

New address: Rt. 7, Frederick, Md. 21701::301/473-8186

Mr. Richard S. Jacobson
Editor, Trial
6 Beacon St.,
Boston, Mass.

Dear Mr. Jacobson,

Several weeks ago, when I first saw the Goodhart article "defending" the Warren Report, I spoke to Jack Fuchsberg, seeking the opportunity for fair response. He suggests this letter. I regret my absence since then has kept me from writing earlier.

Mr. Goodhart is one of a number of eminences who lend their names to a campaign to persuade us that the world is flat. In their pretended "defense" of the Warren Report, they have nothing to support them but their reputations - and I wonder that they so jeopardize the good reputations they have earned.

The article you published is of incredible inaccuracy. I could write one of equal length on just its opening, in which Mr. Goodhart redesigned Dealey Plaza, changed directions and took other liberties with reality.

As the author of the first book on the Warren Report, the one who I believe has brought to light most of what is now public about it, the one whose researches and writing are most extensive, I think it is appropriate that I be given the chance to reply. I propose using his article as a case study and to restrict myself to it. I think your lawyer-readers will be astounded at the truth.

The enclosed flyer lists my books and reproduces one of the large stories in the New York Times on my work.

I do hope you will extend this courtesy to me.

Sincerely,

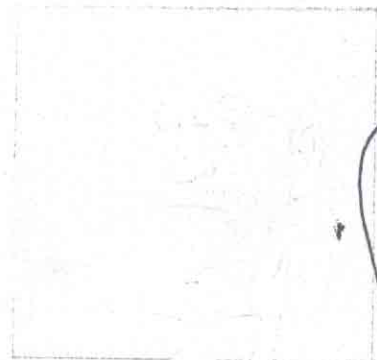
Harold Weisberg

Three Famous Legal Hoaxes: Part One

How

The Assassination of President Kennedy

by Professor Arthur L. Goodhart



There is an often-quoted Latin tag which reads "Quod homines credere volunt, id facile credunt" (what men wish to believe they easily believe). In his book on *The Tichborne Case* Lord Maughham, later Lord Chancellor, cited this to explain what he said were "beyond doubt the most celebrated and perhaps the most interesting English trials of the last one hundred years." I believe that this is equally true when applied to the Dreyfus Affair, and to the conspiracy stories of the Kennedy assassination written by Mark Lane and Edward Epstein.

I have described these as three famous hoaxes because in each of them a few irresponsible men succeeded in persuading a large number of people to accept stories which are unsupported by any credible evidence. (Professor Goodhart's accounts of the Tichborne and Dreyfus affairs will appear in a forthcoming issue of TRIAL.) People believed because they wanted to believe. The cases are English, French and American which shows that human nature tends to be the same wherever we may find it. As is fitting, the American hoax is the greatest.

Published with permission from The Record of the Association of the Bar of the City of New York. Professor Goodhart, Scholar-in-Residence at The Association of the Bar of the City of New York, is the former Master of University College, Oxford.

The Assassination of President Kennedy

The main facts relating to the assassination are so well known that it is only necessary to refer to them briefly. The Dealey Plaza is a large open square. At the north end is the seven-story Texas School Book Depository Building. On the west side, flanked by Elm Street, is a grassy knoll rising sharply about 35 to 50 feet to a picket fence, about 4 1/2 feet high, behind which there is a large open space crossed by railroad tracks and used in part as a car park. On the south side there is a large overpass or bridge, used for railroad lines, and beneath which Elm Street and two other roads converge and pass. On the east side of the Plaza there are a number of high buildings at right angle to the Book Depository building so that any noises coming from it are funneled to the south. At 12:35 p.m. the President's car passed the Book Building, and then turned sharp left down Elm Street. After it had gone about 200 feet a number of shots rang out. The President was wounded by one bullet and killed by another one. Governor Connally, who was sitting on the jump seat immediately in front of the President, was wounded by a bullet that struck him in the back, exited from the front of his chest, struck his wrist and ended in his thigh. The President and the Governor were rushed to the Parkland Hospital where the President died. An hour later a man named Oswald was arrested in a cinema after shooting one of his captors. Two days later Oswald was killed by Jack Ruby while being transferred from one jail to another.

