JAN. 3, 1966 · 35c

THE NEW LEADER

A BIWEEKLY OF NEWS AND OPINION... 42ND YEAR OF PUBLICATION

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The Case Against Mr. X

By Leo Sauvage

This is the last of three articles by Leo Sauvage examining the Warren Commission Report. Sauvage, chief New York Correspondent for the French daily, Le Figaro, **is author of** L'Affaire Oswald, **published in Paris by Editions de Minuit. His first article, "The Warren Commission's Case Against Oswald" (NL, November 22), offered a detailed critique of the Commission's affirmations and found them unconvincing; the second presented "Oswald's Case Against the Warren Commission," (NL, December 20). Here Sauvage shows that the inquiry ignored evidence which "could have led in an entirely different direction."**

AS FAR AS I KNOW, no one has yet undertaken a defense of the Warren Commission and its Report by employing what could be described as "scientific" techniques—that is, by justifying step by step with text in hand the Commission's principles, methods, affirmations and arguments. Having returned to their regular occupations, the lawyers and professors of law who made up the Commission's staff apparently believe they do not owe anyone an accounting and take the position that "no comment" is a sufficiently honorable response to a precise criticism. The panegyrists, on the other hand—most of whom seem to have hardly leafed through the Report—satisfy themselves with expressions of faith in the Chief Justice (like James Wechsler) when they do not simply withdraw into a dream world (like Louis Nizer).

But there are others, among them Murray Kempton and Dwight Macdonald, cited in my second article, who take a more sophisticated position. These men do not hide their lack of enthusiasm for the Commission's procedures, yet find it possible to accept its conclusions. Their technical argument is based essentially on an overestimation of the weight of certain affirmations in the Report, which are either inaccurate (the statement, for example, that ballistics tests proved beyond a doubt that Oswald's Mannlicher-Carcano rifle was the murder weapon) or totally insufficient as proof of guilt not only in the eyes of the law but in terms of practical experience (the fact, for example, that Oswald seemed to have been the owner of the Mannlicher-Carcano found at the scene). The real basis of their conviction is perhaps most accurately reflected in a question Dwight Macdonald has asked me repeatedly: "Who else could have done it?"

In fact, almost every discussion of the assassination of President Kennedy ends with that question. Sometimes it is asked in an accusing tone, as if it were the responsibility of the Commission's critics to offer a better reconstruction of the events than the official investigators armed with all the powers of the government. Sometimes it is asked in a sarcastic tone, especially when aimed at those critics who pretend they have the answer. And it is true that the "factual" conjecture of a Thomas Buchanan (author of *Who Killed Kennedy*; see NL, September 28, and November 9, 1964) is infinitely less plausible than the "factual" speculation of the Commission.

In a legal sense, of course, the responsibility for offering proof of a suspect's guilt rests on the prosecution. If the prosecution fails, the accused is declared innocent without the defense being required to present any other suspect. But being a journalist not a lawyer, I think it more appropriate here to examine a number of clues that were not pursued, though they could have led the Commission in an entirely different direction.

Dwight Macdonald, in his "Critique of the Warren Report" published in *Esquire*—which is also, naturally, a critique of the critics of the Warren Report—maintains that all "conspiracy theories" face a dilemma. "Either (A): Some or all of the many investi-

gators knew about a conspiracy in advance, perhaps were part of it, or discovered it later and then covered it right up again. Or (B): They knew of no conspiracy, were part of none, and although one existed, their best efforts were unable to find any trace."

I would like to invite the author of *Against the American Grain* to consider that there is a third alternative. (C): Some or all of the many investigators knew of no conspiracy and were part of none, but they did not make the slightest effort to find any trace of one because they assumed that their job—not as members or as protectors of a conspiracy but as representatives of the American Establishment—was only to prove the guilt of Oswald (without any doubt the best solution politically). Macdonald himself points out "a conclusion [that] may be drawn from the Warren Report," namely that "the Commission drew back from a line of inquiry that would have discredited the Dallas cops, and, more important, the FBI and the Secret Service." How does this conclusion fit in with either horn (A) or horn (B) of Macdonald's "dilemma"?

