Eric Larrabee on the career of Liddell Hart

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BOOK WEEK

AUGUST 28, 1966

The Washington Post

THE GREAT AMERICAN MYSTERY

A new dissent on the methods and findings of the Warren Commission

By Norman Mailer

RUSH TO JUDGMENT. By Mark Lane. Holt, Rinehart & Winston. 478 pp. $5.95.

On May 14, 1964, when J. Edgar Hoover testified before the Warren Commission, he said about Marguerite Oswald: "the first indication of her emotional instability was the retaining of a lawyer that anyone would not have retained if they really were serious in trying to get down to the facts." Well, Bill Terry once asked if the Dodgers were still in the league, and J. Edgar Hoover revealed this day an even more massive incapacity to judge certain kinds of underdogs and men, for Mark Lane, the lawyer retained, has come up with 400 pages of facts on the Warren Commission's inquiry into the murders of President John F. Kennedy, Officer J. D. Tippit, and Lee Harvey Oswald, and they are somewhat staggering facts. If one-tenth of them should prove to be significant, then the work of the Warren Commission will be judged by history to be a scandal worse than Teapot Dome.

Rush to Judgment is of course a defense attorney's brief, and it seeks to make its case as best it can, wherever it can. Those looking for a comprehensive explanation of the mystery of the assassination will not find it, not here. There is no single overall explanation of the unspoken possibilities, nor is one even offered. Lane is attempting to prove that Oswald most certainly could not have committed the crime alone, and that the odds are great he did not commit either murder. Lane's attempt, therefore, is to disprove the case brought in by the prosecution—it is a small continuing shock to recognize, as Lane fortifies his arguments in the most interesting detail, that the Warren Commission served as an agent of gentlemanly prosecution rather than a commission of inquiry. That this was not head-on evident when the *Report* came out is due to the lucidities and sweet reasonable tone of the style in which the *Warren Commission Report* is written. But the gentlest of men often write in a bad harsh voice, and many a quiet calculating brute has acquired the best of good tones in prose. Yes, the *Warren Commission Report* convinced a majority of Americans by the reasonableness and modesty of its style—what casual study did not show, however, was that when the Commission was being most reasonable in stating that something could not be proved, it was neglecting to say that the preponderance of unexplored leads to new evidence was pointed resolutely in the opposite direction from their conclusion. The scandal of the Warren Commission was twofold—it did not look into some of the most interesting and fascinating matters before it, and it distorted its hard findings. As Hugh Trevor-Roper points out in a fine British introduction to *Rush to Judgment*, "A pattern was made to emerge out of the evidence, and having emerged, seemed to subordinate the evidence to it." It was not enough to read the *Report;* one was obliged, Trevor-Roper points out, to read the 26 volumes of *Hearings*. "To follow the same question through the three successive levels of *Hearings*, *Report*, and *Summary and Conclusions* is to see sometimes a quiet transformation of evidence."

But one may ask: was the Warren Commission in conspiracy to hide the truth, all those fine, separate, august, and honorable gentlemen? And the answer is: of course not. They were not in conspiracy, they never needed to be, no more than a corporation has to be in conspiracy to push out a product which is grievously inferior to the product they are potentially equipped to make, nor the head of General Motors need hire private detectives to hound Ralph Nader. Products come from processes, and a commission's report is a reflection of a method of inquiry. Edward Jay Epstein's book demonstrated even to Fletcher Knebel's satisfaction that the Warren Commission did not work very hard. Walter Craig, president of the American Bar Association, appointed as "protector" of Oswald's interests, attended two out of 51 sessions of the Commission—he was perhaps not the kind of lawyer Mr. Hoover would have recommended to Mrs. Oswald; the only Commission member to be present much more than 50 per cent of the time was Allen Dulles of the CIA—perhaps he had the most to protect.

No, for the large part, the seven members of the Commission were abstracted and often distant. The established lawyers who pursued the investigation as their nominal assistants were busy in private practice, and usually absent. So the work passed on down to junior assistants, bright young lawyers with careers to make. They were forced to contend every day with agents, investigators, and detectives who knew more about criminal investigation than they did and were also presumably possessed of more physical strength, more martial arts, as well as endowed with that dead, muted, fanatical intensity which wins much in negotiation across a table. The investigation seemed to push at every turn against the likelihood of inefficiency, corruption, collusion, or direct involvement in the case by the Dallas police, and, in more complex fashion, the CIA and the FBI. The Secret Service, having done a poor job, had their own reputations to protect. In such a situation, what overworked young lawyer is going to continue to make a personal crusade of his own investigation against the revelatory somnolence of the Committee members, and the resistance of the FBI, especially when a routine performance satisfactory to the Commission gives assurance of a happy and accelerated career?