A week later President Johnson appointed a commission of investigation under the Chairmanship of Chief Justice Warren. Its function was similar to that of a Grand Jury. It was to make a Report or a Presentment in which it was to state who, in its opinion, was responsible for the assassination, who had wounded the Governor, and whether the press and the officials

had acted properly. It was in no sense a trial court. If it had found that there was a fellow conspirator, it would have been necessary for a Grand Jury to indict him by name before he could be tried in a regular court on a charge of murder. This procedure could not, of course, be followed in Oswald's case because he was dead.

When the Commission began its hearings Mark Lane, a New York lawyer, who had practiced law for 12 years, demanded the right to appear as defense counsel for Oswald, having been appointed by Oswald's mother. The Commission refused on the ground that it was conducting an investigation and not a trial. It stated, however, that he could present to the Commission any relevant evidence that it ought to consider. He did so on two occasions. Of the 552 witnesses who gave evidence, he was the only one who asked for public hearings.

The basic conclusions in the Commission's Report were that (a) the shots which killed the President and wounded the Governor were fired from the sixth floor windows at the south-east corner of the Book Depository building, that (b) there is no credible evidence that the shots were fired from any other location, and that (c) the shots were fired by Lee Harvey Oswald. Lane's book is 477 pages long but it can be judged by its first 40 pages. That is enough. Lane disputes the first two conclusions on the ground that there was credible evidence that one or more shots were fired from the knoll, and that one or both of the shots that struck the President hit him from in front so that there must have been two assassins. Concerning Oswald's guilt, he argues at great length that Oswald could not have shot so accurately, that the real assassin was someone else masquerading as Oswald, that the rifle found in the building did not belong to Oswald, but if it did belong to Oswald it was planted there by the Dallas police. All the rest of the book dealing with Mrs. Odio, the fantastic story

(Continued on next page)

of Mrs. Perrin, the alleged meeting at the Carousel Club of Ruby, Tippit and Weissman, together with the suggested murder by the Dallas police of possible witnesses is used to create suspicion without a shred of evidence to support it.

Lane is more precise when he says that "to conclude that 'no credible evidence suggests' that shots came from any place other than the Book Depository is to ignore the evidence of Miss Mercer, Bowers, Price, Holland, Deputy Constable Weitzman and the railroad yardman who spoke with him." Later he adds James L. Simmons. Lane must have felt safe in assuming that hardly any of his American readers and none of his European ones would check his stories against the evidence that can be found in the 26 supplementary volumes published by the Commission.

Miss Mercer was one of a number of other witnesses who after the assassination thought that they had seen someone carry what might have been a concealed rifle. A green truck which "looked like it had 1 or 2 wheels on the curb" of Elm Street blocked her way. She saw one of the two men in the truck "take out from the truck what appeared to be a gun-case," and then walk "up the grassy slope." When this incident occurred "there were three policemen standing talking near a motorcycle on the bridge just west of me." In her affidavit Miss Mercer did not state at what time this happened, so Lane has added the words "early in the day" when reporting what she said. This was a necessary guess because later in the morning Elm Street was patrolled by the police and there were people on the sidewalk who would have seen a man carrying a gun-case, which thereafter disappeared never to be found. The gunman must therefore have been hanging about for nearly four hours before the assassination took place. In his recent interview in *Playboy* Lane alters the time by saying that it happened "Some time before the motorcade reached the area." Miss Mercer's reference to the three police officers she thought were on the bridge has been altered to read: "Dallas policemen were standing a short distance away, but they didn't move the truck on." The point of Lane's comment was that this was evidence that the Dallas police were involved in the conspiracy, but it loses even this point if we realize that the police would have had to walk off the bridge, climb a picket fence, and then descend the knoll before reaching the truck. Lane's final comment is: "I have not been able to find her (Miss Mercer). She's no longer in Dallas." It is unfortunate

that his efficient researchers have not been more successful. This must be the feeblest possible evidence on which to charge the Dallas police with complicity in the assassination.