THE WARREN REPORT offers us a real dilemma which is so striking that the day the Commission decides to respond with something besides "no comment," it will not be able to avoid discrediting the FBI. In the section of Chapter IV ("The Assassin") in which the Commission attempts to prove that Oswald was "the man at the window," the Report says an employe named Charles Givens furnished "additional testimony linking Oswald with the point from which the shots were fired." Actually, Givens testified that at about 11:55 a.m. on the day of the murder, "he saw Oswald, a clipboard in hand, walking from the southeast corner of the sixth floor toward the elevator." So what? The Report, by stressing in the heading of the section that this was "approximately 35 minutes before the assassination," seems to want us to read *as little* as 35 minutes, yet one can just as accurately read *as much* as 35 minutes. Continuing in the Commission's own style, after all at 11:55 a.m. Givens saw Oswald walking away from the southeast corner (the vantage point of the alleged assassin) and not toward it. In any event, this testimony clearly does not prove he was there at 12:30. But the Commission has something else in mind:

"The significance of Given's observation that Oswald was carrying his clipboard became apparent on December 2, 1963, when an employe, Frankie Kaiser, found a clipboard hidden by book cartons in the northwest corner of the sixth floor at the west wall a few feet from where the rifle had been found. This clipboard had been made by Kaiser and had his name on it. Kaiser identified it as the clipboard which Oswald had appropriated from him when Oswald came to work at the Depository. Three invoices on this clipboard, each dated November 22, were for Scott-Foresman books, located on the first and sixth floors. Oswald had not filled any of the three orders."

The dramatic concluding sentence reveals the Commission's inference: that Oswald had not filled the orders shown on the clipboard's invoices because he had devoted the 35 minutes after he was seen to preparing for the assassination. Well, maybe. Or maybe he was merely waiting for the lunch break. The more significant fact, however, is the date when the clipboard was "found." On December 2, 1963, 10 days after the assassination and eight days after Oswald's murder, a board 12 x 9 inches, with a clip that would prevent it from sliding under anything, was discovered for the first time in the room where the

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search effort of the police had been concentrated. Either (A): The sixth floor of the Texas School Book Depository was never thoroughly searched, not even by the celebrated FBI, which President Johnson had assigned on November 25 to conduct an independent investigation. Or (B): An object tending to incriminate Oswald was placed on the sixth floor by someone else after the visit of the FBI (that is, well after the death of Oswald).

This fantastic episode is enough to undermine the assertion that Oswald was the sole possible suspect. But the Commission, in its eagerness to present "additional testimony linking Oswald with the point from which the shots were fired," did not notice the pit it was opening under its feet: If (A) an object of the size and shape of the clipboard escaped the attention

of J. Edgar Hoover's men "a few feet from where the rifle had been found," we are entitled to believe that not only "one stray bean" (as Dwight Macdonald puts it) but an entire collection of other important clues also escaped such investigators. Yet that hypothesis seems unlikely in view of the renowned professional competence of the FBI. Thus (B) the clipboard must have been set in place after the FBI search, but the Commission refrained from pursuing this path of inquiry. Since the Commission, until now, has not impugned the professional competence to the FBI, it should at least have conducted a detailed interrogation of the Depository employes in the hope of discovering who could have placed Oswald's clipboard where it was found. In any case, it seems fair to observe here that if there are men who—to borrow one of Macdonald's pretty sarcasms—would deny the evidence "if Jehovah had descended in Person and had the Recording Angel engrave it on tablets of stone before their eyes," the "diehards" are those who reject any criticism of the Report, not those who criticize it.

STILL ANOTHER real dilemma derives from the episode of the repair tag found at a gunsmith shop in the town of Irving, and it reinforces "the case against Mr. X" at the same time that it definitively confirms the Commission's determination—not only blind in this instance, but blinding—to ignore that aspect of the evidence. Maybe the clipboard mystery, which seems to have escaped all the American commentators on the Report, could by some stretch of imagination be attributed to a lack of perspicacity on the part of the members of the Commission and its chief counsel, J. Lee Rankin. The mystery of the Irving gunsmith, however, provides us with a situation where the members and staff of the Commission, clearly placed in front of a new avenue to be investigated, chose to turn their backs on it.