What becomes oppressively evident is that the Warren Commission from the beginning had no intention of trying to find any other assassin than Oswald. Whether from pure motives or from intentions not so clear (it will be remembered that before the Commission began to sit, the Chief Justice was speaking already of information which could not be divulged for 75 years), whether from honest bias or determined obfuscation, the evidence fitted a bed of Procrustes. Everything was enlisted to satisfy the thesis that Oswald, half-mad, had done the job alone, and Ruby, half-mad, had done his particular job alone. So a witness, Brennan, who had poor eyesight, was credited by the Commission with identifying Oswald in a sixth-story window—his eyes, went the unspoken assumption, could see better at one time than another; *(Continued on page 11)*

The great American mystery

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whereas a man with excellent eyesight named Rowland who saw two men in the window was considered unreliable because his wife told the Commission her young husband was prone to exaggerate the results of his report cards.

Besides, it was a game of experts. The expert always plays a game in which his side is supposed to win—the expert has a psychic structure which is umbilically opposed to finding the truth until the expert finds out first if the truth is good for his side. We have prosecuting attorneys and defense attorneys because a legal case is first a game —each side looks for its purchase of the truth, even if the search carries them into almost impossible assumptions. It is why a fact-finding commission cannot by its nature make discoveries which are as incisive as the evidence uncovered by the monomaniacal, the Ahablike search of a dedicated attorney. In contrast to him, the totalitarians look to find their truth in consensus. You and I are more likely to find it beneath a stone.

So Lane's book provides the case for the defense. Like all lawyers' briefs, it is not wholly satisfactory as a book. One *wishes that the strongest evi*dence of Oswald's guilt provided by the Warren Commission were presented at least in summary, if only to be demolished, or that admission were made by Lane that certain crucial damaging points cannot be refuted, but Lane's intent is to do the best for his dead client, and that is what he does. If *Rush to Judgment* accomplishes nothing else, it will live as a classic for every serious amateur detective in America. Long winter nights in the farmhouse will be spent poring over the contradictions in the 26 volumes of *Hearings* with Lane's book for a guide, and plans will be made and money saved to take a trip to Dallas, which will become a shrine for all the unborn Baker Street Irregulars of the world. Because Lane's book proves once and forever that the assassination of President Kennedy is more of a mystery today than when it occurred.

Well, then—what finally does Lane produce? He presents a thousand items of clear-cut doubt in 400 pages, material sufficient for five years of real investigation by any fair country commission. He makes it clear that most of the witnesses to the assassination thought the shots came not from the Texas Book Depository Building but from behind a fence on a knoll above and in front of the Presidential limousine. And that autopsy which could clarify whether the President was shot from the front, from behind, or from both separate positions—well, that autopsy is mired in massive confusion which the Commission did not dissolve and in fact interred, for X-rays and photographs taken at the autopsy have not been published. The bullet which shattered the President's skull almost certainly had to be a soft-nosed lead round to explode so large a wound; Oswald's gun fired hard-nosed metal-jacketed rounds. The questions raised by Edward Jay Epstein in *Inquest* about the bullet which was alleged to strike the President and Governor Connally are explored again and point to the same conclusion—one bullet could not have entered where it did, and come out where it came out.

Nor has any satisfactory explanation ever been offered, Lane shows in detail, as to how the police were able to send out a call to apprehend Oswald 15 minutes after the assassination, nor why the two officers who discovered the rifle on the sixth floor described it in careful detail as a "7.65 Mauser bolt-action equipped with a 4/18 scope, a thick leather brownish-black sling on it . . . gun metal color . . . blue metal . . . the rear portion of the bolt was visibly worn. . . ." But the Mauser turned into a pumpkin and became a 6.5 Mannlicher-Carcano. Of course, Marina Oswald, on hearing of the assassination over the radio went out to the garage to see if Oswald's Mannlicher-Carcano was in place. It was there. It was there? "Later," she said, "it turned out that the rifle was not there [and] I did not know what to think." The Dallas police came in soon to search the garage and later reported that they found an empty blanket upon a shelf. It was that empty blanket, they declared, which Marina had mistaken for the rifle. So the rifle on the sixth floor altered from a 7.65 Mauser bolt-action to a 6.5 Mannlicher-Carcano carbine, a point for the shade of Sherlock Holmes, for unless the police in Texas are such unnatural Texans as to be innocent of rifles, they would know a 7.65 Mauser bolt-action, for the Mauser is the most beloved and revered of bolt-actions, whereas the 6.5 Mannlicher-Carcano rests among the more despised of shooting irons. It is curious; one repeats: it is curious that the Commission taking testimony from the very same *(Continued on page 12)*

