

## CONtroversy

### The Assassins

JOHN KAPLAN

The present furor over the assassination of President Kennedy and the work of the Warren Commission can best be understood as part of a four-stage controversy—of which we are now just entering the fourth stage. First, in 1964, just a few months after the assassination, Thomas G. Buchanan (*Who Killed Kennedy?*) and Joachim Joesten (*Oswald: Assassin or Fall Guy?*) put forth quite different theories which agreed that the President had been slain by a right-wing conspiracy. Although both books enjoyed large sales outside the United States—and to some extent in it—within the perspective of only three years they are so inept that it is embarrassing to read them over. Second came the Warren Commission *Report*, followed shortly by its twenty-six volumes of documentation. Inside the United States and to a markedly smaller extent outside it, the work of the Warren Commission and the lavish, indeed uncritical, praise of it quieted most doubts. Then about nine months ago as we reached the third stage, a second generation of unofficial inquiries into the assassination began appearing. These, although they differ enormously from each other, have had a single impact on the public mind and have at least to a substantial segment of the American people cast great doubt not only upon the Commission's conclusions but on the ability and integrity of the Commissioners themselves. Finally and only in the past few months, we have begun to hear not only more and more evidence to throw the Commission's conclusions into question but also,

for the first time, demands for action from those who have the power to compel action.

To understand how this has happened we must look carefully at stage three, the stage at which the first serious and specific criticisms of the Commission appeared. This stage consists essentially of five books: *Inquest*, by Edward J. Epstein; *Rush to Judgment*, by Mark Lane; *Whitewash*, by Harold Weisberg; *The Oswald Affair*, by Leo Sauvage; and *The Second Oswald*, by Richard H. Popkin. Although these books differ greatly in detail and in theses from one another, all share two characteristics. First, they rely primarily on the Warren Commission's own testimony and exhibits; and second, they agree that the Warren Commission, in evaluating even its own evidence, did at very best an incompetent job, and at worst, something that can only darkly be hinted at.

We must therefore draw a sharp distinction between the *Report* of the Warren Commission and its twenty-six volumes of supporting evidence. Although the *Report* itself comes under criticism on almost every conceivable ground, most of the ammunition for this attack is contained in the evidence that the Commission itself published. It has only rarely been argued that the stenographers did not take down what the witnesses really said, that the physical exhibits were altered, or that the expert witnesses lied. And, equally significant, no one has come up with any witnesses of importance whose statements were not before the Commission either through testimony or through interview reports. This is not to say that the authors of the third stage afford equal credence to the testimony that the Commission accepted, or view the weight of the evidence as did the Commission. Quite

© JOHN KAPLAN is a professor of law at Stanford University. This is his first appearance in the SCHOLAR.

the contrary. In each of the books, there is a rejection of those witnesses whom the Commission apparently believed, an acceptance of those whom the Commission discounted and the drawing of entirely different conclusions from the same evidence.

Nor is it merely whim that made each of these books accept witnesses and theories that the Commission had rejected. Each author argues essentially that his account is unbiased and therefore completely rational and that the Commission was more interested in "political truth" than in the actual facts of the assassination. The theory is that the most politically settling thing the country could hear was that a lone assassin, unconnected with any power group and completely without political motive, had committed a hopelessly irrational act and had then died at the hands of someone equally irrational. Since that was so, it is argued that no great dishonesty need be imputed to the Commission, but rather only a subconscious straining to find what it wished to find. Indeed, this theme is repeated so often throughout these books that one almost accepts it as an obvious truth. When one thinks about it, however, it is hard to visualize a set of facts about the assassination which if published would afford no consolation to at least one of two such polar men as Earl Warren and J. Edgar Hoover.

Moreover, although it sounds much nicer to say that the Commission need only have acted out its subconscious desires in order to have made the gross errors it is accused of, one would have to distort the facts alleged in all of the books to argue that this would be a possibility. For their main thesis to have any validity at all, all of the books—with the possible exception of Epstein's—must imply that many people, including the Commissioners themselves, had deliberately lied, suppressed evidence, and concealed the truth.

There are, of course, certain problems with the conspiracy-to-suppress-the-truth theory. The fact is that the Commission did relatively little of the work of collecting and analyzing the facts. In common with many other governmental commissions, the Warren Commission was chosen

for its balance and reputation for integrity, but even if both of these were in fact a sham, the charges of fraud would be meaningless unless the same were true of the staff—composed primarily of young honor graduates of the nation's leading law schools.

The argument that the Commission subconsciously suppressed the truth has, aside from the flat allegation of motive, two main prongs. The first is that the Commission got off on the wrong track by regarding Lee Harvey Oswald from the beginning of the hearings as the principal—and indeed the only—suspect. Before one can appreciate the justice of this complaint, one should consider the physical evidence that greeted the staff members of the Commission when they began their work. First, the President was killed by a series of shots, at least two of which, from the wounds they caused and the marks on his limousine, appeared to have been fired from above and from the rear, the general location of the upper storeys of the Texas School Book Depository. Secondly, in this Depository a rifle was found that not only contained on it a palm print of Lee Harvey Oswald, an employee of the Depository, but that was traced by handwriting analysis as having been purchased by Oswald under an assumed name several months before. Moreover, a bullet in almost perfect condition (the famous "Exhibit 399") was recovered from the stretcher of Governor Connally, another occupant of the car, shortly after the shootings, and was identified positively as having come from Oswald's rifle; and of the fragments of a bullet (which were recovered from the Presidential limousine), two were conclusively identified as having come from Oswald's rifle while the rest—although not conclusively identified—were consistent with this origin. Even if this were the only evidence against Oswald, it would certainly justify a jury verdict against him. Cases have turned on physical evidence no better than this—for instance, the identification of a typewriter rather than a gun transmuted the testimony of a Whitaker Chambers into a case strong enough to convict Alger Hiss, a far more attractive defendant than Lee Oswald.

But the fact that Oswald's rifle was used

#### THE ASSASSINS

in the killing is not the only physical evidence connecting Oswald with the crime. His subsequent behavior would be hard to explain to a jury on any other theory. Within forty-five minutes of the killing of the President, a Dallas patrolman, J. D. Tippit, was shot to death, and a few minutes thereafter Lee Oswald was arrested in a moving picture theater nearby. A revolver was found on his person, and, while the barrel was too large to allow conclusive identification of the bullets that killed Tippit, several shells were found at the site of the Tippit killing that were unambiguously identified as having come from this gun. One need not assert that these facts prove Oswald's guilt beyond any possible doubt, or even—as is indisputably true—that any prosecutor having such a hard core of evidence would sleep quite comfortably before the trial. Actually, all that need be said is that this evidence gave the Commission a likely and proper starting point. An investigative body, like a human mind, cannot collect facts endlessly without a working hypothesis to give direction to the investigation and to separate that which is relevant from that which is not. This was far from improper; indeed it would seem that the Commission used the most rational method of inquiry by starting with a working hypothesis that Oswald had a hand in the killing and attempting from there to find out, first, whether this was so; second, whether, if so, there was anyone who aided or conspired with him; and third, whether Jack Ruby had any connection with Oswald or the assassination.

The second prong of the argument, that the truth was unintentionally suppressed by the Commission, is much more complicated. This argument is that the Commission should have treated the inquiry as at least in part a trial of Lee Oswald and afforded him the benefits of the adversary system by appointing a lawyer to cross-examine witnesses and protect his interests. (The Commission did appoint a lawyer to "represent" Oswald but neither this attorney—the then President of the American Bar Association—nor the Commission took the appointment in any way seriously.) It is argued that not only was this unfair to

Oswald, but it contributed to the alleged unreliability of the Commission's conclusions. It should be clear, however, that although a criminal trial of Lee Oswald might have been the best method of determining Oswald's guilt, it would have been one of the worst methods of deciding whether Oswald, if guilty, had been part of a conspiracy. For a host of reasons, evidence bearing on the question of a conspiracy would have been ruled inadmissible in such a prosecution, even if the parties felt that they were tactically better off by producing it. Furthermore, it is really quite unlikely that either side would have tried. Oswald certainly would not have made his case better by showing that there was or was not a conspiracy, and while the government perhaps might have been marginally benefited by showing there was a conspiracy if it had had such evidence, the chances of confusing the jury and leading them away from the basic issue—Oswald's guilt—might very well have made such a course inadvisable to any confident prosecutor.

The lack of counsel for Oswald on the issue of his own guilt is another point entirely. Here, I part company with the Commission and think that a competent, honest and dedicated staff working solely to show that Oswald was innocent would have improved the reliability of the Commission's determination. On the other hand, it was hardly outrageous of the Commission to place the burden both of looking for exculpatory evidence and of cross-examining witnesses on its whole staff—which did in fact reveal the unreliability of a great deal of evidence that might otherwise have been adduced against Oswald. Had Oswald been alive, he, presumably knowing the facts, would have been most competent to advise his counsel how to proceed. But since Oswald was dead by the time the Commission was called into being, his lawyer would have been put in the position of the famous advocate who is reputed to have defended a rape case by arguing first that the man never did it, and second that the girl consented. The facts brought before the Warren Commission might support arguments, albeit very weak ones, that Oswald did not commit the crime, for, say, eight mutually

exclusive reasons. Presumably, only Oswald would have known whether any of these reasons was the true one—and hence probably the one most likely of success—but any counsel who had tried seriously to put forth all of the inconsistent defenses would only have succeeded in burying any valid ones beneath many that turned out to be spurious. Moreover, any lawyer for Oswald would, after the fact, have been open to the charge, "Why didn't you show this and so?" The answer, of course, might have been "Because if I did, my witness could have been destroyed completely," or "thus and so was obviously not true." These perhaps might be good answers, but coming from the Commission's defenders they would not prove sufficient and it is unlikely that they would prove more so if they came from any "defense" lawyer. The fact is that the death of Oswald made the work of the Commission vastly more difficult. If Oswald had been alive his failure to point out any possible theories of innocence would be taken as an admission that there were no valid ones and his refusal to testify or provide any evidence—the highly artificial command of the Fifth Amendment notwithstanding—would be taken as an effort to cover up guilt. With Oswald dead, however, the Commission was left to refute every possible argument that Oswald might have made—an almost endless task.