The next witness, Lee Bowers, was a tower man operating the switches and signals controlling the movement of trains. He had an uninterrupted view of the area back of the picket fence from which Lane suggests that the shooting took place. Yet, Bowers never saw a man carrying a rifle or doing anything suspicious. He was, however, able to note that three cars which entered the area bore Goldwater campaign stickers, but the relevance of this is not apparent as it is not suggested that Senator Goldwater was involved in the assassination. When Bowers gave evidence before the Commission, he stated that he first realized that there was "some unusual occurrence" because of something he "could not identify." He could not have seen anything that was happening on Elm Street which is 30 to 40 feet below the picket fence, so that it was probably the noise of people climbing the slope of which he was first aware. Lane's main point is that Bowers was prepared to tell more to the Commission if he had not been interrupted by Joseph A. Ball, assistant Counsel to the Commission, who was questioning him. The record shows that Mr. Ball repeatedly asked Bowers whether he had more to say, so that there is not the least substance in this point. When Bowers was interviewed by Lane himself two years later he said: "I was just going to tell that at the time the shots were fired, I looked at the fence and saw a puff of smoke or flash of light, just when the shots were fired." This is nonsense because a puff of smoke and a flash of light cannot be confused. Bowers was killed in an automobile accident six months ago which Lane regards as suspicious, but Bowers could not have added anything to what he had already said.

The third witness was Mr. J. C. Price who was on the roof of the Terminal Annex Building across Dealey Plaza more than 150 yards from the picket fence. In his evidence to the Commission, he said: "I saw one man run towards the passenger cars on the railroad siding after the volley of shots. . . . He had something in his hand, I couldn't be sure but it may have been a headpiece." When, two years later, he was interviewed and filmed by Lane, his memory had improved. "He had on khaki trousers, a white shirt, and I think—I'm pretty sure that his hair was sandy and long. A man appearing about 145 pounds in weight and not too

tall. I would say five (feet), six or seven. He was bare headed, and he was running very fast, which gave me the suspicion that he was doing the shooting, but I could be mistaken." The man "was carrying something in his right hand which could have been a gun."

The meticulous precision of Price's second-thought evidence illustrates the legal maxim that an over-precise witness is usually telling an untruth.

The fourth witness was G. M. Holland, who was accompanied by a lawyer when he gave his evidence, and then had to retire to bed. He was on the overpass when the shots rang out. He had "no doubt about seeing a puff of smoke come out from under those trees." He also saw a station wagon backed up toward the fence, and it looked as if "someone stood up on the bumper to see over the fence." It is astonishing that neither Bowers nor anyone else noticed this because a man standing on a bumper and holding a rifle can hardly have failed to attract more attention than did a puff of smoke.

The fifth witness was Constable Seymour Weitzman. He said he "ran in a northwest direction and scaled a fence towards where we thought the shots came from." He met a railroad employee who said he thought that "he had seen somebody throw something through a bush." Weitzman himself was not impressed by this, and rushed over to the Book Building where he helped to find the assassination rifle.

Finally the reference to James L. Simmons is of special interest. He saw a motorcycle policeman drive up the grassy slope, jump off his motorcycle and then run up the rest of the hill. Simmons thought that he saw exhaust fumes of smoke. He advised that in his opinion the shots came from the direction of the Texas School Book Depository.

This is the whole of Lane's so-called direct evidence that there was another assassin shooting from the knoll. An English critic has summed this up by saying: "The whole of Lane's book is nothing but a puff of smoke."

Lane also argues that the fact that ninety persons thought that the shots came from the knoll is convincing evidence that they came from there, but his own star witness, Bowers, testified that he could not distinguish between shots coming from the Book Building and from the overpass, because "there is a reverberation which takes place from either location." Anyone who has been to the Grand Canyon or to St. Paul's Cathedral in

London knows that if you clap your hands together you cannot distinguish between that and the echo which returns to you. Many of Lane's witnesses said that all the shots came from the knoll, but this is obviously impossible as it has never been questioned that Governor Connally was hit in the back. Even Lane has not been able to invent a story to answer that.