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THE VIKING PRESS, New York

The great American mystery

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officer who discovered the original rifle which he had declared a Mauser did not choose to show this police officer the Mannlicher-Carcano and ask if he might be in error, or if, horror beyond belief, the guns were switched.

Roll-call of these unexplored details continues. The Mannlicher-Carcano had the same scope as the nonexistent Mauser, but Marina Oswald had never seen a scope on a rifle. (She was a woman, after all.) So the suggestion intrudes itself—was the 4/18 scope on the Mauser switched in a great private frantic hurry to the Mannlicher, installed in fact so quickly that the telescopic sight was unrelated to the line of fire! Certainly we have it on record that the scope had to be reset with shims before three Masters of the National Rifle Association could even aim it. This, the rifle supposed to have killed Kennedy? And when they fired for test, these three Masters, six shots each in groups of two at three fixed targets, 18 shots in total by three Masters, they did not fire nearly so quickly or so well at fixed targets as Oswald had fired at moving targets from a more difficult and certainly more extraordinary position. In fact the Mannlicher dispersed its shot group so widely (an estimated 12 inches at 100 yards) that no one of the experts in all their collective 18 shots succeeded in striking the head or neck of the fixed target. Nonetheless, the Commission decided that the Mannlicher-Carcano had done the job. Oswald, of course, had no great record as a rifleman, but perhaps his bad aim, the moving car, the crazy banged-up scope, the inaccurate barrel, and the very heavy trigger pull came together in the vertigo of the moment to funnel-in two hits out of three. Perhaps. Perhaps there is one chance in a thousand. But a Zen master, not a rifle expert, must be consulted for this.

Questions arise here and everywhere. The package of curtain rods in which Oswald was supposed to have concealed the Mannlicher-Carcano was too small (on the account of both witnesses who had seen it) to contain the disassembled rifle. But the size of the bag remains moot because it was *ruined* in the FBI labs while being examined for fingerprints. Another bag was put together—38 inches in length. The witnesses seemed to think it was about 10 inches longer than the original. (The Mannlicher disassembled is almost 35 inches.) The Commission decided the witnesses "could easily have been mistaken in their estimate." So could the FBI, unless there were affidavits on the dimensions of the original bag before it had been subjected to fingerprint tests.

Move on. The only eyewitness to the murder of Tippit was a woman named Mrs. Markham. She was certain the killing took place at 1:06 p.m. The Commission was not able to get Oswald to the spot before 1:16 p.m. So the Commission decided Mrs. Markham was correct in her identification of Oswald, but wrong in her placement of the time. Mrs. Markham, however, in an interview with Lane, described Tippit's killer as "a short man, somewhat on the heavy side, with slightly bushy hair." The description she gave the police was "about 30, 5'8", black hair, slender."

Tippit leads to Ruby. Among the many potential witnesses who were not called were a variety of people who had been associated with Ruby for years. They made a general collective estimate that Ruby knew personally more than half the officers on the Dallas police force. Ruby kept begging the Warren Commission to get him out of the Dallas jail and into Washington. "I want to tell the truth," he said, "and I can't tell it here . . . Gentlemen, unless you get me to Washington you can't get a fair shake out of me." Of course, many witnesses were intimidated in mysterious ways. Two reporters who visited Ruby's apartment just after he killed Oswald were later murdered, one in his Dallas apartment as the victim of a karate attack (where are you, Charley Chan?). The Commission did not seem to explore this. Another witness, Warren Reynolds, was shot through the head, but recovered. He had seen a man whom he did not identify as Oswald (until many tribulations and eight months later) fleeing the scene of the Tippit murder, pistol in hand. Two months elapsed before Reynolds was questioned. He then told the FBI that he could not identify the fugitive as Oswald—although he had followed the man on foot for one block. Two days after the interview, Reynolds was shot through the head with a rifle and somehow survived. The prime suspect, Darrel Wayne Garner, was arrested by Dallas police, and later admitted he had made a call to his sister-in-law and "advised her he had shot Warren Reynolds," but the charges were dropped because Garner had an alibi in the form of a filed affidavit by Nancy Jane Mooney, a strip-teaser who had been employed once at Jack Ruby's Carousel. Eight days later, Miss Mooney was arrested by Dallas police for fighting with her roommate, "disturbing the peace." Alone in her cell—less than two hours after arrival—Miss Mooney hanged herself to death, stated the police report.