Although the five books of the third stage rely in part on general criticisms of the Commission to make plausible their different weighing of the facts, it is on their discussions of specific items of evidence that they must stand or fall.

Epstein's book, for this reason, is the best with which to begin. Its exposition of the facts is the shortest; it is the clearest and least polemical; finally, it hits at what is probably the most difficult to justify of the Commission's major conclusions. Epstein does not deny that Oswald took part in the assassination of President Kennedy. The thrust of his work is that the Commission, in concluding that there was no reason to believe that Oswald had had assistance, had accepted a hypothesis that on its own evidence was a most unlikely one and rejected persuasive evidence that Oswald must have

had aid in firing at President Kennedy.

Although the evidence against Oswald was ample, the Commission was, of course, most interested in determining whether he was acting in concert with others. While this task was central to the Commission's role, a little thought reveals just how difficult was the problem that the Commission faced. If the Commission could find enough evidence of a conspiracy, it could then prove—or at least assert with confidence—that one existed. On the other hand, if it could find no evidence of one, what did that prove? How could one ever prove that Oswald had not been part of a conspiracy? It was always possible that somebody had telephoned the night before and encouraged him; someone might have been waiting farther along the President's route prepared to fire if Oswald missed; and it is even possible that Oswald fired after—or even at the same time as—another attempt, which failed so completely that it did not even cause a disturbance. Certainly, the failure of the Commission to find evidence of any of these things was only very weak proof that they did not happen. Indeed, the nature of the situation was such that a reasonable possibility that Oswald had had help would have to remain, regardless of how careful and competent was the investigation, which found no evidence of a conspiracy.

On the other hand, one thing the Commission might be able to do was to prove whether it was possible for Oswald to have fired the shots himself. For this reason it became imperative to examine more closely the sequence of shots that struck the President and Governor Connally. In this task, the Commission was aided enormously by moving picture photographs taken by a clothing manufacturer named Abraham Zapruder. In determining the timing of the fatal volley the Commission began with the likelihood—not disputed by Epstein—that there were three shots. The Commission reasoned that, inasmuch as Oswald's view of the President would have been blocked between Frames 166 and 210 on Zapruder's film by the foliage from a large tree, the first shot must have been fired either before Frame 166 or after Frame 210. The elimi-

#### THE ASSASSINS

nation of the period before Frame 166 was fairly simple. If the President had been shot from Oswald's vantage before Frame 166, his entrance wound would have been in the front rather than the rear. Moreover, the President reacted to the wound around Frame 225, and his reaction time would have been inordinately slow—over three seconds—had he been struck at Frame 166. The photographs not only fixed the President's first wound at somewhere between Frames 210 and 225 (because Zapruder's view was blocked briefly by a sign, the President disappeared from the film at Frame 205 and did not reappear until Frame 225—at which time he seemed to have been hit), they also showed that by Frame 235 Governor Connally had also been hit and that at Frame 313 the fatal bullet struck the President's head.

While one might, at first, think that the first shot hit the President in the neck, the second hit Governor Connally, and the third struck the President's head, another fact made this reconstruction impossible. It was demonstrated that Oswald's rifle could not physically be reloaded and fired in less than 2.3 seconds, or, in terms of Zapruder's film speed of 18.3 frames per second, 42 frames. As a result, even if the President had been hit at Frame 210—the earliest point at which Oswald had had a clear shot—it would have been impossible for another bullet from Oswald's gun to have hit Governor Connally at Frame 235. The Commission therefore adopted what has since become known as the "one-bullet" theory and concluded that the same bullet first passed through the President's neck and then struck Governor Connally. Moreover, since one bullet was fragmented when it struck the President's head and there was no sign of any other bullet mark on the limousine, the Commission concluded that one of the shots (most likely the second) must have missed the Presidential car completely. With these two bullets therefore accounted for, Exhibit 399 (the bullet found on Governor Connally's stretcher) had to be the "one bullet" that had struck both President Kennedy and Governor Connally. To reach this conclusion, the Commission had to answer three major ques-

tions: first, is the one-bullet theory refuted by Governor Connally's testimony that he heard the first shot and had time to turn around before being hit by what he was certain must have been the second shot; secondly, could one bullet have inflicted the wound on President Kennedy's neck and the wounds found on Governor Connally—in his rib cage (front and back), his wrist and his thigh; and finally, if one bullet could have done all this damage, could it have remained in the almost perfect condition of Exhibit 399?

The Commission felt that it had satisfactorily answered each of these questions. Governor Connally's testimony could be explained by the fact that often there is a perceptible lag (here the lag would have had to be on the order of one-half of a second) between the time one is struck by a bullet and the time one realizes this. And although the photographic evidence did not show any obvious reaction by the Governor immediately after he was presumably hit, this too could be explained by a delayed reaction. As to the other two questions, the Commission felt that the physical evidence and the expert testimony before it fully supported its conclusion.

It is in this context that Epstein's argument can be understood. First, he argues that unless the Commission's one-bullet theory was correct, there would have to have been another assassin, since Oswald himself clearly could not have fired two shots so close together as the ones that struck President Kennedy and Governor Connally.

Actually, of course, this is but one possibility; another and perhaps a more likely one would have been that Oswald indeed had fired his first shot before Frame 210 while the foliage obscured his view (it was possible to see, although not well, through that foliage). This would then account for Governor Connally's statement that he heard the first shot before he was hit. In that case, the bullet that was Exhibit 399 might be either the first bullet that struck President Kennedy (and then somehow did no further damage either to itself or to the car) or the second bullet that wounded Governor Connally. Al-

though for various reasons each of these possibilities is unlikely, neither seems more so than Epstein's alternative.

Despite his having leaped to the most sensational of the conclusions that follow from his own arguments, Epstein's attack upon the one-bullet theory deserves careful attention. It has two independent parts, either of which, if accepted, would be enough to demolish that theory. The first, and by far the most discussed, involves the nature of the wounds on President Kennedy's body. According to the Commission, the first bullet to strike the President hit him in the back of the neck-shoulder area and continued in a downward path, exiting from his neck below the Adam's apple and then continuing downward, striking Governor Connally who was sitting in the jump seat ahead of the President. This conclusion, however, had not been obvious at the beginning. The doctors at Parkland Hospital where the President was first brought noticed a wound on his throat below the necktie line. They were concerned solely with prolonging the President's life, and, since they did not turn him over, they failed to note the wound in the back of his neck-shoulder area. As a result, they concluded that the visible wound "might be" an entrance wound. They then cut through this wound as part of a tracheotomy, obscuring it completely. Later, when the body was flown to Washington for autopsy, the autopsy surgeons noted what they thought was clearly an entrance wound in the back neck-shoulder area. They could find no exit wound, however, and it was only when, the next morning, they talked to the doctors who had treated the President at Parkland Hospital in Dallas that the autopsy surgeons found out about the obscured wound in the front of the President's neck. Then it all became clear to them. The wound in the back, a bruise they had noted on the lung where it extends into the neck, and the obscured wound were all on a straight line extending slightly downward. From this they concluded that a bullet had been fired from above and had passed downward through the President's neck and out at an angle that, the Commission concluded, would

have enabled it to strike Governor Connally in the rib cage, wrist and thigh—all of these wounds being located on a straight line.

Epstein's argument with reference to the President's wounds is basically a twofold attack on this reconstruction. He argues, first, that the bullet that struck the President did not go through his body, and, secondly, that the wound on the President's back was located much too low for the bullet to have described the path ascribed to it by the Commission. In support of his first attack, Epstein cites an F.B.I. report made at the time of the autopsy that stated, "There was no point of exit and the bullet was not in the body." A supplementary F.B.I. report dated January 13th stated, "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."

Certainly, if this were true, it would demolish the one-bullet theory. Epstein states:

Clearly the FBI summary and supplemental reports and the Warren Report give diametrically opposed findings regarding the President's autopsy. This presents a dilemma; on the one hand if the FBI reports distorted such a basic fact of the assassination, doubt is cast upon the FBI's entire investigation. . .

Actually, this is far from clear. The fact is that there are many errors in the F.B.I. reports, as, for that matter, there would be in any large-scale investigation by any agency. To agree that an agency is not infallible—which the F.B.I. most certainly is not—is something less than to "cast doubt" upon its entire investigation. The explanation that several of the Commission staff members have given is that an F.B.I. agent left before the autopsy was complete and telephoned in his report while the doctors were unable to determine the bullet's path through the President's body. (Actually, even this explanation is not necessary—until they spoke to the Parkland Hospital doctors the next morning, the autopsy surgeons did think the bullet had not passed through the President's neck.) Nor is the fact that this statement was not corrected in the supplemental report, even though

#### THE ASSASSINS

the F.B.I. had the autopsy report by that time, grounds to imply, as Mr. Epstein does, that the infallible F.B.I. was sticking to its guns despite a false autopsy report. First of all, anyone who has dealt with a government agency knows (and I, personally, have seen it in F.B.I. reports) how information from a previous letter or report gets included in subsequent documents long after having been shown to be wrong. Furthermore, even Epstein's theory involves fallibility on the part of the F.B.I. since the proper course would have been to discuss and point out the error in the autopsy report. Finally, the assumption that the F.B.I. does and did make errors does not, as does Mr. Epstein's theory, involve perjury on the part of at least the three autopsy surgeons (one of whom, Colonel Finck, did the one-bullet theory considerable damage in an entirely different connection). Not only did these doctors have no reason to lie, but, more significant perhaps, they could have then had no possible way to know of the evidence disclosed by the Zapruder films and hence no possible knowledge that their testimony and report would prove so crucial.

