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THE NEW LEADER

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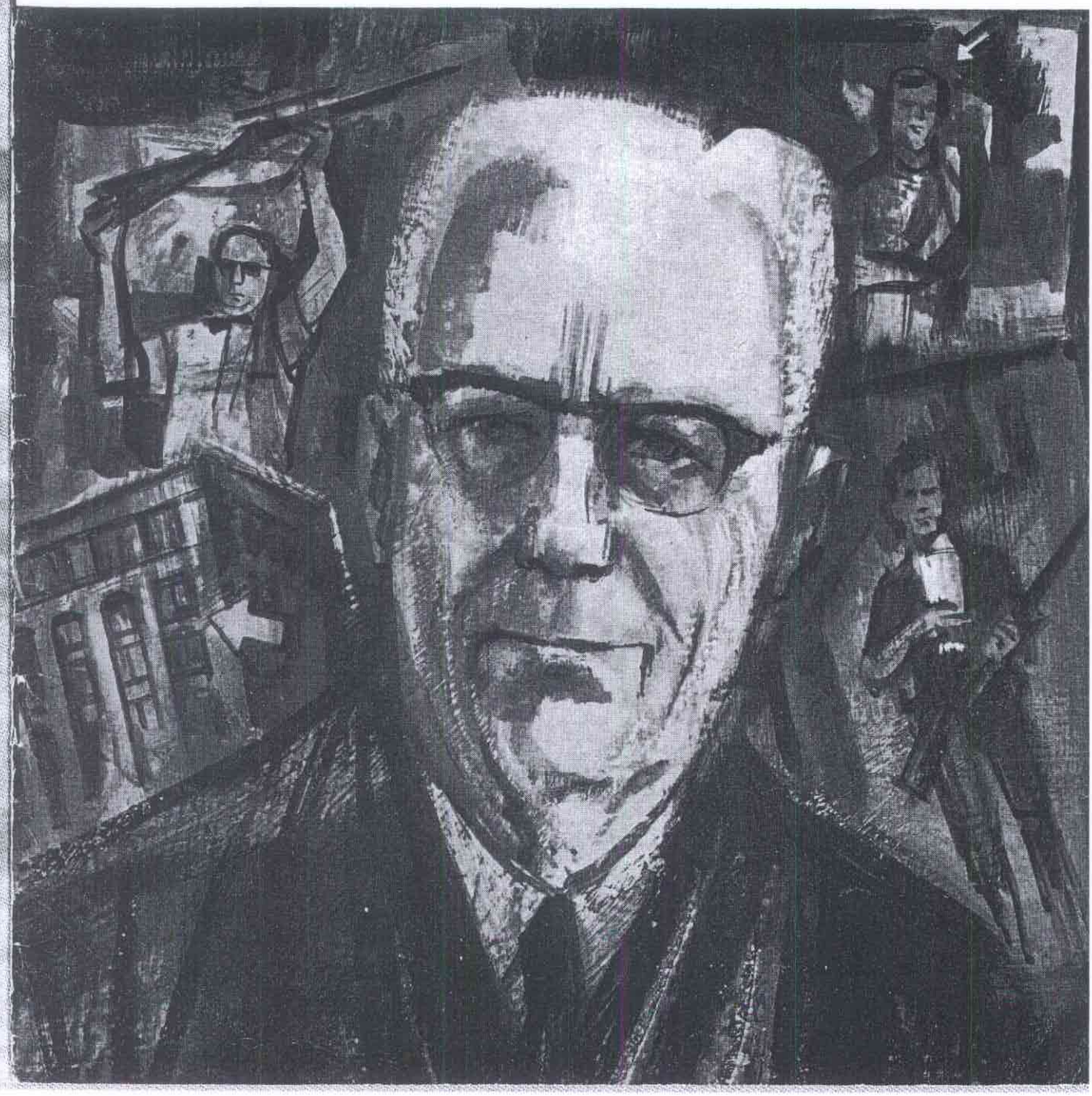
RHODESIAN ROULETTE
WALDEMAR A. NIELSEN