Lane's final point would seem to be a conclusive one. It is that as the wound in the front of the President's neck was an entrance wound, the bullet must have been fired either from the knoll or from the overpass. He says that: "Every doctor at Dallas' Parkland Hospital who examined the wound in President Kennedy's throat and made a statement to the press on the day of the assassination said the throat wound was an entrance wound. That means the bullet entered from the front." You can judge Lane's book by this because it is deliberately misleading. When the President was brought into the operating room he had only a few minutes to live. In a last desperate effort to keep him from choking to death, Dr. Perry performed a tracheotomy operation,—he cut a slit in the throat so that a tube could be inserted. Neither he nor any other doctor examined the wound to determine whether it was an entrance or an exit wound because that was the last thing that concerned them. It is, of course, impossible to prove what the exact words were that Dr. Perry used when he was hurriedly interviewed by the press after he left the operating room, but he has repeated again and again that all he could have said was that the wound *might* have been an entrance wound. Lane makes a suggestion, because he does not dare to make a definite statement, that all the doctors at the Parkland Hospital have been induced to alter their evidence. This is an attack on the good faith of the medical profession. Unfortunately the Parkland doctors cannot sue him for libel because the recent Supreme Court decision in *The New York Times v. Sullivan* requires the proof of malice. Mr. Considine has said that Lane is "flying high on Kennedy's shroud" and Governor Connally has called him "a scavenger," but the desire to make money from a great, national tragedy does not constitute malice. The English law against such libels is far stricter: perhaps someone will test it some day.

Epstein's Book

Epstein's book has been praised as being "scholarly," but it is an unusual

type of scholarship because most of his more important notes are misleading, and his quotations are untrue. In his attack on the members of the Commission, he quotes verbatim from interviews he held with seven of the counsel in which they told him that the Commissioners "had no idea what was happening," "they did nothing," and that they were "nothing more than figureheads." When I read these comments it struck me as odd that lawyers should speak in these terms of a Commission for which they had worked. I made enquiries and I found that each of these quotations was repudiated as being false. Epstein had taken no written notes at the time, and he failed to check with the persons he had interviewed to see whether his quotations were accurate even when he had promised to do so.

What is worse is that throughout this book Epstein misquotes the evidence given by the witnesses so that his so-called conclusions of fact are invalid. This is true of the two basic statements on which his whole attack on the Report is founded.

His first statement is that "according to the established facts, it was physically impossible for the assassination rifle to have been fired twice during the time period when the President and Governor Connally were first wounded. Either both men were hit by the same bullet, or there were two assassins." As authority for this he quotes Mr. Redlich, a counsel to the Commission, as follows: "To say that the President and the Governor were hit by separate bullets is synonymous with saying that there were two assassins." This would seem to be conclusive until we find that Mr. Redlich has categorically repudiated that he ever said this. It is clear that Redlich preferred the one bullet theory, but this did not mean that he thought that the two bullet theory was "physically impossible." On this point Arnold Specter has said that "The events of the assassination just cannot be reduced to mathematical certainty by use of a stop watch."

The second "fact" as stated by Epstein was that "other evidence arose which showed that it was not possible that both men were hit by the same bullet." To support this he quoted from a supplemental Report made by the F.B.I. which said: "Medical examination of the President's body had revealed that the bullet which entered his back had penetrated to a distance of less than a finger length." This again would seem to be conclusive because, if the bullet only penetrated three inches, then it could not have gone on and struck the Governor. The only weak-

ness of Epstein's "fact" is that it is completely untrue. Dr. Humes, who performed the autopsy, testified to the Commission that "We were able to ascertain with absolute certainty that the bullet had passed by the apical portion of the right lung producing the injury which we mentioned." From there the bullet exited from the front of the President's neck. To explain this conflict Epstein suggested that the three surgeons were persuaded for some unknown reason to give false evidence, but is it not more probable that the F.B.I. made a slip in its Report as the F.B.I. itself acknowledged?

Epstein concludes that as Oswald could not have fired the two bullets that hit the President and the Governor, and as a single bullet could not have hit both of them, there must have been a second assassin. This is a self-evident syllogism which even a moderately intelligent schoolboy would be able to understand. Why then did the Commissioners fail to recognize it? This, he says, was due to its "dominant purpose" to conceal the facts. It was telling a "political truth" in its Report: in plain English it was, according to him, telling a lie.

Conclusion

1. Lane has made great play, especially in Europe, of the fact that the majority of the American people probably believe that there was a conspiracy to assassinate the President, but such a Gallup poll cannot prove anything except that the people often believe nonsense. In the Tichborne and Dreyfus cases, which I shall analyze in another issue of TRIAL, vast majorities of people believed what they wished to believe contrary to reason and a preponderance of the evidence. I am certain that in a short time most people will wonder why they ever believed in the Lane and Epstein conspiracy, unless District Attorney Garrison, now assisted by Lane, produces a miracle. It is not due to incompetence that in the past three years the American newspaper reporters have not been able to discover a scintilla of new evidence to prove a conspiracy. Lane pores hopefully over old photographs only to find that the clues that he thought he had discovered do not exist.