The second of Epstein's points on the President's neck wounds is that the downward course of the bullet as determined by the autopsy surgeons was impossible because the bullet wound in the President's back was lower than that in his throat. If this were true, it would mean that the bullet could not have struck Governor Connally so as to cause his wounds, which clearly were made by a bullet following a downward path (the Commission calculated the angle at around eighteen degrees). Again, Epstein's case is based primarily on the reports of the investigatory agencies rather than upon those of the autopsy surgeons. Thus the Secret Service and F.B.I. reports, respectively, state that the wound was in Kennedy's "back, about six inches below the neckline," and "about four inches down from the right shoulder." Moreover, and Epstein regards this as crucial, the F.B.I. reports show that the hole in the back of the President's jacket was five and three-eighths inches below the top of the collar and that the bullet hole in the back

of his shirt was five and three-quarters inches below the top of the collar. From this, Epstein concludes that the actual location of the wound was "obviously inconsistent with the position of the entrance wound" according to the Commission. At first glance, anyone not familiar with anatomy would think this was so. It just so happens, however, that in humans the front of the neck extends considerably lower than the back of the neck—an anatomical fact which the reader is strongly urged to verify. In fact, if one raises one's right arm slightly, as if to wave at a crowd, as the President was doing, one can discover that a point five and three-quarters inches below the top of the collar is slightly above a point on the neck just below the Adam's apple—where the exit wound was. If one has an exceptionally powerful shoulder development, as did President Kennedy, and allows for about an inch of "riding up" by the shirt and jacket, as one would expect on one who wears a brace, it is not unreasonable to assume the wound would be approximately two inches higher, which would account for the seventeen and two-thirds degree downward movement that the autopsy surgeons found. Interestingly enough, the autopsy surgeons located the point at which the wound was—"fourteen centimeters below the top of the right mastoid process"—a place (depending on the length of the President's neck) approximately two inches higher than the position of Kennedy's exit wound. It is hard to decide which is more astounding—the fact that Epstein could have written the book without bothering to measure or the fact that this elementary point slipped by his reviewers.

The second major prong of Epstein's assault upon the one-bullet theory concerns, not the President's wounds, but rather the condition of the putative bullet. Not only is this argument more difficult to answer than the first, but the unsoundness of Epstein's arguments on the President's wounds has perhaps deprived this issue of the full attention it deserves. Epstein's argument here is simply that the "one bullet," Exhibit 999, is in too good condition to have done all of the damage to Governor

Connally's rib cage, his wrist and his thigh. Indeed, Colonel Finck, the only witness to be asked specifically whether Exhibit 399 could have caused Connally's wrist wound, answered, "No, for the reason that there are too many bullet fragments described in the wrist." Nonetheless, although the Commission's investigation would certainly have been more satisfactory if it had probed further into this testimony, there are reasons to believe that Exhibit 399 could have done just the damage that the Colonel denied.

First of all, Colonel Finck had not seen Governor Connally's wounds and the description that he relied upon makes it quite clear that the fragments found in Governor Connally's wrist were minute. (Another witness, Dr. Gregory, who did actually treat Governor Connally's wrist, testified that the missile that struck Governor Connally's wrist "could be virtually intact, insofar as mass was concerned.")

Second, the bullet that first struck Governor Connally in the back of the rib cage made a most unusual wound. As one of Connally's physicians described it:

The wound entrance was an elliptical wound. In other words, it had a long diameter and a short diameter. It did not have the appearance of a wound caused by a high velocity bullet that had not struck anything else.

This kind of wound is typical of that made by a bullet that has already hit another object and is tumbling.

Third, there was expert testimony that had a bullet struck Governor Connally's wrist without having gone through other objects, it would have done far more damage than it did.

Fourth, Exhibit 399 was damaged only on the very rear end, as though it had hit bone rear end first—a condition of course consistent with the tumbling behavior of the bullet that struck Governor Connally. The refusal, then, to accept the one-bullet theory would have forced the Commission to explain what the bullet that struck Governor Connally had struck first to set it tumbling; what, other than Governor Connally's rib and wrist, Exhibit 399 could have struck rear end first; and finally what

happened to the bullet that exited from the President's neck still moving fast enough to damage both itself and anything that it struck.

The conclusion is by no means an obvious one, especially since the crucial testimony—that of Governor Connally's doctors—contains many inconsistencies, some of which point away from the one-bullet theory. On the other hand, when, in addition to raising all these questions, the most significant of the theories alternative to the one-bullet theory presupposed a second assassin firing from the same area as Lee Harvey Oswald but who, unlike Oswald, left no trace at all, it was hardly unreasonable for the Commission to decide that the probabilities favored the one-bullet theory.

Although, of the two major substantive points in Epstein's book, the first is almost certainly wrong and the second quite dubious, Epstein spends most of his effort on what seems a useful and probably is a reasonably accurate description of the Warren Commission's procedures. Epstein's own treatment of the substantive issues, as well as the fact that many members of the Commission's staff have charged him with flagrant misquotation, forces one to withhold judgment on what might be the more significant aspect of Epstein's work.

One need not, however, withhold judgment on the most interesting—and certainly the most publicized and profitable—of the revisionist works, Mark Lane's *Rush to Judgment*. It is a wide-ranging attack on almost every conclusion of the Warren Commission, and at least initially leaves the reader thinking that if only a tenth of Lane's assertions are true, he has more than made his case that the Warren Commission's performance is a major national disgrace. The problem is that if the reader (as, of course, few readers do) begins to check the assertions in *Rush to Judgment* against the evidence, he will find in many instances that he has been expertly gulled. In short, nowhere near a tenth of Lane's relevant assertions and implications stand up to careful scrutiny.

Not that the book is an easy one to demolish. The enormous range of his attacks



#### THE ASSASSINS

on the Commission has allowed Mr. Lane to profit not only by the reluctance of book reviewers to dig deeply into the evidence, but also, perhaps, by the decision of some periodicals not to give the book the respectability that would come of discussing it in detail. Moreover, a major factor that makes Lane's book especially difficult to review is that he presents no coherent theory as to the Presidential assassination. Rather he presents a long string of weakly connected points without any one crucial point at which his theory can be destroyed. Proving his points insubstantial, therefore, is almost an endless task and the complete demolishing of one point still leaves people—as, I regret to say, it will leave many readers of this piece—demanding why this or that point has not been refuted.

Lane's technique can best be appreciated by examining his effort to prove that the shots fired at the Presidential limousine came not from the sixth floor of the Texas School Book Depository where Oswald's rifle was found, but from a grassy knoll in front of and to the right of the Presidential car. Essentially, his argument makes two points: one, that the noise of shots appeared to come from the area of the knoll rather than from the Book Depository, and second, that a puff of smoke was seen rising from the area of the knoll at about the time the President was shot. Indeed, he is able to make his case with a certain amount of persuasiveness—but only at the cost of completely distorting the evidence. On the issue of where the noise came from, Lane convinces us that many (but by no means the preponderance, he would imply) of those at the site of the assassination thought that the shots came from near the grassy knoll. Lane does not, however, bother setting out the highly relevant testimony of a railroad worker named Lee Bowers, Jr., although he relies on that witness for other points. Bowers testified that because of an echo in the area it was almost impossible to tell whether a noise came from the overpass near the grassy knoll or from the Depository building. Bowers had noted this before the assassination when the workers near the knoll could not tell whether noises originating in some work

being done on the Depository building came from that building or from the overpass nearby. Moreover, although there were certainly many witnesses who thought that the shots came from the grassy knoll area, Lane is not content merely with them. He quotes his own interview with witness James L. Simmons in which Simmons says that the sound of shots came from "the left and in front of us toward the wooden fence," without mentioning the fact that some eighteen months earlier Simmons had testified before the Warren Commission that he had the impression the shots came from the Book Depository.

Lane's argument as to the smoke over the knoll is equally interesting. Actually, there was no dispute about this; there was a puff above the knoll—one witness described it as "of smoke or steam," another said it was "vapor eight feet above the ground." The Commission made no attempt to deny this. Lane's sleight of hand is to concentrate on the presence of the smoke and take as obvious the assumption that the puff came from a gun fired at the President. Thus he quotes witness Clemon E. Johnson as saying that he saw white smoke but does not go further to note Johnson's statement that he "felt that this smoke came from a motorcycle abandoned near the spot by a Dallas policeman." Moreover, unless the assassin fired a sixteenth-century arquebus it is hard to see how a shot fired at the President could have made as much smoke as Lane convinces us was visible. Then too, the area was teeming with people; and although it is conceivable that a man with a rifle might not have been seen, not only was this most unlikely but—perhaps more significantly—it was so dangerous that it is hard to believe any assassin with even minimum rationality would choose such a spot. Finally, and of course most important, the physical evidence indicates beyond any reasonable doubt that the two shots that struck those in the Presidential limousine were fired from the rear and from above and that there is no physical trace of any other would-be assassin.

The question of the smoke over the grassy knoll indicates another of Lane's

techniques. He has excoriated the Commission both in his book and in innumerable public appearances for not calling witnesses who could have testified that a puff of smoke was seen over the grassy knoll. The implication is, first, that in this matter the Commission did at best a slovenly job in not calling those witnesses, (whose statements to the F.B.I. were before the Commission) and, second, that this testimony would (or could) have changed the Commission's conclusions. The obvious untruth of the second implication shows why the first is also false.

But going through Lane's book piece by piece is so time- and space-consuming that, after this brief taste of his technique, it is more appropriate merely to classify his methods of distortion.

First, there is the rank distortion of a witness's testimony. Thus, to bolster his argument that the shots came from the grassy knoll area, Lane discusses the testimony of Lee Bowers:

He told Commission counsel that "something occurred in this particular spot which was out of the ordinary, which attracted my eye for some reason, which I could not identify."

Q. "You couldn't describe it?"

Bowers: "Nothing that I could pinpoint as having happened that—"

Before Bowers could conclude this most important sentence, the Commission lawyer interrupted with an unrelated question. A little later Bowers was excused as a witness, leaving unexplained what it was in the area behind the fence that caught his eye at the moment the President was shot.

In a subsequent interview with me which was filmed and tape-recorded, however, Bowers offered more detailed information on this important point.