PORTUGAL: LETTER FROM A YOUNG WRITER
PEDRO BANDEIRA

THE WARREN COMMISSION'S CASE AGAINST OSWALD
LEO SAUVAGE



BETWEEN ISSUES

IT SEEMS difficult to believe that only two years have gone by since the assassination of John F. Kennedy. Somehow, the astonishing events of November 22, 1963, already seem locked in the recesses of history—and, if pressed, we would probably have to admit that we prefer not to be confronted once again by the ugly details of that day. We are content, in other words, as we stated in this space when the Warren Commission Report was issued, to accept its conclusion that Lee Harvey Oswald, acting alone, killed President Kennedy.

Yet there are those who disagree. We are not talking of those on the Left and Right whose outrageously irresponsible and ignorant books and articles were subjects of controversy for a brief period after the assassination. We are talking of serious, responsible people who after painstaking study remain dissatisfied with the Commission's methods and unconvinced by its findings.

One such person is Leo Sauvage, chief U.S. correspondent for the French daily *Le Figaro* and a frequent contributor to these pages. To regular readers of this magazine who recall his definitive demolition of Thomas Buchanan's *Who Killed Kennedy?* in our issue of September 28, 1964, this will not come as a surprise. And three issues later (November 9, 1964), in an exchange with Buchanan, Sauvage stated quite bluntly: "In my opinion the Commission has in no way proved that it was Lee Harvey Oswald who actually killed President Kennedy."

Since that time, however, Sauvage has spent much of his spare time questioning his own view, speaking to the various witnesses, and poring over the Commission Report and Hearings. Two weeks ago he called to say that while he knew our feelings, he was firmly convinced that he was right and would appreciate the opportunity to present his bill of particulars. After reading his manuscript we thought it should be published, and we hope some Commission member will agree it deserves comment.

"The Warren Commission's Case Against Oswald" begins on page 16. A second article by Sauvage, "Oswald's Case Against the Warren Commission," will appear in a later number.

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THINKING ALOUD

The Warren Commission's Case Against Oswald

By Leo Sauvage

TWO YEARS have passed since John Fitzgerald Kennedy was slain in Dallas. There will be numerous public and private commemorations, just as there were last November 22. There will be speeches and sermons, reminiscences and understandably sorrowful headshaking before the television sets. There will be pilgrimages to the grave at Arlington. And again this year, as last, it will be tacitly understood that there can be no casting of doubts on the official account of the President's assassination.

After July of 1925, thanks to Clarence Darrow, Americans became used to the idea that they could discuss the Bible. But since September 27, 1964, when the Warren Commission Report was issued, they have been subjected to a unanimous chorus in which jurists like Louis Nizer add their befuddled hallelujahs to the frantic hosannas of liberal opinion running from Walter Lippmann to James Wechsler and on to I. F. Stone. Thus Americans still do not seem capable of accepting the idea that one can criticize—and even reject—the Warren Report.

The death of President Kennedy has been felt not only by the United States but by the entire free world. How much longer can we all fail to honor his memory through the elementary homage of seriously seeking the truth about his assassination? Perhaps now, 15 months after its publication, it will not be considered inappropriate to at least examine closely the Warren Commission's case against Lee Harvey Oswald.

The Commission insists it did not pass judgment on Oswald. According to its Report, it merely "ascertained the facts surrounding the assassination but did not draw conclusions concerning Oswald's legal guilt." It was content simply to gather the evidence which "identifies Lee Harvey Oswald as the assassin of President Kennedy." Judgment or not, no American newspaper that I know of today feels obliged to place the word "alleged" before "assassin" in referring to Oswald.

