cc: JL, DW, PH, JF, SM

Notes on "Appendix A: The Status of the Evidence" in LEGEND, by Edward J. Epstein

Memo by HOward Roffman, 3/25/78

This brief (6 page) section is so inaccurate that I cannot believe it to be careless or sloppy. It had to be deliberate. To illustrate the pervasiveness of the errors, I will go through it line by line.

I. The Path of the Bullets

1. EJE says the best evidence "on the nature of the wounds" to JFK and Connally is the photos and X-rays taken during the autopsy. How can these say anything about Connally's wounds?

2. "This evidence was not examined by the Warren Commission or its staff, (since it was withheld by the Kennedy family until 1966)... Wrong on both counts. The staff, or some of them, did see at least som of this material. None was withheld by the family during the life of the Commission, and all was available to the Commission.

3. Next lines imply that only people to see the pictures and X-rays were the Clark panel in 1968 and Wecht in 1972. A minor point, but still misleading, especially in light of what follows.

4. "All the evaluators of the autopsy agreed, without any dissent, that all the bullets that hit the Pres. & Gov. Con. were fired from above and behind..." Grossly overstates what anyone has "agreed" to. THe Clark panel drew no conclusions about Connally. I'm sure that even the irresponsible Wecht has not forgotten to qualify hi conclusions about the source of the bullets.

5. "In the autopsy X rays and photographs, the path and dispersal of fragments can clearly be traced from back to front." Again, overstatement and misstatement. No "fragments" show on photographs. As for the X rays, arguably they can be so traced on the head X rays. However, the story on the neck X rays is that there are no lateral views, so no discernable path is depicted on the extant anterior-posterior views.

6. EJE notes that JFK jacket and shirt fibers point inward. He fails to note Frazier's caveat that his conclusions assumed there had been no tampering with the clothing prior to his examination.

7. In a footnote on the head shot, EJE argues, incorrectly, th the backward motion of the head may have been caused by the acceleration of the car. He also uses the neurological reaction theory. ALthough I am wary of whether the backward motion of the head is really probative of a frontal shot, it is a fact that the car did not accelerate until several seconds after the head shot, so EJE is clear wrong in trying to explain away the movement in this method.

II. The Source of the Rifle Fire

8. EJE states that "the evidence is now overwhelming" that th

shots came from an upper flaur of the TSBD. Why is it "now" overwleming. This implies that there is new evidance to buttress that conclusion. Of course, there is not, and EJE cites none.

9. After naming BRennan & Euins, EJE writes, "And three other witnesses--Carolyn Walther, Arnold Louis Rowland and his wife, Barbara --claimed to have seen a rifle in the window moments before the shooting." This is particularly revealing in light of the use EJE made of these three witnesses in INQUEST. He has to know this is incorrect. First, Arnold Rowland did not see a man with a rifle in that window, He saw the man in a window on the opposite side of the building 15 minutes before the shots were fired. Second, Mrs. Rowland never saw the man or the rifle. Even the Warren Report (p. 251) admits this. Rowland told her about the man, but when she looked up, he was gone.

10. EJE says it is not reasonable to assume that rifle and cartridge cases planted in TSBD after the shots "since the building was sealed off minutes after the assassination." This is not true. ALthou there is some testimony to the effect that the TSBD was sealed o: we know in fact that it was not. It was swarming with unaccounted for people after the shots, including newsmen and others.

III. The Accuracy of the Rifle

11. EJE says the rifle can be fired "with deadly accuracy" at 100 yards because "after the assassination three different FBI agents fired this exact rifle and scored bull's-eyes two out of three times." Besides grossly oversimplfying the test results, EJE omits too much significant information--such as the uncertainty about whether the scope could have been used at all during the assassination, the FBI's need to repair it before firing, the fact that stationary targets were fired at, and LHO's lack of ability with a rifle.

IV. The ~~Ownership~~ Ownership of the Rifle

12. While I agree with EJE that LHO owned the rifle, EJE cites evidence of LHO's possession of the rifle which is either suspect or false. First, that the palmprint was found on the rifle. Evidence that the print was ever on the rifle is lacking except for the contradictory testimony of Lt. Day. EJE does not mention this gap in the evidnece and the reasons for doubting Day's testimony. Then he says that MArina photographed LHO with the rifle and inserts, parenthetically, "a phtograph he signed," falsely implying that only one photograph was taken, when in fact there are at least three different poses and conclusive indications that each photo is a composite. Agai EJE is silent as to such evidence. He mentions 4 witnesses who saw Oswald with "a rifle," including two new ones, Gary Taylor and Alexandra. These two must be doubted, if only because they came forward so late. Why didn't they say this earlier? As for Jeanne DeM & Marina, we know how reliable their testimony was.

V. The Elasped Time of the Assassination

13. EJE begins by stating, incorrectly, that the WC "postulate that the firing of all three shots occurred within 5.6 seconds." In fact, what the WC said was that the first and last hits occurred withi 5.6 seconds, and left open the possibility that a missed shot occurred

either before the first hit or after the last one, indicating a minimum time span of 7.9 seconds. See WR at 117. The Commission's reconstruction may have been a fantasy, but let's at least be faithful to what they said in the Report!