Bowers: At the time of the shooting, in the vicinity of where the two men I have described were, there was a flash of light or, as far as I am concerned, something I could not identify, but there was something which occurred which caught my eye in this immediate area on the embankment. Now, what this was, I could not state at that time and at this time I could not identify it, other than there was some unusual occurrence—a flash of light or smoke or something which caused me to feel like something out of the ordinary had occurred there.

Lane: In reading your testimony, Mr. Bowers, it appears that just as you were about to make that statement, you were interrupted in the middle of the sentence by the Commission counsel, who then went into another area.  
Bowers: Well, that's correct. I mean, I was simply trying to answer his questions, and he seemed to be satisfied with the answer to that one and did not care for me to elaborate.

Lane's implication that the counsel for the Commission wished to avoid this revelation is typical of his approach. The dialogue just before the testimony which Lane quotes, however, casts a certain light upon what actually happened before the Commission.

Mr. Ball: "When you said there was a commotion, what do you mean by that? What did it look like to you when you were looking at the commotion?"

Bowers: "I am just unable to describe rather than it was something out of the ordinary, a sort of milling around, but something occurred in this particular spot which was out of the ordinary, which attracted my eye for some reason, which I could not identify."

Moreover, eight questions earlier, the question and answer went as follows:

Ball: "Did you see any activity in this high ground above Elm after the shot?"

Bowers: "At the time of the shooting there seemed to be some commotion, and immediately following there was a motorcycle policeman who shot nearly all of the way to the top of the incline."

Finally, Lane does not set out the very end of Bowers' testimony—which hardly supports his view that the Commission was trying to hide something.

Ball: "Is there anything that you told me that I haven't asked you about you can think of?"

Bowers: "Nothing that I recall."

Ball: "You have told me all that you know about this, haven't you?"

Bowers: "Yes, I believe that I have related everything which I have told the city police, and also told to the F.B.I."

The second technique Lane uses is the careful and factual presentation of one side of a case without indicating, in any way, that powerful reasons exist for reject-

#### THE ASSASSINS

ing the conclusion to which this side might point. Probably the best example of this technique is his discussion of the palm print on Oswald's rifle.

When Oswald's rifle was first sent from Dallas to the F.B.I. for examination, it contained a number of notations as to possible fingerprints—none of which could positively be identified as Oswald's. Some days later, when Oswald's death had mooted Texas' case against him, all of the miscellaneous evidence against him not previously sent for examination was forwarded to the F.B.I. Then it was discovered that included in this batch, among the miscellaneous documents and pictures, was a piece of scotch tape with a notation that on it was a palm print lifted from the rifle. This palm print turned out to be the only print on the weapon positively identifiable as Oswald's. The Dallas police officer, J. C. Day, who lifted the print stated that he had not bothered noting this when the rifle was first sent to Washington because he thought that enough of the lifted print was still identifiable on the weapon—an assertion which Lane calls "incredible" in view of the fact that the F.B.I. expert testified that no such print remained. With this evidence and the statement by Dallas Police Chief Curry that

If we can put his prints on the rifle, why, it'll certainly connect him with the rifle, and if we can establish that this is the rifle that killed the President, why. . .

Lane has a field day. Indeed he makes a very persuasive case for the proposition that the "lifted" print was an afterthought by the Dallas police after the rifle had been sent to Washington, and that Oswald's prints had never been on the gun at all. Unfortunately, Lane does not choose to mention the only remaining piece of evidence on the issue. In response to a request from the Commission, the F.B.I. fingerprint expert reexamined the lifted palm print and was able to determine that the interruptions in the print caused by the nicks and scratches in the surface of the material from which the print had been lifted exactly matched the nicks and scratches in Oswald's gun—thus proving

beyond question that Oswald's palm print had indeed been lifted from the rifle.

Lane's use of this technique does not always rise even to the level of one-sided truth. Thus, to make his case that the bullet that struck the President's neck was fired from the front, not from the rear, Lane not only relies heavily upon the original impression of the doctors at Parkland Hospital, but he badly distorts their views as well. Lane quotes out of context to make it appear that they thought the wound was an entrance wound because of something in its appearance rather than merely because it was the only wound they saw. Far more important than this, however, is Lane's failure to mention what is probably the crucial and irrefutable evidence on the issue of which direction the shots came from—the President's clothing. Lane does not bother telling us that the fibers around the bullet hole both in the back of the President's jacket and in the back of his shirt were pointed inward, while the fibers on the front of his collar were pushed outward.

Lane's third basic technique is to set himself up as his own expert witness—although not of course under oath. He states that a picture taken at the time of the assassination shows Jack Ruby in the crowd, not in the offices of the Dallas *Morning News*, where the Commission placed him. To this type of assertion one can only say that as close an examination of the picture as I could make did not reveal to me that this was Jack Ruby (indeed, I would say quite the contrary) and I am certain that I am as familiar with Jack Ruby's picture as is Mr. Lane. Lane, however, is not satisfied with accusing the Commission of ignoring Ruby's presence; he has built upon his identification to accuse the Commission of cropping the picture for the purpose of hiding the refutation of its own version. In fact, as pointed out by Wesley Liebeler, a professor at the U.C.L.A. Law School and probably the Commission's most articulate defender, all that happened was that the edge of the picture was removed because the Commission was using it solely to show the action at its center and because the edge

showing "Ruby" was under the cardboard holder of the thirty-five millimeter slide. Moreover, as Liebler points out, in deciding whether the Commission was trying to suppress this evidence, it is relevant to consider that one can get the slide in question, plus several others, by sending about two dollars to Phil Willis Enterprises, Post Office Box 17266, Dallas.

The technique of acting as one's own expert witness can be combined with the previously mentioned technique of leaving out crucial evidence, as Lane does when he insists that the famous picture of Oswald carrying a rifle (Exhibit 133(a)) is a composite of which only the head was Oswald's. Lane says he is led to this conclusion by his own observations of the shadows on the face and on the body. The reader can examine the picture for himself, but it does appear to me that the picture was a composite. Of course, on this issue, I would rely neither on my own nor on Lane's observations. There is relevant expert testimony, which Lane does not mention. An F.B.I. photographic expert testified before the Commission that his microscopic examination of the picture convinced him that it was not a composite. Moreover, although the negative of the photograph Lane attacks was not discovered, the police found among Oswald's belongings the negative of another picture (Exhibit 133(b)) which also showed Oswald holding a rifle. An examination of this picture indicates that it was taken at the same time as its more famous companion (Oswald is wearing the same clothing and his hair is combed in exactly the same way in both photographs) and as to this picture the evidence is overwhelming. The photographic expert testified that an examination of this negative and of Oswald's camera (which was also in evidence) showed not only that the negative was not a composite but that it had been taken with Oswald's own camera.

The fourth of Lane's basic techniques involves the gross logical fallacy. Thus, he argues at some length that Lee Oswald was not a good enough shot to have assassinated the President in the way the Commission stated that he did, and therefore

by implication that Oswald could not have been the assassin. At first glance the logical connection between the propositions seems apparent but a little thought reveals that ability to perform a task means two entirely different things. First, one's inability to lift, without aid, a ten thousand pound weight or run a mile in three minutes is such that, regardless of any other evidence, we could conclude that such a thing just could not have happened. When we say, however, that someone is not a good enough shot to hit a given target two out of three times, we are speaking of an entirely different kind of inability. What we mean, of course, is that one is not good enough to do this consistently, and although the chance of one's having made a particular shot becomes less and less as the shot becomes more difficult, or as one's marksmanship ability decreases, it is always possible for one to have made a lucky shot or two. Thus, the fallacy in Lane's argument is in asking whether Oswald was a good enough shot to have hit the moving targets twice in a given time, at a given distance, instead of asking whether the unlikelihood of Oswald's making those shots is enough to shake our conviction that he in fact did so. This of course depends upon the strength of the other evidence that Oswald was the killer—an inquiry which Lane nowhere mentions in this context. In fact, if one estimates the probabilities involved, I would have to say that if the question were asked in advance, the odds of Oswald's making the necessary shots were about one in fifty (although who can say to what extent it concentrates the mind to have the President of the United States in one's telescopic sights). On the other hand, I would have to say that the other evidence, not counting that of Oswald's marksmanship, would lead to the odds of about one thousand to one that Oswald had been the assassin, after all. It may sound paradoxical, but a little thought reveals that the very best evidence that Oswald was able to make the shots is the mass of evidence that he in fact did so.

Number five among Lane's techniques—one which we have already alluded to—is to set up straw men, and attack the Com-

## THE ASSASSINS

mission on points where he does not even disagree with its conclusions. We have seen one variation earlier where Lane denounced the Commission for not calling further witnesses who had seen smoke above the knoll. Another variant of this is to quote a statement from the Commission's report and to demolish it completely—never pointing out that his quotation is so slanted as not to have represented the Commission's view in the first place. Thus Lane quotes the Commission as saying,

Jesse Curry, Chief of the Dallas Police Department testified that no more than 25 to 50 of Dallas's almost 1200 policemen were acquainted with Ruby.

Then he goes on to show that Curry—and of course inferentially the Commission—had grossly underestimated the extent of Ruby's acquaintanceship with policemen and that Ruby in fact knew closer to five hundred policemen than fifty. Lane's demonstration is indeed correct, but if one reads what the Commission originally had to say on the issue his point becomes somewhat less compelling. Immediately after the sentence Lane quoted, the Commission adds,

However, the reports of present and past members of the Dallas Police Department as well as Ruby's employees and acquaintances indicate that Ruby's police friendships were far more widespread than those of the average citizen.

Obviously the Commission saw no need to demonstrate the gross underestimation of the Dallas Police Chief, and contented itself with a broad hint.

The remarkable thing about *Rush to Judgment* is that we have hardly scratched the surface in numbering and classifying Lane's distortions. There are more and more and more.

