examination, trap-questioning and badgering. The Commission felt that these tactics had no place in the proceedings. Since most of the witnesses appeared voluntarily and without counsel, the Commission believed that they should not be subject to rigorous cross-examination unless it was evident that they were concealing information. The conflict between the staff's interest in interrogating witnesses and the Commission's interest in assuring "judicial fairness" became evident after the first witness, Marina Oswald, testified.

Most of the lawyers were not satisfied with Mrs. Oswald's testimony. Liebeler said that it contained obvious contradictions and inconsistencies, and it seemed she might very well be "approximating the truth" in order to tell the Commission what she thought it wanted to hear. Joseph Ball said that Marina Oswald "left too many questions unanswered." William Cole-

man asked Rankin to permit Mrs. Oswald to undergo a more rigorous examination.

At the next staff meeting Rankin announced that the Commission had decided against further examination of Marina Oswald. The staff strongly protested this decision.

The Commission finally relented and allowed further examination. Marina Oswald was called as the final Commission witness in September, and she changed an important part of her testimony—Oswald's motive. Whereas in February Mrs. Oswald said she had thought that the motive was fame, she said in September that she had always believed that Oswald was aiming at Governor Connally and not at the President. The discrepancies in Mrs. Oswald's testimony were never satisfactorily resolved.

This case illustrates the difficulty the staff had in examining witnesses without being permitted to use the tools of forensic interrogation. Lawyers taking testimony in their field investigations also were restricted. Without the right to challenge witnesses with other evidence, some of the lawyers felt that "they were reduced to deposition-takers."

The Commission's policy also limited the use of such quasi-legal devices as polygraph tests. A polygraph is not, as it is sometimes called, a "lie detector." It only measures emotional stress in a witness that may indicate deception or that may indicate other emotions such as fear, anxiety, nervousness. The results of a polygraph test depend largely on the subjective interpretation of the witness' responses and are thus of dubious value in determining the truthfulness of a witness. Nevertheless, if a witness believes that the instrument is in fact a "lie detector," it may provide a strong psychological inducement for him to be truthful.

Although the staff fully realized the limits of the polygraph test, some of the lawyers felt it was the only way to resolve certain problems. For example, Liebler was confronted with the testimony of a Dallas gunsmith, Dial D. Ryder, which, if true, would indicate that an important part of Oswald's life was unknown to the Commission. Ryder claimed that the day after the assassination he had found a repair ticket for a rifle with the name "Oswald" on it. It was evident from the information on the repair ticket that this rifle could not have been the assassination weapon. Since the FBI was unable to locate any other "Oswald" in the area, and since Oswald lived in the same neighborhood as the gun-repair shop, it seemed possible that Oswald owned a second rifle.

Two other witnesses testified that Oswald had inquired in a furniture store about having his rifle repaired, then claimed that they had directed Oswald to Ryder's gun shop. When Liebler confronted the witnesses with Marina Oswald, both positively identified her as the woman who had entered the furniture store with Oswald. There remained, however, the distinct possibility that the repair tag was spurious and that Ryder had invented the story.

In reply to Liebler's request for an FBI polygraph test of Ryder, Willens wrote that "the FBI is extremely dubious of polygraphs" and that the Commission had therefore denied the request. The problem of Oswald's "second rifle" thus was never resolved.

The third major problem that limited the lawyers in their investigation was time pressure. The constant deadlines limited not only the quantity of the investigation but also its quality.

As the investigation progressed into June, and the Commission was forced to extend the deadline to July 1, the Commissioners became increasingly anxious to "get the Report out." John J. McCloy said that he was concerned with the "ugly rumors" that were circulating in Europe, and he feared that a delay in publishing the Report would "cause them to spread like wildfire." The Congressional members of the Commission wanted the Report released well before the election.

To "close down their investigations," lawyers, in some instances, were forced to leave important problems unresolved. For example, Burt Griffin had the problem of determining how Ruby gained entrance to the basement of the Dallas city jail a few minutes before he murdered Oswald. The task was complicated by the fact that there were over 100 witnesses in the basement at the time, and there were at least six different possible entranceways.

During his field investigation, Griffin found Ruby's story that he had entered by the Main Street ramp was contradicted by other evidence. The police officer guarding the ramp categorically denied Ruby could have entered by that ramp, and four police officers, who had driven up the ramp at virtually the only

time Ruby could have descended, testified they did not see Ruby on the ramp. This contradiction raised questions both about Ruby's truthfulness and about the possibility that he had assistance in entering the basement.

In June the Commission reportedly felt that Griffin was spending too much time on this problem. Consequently, Griffin was ordered to proceed with other areas of his investigation, despite his protests that the question of Ruby's entrance was of prime importance.

Thus the question was left unanswered.

One witness, Sylvia Odio, gave testimony indicating that Oswald had visited her in the company of two "Cuban underground fighters" the day before he left on his trip to Mexico. If Mrs. Odio's testimony was accurate, it meant that Oswald had two associates, not known to the Commission who were involved in his trip to Mexico not long before the assassination.

By July the staff still had not questioned Sylvia Odio. Meanwhile, W. David Slawson, the lawyer assigned to the problem, tried to preclude the possibility of truth in Mrs. Odio's story by showing that it was not possible for Oswald to have been in Dallas at the time she claimed. Slawson's analysis was based on the fact that Oswald was in New Orleans at 8 a. m. on September 25 and on the bus bound from Houston to Mexico at 6 a. m. on September 26. Slawson assumed that Oswald had traveled from New Orleans to Houston on September 25 and then had caught the 2:35 a.m. bus to Mexico the next morning. This left only a few hours unaccounted for in Houston and "precluded" the possibility that Oswald had visited Mrs. Odio in Dallas on September 25.