On what grounds does the Commission, headed by the Chief Justice of the United States, label as an assassin a man whom it claims not to be judging and whose family, for that reason, was refused an opportunity to defend his name? A summary of its indictment is presented at the conclusion of Chapter IV of the Report, which is titled, precisely, "The Assassin":

"The Commission has found that Lee Harvey Oswald 1) owned and possessed the rifle used to kill President Kennedy and wound Governor Connally, 2) brought this rifle into the Depository Building on the morning of the assassination, 3) was present, at the time of the assassination, at the window from which the shots were fired, 4) killed Dallas Police Officer J. D. Tippit in an apparent attempt to escape, 5) resisted arrest by drawing a fully loaded pistol and attempting to shoot another police officer, 6) lied to the police after his arrest concerning important substantive matters, 7) attempted, in April 1963, to kill Maj. Gen. Edwin A. Walker, and 8) possessed the capability with a rifle which would have enabled him to commit the assassination. On the basis of these findings the Commission has concluded that Lee Harvey Oswald was the assassin of President Kennedy."

I have commented in detail on each of these eight affirmations in my book, *L'Affaire Oswald,* published in Paris by Editions de Minuit. (The New York publisher broke the contract for the American version when he learned that I was not convinced by the Report and that I intended to say so.) In the available space here, I can only point up briefly the main flaws that weaken, vitiate or destroy all the Commission's affirmations, even when they are not totally irrelevant. Of the eight "proofs," cited by the Commission, four have no connection, or only the slightest link, with its conclusion.

To begin with, it is necessary to single out proof number 6, concerning Oswald's "lies." I use quotations around the word "lies" because it is a reference

to statements of the accused which, since they were not recorded on tape or by a stenographer, are known to us only through the recollections of various policemen who questioned Oswald. While the Commission apparently sees nothing reprehensible in that fact (it is also not shocked that the man suspected of having killed the President of the United States was questioned for a total of 12 hours in the absence of a lawyer), it is certainly not regular procedure to hold a defendant accountable for remarks attributed to him by his interrogators when it is impossible to know their context and still less their exact terms.

In any case, the use of Oswald's "lies"—regarding his ownership of a rifle or his adoption of the alias "Hidell"—as evidence against him brings to mind that "consciousness of guilt" once invoked by a lamentably famous judge in a trial which Chief Justice Warren would surely not choose for a model. It was Judge Webster Thayer who saw this kind of reasoning as sufficient ground to send Nicola Sacco and Bartolomeo Vanzetti to the electric chair. Felix Frankfurter, then a Harvard Law School professor, asked at the time what basis Thayer had for affirming that the "consciousness of guilt" shown by the lies of Sacco and Vanzetti was "consciousness of murder rather than of radicalism." I expect that Justice Frankfurter, if he were alive, might pose the same question today to Chief Justice Warren on the subject of Oswald. In addition, it certainly cannot be presumed that Oswald believed he was obliged to tell the truth to hostile police whom he scorned and blamed for not providing him with a lawyer; as the Report says, he was "overbearing and arrogant throughout much of the time between his arrest and his own death."

It seems clear to me, given these circumstances, that proof number 6 proves nothing. Indeed, it is rather astonishing that the Commission dared to include Oswald's "lies" as one of its eight officially proclaimed proofs on page 195 of the Report, for on page 180 it declares: "Oswald's untrue statements during interrogation were not considered items of positive proof by the Commission."

THREE OTHER affirmations of the Commission—numbers 4, 5 and 7—appear to have no genuine connection with its conclusion. Number 4, for example, which maintains that Oswald killed Tippit, rests essentially on such a scandalous collection of inacceptable "testimony" and inadmissible "identification" that it constitutes a graver indictment of the Commission than of Oswald. But let us suppose, for a moment, that the accusation was based on valid arguments. It would still be necessary to show how his murdering Tippit proved that Oswald was Kennedy's assassin.