More recently, Lane has defended himself on the grounds that "My book is not an objective analysis," but more like a brief for Oswald. First of all, this defense comes only after Lane has been backed into a corner. Nothing in the book or in its publicity indicates to the uninformed reader that Lane is anything but objective—outraged, perhaps, by the dishonesty and

deceit he finds all around him, but nonetheless, objective. Furthermore, the idea that *Rush to Judgment* might merely be a brief for Oswald completely misconstrues the nature of a brief. True, an advocate has a certain latitude to emphasize some facts and de-emphasize others. But Lane carries this far beyond mere advocacy to the point of extreme misrepresentation and distortion.

We may pass over *Whitewash* by Harold Weisberg, in just a sentence. It is the most strident, bitter and generally irrationally biased of all the attacks on the Commission. Out of charity, we shall mention it no further and move on to Leo Sauvage's *The Oswald Affair*.

Sauvage, the American correspondent of *Le Figaro*, has written an absolutely bewildering book, which in some ways is very different from Lane's and in others quite similar.

As in the case of Lane, the number and variety of Sauvage's objections to the Commission's version (and many of them are very different from Lane's) are so great that it is impossible even to begin to cover them all here. His technique, however, is a fairly simple one. First, in discussing each question, he begins with the initial reports coming out of Dallas in the first hectic moments after the assassination. These were almost always so wrong and garbled that now that a great deal more evidence has been made available, they are sitting ducks. Then he proceeds to discuss the reports and rumors that seeped out with all too great frequency during the Warren Commission investigation. On most occasions these turned out in one way or another to have been inaccurate, too; and where they were not, Sauvage damns them for having been leaked at all. Finally, then, when he comes to the evidence presented by the Commission, Sauvage has the reader psychologically prepared to find that, like everything before it, it too is a tissue of lies.

Sauvage indeed seems convinced that America has another Dreyfus case (an analogy he uses on several occasions) and that Oswald had no hand whatsoever in the assassination. In Sauvage's words, "I

find nothing to show that Oswald was the assassin of President Kennedy," and, "It is logically untenable, legally indefensible and morally inadmissible to declare Lee Harvey Oswald the assassin . . ."

Unlike Lane, who makes use of a broad range of tactics to attack the Commission, Sauvage concentrates primarily on just one: a refusal to accept the most likely—often even the most overwhelmingly likely—thrust of the evidence because in his opinion it does not amount to a certainty.

Probably the most perverse of all of Sauvage's findings is that, as he has since phrased it, "there is no legally acceptable proof that Oswald had the revolver [ascribed to him] in his possession at the time of his arrest."

Sauvage's reconstruction of the seizure of the revolver (Exhibit 143) from Oswald is almost a virtuoso performance. He correctly points out what he considers to be an error in the testimony of Officer McDonald, the first policeman to approach Oswald in the Texas Theater following the slaying of Officer Tippit. McDonald, who identified Exhibit 143 as the revolver he had taken from Oswald, could, in all probability, not of his own knowledge be sure that it was the same gun, since he had handed it to another officer before his struggle with Oswald had ended.

Sauvage next moves on to the testimony of Officer Carroll, the policeman whom McDonald identified as having received the revolver during the struggle. Carroll, when asked by the Commission who had hold of the pistol at the time he took it, stated:

I don't know, sir; I just saw the pistol pointing at me and grabbed it and jerked it away from whoever had it, and that's all, and by that time then, the handcuffs were put on Oswald.

Carroll himself did not identify the gun but merely stated that he had given it to Officer Hill. Officer Hill then testified that he kept the gun in his possession until he had time to scratch his name on it and was thus able positively to identify Exhibit 143 as the gun that Carroll gave him.

The flaw Sauvage finds in this testimony that leads him to conclude that

The testimony of the three policemen directly involved does not support the conclusion that a gun was taken from Oswald at the Texas Theater . . .

is that Carroll said that he did not know who had hold of the pistol and that

the fact that McDonald stated that he had given the pistol to Carroll is utterly meaningless . . . Though neither of the Commission attorneys saw fit to ask any question to this effect, it is quite obvious that McDonald, fighting with Oswald and swarmed by officers, could not have seen which one took the pistol, if he did give the pistol to someone.

Actually, what is "quite obvious" to Sauvage is not at all clear. McDonald may very well have seen Carroll as he testified he did, even though Carroll did not know that McDonald was holding the other end of the gun.

But this is only the beginning. In addition to the testimony of the officers mentioned by Sauvage, it is interesting to note the testimony of Officer C. T. Walker:

Belin: "When you saw Oswald's hand by his belt, which hand do you see then?"  
Walker: "He had a hold of the handle of it."  
Belin: "Handle of what?"  
Walker: "The revolver."  
Belin: "Was there a revolver there?"  
Walker: "Yes, there was."

Detective Paul L. Bentley stated:

Just as I entered the lower floor, I saw Patrolman McDonald fighting with the suspect. I saw the suspect pull a pistol from his shirt, so I went to Patrolman McDonald's aid immediately.

Patrolman Ray Hawkins stated:

Officer Walker and I ran toward the subject and grabbed him by his left arm. The subject had reached in his belt for a gun and Officer McDonald was holding his right hand with a gun in it. Officer Hutson had entered the row behind the suspect and grabbed him around the neck.

Patrolman T. A. Hutson stated:

Officer C. T. Walker came up and struggling with the suspect's left hand, and as Officer McDonald struggled with the suspect's right hand, he moved it to his waist and drew a pistol . . .

As if this were not enough, Oswald ad-

#### THE ASSASSINS

mitted to at least twelve police officers and federal agents that he had possessed a pistol in the theater—each time coupling it with a statement that that was all they had him for. Sauvage handles these statements with the assertion:

The Commission notes that "Oswald admitted nothing that would damage him, but discussed other matters quite freely." The fact of owning a revolver that the police had said had killed Tippit would certainly tend to damage him. It would seem from the report therefore that Oswald did not admit that.

Mr. Sauvage carries his perversity to extremes in this quotation. Obviously, the reasonable construction of this sentence of the report is that Oswald admitted nothing that he was not completely convinced the authorities could prove. At the time there was no ballistic determination of who shot Officer Tippit, and Oswald obviously believed—and on the evidence one can hardly blame him—that his possession of the pistol could be conclusively established.

Finally, if Exhibit 143 was not the gun that Oswald was seen by all to draw, then where did it come from? It did belong—as Sauvage concedes—to Oswald, having been purchased by him some half a year earlier. Could the gun have been brought into the theater by one of the police officers? If so, what was he doing with the gun that fired the shells found beside Officer Tippit's body—especially at a time when he could not have known that this was so? Nor could a police officer have obtained the revolver from Oswald's room after the arrest since the revolver was initialed immediately after it was taken in the Texas Theater, before the officers even knew who Oswald was. Moreover, if Exhibit 143 was not the gun Oswald drew, what happened to the gun he did draw? It apparently has disappeared completely. Perhaps Sauvage would suggest as the alternative explanation a complicated conspiracy among at least a dozen police officers, none of whom was near the assassination site and none of whom could, by any way we can conceive of, have known in advance where they would find Oswald.

Admittedly, in the face of all this, a sufficiently desperate defense attorney, to take the prosecution's time and to try to confuse the jury, might conceivably argue that it had not been proven conclusively that Exhibit 143 was taken from Oswald at the theater. But to say that the evidence "does not support the conclusion" is more than merely farfetched.

Although some of Sauvage's book could have been written by Mark Lane—Sauvage asserts "Lee Harvey Oswald did not have the skill required to commit the assassination"—for the most part their attitudes are quite different. Lane does not mention any evidence that does not lead his reader along his chosen path. Thus Lane does not mention one word about the circumstances of Oswald's arrest—the reader of *Rush to Judgment* might well conclude that Oswald had turned himself in to the police. Sauvage, on the other hand, generally mentions evidence he finds uncomfortable but applies his bewildering logic to minimize its effect or to turn it to his advantage. A fine example of this is Sauvage's treatment of the General Walker incident. The Commission concluded that one of the circumstances strengthening its belief that Oswald had killed President Kennedy was the fact that Oswald was the author of a previous assassination attempt some five months earlier on General Edwin C. Walker. The Commission evidence on this issue was not overly strong, relying in great part on the somewhat unreliable testimony of Marina Oswald. During the investigation a note in Oswald's handwriting turned up that indicated that he had expected to be in some kind of trouble shortly. Marina Oswald explained to the Commission that her husband had left this note behind one night and then appeared later that night and explained that he had just attempted to kill General Walker. Sauvage spends some time demolishing this theory, pointing out that Oswald had not returned home with his rifle and that therefore it would have been necessary for him to stash it somewhere near General Walker's house. (According to Marina's testimony, he had told her he had done just this.) Moreover,

#### THE AMERICAN SCHOLAR

Sauvage points out that it was "never explained how Oswald got to Walker's house" since he had no car. Of course it was possible, Sauvage admits, that he took a bus. Sauvage asks us to:

Imagine Oswald with his rifle under his arm marching off to slay the General and planning to return home the same way . . . I doubt very much that Lee Harvey Oswald, before reaching home, white and shaking, could make use of those buses and transfers, walk to and from the bus stops, wait at the bus stops for some time (the buses in Dallas, as elsewhere, do not run frequently at night) and do this all without being noticed by anyone.

Certainly Sauvage does point out a number of unlikely aspects to the story. On the other hand, we do know that among Oswald's possessions were found several photographs of General Walker's home, and since microscopic examination revealed that they were taken with Oswald's camera, we are not completely without hard evidence tying him in some way to General Walker. Moreover, the dates involved may be relevant. The picture of Walker's house was taken on March 9th or 10th, 1963. (This was determined from the progress on a building under construction shown in the background.) On March 12th Oswald bought the money order, under an assumed name, which he mailed in to purchase his rifle; on March 20th the rifle was mailed out to him and on April 10th the attempt on General Walker's life occurred.