Item: In January, 1964, Reynolds told the FBI that the man he saw was not Lee Harvey Oswald.

Item: In July, 1964, Reynolds—who now owned a watchdog, took no walks at night and whose house was ringed with floodlights—testified that he now believed the man was Oswald. The Commission, in reporting the changed statements, omitted to mention at that precise point the attempt on Warren Reynolds' life.

Item: Information given by Nancy Perrin Rich to the Warren Commission that Jack Ruby brought money to a meeting between various agents and one U.S. Army officer for smuggling guns to Cuba, and refugees out, was stricken from the record by the Warren Commission.

Item: A communication from the CIA in response four months late to a Commission inquiry: "an examination of Central Intelligence files has produced no information on Jack Ruby or his activities." Indeed. Which files? The Balkan files? The Ipcress file?

Item: William Whaley, Oswald's alleged cab driver, was killed in an automobile collision on December 18, 1965.

Item: Albert G. Bogard, an automobile salesman who tried to sell a car to a man calling himself Lee Oswald, was beaten up by some men after testifying and was sent to a hospital. The Warren Commission determined that the man buying the car could not be Oswald, but it did not inquire further. That someone might be impersonating Oswald before the assassination was a matter presumably without interest to the Commission.

Item: On Wednesday, January 22, a call came to J. Lee Rankin, general counsel for the Warren Commission. It was from the Attorney General of Texas who told Rankin he had learned that the FBI had an "undercover agent" and that agent was none other than Lee Harvey Oswald. After much discussion that evening and much resolution that evening to conduct an independent investigation of this charge, the Commission nonetheless ended months later with this verdict: "nothing to support the speculation that Oswald was an agent, employee, or informant of the FBI," citing as its basis the testimony of Hoover, his assistant, and *three* FBI agents, plus reference to some affidavits signed by various other FBI agents. That proved to be the limit of the "independent investigation." There is nothing to show that the Attorney General of Texas was ever asked to give testimony as to how he heard the rumor.

So there we are left in this extraordinary case, and with this extraordinary Commission which looks into the psychic traumas of Oswald's childhood and Jack Ruby's mother's "fishbone delusion," but does not find out by independent investigation which Dallas cop might have let Jack Ruby into the basement, or whether Oswald could ever have been an undercover agent for the FBI, the CIA, the MVD, MI-5, Fair Play for Cuba, JURE, Mao Tse-tung, the John Birch Society, the Nazi Renaissance Party, or whether indeed an agent for all of them. The word of Mr. Hoover is good enough for the Commission. Mr. Hoover is of course an honorable man, all kneel.

No, what we are left with, after reading this book, is an ineradicable sense of new protagonists—the Dallas police—and behind them, opposed to them, for them, beneath them, on every side of them, another protagonist or protagonists. But first, foremost, the police.

Criminals fall into two categories—good criminals and bad. A bad criminal is the simplest of people—he cannot be trusted for anything; a good criminal is not without nobility, and if he is your friend he is a rare friend. But cops! Ah, the cops are far more complex than criminals. For they contain explosive contradictions within themselves. Supposed to be law-enforcers, they tend to conceive of themselves as the law. They are more responsible than the average man, they are more infantile. They are attached umbilically to the concept of honesty, they are profoundly corrupt. They possess more physical courage than the average man, they are unconscionable bullies; they serve the truth, they are psychopathic liars (no cop's testimony is ever to be trusted without corroboration); their work is authoritarian, they are cynical; and finally, if something in their heart is deeply idealistic, they are also bloated with greed. There is no human creation so contradictory, so finally enigmatic, as the character of the average cop, and these contradictions form the keel of the great American mystery—who killed President Kennedy?