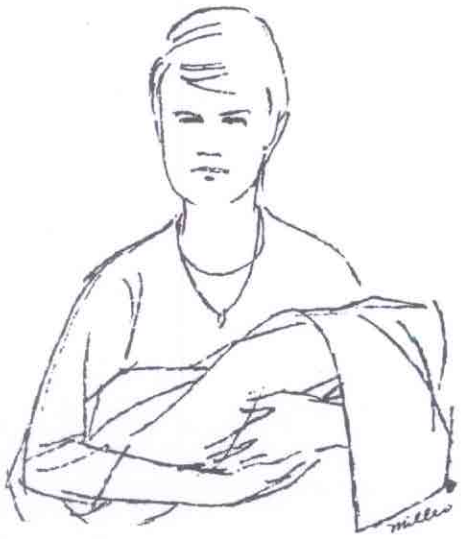
The Commission's explanation is that Oswald killed Tippit "in an apparent attempt to escape." Yet, no one—the Commission no more than I—knows why Tippit, alone in his patrol car, "pulled up alongside a man walking in the same direction." The Commission states that "it is conceivable, even probable, that Tippit stopped Oswald because of the description broadcast by the police radio." This statement is ridiculous. The description broadcast by the police did not mention clothing, shoes, manner or any other distinctive trait enabling identification of a man approached from behind in a car. And this occurred several miles from the scene of the crime, in a neighborhood where Tippit (unless he was informed about Oswald, a hypothesis the Commission avoids like the plague) had no reason to seek the suspect.

If the police had taken to arresting every "white male, approximately 30, slender build, height 5′ 10″, weight 165 pounds," from one end of Dallas to the other, there would not have been enough theaters and

gymnasiums and ballrooms to hold them all. As it turned out, the description broadcast by the police radio did not lead to any other arrest, not even in the immediate neighborhood of the Texas School Book Depository. Is it "probable," even "conceivable," that in the entire Dallas Police Department, J. D. Tippit alone was able to identify someone he saw from behind, in Oak Cliff, who in fact stood 5 foot 9 inches tall, was 24 years old, and weighed between 140 and 150 pounds? Finally, according to the extraordinary Mrs. Helen Markham—whose testimony the Commission regards as "reliable," though I do not have the slightest faith in it—Tippit did not at any time act as if he were dealing with someone suspected of assassinating the President. In short, it is impossible to affirm that Oswald was seeking "to escape" because it is impossible to affirm that Tippit was trying to arrest him.

Nor is it possible to affirm, as proof number 5 does,

that Oswald "resisted arrest by drawing a fully loaded pistol and attempting to shoot another police officer." The circumstances of Oswald's arrest in the Texas Theater remain confused, since the Warren Report does not elucidate any of the contradictions and inconsistencies raised by the accounts of the police officers, and the two witnesses it produced (out of a total it estimates at 12 or 14) only added new contradictions and inconsistencies, as the Commission recognizes. The Report itself, and the statements of officer M. N. McDonald contained in Volume III of the Hearings of the Commission, show that in striking the officer who was arresting him, Oswald was not attempting an escape. Oswald resisted arrest, the Report tells us, by hitting McDonald "between the eyes with his left fist," and it was only after this, according to the Report, that he drew a gun.



If Oswald had wanted to "shoot another police officer," he had plenty of time to do so, since McDonald—even though the suspect had been immediately pointed out to him in the back of the theater—first searched "two men in the center of the main floor, about ten rows from the front." McDonald acknowledged that during this time Oswald "remained seated without moving, just looking at me." Later, when questioned by Senator John Sherman Cooper (R-Ken.), who was clearly intrigued, McDonald repeated a second time that Oswald "just sat in his seat, with his hands in his lap, watching me." The Report does not reproduce these embarrassing details from the hearings, but it does not hesitate to state that when McDonald finally decided to approach Oswald, the latter "rose from his seat, bringing up both hands." There was thus no question of Oswald's resisting arrest even at this final moment, and it was only when "McDonald started to search Oswald's waist for a gun" that the man presented to us as the calm killer of President Kennedy and Officer Tippit ventures his first gesture of resistance: a punch in the face.