I raised the question of the gunsmith in an article in *Commentary* in March 1964, which the Commission was aware of and cited in a note concerning something else. Dial D. Ryder is employed as a gunsmith and general serviceman at the Irving Sports Shop in Irving, the Dallas suburb where Marina Oswald lived with Ruth Paine and where Oswald came to pass his weekends. On November 28, 1963, Ryder told a reporter that he had found in his shop a repair tag in Oswald's name for a job done a few weeks earlier: mounting a telescopic lens on a rifle. The press and television took this as still another proof against Oswald, until someone remembered that the Mannlicher-Carcano sent from Chicago to Hidell-Oswald already had a telescopic lens. In one stroke, what had been sensational information a few hours earlier became retroactively non-existent, and the Irving gunsmith disappeared from the affair.

When I telephoned Ryder in February 1964, he told me that the repair tag in Oswald's name ("no first name or initial, just Oswald") was still in his possession. The FBI apparently saw no reason to bother with this piece of paper. The questioning of Ryder by the Commission on March 25, 1964, revealed that the repair tag was finally obtained from him in March, after the publication of my article.

In that article, I discarded the initial interpretation of the Dallas police that Oswald could have had a second rifle, and I mentioned a different possibility: "If it develops that someone who was neither Lee Harvey nor any (other) real Oswald used the name of Oswald to get a telescopic sight mounted on a rifle by a gunsmith in Irving one month before the assassination of President Kennedy, a startling possibility would present itself—the possibility that clues leading to Lee Harvey Oswald were planted well in advance of the assassination."

In its Appendix XII titled "Speculations and Rumors," intended "to clarify the most widespread factual misunderstandings" and to oppose "what the Commission has found to be the true facts" to "false or inaccurate speculations," the Report cites a single "speculation" having to do with Dial Ryder's discovery, as follows: "*Speculation.* It is possible that there was a second Mannlicher-Carcano rifle involved in the assassination. The Irving Sports Shop mounted a scope on a rifle 3 weeks before the assassination." This is the old trick of distorting a question to make the answer easier, appropriate to discussions in which one of the participants believes he need not be troubled about good faith.

As far as I am concerned, I never "speculated" that there may have been a second Mannlicher-Carcano "involved in the assassination." I had put forward the hypothesis—and I repeat it here—that an unknown person could have had the sight mounted, giving his name as Oswald, for a simple reason "which no serious investigation can ignore": because, not knowing how easy it would be to trace the Mannlicher-Carcano to the Chicago mail-order firm that sold it, or that it had a telescopic lens already mounted, this was an excellent way to connect Oswald with the future "murder weapon." I still think no serious investigation could have ignored this; but the Warren Commission deliberately ignored it.

This is apparent from the attitude of Wesley J. Liebeler, assistant counsel of the Commission, who followed up the matter of the gunsmith. Liebeler, according to the Report, is a young lawyer who graduated *cum laude* from the University of Chicago Law School and was managing editor of the Law Review there. I would suppose, therefore, he is intelligent and competent. But when he questioned Dial D. Ryder on March 25, 1964, in Dallas, he defined—and limited—

the purpose of the Commission as follows (Hearings, XI, 224): "We want to examine you briefly concerning the possibility that you did some work on a rifle for a man by the name of Oswald who may in fact have been Lee Harvey Oswald."

On April 1, 1964, when he questioned Ryder's boss, Charles W. Greener, the assistant counsel was even more precise in his precautions: "As we discussed briefly off the record before we started, it appears that there are three possibilities concerning this tag. One, in view of the fact that Mr. Ryder is quite clear in his own mind that he never worked on an Italian rifle similar to the one that was found in the Texas School Book Depository, we can conclude either that the Oswald on the tag was Lee Oswald and he brought a different rifle in here, or it was a different Oswald who brought another rifle in here, or that the tag is not a genuine tag, and that there never was a man who came in here with any gun at all. Can you think of any other possibilities?"