14. In the next paragraph EJE takes to WC to task on the contraint it imposed on its time reconstruction by assuming that foliage on the oak tree blocked the assassin's view for a period of seconds. Here EJE is at his worst. The most glaring error, of course, is his statement that on Nov. 22 the oak tree "had no foliage." I know little about trees, but that one was extensively photographed on Nov. 22 and it most certainly did have foliage. Two other minor errors here indicate EJE's utter recklessness. First, he asserts that the reconstruction was "done in June (1964)." Wrong; it was in May. Then, he says that the reconstruction demonstrated that JFK passed under the foliage of the oak tree from "frames 180-210." Wrong again. JFK first passed under the foliage at frame 166. See WR at 98.

VI. The Sequence of the Shots

15. The earlier discussion of the time span--incorrect and irrelevant--allows EJE to pretend that he has solved the dilemma of the single bullet theory. He asserts that the problem of the Commissi was that all shots had to be fired within 5.6 seconds, but that since the time span may have been over seven seconds, three shots could easily be fired from the rifle. Of course, this was not the problem. The whole problem was the elapsed time between the reaction first shown by JFK and the reaction displayed by Connally, which--under any theory--is too short for two shots to have been fired from the Carcano. EJE readily admits that JFK & Connally were not hit by the same bullet (although he bases this conclusion on Wecht's article--an irresponsible thing to do since the article is spurious on this point).

This error is culpable, because EJE was one of the first to mak a stink about the time contraint problem, in INQUEST. SO, he knows exactly what the Commission's problem was and yet here he substitutes reasoning about the total elapsed time of the shots to conclude that "the sequence of the bullets is not relevant to the question of whether there was more than one sniper, since it would be possible for a single assassin to fire three shots...in 7 seconds." (emphasis his)

VII. The Number of Snipers

16. EJE here employs a unique type of reasoning. Since all th fragments found were traceable to Oswald's rifle (that, in itself is wrong and misleading since only bullet 399 and two large fragments were traceable, the others being too small to trace), the only weapon used was that rifle. Thus, there may have been 2 gunmen, with one passing t rifle to the other during the shots. Wouldn't this be silly, EJE posit in rejecting the theory. Truly a man of common sense.

VIII. The Murder of Officer Tippit

17. In discussing the Rosetta stone, EJE out-Belins Belin, to conclude that the evidence "is conclusive" against LHO. He notes that all the cartridge cases found at the scene had been fired from Oswald's pistol. Then he parenthetically notes, "Ballistics cannot be done on

bullets fired from a pistol, but the shells were consistent with the cartridge cases." Wrong on both counts. Of course, it is possible to do ballistics comparisons in the case of pistols. What he means is that the bullets in this case were too mutilated to allow comparison. Interesting that he does not mention that the Commission did produce one expert willing to hazard an opinion as to one of the bullets. The statement that the shells were consistent with the cartridge cases is a masterful deception. Yes, they were the same size, but they didn't match. I forget the brand names, but there were 3 Brand A bullets and one Brand B bullet, but the split on the cartridge cases was 2 & 2. A strange way of being "consistent."

18. EJE blandly notes that several people identified LHO at the lineups. Of course, he has nothing to say about the inherently prejudicial manner in which they were conducted and the reliability of the key witnesses--especially Markham.

(I'm omitting discussion of EJE's sections on Consciousness of guilt and The Walker shooting. They are bad, but slightly less flagran than the rest. Not worth protracted disuussion here.)

XI. The Double Oswald Theories

19. You don't have to be a devotee of the theory to see how EJE misrepresents it and, in so doing, makes it look absurd. He states that "a number of critics" have suggested that the man captured & killed was impersonating the real LHO. Of course, only one man has suggested that, Eddowes, and he is as loony as they come. What "a number of critics" have suggested is not that the imposter was captured but rather that Oswald was captured after an imposter left a trail of incriminating evidence.

XII. The Murder of Oswald

20. Another bad section, at best, facile, but in fact highly deceptive. Ends by saying that sinee Ruby is dead, the question of why he shot Oswald "must remain moot." A strange choice of words. Moot generally is taken to mean "having no significance," which surely is not the case here. Even if we assume he means it in the sense of "unanswerable," that would lead to the inference that the answer was known only to Ruby and hence died with him. This, in turn, assumes no conspiracy. Wierd.

All in all, this is flagrant misinformation, written by someon who surely knows better (in some cases, by virtue of his own earlier writings). At best, this Appendix reflects an irresponsbile attitude toward the facts, i.e., "why should I bother laying it out correctly." At worst, it is deliberate, calculated disinformation. I am inclined to the latter view. One could argue that it is all mere carelessness. It reads as if it were hastily written or dictated, and it is obvious that no effort to check details was made (e.g., the wrong time on the reconstruction and the wrong frame number--no purpose served by the error there). By the same token, however, some of the errors are too fundamental and well known to critics and to EJE in particular to be merely careless--such as with the timing problem as it relates to the single bullet theory.

JF