The Commission decided, on the basis of this analysis, that Mrs. Odio's story was false. Liebler gave the matter further attention. On investigating the bus schedules, he found that there was no reason to assume that Oswald had caught the bus at 2:35 a.m. in Houston. Actually, Oswald was not seen on that bus until 6 a.m. that day. Thus Liebler found it possible for Oswald to have traveled from New Orleans to Dallas on September 25, visited Mrs. Odio, and then caught the Mexico bus. Mrs. Odio's story could not be ruled out. The issue was never resolved.

The "independent investigators" were thus constrained in their investigation by the communications problem with the FBI, the forensic problem caused by the Commission's judicial requisites, and the time-pressure problem. How decisive were these limitations?

Despite the restricted flow of information from the FBI, the staff had virtually all its questions answered by the FBI. Despite the judicial restraints, most of the witnesses testified freely and only a small number of questions were left unanswered. Despite the time pressure, most of the problems were resolved. The only type of information unlikely to emerge in such an investigation would be information that was deliberately concealed.



The staff investigation was supplemented to some degree by the Commission hearings. However, only 94 of the 552 witnesses testified at the Commission hearings (the other witnesses either were questioned by the staff lawyers in the course of their field investigations or submitted affidavits). In all, the Commission held 49 days of hearings, beginning on February 3, 1964, and ending on September 6, 1964—an average of about seven hearings per month.

Commission hearings were defined by the presence of "one or more members of the Commission." With one exception, the hearings were closed to the public. The witnesses had the right to be advised by counsel, but few availed themselves of this right. Although these hearings served to substantiate the findings of the investigation, they produced little, if any, new evidence. Possibly no new "truths" came to light because all the significant facts were already known. There were, however, other possible reasons.

First of all, only a minor portion of the hearings was devoted to testimony relating to the assassination itself. By far the greatest portion of the Commission's time was occupied with testimony concerning Lee Harvey Oswald's biography. The hearings

began and ended with the testimony of Marina Oswald, and it accounted for more than 12 percent of the total Commission hearings. She seemed to have no direct knowledge of the assassination itself.

The testimony of Oswald's mother and brother accounted for another 14 percent. In all, 43 percent of the Commission's time was spent hearing testimony concerning Oswald's life history—a fact which suggests that the main focus of the Commission hearings was Oswald, not the assassination itself.

The Commission also spent considerable time—about 12 percent of the hearings—on testimony dealing with such questions as: How was Oswald able to return to the United States after defecting to the Soviet Union? Why was Oswald not under closer FBI surveillance? Were the Secret Service's protective measures adequate? It went into such peripheral problems as the methods of the Dallas police, the activities of Jack Ruby, and anti-Kennedy advertisements.

Less than one-third of the Commission hearings—about 81 hours out of a total of 244—dealt with the pertinent facts of the assassination: the source of the shots, the identity of the assassin, and Oswald's movements on the day of the assassination. During these 81 hours, 51 witnesses testified. Most of the evidence was presented by expert witnesses, whose testimony concerned such complex subjects as forensic pathology, ballistics, fingerprints, hair and fiber analysis, etc. The Commission had neither the time nor technical knowledge to scrutinize the expert testimony.

One Commission lawyer, Melvin Eisenberg, did call "outside" expert witnesses to "verify" the government expert witnesses, but this was only done in the case of fingerprint and ballistic identification. In other areas, expert testimony received only cursory examination. For example, the autopsy surgeon indicated in his testimony that the first bullet that struck Kennedy passed through his body without leaving a discernible path. This testimony, however, contradicts a basic precept of forensic pathology: a rifle bullet traveling through the body will *always* leave a path. An outside expert witness might very well have clarified this apparent discrepancy.

A second possible reason why the hearings failed to uncover new information was that virtually all the witnesses had made statements to the federal investigators or to the staff lawyers *before* they testified at the Commission hearings; the only exceptions were the federal agents themselves and Mrs. John F. Kennedy.

When a witness did give new evidence in the Commission hearings, it became suspect *ipso facto*, because it was not included in a prior statement. For example, Arnold Rowland testified before the Commission that he had seen a second man on the same floor with the assassin. The Commission, however, rejected this portion of Rowland's testimony partly because of "Rowland's failure to report his story despite several interviews until his appearance before the Commission." Rowland insisted that he *did* mention this fact to FBI agents but that they were interested only in whether or not he could positively identify the assassin.

Some of the staff lawyers thought the Commission hearings were "a joke." Liebeler said that most of the Commissioners were absent most of the time, and that they would stop in "for a few minutes," ask a question "which blew the lawyer's entire line of questioning," and then "rushed out to make a quorum or something." Ball said that he spent considerable time "talking to an empty room."

Opinions differ as to what the Commission actually did. Joseph Ball commented that the Commission "had no idea of what was happening, we did all the investigating, lined up the witnesses, solved the problems and wrote the Report." Wesley Liebeler, when asked what the Commission did, replied, "In one word, 'Nothing.'" Melvin Eisenberg compared the Commission to a corporation's board of directors, with Rankin as president and the staff members as the officers.