Duly prepared by the discussion "off the record" (the Commission never deigned to explain the countless discussions "off the record" mentioned in the Hearings, though it is often impossible, as in this case, to imagine any justification for them in terms of national security, morals, or even manners), Greener hastened to reply: "That about covers the situation, it looks to me like." May I raise my hand to remark respectfully to the zealous assistant counsel for the Commission that I, for one, can think of another possibility, and have stated so in writing: the possibility that a man came into the Irving shop with a gun, who was neither Lee Oswald nor a different Oswald, but who gave Oswald's name in order to help build a case against him.

The Warren Report officially confirms its intention of dodging the question by cooly titling the three pages devoted to the gunsmith episode "Ownership of a Second Rifle." Having thus confined the problem to its least likely aspect, the Commission need go no further than to dispose of Ryder and his repair tag by affirming that "the authenticity of the repair tag bearing Oswald's name is indeed subject to grave doubts," and by reflecting on "Ryder's credibility." Here we have still another example of the "resort to impeachment of character" ascribed to the Commission by Paul L. Freese, a member of the California Bar, in the May 1965 issue of the New York University Law Review. After first paying tribute to "the Commission's work" by declaring that "from most responsible and knowledgeable critics has come recognition of a job well done," Freese analyzes at length the Commission's handling of another embarrassing witness, and concludes that "the Commission . . . betrayed a desire to discredit [the witness] rather than confront the implications of his testimony."

In Ryder's case, however, the Commission admits that "when shown a photograph of Oswald during his deposition, Ryder testified he knew the picture to be of Oswald, 'as the pictures in the paper, but as far as seeing the guy personally, I don't think I ever have.' " Here, certainly, is a welcome change from so many other witnesses who showed themselves eager to state—or whom the Commission was eager to have state—that they had "seen the guy personally." When Liebeler asked Greener, "You don't think he would make this tag up to cause a lot of commotion?" the store owner replied: "I don't think so. He doesn't seem like that type boy. I have lots of confidence in him or I wouldn't have him working for me and handling money. Especially times I am going off. . . ." And when Liebeler insisted, "You don't feel Ryder would do that?" Greener continued to maintain, "Not at all, no."

NONETHELESS, to the extent that its obscure and equivocal insinuations have any meaning, the Commission's conclusion seems to be that Ryder invented the whole story of the repair tag to make himself seem important. It is useless to ask the editors of the Report why Ryder did not make himself seem even more important by telling about "seeing the guy personally." And the Commission could at least explain why it neglected to question FBI Agent Emory E. Horton, who made the initial inquiries. The Report tells us that "the FBI had been directed to the Irving Sports Shop by anonymous telephone calls," and Volume XI of the Hearings informs us that Agent Horton, following up these phone calls, went to see Ryder on November 25, three days before the story appeared in the Dallas *Times-Herald*. Ryder believed Horton had come to see him because the FBI was checking all the gunshops; but if, as the Commission seems to suggest, Ryder was himself responsible for the anonymous calls, an account by Horton of his first interview with Ryder could certainly have afforded some significant details.

Horton was never called before the Commission, nor did the Commission seek any action against Dial D. Ryder, in spite of the fact that it accused him of having fabricated a false repair tag. For if the Report, in declaring that "the authenticity of the repair tag bearing Oswald's name is indeed subject to grave doubts," is suggesting that someone other than Ryder made the tag and slipped it onto Ryder's workbench, that could only bring us back to the conclusion—again deliberately ignored by the Commission—that someone intentionally planted a piece of evidence to incriminate Oswald.

The Warren Report contains several other unresolved mysteries, all of which seem to indicate a design to concentrate attention on Oswald to the ex-

clusion of anyone else. For reasons of space I will mention only two of these here.