2. In all the three cases it was suggested that important witnesses had been murdered although there was not a tittle of evidence to support this. In the Tichborne case it was the Dowager Lady Tichborne, in the Dreyfus case it was Colonel

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GOODHART
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Sandherr, while in Lane's book and articles the number has steadily risen to over 23. It includes Miss Dorothy Kluggen who was thought to have died from natural causes in New York City but now seems to have been pursued by the Dallas police.

3. In all the three instances new stories were invented to bolster up a sagging case. In his *Playboy* interview Lane was asked, "If the President was really killed by a conspiracy, wouldn't the Kennedys be the first to raise a public outcry?" He answered that they did not do so for "a political motive." This is a libel. Then he said: "Hugh Trevor-Roper (the Oxford history professor) published a major attack on the Warren Commission Report in the London *Sunday Times*. He told me later he indirectly received a message from Senator Robert Kennedy saying, 'Keep up the good work!' I do not for a second believe that Senator Kennedy, for whom I have great respect, would have sent such a contemptible secret message. Either Trevor-Roper or Lane must take responsibility for a story that has received wide circulation abroad: as an Oxford man I hope that it is Lane who invented it.

4. In all the three cases an attempt to win by blackmail was tried and failed. The Tichborne claimant threatened to destroy the reputation of Kate Tichborne by saying that he had seduced her, but she had the courage to stand up to him. In the Dreyfus Affair every officer in the army was threatened with ruin if he expressed the view that Dreyfus was innocent. Lane has now in his *Playboy* interview threatened President Johnson with political ruin. He has said, "Of course, I don't believe President Johnson had anything to do with the assassination—but until all the facts are known, I cannot base my disbelief on the evidence. President Johnson has a personal and political stake in dispelling these rumors once and for all." I am certain that this hypocritical warning will not influence the President to appoint a new Commission.

Lane concludes his book with the words: "If the Commission covered itself with shame, it also reflected shame on the Federal Government." The history of other legal hoaxes has shown that sooner or later shame will descend on those who have borne false witness. I am confident that history will repeat itself again. □

MARRIAGE
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into the inheritance of certain familial diseases. If family counseling discloses the need for special tests or chromosomal studies, both parties agree to have them performed before the marriage so that they will be well informed beforehand and not be shocked later on.

Husband and wife agree to treat their marriage contract as a will, keeping it up to date by frequent discussion; e.g. on an annual basis to celebrate each wedding anniversary. Codicils can be added as new circumstances require. This re-examination will promote a feeling of partnership so often lacking in marriage.

By affixing their signatures below, the prospective bride and groom accept the conditions unequivocally, as stated and implied in their marriage contract, to take effect on the date of the ceremony; they solemnly agree to love, cherish and honor each other forever and promise to preserve their marriage to the very best of their ability.

This marriage contract will be signed before two witnesses and a notary public.

Dialogue

Some parties, having proceeded this far in discussing and planning their marriage, may decide to forget it and not go through with the wedding! This decision is certainly better than to be "left at the altar" or to have terrible misgivings while walking down the aisle. Parents should encourage their children to make a marriage contract for these reasons, lest they wind up paying for a marriage and then a divorce. This saving is the sublime purpose of the marriage contract.

The success of any marriage, just like that of any business, depends on the joy, happiness, health and financial assets of the partners. Partners seldom go into business without a formal contract; by the same token, two people contemplating marriage should make a prenuptial contract. Marriage has its price and so does divorce, but in either case, let the price be right! Couples already married can enter into a post-marriage contract if they so desire. Better late than never!

Finally, it must have been in the public interest that first preachers and later doctors participated in the preparation and performance of the marriage. It is about time for the lawyers to get into the act with a marriage contract in order to protect the participants, their children, and society. A lawyer may be needed eventually—why not in the beginning? □

**YOU CAN
GUARD AGAINST
HEART ATTACKS**

While science is searching for cures, take these precautions and reduce your risks of heart attack:



1. See your doctor periodically



2. Control high blood pressure



3. Don't smoke cigarettes



4. Eat foods low in saturated fat and cholesterol



5. Avoid overweight



6. Exercise regularly

**GIVE...
so more will live
HEART FUND**



American Trial
Lawyers Assn
(Fuchsberg)

Opportunity to
Respond to Growth