While resistance to arrest is considered an incriminating circumstance, it is not proof of guilt. When such resistance reveals neither premeditation nor method but appears to be an ineffective act of irrational anger, it actually often constitutes an indication of innocence.

As for proof number 7, again space limitations prevent a full exploration of the charge that Oswald attempted to assassinate General Walker. Suffice to say that the accusation rests essentially on the "revelations" of Marina Oswald—whom everyone need not regard with the same confident admiration as does Justice Warren. Besides, her testimony is contradicted by a mountain of improbabilities: the circumstances under which Oswald would have been able to go to Walker's house and back, the identification of the recovered bullet, the simple fact that the sharpshooter of Elm Street is supposed to have missed an extremely easy target and, curiously, did not immediately fire a second shot. All that matters here, however, is the way the Commission tries to link the attack on Walker with the President's assassination.

The idea, apparently, is that the attempt on Walker demonstrates Oswald's "disposition to take human life" and "his capacity for violence." This is summed up in Chapter VII of the Report, where "possible motives" of Oswald are discussed, in a striking sentence that is in itself sufficient to destroy proof number 7: "The Commission has concluded that on April 10, 1963, Oswald shot at Maj. Gen. Edwin A. Walker (Resigned, U.S. Army), demonstrating once again his propensity to act dramatically and, in this instance, violently, in furtherance of his beliefs."

In furtherance of which beliefs is Oswald supposed to have slain Kennedy? The Report gives us the following details: "Oswald did not lack the determination and other traits required to carry out a carefully planned killing of another human being and was willing to consummate such a purpose if he thought there was sufficient reason to do so. Some idea of what he thought was sufficient reason for such an act may be found in the nature of the motive that he stated for his attack on General Walker. Marina Oswald indicated that her husband had compared General Walker to Adolph [*sic*] Hitler . . ." Granting for now, as does Chief Justice Warren, that the word of Marina Oswald is sacred —did Oswald consider John Kennedy to be another Hitler or another Walker? Oswald's various statements about Kennedy, cited by the Report, categorically disprove this interpretation; yet in the conclusion to Chapter VII the Commission cooly repeats that Oswald demonstrated "a capacity to act decisively and

without regard to the consequences when such action would further his aims of the moment." Since one searches in vain, from start to finish of the Warren Report, for a single word on the "aims of the moment" Oswald believed he would serve by killing Kennedy, the Commission—to the extent that it brings up the attempt on Walker—seems to prove, if anything, that Oswald could not have been the assassin of President Kennedy.

FOUR AFFIRMATIONS remain which, according to the Commission, accuse and (if we can stop playing with words) condemn Oswald not by implication but directly. I am not going to discuss the ownership of the rifle (proof number 1), although I wonder what the Commission means by "possession." If it means that Oswald had the weapon in his possession at the

moment of the crime, it would be necessary *first* to prove Affirmations 2 and 3: that Oswald had brought the rifle to the Depository on the morning of November 22, and that he was the man at the window on the sixth floor. If the Commission means that Oswald had uninterrupted possession of the rifle until the day of the crime, its own Report clearly establishes the shakiness of this contention. The Report does declare that "the rifle was kept among Oswald's possessions from the time of its purchase until the day of the assassination," but this statement is knowingly false. On the next page, in fact, the Commission states that its star witness, Marina Oswald, saw the stock of the rifle in the Paine garage at Irving "about one week after the return from New Orleans," that is, about September 30. Two pages further, in describing the discovery of the empty blanket after 3 P.M. on November 22, the Report informs us that "Marina Oswald testified that this was her first knowledge that the rifle was not in its accustomed place." Thus, according to the Commission's own Marina, the rifle could have disappeared from the unlocked garage of the Paine house without anyone noticing it at any time between September 30 and November 22, 1963, and the Report is overtly misleading in suggesting that the rifle was brought out of the garage only on "the morning of the assassination"—that is to say, in Oswald's package.

