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## BOOKS

### The Assassins\*

John Kaplant†

RUSH TO JUDGMENT. By Mark Lane.  
New York: Holt, Rinehart & Win-  
ston. 1966. 478 pages. \$5.95.

INQUEST. By Edward Jay Epstein.  
New York: The Viking Press. 1966.  
xix + 224 pages. \$5.00.

WHITEWASH: THE REPORT ON THE  
WARREN REPORT. By Harold Weis-  
berg. 1965. xvi + 208 pages. \$4.95.

THE OSWALD AFFAIR. By Léo Sau-  
vage. New York: The World Pub-  
lishing Co. 1966. 418 pages. \$6.95.

THE SECOND OSWALD. By Richard  
H. Popkin. New York: Avon Books.  
1966. 174 pages. \$0.95.

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 within it, the perspective of only three years has proven them so inept that it is embarrassing to read them. 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 abroad, the work of the Warren Commission received lavish, indeed uncritical, praise which quieted most doubts. Then in the spring of 1966 we reached the third stage, in which a second generation of unofficial inquiries into the assassination began to appear. Although these inquiries differ enormously, they have had a single impact on the public mind and have, at least for a substantial segment of the American people, cast great doubt upon the Commission's conclusions and upon the ability and integrity of the Commissioners themselves. Finally, in the past few months we have begun to hear not only more and more evidence tending to throw the Commission's

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† A.B. 1951, LL.B. 1954, Harvard University. Associate Professor of Law, Stanford University.



conclusions into question but also, for the first time, demands for action from those who have the power to compel action.

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

We must therefore draw a sharp distinction between the report of the Warren Commission and its twenty-six volumes of published hearings. Although the report itself is criticized on almost every conceivable ground, most of the ammunition for the attacks is contained in the evidence that the Commission itself published. It has only rarely been argued that the stenographers did not record what the witnesses actually said, that the physical exhibits were altered, or that the expert witnesses lied. And, equally significant, no one in the third stage has come up with any witnesses of importance whose statements were not before the Commission either through direct testimony or through interview reports. This is not to say that the authors in the third stage afford equal credence to the testimony that the Commission believed or that they view the weight of the evidence as did the Commission. To 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 a drawing of entirely different conclusions from the same evidence.

Nor is it merely whim that made each of these authors accept witnesses and theories that the Commission had rejected. Each author argues that his account is unbiased and therefore completely rational and that the Commission's report is not completely rational since it was more interested in "political truth" than in the actual facts of the assassination. The theory is that the Commission thought that the most politically settling account 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 alone and equally irrational. In light of the Commission's underlying motivations, they argue that no great dishonesty need be imputed to the Commission, but 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.

However, when one thinks about it, 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 of which it is accused, one would have to distort the facts alleged in all of the books to conclude that this is a possibility. For their main theses to be at all valid, all of the books—with the possible exception of Epstein's—must imply that many people, including members of the Commission, 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 itself did relatively little of the work of collecting and analyzing the facts.<sup>1</sup> In common with many other governmental commissions, the Warren Commission was chosen for its balance and its members' reputations for integrity. But even if both of these qualities were in fact lacking, the charges of fraud would be meaningless unless balance and integrity were similarly lacking in the staff—composed primarily of young honor graduates of the nation's leading law schools.<sup>2</sup>

The argument that the Commission consciously or 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. To evaluate the justice of this complaint, one must consider the physical evidence that greeted the staff and the members of the Commission when they began their work. The President was killed by a series of shots, of which at least two, judging from the resulting wounds<sup>3</sup> and the marks on his limousine,<sup>4</sup> appeared to have been fired from above and from the rear,<sup>5</sup> the general location of the upper stories of the Texas School Book Depository. In the depository a rifle was found that not only bore a palm print of Lee Harvey Oswald,<sup>6</sup> an employee of the depository, but was purchased several months earlier by Oswald under an assumed name.<sup>7</sup> Moreover, shortly after the shooting, a bullet in

1. PRESIDENT'S COMM'N ON THE ASSASSINATION OF PRESIDENT KENNEDY, REPORT xi-xii (1964) [hereinafter cited as WARREN COMM'N REP.].

2. See *id.* at 475-81.

3. See 2 HEARINGS BEFORE THE PRESIDENT'S COMM'N ON THE ASSASSINATION OF PRESIDENT KENNEDY 360 (1964) (testimony of Comdr. James J. Humes, autopsy surgeon) [hereinafter cited as WARREN COMM'N HEARINGS].

4. See 2 *id.* at 89 (testimony of Roy H. Kellerman, special agent of the Secret Service); *cf.* 5 *id.* at 68-74 (testimony of Robert A. Frazier, FBI firearms expert); WARREN COMM'N REP. 76-77.

5. WARREN COMM'N REP. 96.

6. 4 WARREN COMM'N HEARINGS 24 (testimony of Sebastian F. Latona, FBI fingerprint expert).