Although the staff no doubt tended to exaggerate the Commissioners' absenteeism, the attendance records of the Commission show that most of the Commissioners were present for only a minor portion of the hearings. Only three Commissioners heard more than half the testimony, and the average Commissioner heard 45 percent.

Rankin, however, asserted that the Commission members were "extremely dedicated" and that they would attend whenever they could leave their other responsibilities. Rankin noted that even though Warren had to attend the Supreme Court every day it was in session, he arranged for Commission hearings to com-

mence at 9 a.m. so that he could officially open them before he left for the Court at 10 a.m.

Rankin said that some of the younger lawyers simply didn't understand how a government investigation functions. He explained that it was important "for the sake of public, as well as historic, acceptance of the Report that the main evidence be brought directly before the Commission." The function of the Commission hearings, then, was to record, rather than to investigate, the evidence.



On December 9, 1963, shortly after the first Commission meeting, the FBI submitted the Summary Report of its investigation to the Commission. This report contained the seven major facts upon which the Commission, nine months later, predicated its main conclusion—that Oswald had assassinated President Kennedy. If all the major facts were already established, what were the contributions of the independent investigation?

Norman Redlich said that, although the FBI established the basic facts, the independent investigation determined the relationships between these facts. According to Redlich, the single most important contribution of the investigation was the theory that explained how one man, acting alone, committed the assassination. The way in which this theory developed reveals to some extent the basic orientation of the investigation.

The FBI Summary Report gives the following description of the assassination:

As the motorcade was traveling through downtown Dallas on Elm Street about 50 yards west of the intersection with Houston Street . . . three shots rang out. Two bullets struck President Kennedy, and one wounded Governor Connally.

Although this account appeared to be basically accurate, the Commission's staff felt that for "the historical record" the sequence of events should be ascertained with greater precision.

On January 27, 1964, Norman Redlich, Melvin Eisenberg, and Arlen Specter of the Commission staff met with FBI photographic expert Lyndal Shaneyfelt, Secret Service Inspector Thomas Kelley and FBI visual-aids expert Leo Gauthier to conduct a frame-by-frame analysis of the Zapruder film. The first problem was determining the exact position of the Presidential limousine at the time of the first shot.

The latest point at which the President could have been first hit is film frame 225. On this frame it is evident that the President has been wounded. The earliest point at which the President could have been hit was fixed by an oak tree. The Secret Service reenactment of the assassination showed that the assassin's line of sight was blocked by the foliage of the large oak tree between frame 166 and frame 207. The film further shows that the President is smiling and waving on frame 207, and this makes it highly improbable that the President was shot before frame 166. Moreover, still photographs and virtually all the eyewitnesses place the car past the oak tree at the time of the first shot. It was thus concluded that the first shot could have been fired only after frame 207. The staff was able through this analysis to fix the position of the car, at the time of the first shot, within 18 frames (about 16 feet).

However, establishing the position of the car at the time of the first shot raised a more serious problem. The FBI had established that the murder weapon could not be fired twice in less than 2.3 seconds. This was the time it took to open and close the bolt of the rifle. In terms of the film, 2.3 seconds are equivalent to 42 frames. This meant that the shots had to be spaced at least 42 frames apart on the film to be consistent with the minimum firing time of the assassination weapon. Since the first shot could not have been fired before frame 207, a second shot from the same rifle could not have been fired before frame 249. Thus it was initially assumed that Connally was hit after frame 249, even though this was not apparent in the film.

On February 25, 1964, the Commission finally obtained the original copy of the Zapruder film from *Life* magazine. Up to this point the staff had been using a copy. The original film is considerably more detailed, and it shows that Governor Connally was hit well before frame 249. Subsequently Connally's

doctors testified that Connally was not in a position to have been hit after frame 240.

Thus there are only 33 frames on the film between the earliest time at which Kennedy could first have been shot and the latest time at which Connally could have been shot. Yet the murder weapon could not be fired twice within this time period. A new working hypothesis thus would have to be found to explain the assassination.

In early March, Arlen Specter discussed the time problem informally with Commanders James J. Humes and J. Thornton Boswell, the Navy doctors who had performed the autopsy. According to Specter, Commander Humes suggested that since both Kennedy and Connally apparently had been hit within a second of each other, it was medically possible that both men had been hit by the same bullet and that Connally had had a delayed reaction. This hypothesis raised another problem.

If both men were hit by the first bullet, obviously the first bullet must have exited from the front of the President's body. However, the FBI Summary Report states that the autopsy revealed the bullet in question did *not* exit from the front of the President's body.

On March 16, 1964, the Commission heard testimony concerning the autopsy. An undated autopsy report was introduced in evidence. Commander Humes testified that this report was prepared immediately after the autopsy and submitted to "higher authority" on November 24, 1963. He also stated that he "destroyed by burning certain preliminary notes relating to" the autopsy.

The autopsy report contains a conclusion that is diametrically opposed to the FBI's statement on the autopsy. The autopsy report states that the first bullet hit the President in the rear of the neck and exited from his throat, whereas the FBI Summary and Supplemental Reports stated that the autopsy found the bullet in question hit the President below the shoulder and "penetrated to a distance of less than a finger length."