In any case, the Commission fails to prove that this rifle, however it arrived in the Depository, was "used to kill President Kennedy and wound Governor Connally." The Report offers us the testimony of experts who, basing their views on ballistics tests, affirm that two bullet fragments found in the front seat "after the Presidential car was returned to Washington" were fired from Oswald's Mannlicher-Carcano. One of the fragments represented less than a third, the other hardly more than an eighth of a complete bullet. They were mutilated to the point that "it was not possible to determine whether they were from the same bullet or from two different bullets," but the experts claim that each had a "sufficient unmutilated area to provide the basis for identification." I will merely note that the manual on "Modern Criminal Investigation" by Harry Söderman and John J. O'Connell, in common use in American police academies, considers ballistics tests suitable for identification purposes only "if the bullet has retained its shape or is only partly deformed."

There also exists, meanwhile, a "nearly whole bullet." Here the Commission would have had a better case if it did not ask us to believe that this bullet, after passing through the neck of the President, also passed through the Governor's chest, "shattering his fifth rib," and then traveled on through his right wrist, shedding small fragments of metal "upon striking the firm surface of the bone," and finally leaving "a tiny metallic fragment embedded in the Governor's leg"—all of this while remaining "nearly whole." The "nearly whole bullet," we are further told, was "slightly flattened but otherwise unmutilated."

One could write pages about this miraculous bullet and its extraordinary voyage, whose vicissitudes (when brought to light, as they were most effectively by Vincent J. Salandria, a Philadelphia lawyer) seem to have been borrowed from the fables of Baron Munchhausen. It must be noted, at least, that the Commission theory was rejected by several medical experts whose depositions are reproduced in the Hearings record even though they are ignored in the Report. In addition, while the Report rather arbitrarily affirms the existence of "very persuasive evidence from the experts to indicate that the same bullet which pierced the President's throat also caused Governor Connally's wounds," it does not conceal the formal disagreement of Connally himself and grants that "Governor Con-

nally's testimony and certain other factors have given rise to some difference of opinion as to this probability." The Commission thus officially admits that this is not a demonstrated fact but a simple "probability," and a doubtful "probability" at that. Yet it apparently does not consider the issue of great importance, since "it is not necessary to any essential findings of the Commission to determine just which shot hit Governor Connally."

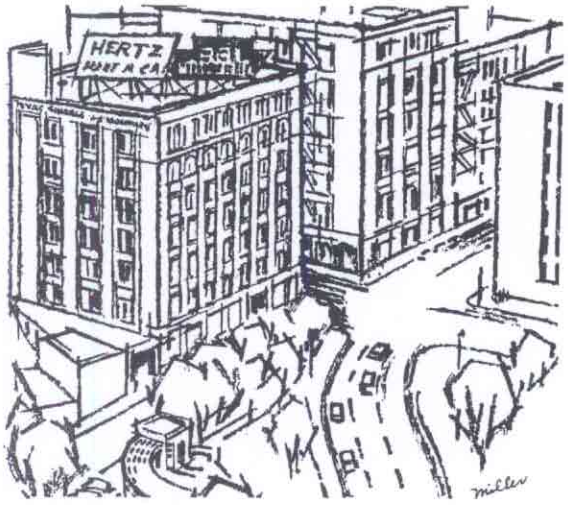
Such an opinion is thoroughly stupefying. The Report tells us that the "nearly whole bullet" was discovered "on the stretcher used to carry Governor Connally at Parkland Hospital," and it emphasizes expressly that "that conclusion is buttressed by evidence which eliminated President Kennedy's stretcher as a source of the bullet." Since the Commission admits it did not establish beyond any doubt that the bullet which struck Governor Connally is one of those which hit the President, it cannot say that it has identified all of the bullets which struck Kennedy. And it has not proved that Oswald's rifle was the weapon used in the crime, or at least that it was the sole weapon used.