Sauvage's technique, however, requires him to make mention of the photographs and he quotes the Commission as saying, "Three photographs found among Oswald's possessions after the assassination were identified by Marina Oswald as photographs of General Walker's house." He concentrates, however, on pointing out an inconsistency he finds between this statement and an earlier statement of the Commission: "Until December 3, 1963, the Walker shooting remained unsolved." Since the pictures were found eleven or twelve days earlier than this date,

Wasn't it strange that the Federal investigators who examined the pictures failed to identify them when they could have checked with the

tourist bureau, the Chamber of Commerce, cab drivers or the Boy Scouts. . . ?

To me, it seems hardly strange at all that in the first eleven days after the assassination no one had identified the pictures of General Walker's house. Presumably, police were working on all facets of Oswald and there was no reason at the very beginning of the investigation to think that those pictures might be significant. Indeed, considering the circumstances, the time lag of eleven days seems rather short.

Subsequently (and here he reveals most clearly his talent for missing the point) Sauvage is willing to assume for the sake of argument that Oswald did attempt to kill General Walker. In that case, however, he would regard this as evidence not that Oswald killed President Kennedy but that he did not. Sauvage states:

I am ready to admit that Oswald was against Fascists and that he might have been led to undertake some action against a Walker. Would the same reason have led him to kill a Kennedy?

To me the fact, if it were so (and it was admittedly not conclusive), that Oswald had attempted to kill General Walker would be reasonably persuasive evidence. True, in criminal prosecutions, it would probably have been held inadmissible, but the reason for this would be not so much because it is not probative, but rather because it is, in a sense, too probative and therefore prejudicial. The significant thing—and in our society the far more rare thing—shown by the attempt on General Walker's life is not that Oswald was against fascists, but that he was capable of killing a man who had done him no personal wrong. Sauvage, of course, is perfectly correct in stating that the absence of a motive for Oswald to kill the President is some reason to believe that he did not do it. But it seems that the significant thing the attempt to kill Walker would indicate is that, in Oswald, we had a man who could kill from ambush a man who had done him no personal harm and from whose death he could not expect to profit.

One must be very careful not to use up all of one's synonyms for perversity on Mr.



Sauvage's book lest one run out before coming to Richard Popkin's *The Second Oswald*. Actually *The Second Oswald* is only a thin paperback that has had to be padded with nine appendices to make it as long as it is. It is essentially Popkin's long and widely discussed review of the four previously mentioned books, which first appeared in the *New York Review of Books*.

Popkin, chairman of the department of philosophy at the University of California, San Diego, has grasped one of the great truths that has eluded most of the other critics of the Commission. It is one thing to attack the Commission's conclusion on this or that issue as not being based upon the evidence or as being the less likely of two possibilities. It is entirely different, though, to attempt to work all the evidence one accepts into one coherent theory. Popkin understands the fallacy of agreeing at the same time with Epstein that there probably was an assassin in addition to Oswald behind and above the President; with Sauvage that Oswald had nothing to do with the assassination; and with Lane that the shots were fired not from the Book Depository but from the grassy knoll. Popkin realizes that if one agrees with Epstein that the autopsy doctors misplaced the President's wounds, one should be prepared to offer some explanation why they should do this; that if one agrees with Lane that a bullet struck the President in the front of the throat, one should be prepared to explain what happened both to the bullet and to its exit wound; and that if one agrees with Sauvage that Oswald had nothing to do with the attempt on General Walker's life, one should offer an explanation of why he happened to have in his possession a picture of General Walker's house. The discipline required by having to have a theory rather than merely attacking on a large number of isolated points is that one's points and the evidence one accepts must then be consistent.

Popkin therefore makes the effort and his result is so silly that it is hard to believe that he is serious.

In many ways this is quite unfortunate,

because several of Popkin's ideas might well have been made into a theory considerably less unlikely than the one he finally chooses. Essentially, the problem that Popkin tries to explain and that throws his theory off is that several identifications of Oswald were made in testimony before the Commission that could not possibly have been correct, since Oswald was undeniably proved to be elsewhere at the time. If Popkin had decided, as the Commission did, that therefore these witnesses were either unintentionally wrong or lying, he would have had no further trouble. In fact, there is good reason to believe that at least one of the witnesses was lying in an attempt to gain publicity. If one accepts their testimony as true, however, as does Popkin, one has to conclude either that Oswald was in two different places at the same time or that there were two Oswalds. Essentially, Popkin's theory is the latter: that the witnesses who identified Oswald as having been in places where he clearly could not have been were correct in the main and that they had been thrown off by an extremely complicated scheme to set up a false trail.

The crime was then to be committed by both Oswalds with the rifle implicating Lee Oswald left at the assassination scene. The second Oswald, who was a better shot and used a better gun than Lee, then could disappear and when the evidence all came in it would be so confused that it would be impossible to convict the actual Oswald.

Mark Lane in one of his chapters uses a variant of this theory in which Oswald was an innocent patsy. If one does this, however, the incident in the Texas Theater is most difficult to explain. Moreover, framing poor Oswald does seem a great deal of trouble for the conspirators to go to at a time when for all they knew by the time President Kennedy arrived in Dallas, Oswald might have either lost his job or gone to Mexico. And even if they could be certain that Oswald would still be working at the Depository they could not possibly know that he would not have been out in the street or elsewhere with a perfect alibi at the time of the shooting.

On the other hand, if Oswald was, as Popkin seems to assume, a willing party to the whole false trail, one might point out that in that case the trail would in great part not have been false at all. One might then ask what could have been Oswald's possible object in having the trail lead to himself, especially considering the fact that he would end up being tried before a Texas jury that, having heard about his Marxist past, might well not require a vast amount of evidence to give him the death penalty?

But more basically the problem with Popkin's conspiracy is that no sane or even mildly insane person would have done it the way he has suggested. The scene as Popkin visualizes it has two men shooting with different rifles at the Presidential car. (Early in the book it seems that both are in the Book Depository—later Popkin either forgets this and places one on the grassy knoll or adds, without explanation, a third assassin at that site.) If it turns out—as they have no way of making sure it doesn't—that the identifiable bullet is fired not from Oswald's gun but from the other Oswald's gun, the entire scheme blows up completely. As it is, Popkin argues that Exhibit 999 was planted beside Governor Connally's stretcher—presumably by someone who knew that there would be need for a bullet damaged only on the rear end. One would think that if the second Oswald was able to get out of the Book Depository with his rifle without even being seen, there would be no reason to leave Lee Oswald behind as some kind of a hostage.

If Popkin's conspirators to assassinate President Kennedy from the Texas Book Depository were as clever as he makes them out, they could have had Oswald, who worked there, and his friend, the other marksman, fire their shots, then put their rifles in a previously prepared box full either of high explosives or thermite, touch the thing off with a short fuse and appear in the hallway asking what had happened. Since the murder weapons would then have been completely destroyed and there would have been no eyewitnesses, there would have been nothing against either

man. Oswald could have said that he decided the best place to watch the parade was from a nearby window and that he had asked his friend, the marksman, to visit with him.

True, there are many ways one can suggest in which the crime, as reconstructed by the Commission, could have been better planned. Obviously, Oswald did not plan it well himself, and one would think that if he had help, that help was much more lucky than skillful. On the other hand, it is one thing to say that it was not well-planned and it is a very different thing to say, as Mr. Popkin does, that it was planned without even the minimum elements of rationality.

The aforementioned five books, their publicity releases, and the public appearances of their authors constitute the great bulk of the third stage of inquiry into the assassination. The "mysterious death" issue, however, brought up after their publication (*Rush to Judgment* mentions it but gives it relatively little attention), probably has to be accounted a legitimate portion of this stage, too. A number of magazines, the most publicized of which is *Ramparts*, have published stories commenting on and drawing the most sinister implications from the "mysterious" deaths of "witnesses" somehow connected with the assassination. Although this facet of the inquiry (like the curse of Tutankhamen of a few decades ago) has received a great deal of comment, even the most cursory examination of the stories shows how essentially foolish they are. First of all, a good many of the deaths hardly seem mysterious in that they were caused by auto accidents, heart attacks and other phenomena that afflict our everyday population. Moreover, before we can tell whether even the number of these deaths is in any way unusual, we would have to know the number of equally mysterious deaths that occurred to people completely unconnected with the Warren Commission *Report*. But even apart from any statistical refutation, the theory that a set of conspirators is now devoted to wiping out a host of unimportant witnesses is almost too silly to be put forth.

There is not the slightest indication that most of the "victims" have had anything to tell that they had not already told, and indeed the deaths seem concentrated among those who bore only the most peripheral relation to the assassination. When one stops to consider that almost each one of the "mysterious" deaths—presumably to cover up something the victim knows—requires the recruitment of at least one and often several new conspirators, it would seem that, like the pyramid club, the conspiracy would be getting bigger and bigger rather than smaller. One would think that seeing what had happened to those who knew too much, it would get very difficult to recruit new members into the conspiracy. Most important, however, it is hard to say why the supposed killers are taking whatever chances these murders entail when it is so obvious that, whoever the conspirators are, they have already gotten off scot-free.

In all probability, however, the biggest question raised by the third stage of inquiry into the assassination has nothing whatsoever to do with any of the points that have been discussed here. Rather the question is, considering their quality, why have the third-stage writings attracted the attention that they so clearly have?

To my mind it is only a partial answer to rely on the dictum of P. T. Barnum. As I see it, there are four more basic reasons. First, there really are doubts concerning the assassination of the President. This should hardly be surprising since even in a typical criminal case one cannot determine the guilt of a defendant beyond all possible doubt—this is why the jury is instructed that it need only be convinced beyond a reasonable doubt. But in the Warren Commission investigation there are other problems. Even if one concedes that Oswald was guilty beyond any reasonable doubt, there still remains a host of subsidiary questions as to just how he committed the crime and whether he had help. In the typical criminal trial these questions, of course, would often not be answered beyond a reasonable doubt. The jury might well be completely undecided as to which of three or four different means the defendant employed,

and yet perfectly rationally believe that, nonetheless, he had employed one of them to commit the crime.