Commander Humes testified that, although no bullet path was found through the President's body, it was deductively concluded that the bullet did indeed pass through the body and exit at the throat. The Commander was asked what had happened to the bullet that had exited from the President's throat. Humes explained: "I see that Governor Connally is sitting directly in front of the late President, and suggest the possibility that this missile, having traversed the low neck of the late President, in fact traversed the chest of Governor Connally."

The single-bullet hypothesis was thus advanced to the Commission. But although it solved the time problem, it raised new problems.

There was the problem of the nearly whole bullet (bullet 399) found on a stretcher in the Dallas hospital. It was "preliminarily" thought that this bullet had come from Kennedy's stretcher. However, if both men were both first hit by the same bullet, this nearly whole bullet could not have come from Kennedy's stretcher. According to the single-bullet hypothesis, the first bullet went through the President and Connally, the second bullet missed the car completely, and the third bullet hit the President's head and fragmented. Thus, the single-bullet hypothesis could be maintained only if the nearly whole bullet came from Connally's stretcher.

Subsequent evidence developed which all but precluded the possibility that the bullet had come from Connally's stretcher. Colonel Finck testified that the bullet found on the stretcher could not be the bullet that caused Connally's wrist wound, primarily because more fragments were found in the wrist than were missing from the bullet. Yet, since other expert testimony and evidence precluded the possibility that Connally's wrist wound was caused by a fragment from the third bullet, or by a direct hit from another bullet, the Commission concluded that all Connally's wounds were caused by a single bullet. The bullet found on the stretcher thus could not have been the bullet that caused all Connally's wounds.

A second problem involved the testimony of Governor Connally in April. Connally testified that it was inconceivable to him that he was hit by the first shot because he distinctly remembered hearing the first shot before he had felt the impact of the bullet striking. Since a bullet travels faster than the speed of sound, Connally reasoned that he could have been hit only by the second bullet. The evidence clearly indicated that Kennedy had been hit by the first bullet.

There was other evidence which corroborated Connally's account. Both of his doctors testified that Connally was hit after

film frame 231. Yet the film showed that the President was definitely hit by frame 225. This leads one to the conclusion that the two men were hit by two bullets.

In order to maintain the single-bullet hypothesis it was necessary to assume that other evidence was erroneous. First, that the FBI Summary and Supplemental Reports' statements on the autopsy were inaccurate. Second, that expert testimony which precluded the possibility that the bullet found on the stretcher was the bullet that wounded Connally was incorrect. Third, that Connally was wrong in his impression that he was hit by a separate bullet. Finally, that Connally's doctors were mistaken in their conclusion that Connally was not in a position to be hit before film frame 231. The fact that this hypothesis was maintained indicates the investigation's commitment to an explanation based on a "lone assassin" premise.

On April 27, 1964, United States Army wound ballistics expert's conducted further tests on the murder weapon. Arlen Specter, who supervised these tests, said their primary purpose was to determine specifically whether or not the bullets would penetrate a second object after exiting from the initial object.

Colonel Finck testified that properly to test the single-bullet hypothesis it would be necessary to pass a bullet through two human cadavers. However, Specter said that it was "too complicated" to fire a bullet through two objects at a time; thus, in the wound ballistics tests, bullets were not fired through more than one object at a time. Three series of tests were held. In the first series, bullets were fired from the murder weapon through an object (gelatin blocks) which simulated the President's neck. By measuring the average entrance and exit speed of the bullets, it was determined that the bullets lost about 82 feet per second from an original velocity of about 2,000 feet per second. In the second series of tests, bullets were fired from the murder weapon through an anesthetized goat, which simulated Governor Connally's chest. In the third series of tests, bullets were fired through the wrist of a cadaver, which simulated Connally's wrist.

Dr. Alfred Olivier, the veterinarian who conducted the wound ballistics tests, testified before the Commission in May on the results. When asked if the tests had indicated that Connally and Kennedy were hit by the same bullet, he replied: "My feeling is that it would be more probable that it (the bullet which struck the wrist) passed through the President first."

Doctor Olivier explained that this conclusion was based on the fact that a direct hit caused considerably more damage to the simulated wrist than Connally's wrist actually had suffered. Therefore it was deduced that the bullet which had hit Connally's wrist had passed through a prior object. In the tests, the bullet had lost 265 feet per second when it passed through the goat. Because Connally's chest is about half again as wide as the goat, it was assumed that the bullet would have lost 400 feet per second passing through Connally's chest. Doctor Olivier estimated that the bullet that struck the wrist had lost at least 480 feet per second, and therefore he concluded that the bullet must have passed through a third object—the President's neck.

This conclusion was based on the assumption that the conditions of the experiment closely simulated those of the assassination. This was not the case. Since the conclusion that Kennedy and Connally were hit by the same bullet is based on a difference of only about 80 feet per second in the bullet's velocity, the disparity between the width of Connally and the goat might be a significant one.

Further doubt was cast on the results by Dr. Frederick E. Light, the medical pathologist associated with the tests. Doctor Light was asked whether he agreed with Doctor Olivier's conclusion. He replied: "I am not quite as sure in my mind as I believe he [Olivier] is that the bullet that struck the Governor was almost certainly one which had hit something else first. I believe it could have produced that [wrist] wound even though it hadn't hit the President or any other person or object first."

In May, Specter proposed that the Commission conduct a reconstruction of the assassination based on the film in order to determine whether Connally and Kennedy were hit by the same bullet.