COMPROMISED ALREADY by the yawning gap, the fundamental accusation of the Warren Commission is definitely demolished by the fact that it is equally incapable of furnishing any evidence of the indispensable corollary: If Oswald's rifle was in fact the murder weapon, it is necessary to prove that it was Oswald who fired it. Countless crimes have been committed with weapons belonging to others, often precisely in order to incriminate the owners. The Commission carefully avoids any allusion to this possibility in the Oswald case, and to dodge this argument it employs affirmations 2 and 3. What remains of these after a close scrutiny?

Only two witnesses saw the brown paper package that Lee Oswald carried when he went to work on the morning of November 22—the package which, the Commission says, contained the dismantled rifle. In their deposition before the Commission on March 11, 1964, Wesley Frazier and Linnie Mae Randle were exhaustively questioned by Assistant Counsel Joseph A. Ball, who the Hearings record shows, employed the traps and tricks and other devices an experienced lawyer makes use of when testimony embarrasses him. This effort was a total loss, however: The descriptions given by Frazier and Mrs. Randle, confirmed by the practical tests to which the witnesses were put by Ball, applied to a package which could not have contained the rifle. Does the Commission waver? No: "The Commission has weighed the visual recollection of Frazier and Mrs. Randle against the evidence here presented that the bag Oswald carried contained the assassination weapon and has concluded that Frazier and Mrs. Randle are mistaken as to the length of the bag."

A sub-heading on the following page perfectly illustrates the spirit in which "the evidence here presented" was approached. The evidence concerning the bag should obviously have related to the rifle, not to Oswald, but the sub-heading—and the section it introduces—mixes the two: "Scientific Evidence Linking Rifle and Oswald to Paper Bag." This allows the Report to go into great detail about "Oswald's fingerprint and palmprint found on bag" or about "Materials used to make bag," all of which remains totally irrelevant because it proves nothing about whether the package contained a rifle.

The Report would like to convince us that the presence of the rifle was suggested by the discovery, inside the bag, of fibers which could have come from the blanket in which the rifle was wrapped. But the expert called on by the Commission "was unable to



render an opinion that the fibers which he found in the bag had probably come from the blanket." It should be observed that the expert found no trace of powder and no oil stains. In a letter to the Commission, which asked the FBI for technical data about the firing pin of "the assassination rifle," J. Edgar Hoover commented that the weapon was in "well-oiled condition."

I must leave aside the delicate and/or insoluble problems raised by the theory that the rifle was brought in dismantled, and thus had to be secretly and perfectly assembled in time for the assassination. It is now necessary to discuss proof number 3—the testimony of Howard L. Brennan, which the Commission uses as the basis for stating that Oswald "was present, at the time of the assassination, at the window from which the shots were fired."

Howard L. Brennan—one of the Commission's star witnesses, along with Marina Oswald and Helen Markham—was presented as an apparent discovery of the

Commission. Yet Brennan's statements had appeared in the press from the start of the investigation in Dallas. Nobody at that time took him seriously, and it was necessary to await the Warren Report to learn that "Howard L. Brennan made a positive identification of Oswald as being the person at the window." Leafing back in the Report to the chapter on "The Assassin," and its section titled "Eyewitness Identification of Assassin," we learn that "Brennan testified that the man in the window was standing when he fired the shots," while the Report is obliged to recognize that "the half-open window, the arrangement of the boxes, and the angle of the shots virtually preclude a standing position." The conclusion of the Commission is that Brennan was mistaken in saying that the man was standing, but not mistaken in identifying (from the sidewalk opposite the building) the man sitting behind a half-open sixth-floor window.