Reluctant to believe that an average marksman like Oswald could have been so successful with three shots from a cheap second-hand rifle he had never used before, the press lunged avidly at the story that he had made several visits to a rifle range in Grand Prairie, not far from Irving. The Warren Commission had no difficulty in showing that the man in question could not have been Oswald (because, for instance, Oswald was in Mexico on one of the weekends he was supposed to have been seen at the Grand Prairie "Sportsdrome"), and the incident was closed as far as it was concerned.

It is strange, though, that the Commission did not feel impelled to look further in this direction. For

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one thing, the unknown man deliberately attracted attention on the range—both to himself and to his foreign rifle with the telescopic sight—by firing at the targets of other riflemen. Also, his resemblance to Oswald was so striking that on a CBS program on September 27, 1964, on the occasion of the Warren Report's publication, two regulars at the Sportsdrome repeated that the obnoxious customer of November 1963 was indeed Oswald. A coincidence? Perhaps. But shouldn't the stranger at least have been located?

The other mystery takes up over a page in the Report under the heading "Automobile Demonstration." On November 9, 1963, two weeks before the assassination a customer came to a Lincoln-Mercury dealer in Dallas, where Albert Guy Bogard was then a salesman. "After test-driving an automobile over the Stemmons Freeway at 60 to 70 miles per hour, [he] told Bogard that in several weeks he would have the money to make a purchase. Bogard asserted that the customer gave his name as 'Lee Oswald,' which Bogard wrote on a business card." Bogard ("assertedly," says the Report, which becomes extremely suspicious of testimony that cannot be used against Oswald) later threw the card away. The Commission recognizes, however, that "Bogard's testimony has received corroboration": Another salesman, Oran Brown, "stated that he too wrote down the customer's name and both he and his wife remember the name 'Oswald' as being on a paper in his possession before the assassination."

But Bogard's customer could hardly have been Lee Harvey Oswald, if only because Oswald did not know how to drive. And as with the rifle range, the Commission—this strange "fact-finding agency" which feels committed only to ascertaining a single pre-established truth—seems therefore to have decided that it could disregard the episode. Additional testimony, that of assistant sales manager Frank Pizzo, is brought in to strengthen the Commission's position: "Mr. Pizzo, who saw Bogard's prospect on November 9, and shortly after the assassination felt that Oswald may have been this man, later examined pictures of Oswald and expressed serious doubts that the person with Bogard was in fact Oswald. While noting a resemblance, he did not believe that Oswald's hairline matched that of the person who had been in the showroom on November 9."

That's all. One finds nothing else in the Warren Report either about the stranger of the "automobile demonstration" or about the stranger of the rifle range. The most striking fact in both cases is not merely that a stranger resembling Oswald, who was not Oswald, evidently sought to attract attention shortly before the assassination, but that he vanished afterward. Yet the Commission did not consider it useful to appeal to this stranger, by press and television, to make himself known. Even without such an appeal, it is astonishing, if not highly suspicious, that the stranger should not have made himself known. Neither the Sportsdrome customer nor the Lincoln-Mercury prospect (assuming they were not the same man) acted as if they were shy persons who could have feared publicity. Why have they kept silent? The rifle-range affair in particular was extensively covered at the time in the press and on television. Is it conceivable that the rather communicative and exuberant individual described by the witnesses could have missed this chance to telephone the newspapers to tell them: Look no further, it was I, do you want my picture?

No attempt was made to answer any of these provocative questions. It is difficult to believe, for example, that it was impossible for the FBI to track down the Sportsdrome stranger, who had gone there

several times, whose car was described with considerable precision ("an old car, possibly a 1940 or 1941 Ford"), and who in any case did not fall from the sky and did not vanish into thin air. But the Warren Commission, like the FBI, was not looking for evidence against Mr. X. It only sought proof against Oswald.