On May 23, 1964, Rankin, Redlich and Specter went to Dallas. The next morning the sequence of events of the assassination was meticulously reconstructed. An open limousine, with stand-ins for Kennedy and Connally, simulated the movements of the Presidential limousine. The limousine was slowly pushed until its position coincided exactly with the position shown in the film of the assassination; at each point a photograph was taken from the "sniper's nest" in the Texas Book Depository through

the telescopic sight of the murder rifle. In this manner, each film frame was correlated with the assassin's line of sight, and the trajectory was measured.

On June 4, 1964, the federal agents who participated testified before the Commission. FBI ballistics expert Robert Frazier, who had occupied the position of the assassin during the test, was asked if it was probable that the bullet "which passed through the neck of the President" hit Governor Connally. Frazier replied: "There are a lot of probables in that. First, we have to assume that there is absolutely no deflection in the bullet from the time it left the barrel until the time it exited from the Governor's body." Frazier said it was "entirely possible" that both men were hit by the same bullet, but he continued: "I myself don't have any technical evidence which would permit me to say one way or the other."

Like the wound ballistics tests, the reconstruction showed only that it was *possible* that both men were hit by a single bullet; it did not show that it was *probable*.

Specter, however, considered both tests to be "very important corroborative evidence" that both men were hit by the same bullet. By June 5 Specter had submitted his chapter on the basic facts of the assassination. The facts and premises set forth were selected so as to support the single-bullet hypothesis. Even after the chapter was toned down by the Commission, it asserted:

Frazier testified that it (the bullet which first hit Kennedy) probably struck Governor Connally.

Frazier did *not* testify that the bullet that hit the President "probably struck Governor Connally."

Despite the fact that the staff felt this theory was the only reasonable way to explain the sequence of events in terms of a single assassin, and no alternate hypotheses were considered, in the final analysis the Commission as a whole—for reasons to be discussed later—refused to accept the single-bullet theory.



The Commission had two distinct tasks: the investigation and the writing of the Report. The original plan was for each team of lawyers to write a chapter about its own investigative area and for all teams to submit their chapters to the Commission by June 1. Most of the lawyers had not even completed their field investigations by June.

In the writing of the Report the major problem was the selection of evidence. From the tens of thousands of pages of evidence, which facts were to be included, which excluded?

The writers obviously could not simply select the evidence that supported their case. Norman Redlich thought the problem could be solved by the "impartial selection of facts," but Liebeler skeptically told him, "I suggest, Norman, that you start to make an argument the minute you select a fact."

The difficulties encountered in attempting to select evidence impartially can best be seen in Chapter IV of the Commission's Report. Chapter IV was first written by Joseph Ball and David Belin, the lawyers who investigated the evidence in this area. When the Re-editing Committee found the chapter "totally inadequate," Norman Redlich undertook to rewrite it.

There were substantial differences between the two versions. For example, Ball had rejected as "utterly unreliable" the testimony of Helen Louise Markham, who was the only witness who claimed to have seen Oswald shoot Dallas Policeman J. D. Tippit. Ball found Mrs. Markham's testimony "full of mistakes." Ball characterized Mrs. Markham as an unconvincing witness, and he said that, in view of other available evidence, her testimony was not needed for the case against Oswald.

When the chapter was rewritten, Mrs. Markham's testimony was given considerable weight, and the description of Tippit's murder was based mainly on her account of the event. Wesley Liebeler, the lawyer who had examined Mrs. Markham, told Redlich that the woman's testimony was "contradictory" and "worthless." However, Redlich had replied, "The Commission wants to believe Mrs. Markham and that's all there is to it."

Ball was also extremely dubious of the testimony of Howard L. Brennan, the only eyewitness who claimed he could identify

the assassin as Oswald. At the time of the assassination Brennan was across the street from the Texas Book Depository, about 120 feet from the sixth-floor window from which the shots came. Later that day Brennan said at a police lineup that he could not identify Oswald as the assassin. In January, when asked by the FBI, Brennan still insisted he could not identify Oswald as the assassin. However, when Brennan appeared before the Commission in March he said that he *could* identify the assassin as Oswald, and that he had lied at the police lineup to protect himself and his family.

In rewriting the chapter, Redlich gave a great deal more weight to Brennan's identification than did Ball. The section was subtitled "Eyewitness Identification of the Assassin," even though the Commission had never fully accepted Brennan's identification.

Although Ball found Marina Oswald to be "at best, an unreliable witness," Redlich based part of his version of the chapter on her testimony. Norman Redlich himself had asserted in February: "... Marina Oswald has lied to the Secret Service, the FBI, and this Commission on matters of vital concern. . . ." Yet in rewriting the chapter Redlich chose to rely on Marina Oswald's testimony.

It took nearly three months to rewrite Chapter IV. Finally it was sent to the printer.

Wesley Liebeler read the galley proofs, and was disconcerted by the quality of the writing. Over the weekend of September 5, 1964, he wrote a 26-page single-spaced memorandum which attacked the chapter point by point and warned:

To put it bluntly, this sort of selection from the record could seriously affect the integrity and credibility of the entire Report.

The memorandum, by its detailed analysis of the way facts were selected, provides an insight into the writing of the Report.

First, there was the problem of gaps in the case against Oswald. How were these gaps filled? For example, to eliminate the possibility that Oswald's rifle was used by another person, the Report had to show that the rifle was in Oswald's possession on the day of the assassination. The chapter therefore asserted that "evidence showed" that the rifle was in the Paines' home (where Marina Oswald temporarily resided) on the eve of the assassination, that Oswald visited his wife at the Paines' home that evening, that he left on the morning of the assassination with a "long, bulky package," and that after the assassination the rifle was missing from the Paines' home. Yet there was no actual evidence that the rifle was in the Paines' home on the eve of the assassination.