7. 4 *id.* at 359-62 (testimony of Alwyn Cole, handwriting expert).



almost perfect condition (the famous exhibit 399) was recovered, most likely from the stretcher of Governor Connally, and was identified positively as having come from Oswald's rifle.<sup>8</sup> In addition, of the bullet fragments recovered from the Presidential limousine, two were identified positively as having come from Oswald's rifle,<sup>9</sup> and the rest, though no positive identification could be made, were consistent with this theory of origin.<sup>10</sup>

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 Whittaker Chambers into a case strong enough to convict Alger Hiss, a far more attractive defendant than Lee Oswald.

But the use of Oswald's rifle in the killing was not the only evidence connecting Oswald with the crime. His subsequent behavior would be hard to explain to a jury on any theory other than his involvement in serious crime. 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 nearby movie theater. A revolver was found on his person, and, although the barrel was too large to allow conclusive identification of the bullets that killed Patrolman Tippit,<sup>11</sup> several shell casings found at the site of the Tippit killing were unambiguously identified as having come from this gun.<sup>12</sup> 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. Rather, all that need be said is that this evidence gave the Commission a likely and proper starting point. An investigative body 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. 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 of the President and by attempting from there to find out, first, whether this was in fact so; second, whether, if so, anyone aided or conspired with him; and third, whether Jack Ruby had any connection with Oswald or with the assassination.

The second prong of the argument that the truth was suppressed by the Warren Commission is much more complicated. This prong is that the Commission should have treated the inquiry at least in part as a trial of Lee Oswald and should therefore have afforded him the benefits

8. 3 *id.* at 428-29 (testimony of Robert A. Frazier).

9. 3 *id.* at 435-37 (testimony of Robert A. Frazier).

10. 5 *id.* at 66-71 (testimony of Robert A. Frazier).

11. 3 *id.* at 475-76 (testimony of Cortlandt Cunningham, FBI firearms expert).

12. 3 *id.* at 466-76 (testimony of Cortlandt Cunningham).



of the adversary system by appointing a lawyer to cross-examine witnesses and to protect his interests.<sup>13</sup> (The Commission did appoint a lawyer to "represent" Oswald, but neither this attorney—then the president of the American Bar Association—nor the Commission took the appointment at all seriously.) It is argued that the failure to appoint an attorney not only was unfair to Oswald, but it contributed to the unreliability of the Commission's conclusions.<sup>14</sup> 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 to produce it. Oswald's case would not have been improved by showing either that there was or that there was not a conspiracy; and while the government might perhaps have been marginally benefited by showing that a conspiracy did exist (if it had had such evidence), the chances of confusing the jury and leading them away from the basic issue of 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 for the Commission to place on its staff the burden both of looking for exculpatory evidence and of cross-examining witnesses. These techniques did in fact reveal the unreliability of a great deal of evidence that might otherwise have been adduced against Oswald. Moreover, had Oswald been alive, he, presumably knowing the facts, would have been the most competent person to advise his counsel how to proceed. But since Oswald was dead by the time the Commission was created, 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 true—and hence which was the one most likely to succeed. Any counsel who tried seriously to put forth all of the inconsistent defenses would only have succeeded in burying the

13. See LANE 378.

14. See *id.* at 378-80.



valid one beneath many that turned out to be spurious. Moreover, any lawyer for Oswald would have been open, after the fact, to the charge, "Why didn't you show thus-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 might be good answers, but coming from the Commission's defenders they would not prove sufficient to allay suspicion, and it is unlikely that they would prove more so if they came from a "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 have been 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 have been taken as an effort to cover up guilt. With Oswald dead, however, the Commission was left to refute every possible argument that Oswald might conceivably have made—an almost endless task.

Although the five books of the third stage rely in part on general criticisms of the Commission to support their conclusions, it is on their discussions of specific items of evidence that they must stand or fall. For this reason, Epstein's book is the best with which to begin. Its exposition of the facts is the shortest; it is the clearest and least polemical; and it hits at what is probably the most difficult to justify of the Commission's major conclusions. Epstein does not deny that Lee Harvey Oswald took part in the assassination of President Kennedy.<sup>15</sup> The thrust of his work is that the Commission, in concluding that there was no reason to believe that Oswald had not acted alone, 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 the President.<sup>16</sup>

Although the evidence against Oswald was ample, the Commission, of course, was most interested in determining whether he was acting alone or in concert with others. While this task was central to the Commission's role, a little thought reveals just how difficult a problem 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 had existed. On the other hand, if it could find no evidence of a conspiracy, what would that prove? How would 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 had Oswald missed; it is even possible that Oswald fired after—or at the same time as—another attempt,

15. See EPSTEIN 151.

16. See *id.* at 152-53.



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. Therefore, a reasonable possibility that Oswald had conspired with others would remain regardless of the care and competence of any investigation which found no evidence of a conspiracy.