LET ME CONCLUDE by citing what is perhaps the most fantastic gap of all in the investigation. In my *Commentary* article of March 1964, I noted that a "curious detail of the case" concerned what was found in the two places Oswald lived. For "while the search conducted in Irving as well as in the North Beckley Avenue rooming house in Dallas produced a great number of letters, photographs, and other documents, not a single 6.5 mm. bullet was ever announced as having turned up." I have since learned from Milton P. Klein, president of Klein's Sporting Goods in Chicago—from whom Oswald-Hiddell had purchased the Mannlicher-Carcano with telescopic sight for $19.95—that the order did not include the advertised "6.5 mm Italian military ammo, 108 rds," which together with a free "6-shot clip" amounted to $7.50. Where, when and how did Oswald buy his cartridges? FBI expert Frazier testified that "the ammunition that we have purchased for this rifle comes in 20-shot boxes." If Oswald bought a 20-shot box, what happened to the unused cartridges?

The Report is extraordinarily discreet regarding the origin of the cartridges. In fact, it never says bluntly that Oswald did not buy a clip and ammunition when he bought the rifle. And it even contains a sentence concerning the clip which suggests that the Report sought to create a contrary impression: "The rifle probably was sold without a clip; however, the clip is commonly available." Why *probably*? Surely the FBI and the Commission had the same information that was given to me by Mr. Klein in a three-minute telephone conversation.

Another sentence of the five lines (out of some 900 pages) which the Report devotes to this essential question of the origin of the cartridges is similarly weighted: "The cartridge is readily available for purchase from mail-order houses, as well as a few gunshops; some 2 million rounds have been placed on sale in the United States." The accent on "some 2 million rounds" obviously is intended to give the impression that the United States was flooded with 6.5mm Mannlicher-Carcano cartridges, and that the most minute investigation could never trace the origin of those used at the Texas School Book Depository. Yet according to the Report itself, these cartridges are sold directly only in "a few gunshops," which should not be too difficult to locate and visit, and are available mainly through mail-order houses, which keep records of their sales. A check of these records, moreover, would be confined to a limited period of time, beginning on March 20, 1963, when Oswald got his rifle without clip or cartridges.

Incidentally, although the Report volunteers the irrelevant information about the number of rounds "placed on sale," it does not tell us how many actually were sold. Drawing up an accurate list of those who bought such cartridges between March 20 and November 22 might have been costly and time consuming, but is it presumptuous to say that it would have been worth the trouble, since it involved the assassination of the President of the United States? The FBI and the Commission wasted countless days of effort and hundreds of thousands of dollars in assembling tons of useless data which did not lead to the important facts but buried them. Certainly the Commission and the FBI, before concentrating their attention on Oswald's biography, should have exhausted every credible avenue of inquiry—including those that seemed to lead to someone other than Lee Harvey Oswald.

I could go on to show that there actually never was a genuine investigation of the assassination. An incredible number of vital witnesses were not called before the Commission, and many of those called were not questioned on the obviously essential points. One example should be sufficient.

George and Patricia Nash, research assistants at Columbia University's Bureau of Applied Social Research, in a brilliant article in these pages ("The Other Witnesses," NL, October 12, 1964) based on personal inquiries in Dallas, already have shown that among those not heard by the Commission were the following witnesses to the murder of Tippit: Frank Wright and his wife, who lived half a block from the murder site, were among the first to be aware of the crime, and called the ambulance (the call slip bore their address); Clayton Butler, the ambulance driver, and Eddie Kinsley, his assistant, who arrived on the scene within minutes and, having taken away Tippit before the police arrived, were the only ones able to provide such indispensable details as the position of the body; and the manager of the apartment house facing the murder site. The statements of all of these witnesses were "in direct contradiction" to those of the celebrated Mrs. Helen Markham, star witness of the Commission in the Tippit murder.

George and Patricia Nash concluded from their research that "future historians and social scientists will not be able to reconstruct what occurred last November 22 from the Commission's Report alone." I would only add the words of Felix Frankfurter, who wrote in the prefatory note of his *The Case of Sacco and Vanzetti* in 1927: "There are no legal mysteries about the case which a layman cannot penetrate. The issues that are involved and the considerations relevant to their solution are within the comprehension of anyone who feels responsibility for understanding them."