Marina Oswald had testified that the rifle was transported from New Orleans to Dallas in a blanket and that the blanket was stored in the Paines' garage. In September, she said, she had looked inside the blanket and had seen part of a rifle, but in the seven weeks preceding the assassination she had not looked inside the blanket or handled it, and thus she had no way of knowing whether the blanket still contained the rifle. It was conceivable that the rifle was removed sometime during this seven-week period.

Second, there was the problem involving relevant evidence that was not cited. The chapter based its conclusion that Oswald carried the rifle in the "long, bulky package" mainly on the testimony of two witnesses, Linnie Mae Randle, Oswald's neighbor, and Buell Wesley Frazier, who drove Oswald to work on the morning of the assassination. Both witnesses believed that the bag was less than 28 inches long. However, the wooden stock of the rifle was 34.8 inches long. Mrs. Randle said that she had only a glimpse of the bag, and therefore no weight was given to her estimate of length. Frazier based his estimate of two feet "give and take a few inches" on the fact that Oswald held the package under his arm, cupping the bottom of it with his right hand. The chapter stated: "Frazier could easily have been mistaken when he stated that Oswald held the bottom of the bag cupped in his hand with the upper end tucked under his arm pit." There was, however, corroborative evidence for Frazier's description. Liebeler pointed out that the location of Oswald's right palm print on the bag—the heel and fingers were on the bottom of the bag exactly as if it had been "cupped"—indicated that Frazier's description *was* accurate.

Third, Liebeler noted a tendency to "stretch" inconclusive scientific evidence by selecting testimony out of context and making it appear conclusive. For example, the chapter stated that fibers found in the paper bag (found in the Depository)

matched fibers in the blanket in which it was assumed the rifle was stored; and that this fact further indicated the bag was used to carry the rifle into the Depository.

However, Paul Stombaugh, the FBI expert who examined the fiber evidence, had testified that since the two types of fibers found in the bag were common, and since the blanket contained 30 different types of fibers, of which only two matched the fibers found in the bag, there was insufficient evidence to judge whether or not it was probable that the fibers in the bag came from the blanket. Yet the chapter asserted that the fiber evidence indicated that the bag had once contained the rifle.

Another problem with the fiber evidence was omitted from the chapter: the fibers found on the rifle did not match either those in the bag or those in the blanket. If the rifle had been stored in the blanket, one would expect some blanket fibers to have been found on the rifle, but none were.

Liebeler also criticized the way in which the chapter interpreted the fingerprint evidence. In reaching the conclusion that Oswald was at the window when the shots were fired, the chapter attached "great weight" to the fact that Oswald's fingerprints and palm prints were on the cardboard cartons found near the window from which the shots came.

Liebeler pointed out that these were cartons that Oswald normally handled in his work, and that the fingerprints thus showed only that Oswald had handled the cartons and not that he was at the window at the time of the assassination.

The final part of the memorandum's analysis of the evidence dealt with Oswald's capabilities as a rifleman.

The first problem was to see whether Oswald could have fired three shots in 5.6 seconds. This time was determined from the film of the assassination.

The rifle tests held by the FBI and the Army were an important part of the evidence. The first tests with Oswald's rifle were conducted on November 27, 1963, by the FBI. Each of three rifle experts—Charles Killion, Cortlandt Cunningham and Robert Frazier—fired three shots at a target. All the shots were high and to the right of the aiming point: Killion's firing time was nine seconds; Cunningham's firing time was eight seconds; Frazier's firing time was six seconds. Their target was stationary and only 15 yards away; Oswald's target was moving and more than 60 yards away.

Later the same day Frazier fired two more series of shots "to determine how fast the weapon could be fired." The first series of three shots was fired in 4.8 seconds, and the second one was fired in 4.6 seconds.

The final FBI tests were held at Quantico, Virginia, on March 16, 1964. Frazier fired at a target a hundred yards away. His time for the first series of three shots was 5.9 seconds; for the second series, 6.2 seconds; and for the third series, 6.5 seconds. Not only did Frazier fail to equal Oswald's time of 5.6 seconds, but all hit shots were about five inches high and about five inches to the right of the aiming point. Frazier explained in his testimony that the inaccuracy was due to an uncorrectable mechanical deficiency in the telescopic sights.

The Commission evidently was not satisfied. It arranged for the United States Army Ballistic Research Laboratory to conduct further tests on March 27, 1964. Three rifle experts—Hendrix, Staley and Miller—fired at three silhouette targets located at distances matching the distances of the Presidential limousine from the source of the shots.

Hendrix fired his first series of three bullets in 8.25 seconds and missed the second target; he fired his second series in 7.0 seconds and missed the third target. Staley fired his first series in 6.75 seconds and his second series in 6.45 seconds; both times he missed the second target. Miller was the only expert to equal Oswald's time; he fired his first series in 4.6 seconds and his second series in 5.5 seconds, although he missed the second target both times. Miller later fired a third series, using standard sights instead of telescopic sights. In this series he fired three shots in 4.45 seconds, but the third shot went wild.

Although the Army tests demonstrated that it was possible to fire three shots in 5.6 seconds with the murder weapon, three factors must be taken into account.