As to the variations which marked his identification in the police lineup and the turnabouts that followed, these are related on an epic page of the Report, the farcical torment of which could never be suggested by any summary. I would therefore refer the reader to page 145, only remarking that one will also find there the following admission: "Prior to the lineup, Brennan had seen Oswald's picture on television."

There remains affirmation number 8, the most dubious of all, with the Commission serving up the refutation on a large platter. To demonstrate Oswald's "rifle capability," the Commission cites his record in the Marines: "Oswald was tested in December of 1956, and obtained a score of 212, which was 2 points above the minimum for qualification as a 'sharpshooter' in a scale of marksman-sharpshooter-expert. In May of 1959, on another range, Oswald scored 191, which was 1 point over the minimum for ranking as a 'marksman.'" To the layman, this suggests that Oswald was among the elite riflemen of the U.S. Marine Corps, although his skill diminished somewhat between 1956 and 1959. What the Commission does not point out is that the scale "marksman-sharpshooter-expert" applies not to an elite group but to all Marines. Thus, toward the end of his service, in May 1959, Oswald was just 1 point above the minimum required of any one of the 175,571 Marines in the Corps at that time.

More than four years were to go by between that time and the shots on Elm Street. Did Oswald have more opportunities for training in those four years than he had during his Marine service? The Warren Report does not claim this, and in dealing with his second-hand, $19.95 rifle bought in March 1963, it is even less satisfactory. We learn that "Marina Oswald testified that in New Orleans in May of 1963, she observed Oswald sitting with the rifle on their screened porch at night, sighting with the telescopic lens and operating the bolt." But previously, preoccupied with other concerns, the Report lets this admission pass: "The Commission found no reliable evidence that Oswald used the rifle at any time between September 23, when it was transported from New Orleans, and November 22, the day of the assassination."

THE ONLY possible remedy, under these conditions, was to demonstrate that nothing was easier than to obtain three direct hits in 4.8 to 5.6 seconds, with a bolt action rifle such as Oswald's Mannlicher-Carcano. And the Commission seems to have had no trouble in finding a Marine Sergeant, even a Marine Major, as well as an FBI expert and the "chief of the U.S. Army Infantry Weapons Evaluation Branch of the Ballistics Research Laboratory," to confirm this. But many European experts—including the Olympic rifle champion and instructors of the Italian Army, where the Mannlicher-Carcano was used during the War—continued to maintain the contrary. The Commission then asked three "masters" of the National Rifle Association —three recognized champions—to fire from the top of a tower with Oswald's rifle, at stationary targets at distances corresponding to those on Elm Street. The "chief of the U.S. Army Infantry Weapons Evaluation Branch of the Ballistics Research Laboratory" was asked to evaluate the results. And the chief, etc., testified in effect "that in his opinion the probability of hitting the targets at the relatively short range at which they were hit was very high."

These results are shown on the same page of the Report. Each rifleman had two chances. The times recorded for them in the first round of three shots each were 4.6 seconds for the first master, 6.75 for the second master, and 8.25 for the third master; in the second round, 5.15, 6.45, and 7 seconds. Out of the six shots fired at each target all hit the first target, four missed the second "by several inches," and one missed the third.

It is clear that even if the three "masters" of the National Rifle Association—all of them identified in the Hearings as professional specialists—had done as well or better than the Elm Street assassin, that would prove little about non-expert Oswald. Moreover, contrary to the Report's claim, the conditions of the test did not "simulate those which prevailed during the assassination," since not only were the targets stationary but the champions "took as much time as they wanted for the first target," whereas the gunman of the Texas School Book Depository, by reason of the limitations imposed by the movement of the motorcade and by his own position at the window, had as little time for the first shot as for the two others. Despite all this, only one of the three "masters" matched the assassin.

How, under these circumstances, can the Warren Commission unhesitatingly assert that "Lee Harvey Oswald was the assassin of President Kennedy"?