Uncertainty about many issues is an inevitable by-product of any large-scale investigation, and, of course, where the issue is important, there will be disputes. The evidence for the one-bullet theory is ambiguous, and, as often happens when that is true, some people assert one possibility with fervor while others disagree with equal vigor. In all probability we will never know, not only for sure, but even with a very high degree of confidence, whether the one-bullet theory is correct. If this thought is upsetting in the abstract, it is all the more so when one realizes that a completely competent investigation immediately after the assassination (and before the Warren Commission had come into being) might have given us the answer. Unfortunately, however, no one even realized that the issue was raised until after both the Zapruder films and Oswald's gun had been closely examined. By that time the autopsy on President Kennedy had been finished and his body was permanently out of the hands of the surgeons; Governor Connally's wounds were well on the way to healing; and, through an incredible bungle, the Governor's clothes had been cleaned, thus destroying any light they might have shed on the mystery.

The second reason for the great furor caused by the third-stage writings is the fact that, although the Warren Commission investigation seems on the whole a competent one, the actual *Report* of the Commission shows two grave defects. First, it was obviously rushed out. Epstein gives a most plausible explanation why, and although we can understand the Commissioners' desire to get the *Report* published before the 1964 elections, their failure to have taken the necessary time shows up again and again in the quality of the *Report*. Thus, the index to the twenty-six volumes and the citation of exhibits in the *Report* are extremely inaccurate and incomplete (making all the more valuable the comprehensive index compiled by Sylvia Meagher—and published by the

Scarecrow Press—which has become the standard work for all investigations into the Commission documents), and there is a good bit of sloppiness which can be explained only by the pressures of time upon the staff. Despite the legitimate desire for speed, however, it was not necessary for the pressure to have compromised the work of the Commission. It would have made sense—considering the way in which the world awaited the *Report*—for the Commission to have put out what it did put out, or even something considerably more sketchy, as a preliminary report, just as administrative agencies often hand down tentative decisions. Then the Commission could have assembled its discussion of the evidence and its conclusions carefully and deliberately in the extra six or eight months this would have taken.

In all probability, however, another basic decision of the Commission was even more detrimental to the *Report's* ultimate value than merely the decision to get it out too quickly. This was the decision to write the *Report* not as an impartial historian but, in many places, as an advocate. When I say that the Commission too often was an advocate, I do not, of course, mean to charge it with the distortions and misrepresentations that have characterized the third stage of inquiry. What the Commission did was to put the best face on the evidence it wished to use. Thus in its discussion of the one-bullet theory the Commission marshalled most of the evidence in its favor, but alluded only slightly to the opposing evidence and not at all to the possible importance of the issue. How much better it would have been had the Commission discussed the alternatives and then decided on the one-bullet theory as the most likely of the possibilities, recognizing fully the fact that it was a likelihood, on the basis of all the evidence, somewhat on the order of four out of five rather than, as it implied, ninety-nine out of one hundred. Having done this, the Commission could have discussed how the evidence could be rationalized were the one-bullet theory not true, instead of relying on what is perhaps a technically accu-

rate but by no means obvious truth that the validity of the one-bullet theory was "not necessary" to any of the Commission's major conclusions.

The Commission's advocacy compromised its discussion of other issues as well. It attempted to prove that Oswald's shots were not difficult ones, and concluded, on the basis of his Marine record and several not very successful tests with his rifle, that "Oswald had the capability with a rifle to commit the assassination." It would have been more candid to have pointed out that Oswald had probably just gotten off two "lucky" shots.

The Commission's advocacy is visible at yet another point. Although it had what would seem to be sufficient proof that Oswald had slain Officer Tippit, the Commission nonetheless supported its view with a purported eye-witness identification by one Helen Markham whose credibility had been badly tarnished during the hearings.

It is hard to assess the blame for the Commission's failure to accord due respect to its historical role. Perhaps it lies in the fact that the majority of the Commissioners were lawyers and that lawyers, having reached a conclusion—even honestly and fairly—are accustomed to stating it in the form that most justifies their belief and that convinces onlookers. Perhaps it is due merely to the time pressures that ruled out the longer and more careful discussion that would have been necessary had every point been given full consideration. Perhaps Epstein was partially correct, and the Commission, having decided that no conspiracy existed, tried to fulfill both its duty to its own integrity and its role as an organ of state by writing what it felt to be the truth in the most convincing form.

Whatever the reason, however, it was a serious error, and if it is responsible for even a tiny part of the third stage, the Commissioners have suffered for it.

A third problem, which quite reasonably has worried a great many observers of the controversy, is the failure of the Commission to disclose the full contents of everything before it. To be sure, although certain

governmental privileges of secrecy do apply in a criminal trial, the strong presumption is in favor of complete disclosure of all admissible evidence. The Warren Commission investigation was far different, however. Unlike the criminal trial, which is generally confined by the rules of evidence to a comparatively narrow range of facts bearing upon well-defined issues, the Warren Commission conducted the broadest possible inquiry into much less well defined problems. As a result, controversy could arise over the disclosure of a great many bits of evidence that, not being usable in a criminal trial, would have created no issue as to disclosure there. Thus, reports on Oswald's behavior in the Soviet Union were at least peripherally relevant to the Commission's investigation. It is not too great a flight of fancy to believe that these reports would have revealed the names of confidential informers in the Soviet Union whose identity the C.I.A. might reasonably prefer to have uncompromised. The question, then, is where the line should have been drawn between the public's right to know and the legitimate demands of secrecy.

Furthermore, the Commission itself made no effort to determine which documents should and which should not be released to the public. Rather than make such determinations itself, the Warren Commission turned over its documents to the National Archives which, after initial confusion, asked the Department of Justice for help in determining which documents should and which should not be released. The Department of Justice, then, in consultation with the investigative agencies involved, worked out a set of general guidelines for this purpose, leaving, of course, the application of these guidelines, on a document by document basis, to the Archivists. These guidelines, as one might expect, were vague.

They provided that statutory and security classifications must be respected but at the same time called on the agencies involved (C.I.A., State Department, *et cetera*, which by law have control of this issue) to reevaluate the security classifications to determine whether the information could be released.

As to unclassified material, the requirements were even more vague—although it is hard to see how one could have drafted specific requirements to cover the multitude of cases. There the object was to prevent the disclosure primarily of documents “which might reveal the identity of confidential sources of information and [thereby] impede or jeopardize future investigations,” or which might be a “source of embarrassment to innocent persons because they contain gossip or rumor or details of a personal nature having no significant connection with the assassination.” And, although it may be argued that these directions are too inclusive, the guidelines also urged the Archives and the agencies involved to “weigh the reason [for nondisclosure] against the over-riding policy . . . favoring fullest possible disclosure.” Moreover, the classifications of documents are to be reviewed after five years and then every subsequent ten years to determine what documents may then be made available.

Although the standards for releasing documents seem, at least on the surface, completely reasonable, there have been incidents that cannot help but damage the public faith in the handling of the whole issue. Before the guidelines were worked out, the Archives refused to make any documents available without the Commission's approval. Unfortunately, by that time the Commission had gone out of existence and its general counsel insisted that he therefore had no jurisdiction to approve anything. Finally, the imbroglio was solved by the Attorney General's Office, which ruled that the Archives had “the authority and obligation to review that material and to determine which of it should be made available to, or withheld from, the public . . .”

Far more important to the third-stage controversies, the X rays and photographs taken at the autopsy of President Kennedy were not initially turned over to the Archives. Apparently—although this is far from certain—they were in the possession of the Kennedy family, which, considering the matters of taste and the probable condition of the President's body, would have preferred not to release them at all. One

positive result of the furor is that now the exhibits—which should have been turned over much sooner—are at the Archives, and they have already been made available to the autopsy surgeons (who have announced that their earlier conclusions have thereby been confirmed). Until those exhibits are made public, however, there will be many who doubt this and feel that these photographs are being suppressed to cover the guilt of those who lied about the President's autopsy. The problem of the autopsy photographs is a relatively easy one. If taste were the only reason for not releasing a document, it would be quite clear that all should be made public. Unfortunately, we are in the situation where there are overriding reasons for not releasing some of the documents, but it is equally clear that so long as there exists any evidence that has not been made public, many Americans (especially those who draw no distinction between different organs of government such as the Warren Commission and the National Archives) will view this as powerful evidence of a conspiracy to suppress the truth.

It is obvious, however, that the previously mentioned reasons by no means fully account for the violence and the number of attacks upon the Warren Commission and its investigation. The question then is what does, and although the evidence on this is hardly conclusive, there are several indications. The first and most obvious is that the great body of complaint about the Commission has come from the left. Despite the fact that, from what we know of Oswald, a leftist conspiracy—if there was a political conspiracy at all—is far more likely than a rightist one, almost all the conspiracy allegations have been directed from the left at the right. Men who deplored McCarthyism and all it stood for have been perfectly willing on the basis of incredibly flimsy evidence or no evidence at all to posit theories that Patrolman Tippit was a conspirator in the President's assassination; that the Commissioners lied and suppressed the truth; that a whole host of government officials perjured themselves; and indeed that a network of conspirators

far surpassing anything charged during the "Who Promoted Peress?" days now pervades the nation. Even the most baleful excesses of the McCarthy era were not as unfair, irresponsible and reckless as this.

As to what is causing this, one cannot, of course, know for sure. I would suggest, however, that one basic reason has escaped attention: Vietnam. Hatred is not a pretty thing, and the hatred that the extreme left has developed for Lyndon Johnson, although it probably matches that which the right wing had for Franklin D. Roosevelt, is something that is unparalleled in our time. In this context the attacks on the Warren Commission serve the function of blaming one more thing on Lyndon Johnson. After all, the Commission was a governmental body and Johnson not only heads the government, he set up and chose the Commission as well. Thus the widespread feeling that on the Vietnam issue the government has forfeited the citizen's confidence in its integrity need only be extended somewhat to conclude that the Commissioners have merely been loyal to the President in suppressing the truth.

Furthermore, in the background there is an even less pretty thought—indeed one which is very rarely mentioned, at least directly. Popkin slyly refers to those who see the assassination as "a subtle conspiracy involving perhaps some of the Dallas police, the FBI, the right-wing lunatic fringe in Dallas or perhaps even (in rumors I have often heard) Kennedy's successor."