First, the experts were timed only from the sound of the first shot to the sound of the last shot. This meant that they had unlimited time to aim at the first target and pull the trigger before they were timed. The assassin, however, had only 5.6 seconds for all three shots from the moment the car first became visible, thus his aiming time was included in the total time. This is a significant factor. If it is assumed it took the

assassin one second to react, aim, and pull the trigger, then he had only 4.6 seconds (not 5.6 seconds) to fire. Thus, in order to make comparisons, this aiming factor must be added to the experts' time.

Second, the experts were firing at a stationary target, whereas the assassin was firing at a moving target.

Finally, when the Army experts found that the sight could not be accurately aimed at a target, they added three "shims" to correct the inaccuracy. Thus the Army experts fired with accurate sights, whereas, so far as is known, the assassin fired with inaccurate sights.

Despite the fact that only two of the six rifle experts were able to equal the assassin's time, the draft chapter characterized the shots as "easy shots." Statements were selected from four expert witnesses to support this characterization.

The manner in which this testimony was developed indicates that premeditation was involved in the selection process. The two witnesses who characterized the shots as "easy shots," Maj. Eugene Anderson and Sgt. James Zahm, were not called until July 24, 1964. Each was asked a hypothetical question in which the distance of the shot, the trajectory and even the street down-grade were given, but the time factor was conspicuously omitted. Therefore, in answering the question, neither witness had to take into account the problem of firing three shots in 5.6 seconds. Thus both witnesses characterized the shots as "not difficult" and "easy."

Liebeler found these assertions to be contrary to the evidence, which showed that the shot was extremely difficult. He stated that it was "simply dishonest" not to mention the problem with the defective telescopic sight. If the assassin had placed the cross hairs of the sight on the target, the bullet would have missed.

The chapter asserted that Oswald had sufficient proficiency with a rifle to have committed the assassination. This conclusion was based mainly on the rifle scores Oswald had achieved in the United States Marine Corps. Oswald had taken only two tests. In his first test he scored 212, which was considered by the Marine Corps a "fairly good shot;" in his second test, in 1959, he scored 191, which was considered a "rather poor shot." On the basis of these scores, Major Anderson and Sergeant Zahm testified that "Oswald was a good shot."

Liebeler, however, stated that "this was the worst kind of selection" because it omitted other witnesses who had had direct experience with Oswald's marksmanship. One such witness was Nelson Delgado, who had stood next to Oswald when he had fired a rifle in the Marine Corps on a number of occasions. Delgado testified that Oswald was a poor shot and often missed the target completely. Yet the chapter omitted Delgado's testimony.

Furthermore, the chapter implied that, while in the Soviet Union, Oswald had practiced his marksmanship by participating in hunts. In fact, there was information indicating that "Oswald was an extremely poor shot and it was necessary for persons who accompanied him on hunts to provide him with game." This information came from the Soviet KGB file on Oswald (furnished by Yuri I. Nossenko, a Soviet intelligence staff officer who defected in February, 1964).

After Oswald returned from the Soviet Union in 1962 there was no evidence that he ever fired a rifle again, except for one time when hunting with his brother. There is also the possibility that Oswald attempted to shoot General Walker. However, the sniper missed Walker, a stationary, well-lit target, at relatively close range.

Thus all evidence of Oswald's rifle proficiency indicates that he was a poor shot. Furthermore, the Commission found no evidence that Oswald had ever practiced firing the rifle.

On September 6, 1964, Liebeler submitted his 26-page memorandum to Rankin. Rankin refused to accept the memorandum, saying, "No more memorandums! The Report has to be published!" However, Liebeler was insistent, and finally Rankin read the memorandum and then immediately summoned Redlich to Washington.

Redlich heatedly objected to all Liebeler's criticisms. He explained that he had written the chapter exactly the way the Commission wanted it written. He said, "The Commission judged it an easy shot, and I work for the Commission."

Finally Rankin adjudicated the dispute. Most of Liebeler's criticisms were rejected, but some changes were made in the chapter. The problem with the sights was inserted, although it was also suggested that the defective sights were actually

an advantage for the sniper. The fiber evidence, which had been used to indicate that Oswald had brought the rifle into the Texas Book Depository, and the fingerprint evidence, which had been used to show Oswald's presence at the window, were both assigned only probative value. And the statement that the rifle was in the Paines' home the night before the assassination was made less definite, although the chapter still implied that this was a known fact.

In the final analysis, Redlich did "work for the Commission." In his role as editor, he had to select evidence that supported the Commission's judgments. As contradictory evidence and inconsistent details therefore tended to be omitted, the selection process tended to make the Commission's judgments self-reinforcing.



As Commissioner Ford put it, "Conclusions were the work of the Commission." The staff conducted the investigation and drafted the report, but in the final analysis the Commission had to reach the conclusions and take the responsibility for them. There were five main conclusions.

First, the Commission concluded that the shots came from the Texas School Book Depository. This conclusion was based on medical evidence which showed that at least two of the shots came from the general direction of the Depository; on the testimony of eyewitnesses who saw a rifle in the sixth-floor window of the Depository; and on the fact that the murder weapon and three cartridge cases were found on the sixth floor of the Depository. Although this evidence in itself did not exclude the possibility that other shots came from a different source, it constituted ample proof that shots had come from the Depository.