Yet even that oppressive sense of the Dallas police does not satisfy all the resonance of this mystery. For the question remains: was Oswald some sort of agent? We are getting uncomfortably close to the real heart of the horror. So it is time to offer a new hypothesis (or at least offer the beginnings of a working hypothesis), even to make it out of whole cloth without a "scintilla of evidence." Call it a metaphor. So I will say the odds are indeed that Oswald was an undercover agent. He was too valuable not to be. How many Americans, after all, knew Soviet life in the small intimate ways Oswald had known it? And indeed how was it so possible for him to arrange his return? If you, sir, were the head of an espionage service, would you not wish to make Oswald work for you as the price of his return? If you were in Russian intelligence, would you not demand that he serve as some kind of Soviet agent in exchange for his release? A petty undercover agent for two

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services or three, a man without real importance or any sinister mission, he may still have been in so exposed a position that other services would have been attracted to him. Espionage services tend to collect the same particular small agents in common, for most of their operations are only serious as a game, and you need a pocket board on which to play. Oswald may have been just such a battered little pocket board.

Worked over and played over until he metamorphosed from playing board to harried rat, he may even have nibbled at the edge of 20 Dallas conspiracies. It was all comedy of the most horrible sort, but when Kennedy was assassinated, the espionage services of half the world may have discovered in the next hour that one little fellow in Dallas was—all pandemonium to the fore—a secret, useless, little undercover agent who was on their private list; what nightmares must have ensued! What nightmares on the instant! What quiet little mind in some unknown council-of-war room, thinking of the exceptional definition of the game which might soon be given by a rat harried past the point of no return, a rat let loose in a courtroom, cried out in one or another Ivy League voice, "Well, can't something be done, can't we do something about this man?" and a man getting up saying, "See you in a while," and a little later a phone call made and another and finally a voice saying to our friend Ruby, "Jack, I got good news. There's a little job . . ." Is it so unreasonable that the tiny metaphorical center of a host of espionage games should be killed by that precise intersection of the Mafia, the police, the invisible government, and the strip-tease business which Jack Ruby personified to the point.

No, there may have been no formal master plan to murdering Kennedy, just coincidences beyond repair and beyond tolerance, as if all things came together in a blaze of one huge existential moment, and nothing left but wreckage, paranoia, and the secret bewildered sense in every cop, criminal, and agent of the Western Hemisphere that something beyond anyone's ken had occurred; now the evidence had to be covered. So Kennedy may have been killed by a conspiracy which was petty to its root; certainly he must have been killed by a very petty conspiracy with a few good Texas marksmen in it, but the power of several master conspiracies may then have been aroused to protect every last one of us against the possibility of discovery, against the truth, for no one in power in America knew what that truth was. Not any longer. So the case was fertilized and refertilized—it grew into a thicket. And the Commission was obliged to cut a tidy path through the thicket and this laid the ground for future scandals and disasters out of measure.

If in the next few years some new kind of commission does not establish in hard and satisfactory fashion the known and unknown boundaries of the case, then the way is open to a series of surrealistic political machinations. On that unhappy—let us hope impossible—day when America becomes a totalitarian government of Left, Center, or Right, the materials are now at hand for a series of trials of high government figures which will make the Moscow Trials of 1936 to 1938, following upon the assassination of Kirov, seem like modest exercises in domination, for the wealth of contradictory evidence now upon us from the rot-pile of Dallas permits any interpretation, any neat little path, to be cut through the thicket. From any direction to any direction. The Right may now convict the Left. The Left may now stifle the Right. The Center may eat them both. The cannibal's pure totalitarianism is near.

So one would propose one last new commission, one real commission—a literary commission supported by public subscription to spend a few years on the case. There are major intellectuals in this country who are old now and have never been able to serve in American life. Not ever. It is time for that. Time for the best of intellectuals to serve. I would trust a commission headed by Edmund Wilson before I trusted another by Earl Warren. Wouldn't you? Would you not estimate that Dwight MacDonald, working alone, could nose out more facts and real contradictions than could 20 crack FBI investigators working together? Laugh, angels, pass the drinks, make this the game for the week. Pick your members of the new commission. It is very funny. And yet the small persisting national need is for a few men who can induce, from contradictory evidence, a synthesis. The solution to President Kennedy's murder will come not from legal or government commissions, but from minds deeply grounded first and last in the mysteries of hypothesis, uncorrupted logic, tragedy, and metaphor. In the meanwhile, waiting for such a literary commission, three cheers for Mark Lane. His work is not without a trace of that stature we call heroic. Three cheers. Because the game is not yet over. Nor the echo of muffled drums. Nor the memory of the riderless horse.

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