The *Movement*, the newspaper of the Student Non-Violent Coordinating Committee, said in its November 1966 issue:

Several commentators have remarked that the assassination must have been the act of one demented killer because it was not followed by a right-wing takeover. This explanation overlooks the fact that, in some policy areas, Johnson's accession to the presidency constituted a right-wing takeover.

Although it is hardly clear in print, it should be clear for a host of reasons that there are a sizable number of people in the United States who would wish nothing more than to be able, somehow, to pin the blame for

President Kennedy's assassination on his successor, Lyndon Johnson. For them this would be a solution to the Vietnam involvement; a method of avenging the death of one who after his death (although by no means before it) became something of a hero to them; and finally a means of punishing the President for his transgressions.

To remark that these sentiments are unworthy, and that these tactics can only do harm in the long run to the values those who use such methods purport to support, is beside the point. The fact is that they have in some measure been successful. We have already entered the fourth stage where the nation's opinion-makers are belatedly entering the picture.

The fourth stage, when, for the first time, the organized mass media began paying serious attention to the outcries over the Warren Commission *Report*, can be said to have begun during the week of November 25, 1966. In the same week both *Life Magazine* and the *New York Times* demanded that something be done.

*Life*, which owns the original of the Zapruder film, reproduced in blown-up color the crucial section, covering the period when the one bullet—or the two bullets—struck President Kennedy and Governor Connally, and entitled its feature story, "A Matter of Reasonable Doubt." Although *Life* did not purport to draw any conclusions as to the validity of the one-bullet theory, the text included both some of the arguments in its favor, as set out by the Commission's former staff member, Arlen Specter, now District Attorney of Philadelphia, and a rebuttal by the *Life* staff. Certainly the piece leaves the average reader with the feeling that the one-bullet theory is the less likely of the possibilities. There are, however, several things to note about *Life's* story and pictures. First, as *Life* points out, President Kennedy can easily be seen reacting before any reaction by Governor Connally is visible—almost exactly half a second earlier according to the Governor himself. Interestingly, however, the frame the Governor chose as the one in which he was struck, Frame 234, shows him very clearly holding his hand up

and completely out of the path the Commission stated the bullet must have followed to strike him on the right wrist. *Life* explains this way:

Nor can much importance be given to lining up Connally's three wounds—Specter's alignment of holes theory. Having hit a rib would probably have deflected the bullet from a straight course; Connally's wrist could have been almost anywhere and still have been struck by it.

*Life* may indeed be correct, but it is interesting to note that its staff missed a most relevant question and answer between Specter and Dr. Shaw, who operated on Governor Connally at the Parkland Hospital.

Specter: "Would the shattering of the rib have had any effect deflecting the path of the bullet in a straight line?"

Dr. Shaw: "It could have had except in the case of this injury the rib was obviously struck so that not too dense a cancellus portion was carried away by the bullet and probably there was very little in the way of deflection."

In addition, the pictures reproduced by *Life* support the one-bullet theory in another way. If the "alignment of holes theory" is incorrect and the Governor was hit in Frame 234, the bullet that struck the Governor would not only have had to be deflected up to his wrist but back down to his thigh as well. Taken together with the other evidence, the pictures published by *Life* make it perhaps somewhat more likely that, despite his firm belief to the contrary, Governor Connally was struck before he lifted the hand visible in Frame 234 and that his reaction was delayed half a second longer than President Kennedy's. (Anyone who has seen military combat can repeat instances where reactions to or knowledge of wounds have been delayed considerably longer than this period.)

The *New York Times* also contributed relatively little in the way of enlightenment. It quoted one S. M. Holland, a railroad supervisor: "There definitely was a shot from behind that fence" (near the grassy knoll). Mr. Holland's interview with the Warren Commission, however, cast some light on his present views.

"You had no idea, I take it, that the shots were coming from your area." [Holland was standing on the overpass by the knoll.]

Holland: "No."

"It is your impression that they did not, could not, as far as the sound was concerned."

Holland: "As far as the sound was concerned, they did not."

Moreover, Mr. Holland stated in answer to the usual final question:

"Anything else occurred to you?"

Holland: "No, that is about all of it. If I have been of any help, I'm tickled."

And finally, Mr. Holland, who had attended the Commission's proceedings with a lawyer, was given and accepted the opportunity of reading over his full statement as transcribed by the stenographers before signing it as a true and correct copy.

The *Times* also quoted Malcolm Kilduff, former acting press secretary to President Kennedy, to the effect that the one-bullet theory could not possibly be true because "Governor Connally still has a piece of the bullet in his leg." Unfortunately, Mr. Kilduff was not specific about the size of the fragment in the Governor's leg. Governor Connally's doctor, Dr. Shires, however, testified before the Commission that indeed there was a remnant of the bullet in Governor Connally's leg but that its weight was "in grains—a fraction of a grain, maybe a tenth of a grain—very small." When one considers that there are 437.5 grains in an ounce and that the type of bullet used in the assassination weighed about 161 grains, it is hard to refute the one-bullet theory with a one-tenth of a grain fragment.

Far more important than the new light *Life* and the *New York Times* have shed on the issues has been their call to action. *Life* concluded its article:

The national interest deserves clear resolution of the doubts. A new investigating body should be set up, perhaps at the initiative of Congress. In a scrupulously objective and unhurried atmosphere, without the pressure to give reassurance to a shocked country, it should re-examine the evidence and consider other evidence the Warren Commission failed to evaluate.

The *Times* in its editorial was less specific; it merely called on the members of the Commission and its staff to give "clarification and answers to unanswered questions." The *Times* asserted that the Commission's purpose "is being eroded a little at a time by the clamor," and that "merely more denials by the Commission or its staff are no longer enough."

By now it is clear that something will have to be done. But what?

Probably the most obvious measure would be to release the autopsy photographs and X rays of President Kennedy. Certainly this should be done, but the trouble is that it will accomplish very little. The fact is that there is really no doubt as to what those pictures will show. The evidence, entirely apart from the photographs, that the autopsy surgeons were correct is overwhelming. Of course, the photographs should be examined but if indeed the surgeons were not correct, it is hard to see how they—after examining the photographs only very recently—could still have retained their bravado in the face of imminent exposure.

More important, however, is the fact that this is not where the real controversy lies. Even though we might wish that the autopsy on President Kennedy had been done by more experienced forensic pathologists—a fact that can hardly be blamed on the Commission since the choice of the Bethesda Naval Hospital for the autopsy was made by the late President's wife before the Commission came into existence—the one-bullet theory will almost certainly not be disproved or even made less likely by anything we may now learn about President Kennedy's wounds. If the nature of wounds is to be investigated, Governor Connally's wounds are far more significant on the issue and they are all healed.

This is not to say that a careful congressional investigation, choosing consultants who are experts in their field, could not in the first instance put together a report better than that of the Warren Commission. This, however, is now beside the point.

More important today a congressional committee could and should call a host of



witnesses who could tighten up a good many loose ends in the investigation. Some witnesses could be called to quiet doubts that already can be seen to be perverse. Others could be called to testify at length on issues where the Commission assumed more knowledge than perhaps many laymen have—such as the fact that high speed rifle bullets do not tumble in unobstructed flight. Yet others could be called to examine with greater care the theories of the third stage—some of which the Commission could not have anticipated. But to move from the gathering of more evidence—which after all is what will be examined by future generations of historians—to a group that would repeat anew the decision process is a great—and unwise—step indeed. To say as *Life* does that the new investigators should “consider other evidence which the Warren Commission failed to evaluate” is somewhat unfair. Although the Commission’s report does not make this clear at all, there may well be no evidence that the Commission failed to consider. From all sorts of clues one can convince himself that the Commission evaluated far more evidence than appears at first glance. Certainly it should have made this more apparent, but the call for a formal reevaluation is a call for someone either to disagree with the Commission or to agree with it—and in either case there are a host of problems raised.

For instance, any new commission would have to decide whether to recall the witnesses. If it did not, it could not observe their demeanor—something lawyers regard as extremely important in passing upon credibility. And if it did call the witnesses afresh, time would have so dimmed their memory that, compared with the initial hearings, any second hearing would be more likely to misinform than to inform.

Furthermore, if such a commission is to second-guess the Warren Commission, it presumably would have to be composed of members whose prestige, balance, and reputation for integrity transcended that of the members of the Warren Commission. After U Thant, the Pope and perhaps

Arnold Toynbee, however, one has great trouble selecting mortals for this task. Moreover, the fact is that now the trail has gone cold. It is almost inconceivable that any new evidence will be turned up on the one-bullet problem, or for that matter on any other important issue in the case.

Finally, even if a whole new report and new evidence were produced by a new commission, one should ask whether this would quiet the critics of the third stage. My guess is that it would not, and for every point upon which one of those critics was satisfied, there would be others that would place issues—and the integrity of the investigators—more in doubt. The fact is that there is no amount of evidence that cannot be explained if one is willing to envision a conspiracy big enough, and the mine of stories that have been given currency and swallowed until now is a good indication that this conspiracy can be extended as far as necessary. It is sad to acknowledge one more indication that political paranoia is not a monopoly of the far right.

Even apart from this, the hard fact is that the full truth about the assassination—in the sense that there is an objective and verifiable truth—will never be known. Partly this is due to the death of Oswald himself—although if he had remained alive it would certainly have been to his interest to stave off execution by constantly hinting that he knew more than he had told. More to the point, the past may be as unknowable as the future. One may guess at what has already happened with greater and lesser degrees of accuracy, just as one may predict the future with greater and lesser degrees of accuracy. But in many of a nation’s affairs, as in many of an individual’s, truth can never be known, and even the important questions cannot be settled one way or another beyond a reasonable doubt. This is in many ways a most upsetting statement, and obviously the American people are upset about this issue. In one sense they have every right to be upset. But it is a sign of maturity to recognize that even the most important of issues often cannot be resolved to a certainty.