The second conclusion concerned the sequence of events and presented a difficult problem. The film of the assassination showed that the President and Governor Connally were hit less than two seconds apart, and that rifle tests showed it was physically impossible for the murder weapon to be accurately fired twice within this period of time. Thus, either both men were hit by the same bullet or there had to be two assassins.

The Commission was more or less evenly split on this question, with Ford, Dulles and McCloy tending toward the conclusion that both men were hit by the same bullet, and Russell, Cooper and Boggs tending toward the conclusion that both men were hit by separate bullets.

Ford wanted to state that there was "compelling" evidence that both men were hit by the same bullet, while Russell wanted to state merely that there was only "credible" evidence. McCloy finally suggested that the adjective "persuasive" be used, and this word was agreed upon. The Report states:

There is very persuasive evidence from the experts to indicate that the same bullet which pierced the President's throat also caused Governor Connally's wounds. . . . There is no question in the mind of any member of the Commission that all the shots which caused the President's and Governor Connally's wounds were fired from the sixth floor window of the Texas School Book Depository.

The question was thus left open by the Commission.

Third, the Commission concluded that the assassin was Lee Harvey Oswald. This conclusion was based on seven subconclusions: (1) the murder weapon belonged to Oswald; (2) Oswald carried the weapon into the Depository; (3) at the time of the assassination Oswald was at the window from which the shots were fired; (4) the murder weapon was found in the Depository after the assassination; (5) Oswald possessed enough proficiency with a rifle to have committed the assassination; (6) Oswald lied to the police; and (7) Oswald had attempted to kill General Walker.

The most compelling of these subconclusions was that Oswald's rifle was used in the assassination. This fact, together with evidence that Oswald had had the opportunity to commit the assassination, made for a strong case against Oswald. The only other possibility is that another person used Oswald's rifle, but Oswald's subsequent actions—leaving the scene, shooting a

policeman, and resisting arrest—certainly were not the actions of an innocent person.

The other subconclusions, however, were based on less substantial evidence. Subconclusion (2)—that Oswald carried the rifle into the Depository—was no more than a plausible assumption; (3)—Oswald's presence at the window—was supported only by "probative" evidence (e.g., Brennan's identification); (4)—the presence of the rifle in the building—merely reinforced (1); (5)—Oswald's rifle capabilities—was based on extremely dubious evidence; (6)—that Oswald lied to the police—had little value as evidence since, purportedly, no record of Oswald's interrogation statements was kept; and (7)—Oswald's attempt to kill Walker—was based mainly on the testimony of Marina Oswald.

The Commission's fourth conclusion concerned Oswald's motive. Although the Commission "could not make any definitive determination of Oswald's motives," it listed five factors "which might have influenced Oswald's decision to assassinate President Kennedy." These possible motives were: (1) Oswald's resentment of all authority; (2) his inability to enter into meaningful relationships with people; (3) his urge to find a place in history; (4) his capacity for violence; and (5) his commitment to Marxism and communism.

Wesley Leibeler, who originally wrote the chapter on Oswald's motivation, said that each Commissioner had his own "pet theory" to explain Oswald's actions. McCloy persistently suggested the "killer-instinct theory" to Leibeler, although support for this theory was not evident in Oswald's life history. Finally this theory was worked into the conclusions as factor (4). Ford insisted that Oswald's commitment to communism be listed as a factor (5), although it was not clear how this commitment had contributed to Oswald's decision. A number of Commissioners felt that Oswald was motivated by an "urge to find a place in history," but the only evidence for this theory was Marina Oswald's February testimony, and in September Mrs. Oswald refuted her own earlier testimony on this point. Nor were factors (1) and (2) based on objective evidence.

Joseph Ball commented that the Commission replaced Leibeler's informed and brilliant analysis of Oswald's personality with "clichés that belonged in a television script."

Finally there was the question of whether or not Oswald acted alone. Ford said that the draft of the Conclusion stated categorically that there was no conspiracy, but he had insisted that this wording be changed to read: "The Commission has found no evidence of a conspiracy." McCloy said that the Commission could render a conclusion only on the basis of the evidence brought before it, and thus the following qualification was added:

Because of the difficulty of proving a negative to a certainty the possibility of others being involved with either Oswald or Ruby cannot be rejected categorically, but if there is any such evidence it has been beyond the reach of all investigative agencies and resources of the United States and has not come to the attention of this Commission.

It is true that the Commission found no evidence that others were involved with Oswald in the assassination, but the investigation was by no means thorough. The question remains: How far did the Commission go in approaching the question of a second assassin?

The Zapruder film shows that the assassination could have been committed by one man alone only under one condition: that Kennedy and Connally were hit by the same bullet. However, the FBI Summary and Supplemental Reports' statements on the autopsy, if accurate, preclude this condition. Furthermore, other evidence arose which showed that it was not possible that both men were hit by the same bullet. Unless the basic facts and assumption established by the Commission are incorrect, there is a strong case that Oswald could not have acted alone.

Why did the Commission fail to take cognizance in its conclusions of this evidence of a second assassin? Quite clearly, a serious discussion of this problem would in itself have undermined the dominant purpose of the Commission, namely, the settling of doubts and suspicions. Indeed, if the Commission had made it clear that very substantial evidence indicated the presence of a second assassin, it would have opened a Pandora's box of doubts and suspicions. In establishing its version of the truth, the Warren Commission acted to reassure the nation and protect the national interest.

—Edward Jay Epstein