On the other hand, the Commission might be able to prove whether Oswald could have fired the shots himself. It thus 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 pictures 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.<sup>17</sup> Since Oswald's view of the President would have been blocked by the foliage of a large tree between frames 166 and 210 of Zapruder's film, the first shot must have been fired either before frame 166 or after frame 210.<sup>18</sup> The elimination of the period before frame 166 was fairly simple. President Kennedy's reaction to the first bullet wound appeared about frame 225, and his reaction time would have been inordinately slow—over three seconds—had he been struck at frame 166. The film not only fixed the President's first wound at sometime between frames 210 and 225<sup>19</sup> (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), but it also showed that Governor Connally had been hit before frames 235-40<sup>20</sup> and that at frame 313 the fatal bullet struck the President's head.<sup>21</sup>

While one might initially conclude from Zapruder's film that the first shot hit the President in the neck, the second hit Governor Connally, and the third hit the President's head, another fact makes this reconstruction impossible. Oswald's single-action rifle could not 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.<sup>22</sup> As a result, even if the President had been hit at frame 210—the earliest point at which Oswald could have had a clear shot—it would have been impossible for another bullet from Oswald's gun to hit Governor Connally by 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

17. See WARREN COMM'N REP. 110.

18. See *id.* at 98.

19. *Id.* at 105.

20. *Id.* at 105-06.

21. *Id.* at 109.

22. *Id.* at 117; 3 WARREN COMM'N HEARINGS 404-07 (testimony of Robert A. Frazier).



struck Governor Connally.<sup>23</sup> Moreover, since one bullet was fragmented when it struck the President's head<sup>24</sup> and there was no sign of any other bullet mark on the limousine,<sup>25</sup> the Commission concluded that one of the shots must have missed the Presidential car completely.<sup>26</sup> With two bullets physically 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 questions: (1) 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? (2) Could one bullet have inflicted both the wound in President Kennedy's neck and the wounds found in Governor Connally's rib cage (front and back), his wrist, and his thigh? (3) If one bullet had 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 fallibility of memory and perception in time of crisis and 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 it. Although the photographic evidence did not show any obvious reaction by the Governor immediately after he was presumably hit,<sup>27</sup> 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.<sup>28</sup>

In this context Epstein's argument can be understood. First, he argues that since Oswald himself clearly could not have fired two shots as close to each other as the ones that struck President Kennedy and Governor Connally,<sup>29</sup> the rejection of the Commission's one-bullet theory forces one to conclude that there must have been another assassin. Actually, of course, this is but one possibility; another and perhaps more likely possibility is that Oswald indeed fired his first shot before frame 210 while the foliage obscured his view (it was possible to see, although not well, through that foliage).<sup>30</sup> This would account for Governor Connally's statement that he

23. See WARREN COMM'N REP. 109.

24. 2 WARREN COMM'N HEARINGS 94 (testimony of Roy H. Kellerman).

25. 5 *id.* at 71 (testimony of Robert A. Frazier); WARREN COMM'N REP. 105.

26. WARREN COMM'N REP. 110-11.

27. The Commission concluded that Governor Connally had been hit before frames 235-40 of the Zapruder film. WARREN COMM'N REP. 105-06. Frames 225-35 show no apparent reaction. See 18 WARREN COMM'N HEARINGS 26-31 (exhibit 885). Between frames 235 and 245, 18 *id.* at 31-36 (exhibit 888), his reaction becomes apparent.

28. See WARREN COMM'N REP. 117.

29. EPSTEIN 45.

30. See WARREN COMM'N REP. 101 (exhibit 891).



heard the first shot before he was hit. In that case exhibit 399 might be either the first bullet fired, which struck President Kennedy (and then somehow did no further damage either to itself or to the car), or the second bullet fired, which wounded Governor Connally. Although for various reasons each of these possibilities is unlikely, neither seems more so than Epstein's conclusion.

Despite Epstein's having leaped to the most sensational of the conclusions that follow from his own arguments, his 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, continued in a downward path, and exited from his neck below the Adam's apple. It then continued downward and struck Governor Connally, who was sitting in the jump seat ahead of the President.<sup>31</sup>

This conclusion, however, had not been obvious from the beginning. The doctors at Parkland Hospital, where the President was first brought, noticed a wound on his throat below the necktie line,<sup>32</sup> but since they did not turn him over, they failed to note the wound in the back of his neck-shoulder area.<sup>33</sup> As a result, they concluded that the visible wound "could be" an entrance wound.<sup>34</sup> They then cut through the throat wound as part of a tracheotomy, obscuring it completely.<sup>35</sup> 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 of the neck-shoulder area.<sup>36</sup> They could find no exit wound, however, and it was only the next morning, when they talked to the doctors who had treated the President at Parkland Hospital in Dallas, that the autopsy surgeons learned about the obscured wound in the front of the President's neck.<sup>37</sup> 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 neck 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.<sup>38</sup> The Commission concluded that the angle of the wound was consistent with a trajectory that would have

31. *Id.* at 106-07.

32. 3 WARREN COMM'N HEARINGS 360 (testimony of Dr. Charles J. Carrico, resident in surgery, Parkland Memorial Hospital).

33. 3 *id.* at 363-64 (testimony of Dr. Charles J. Carrico).

34. 3 *id.* at 364 (testimony of Dr. Charles J. Carrico).

35. 3 *id.* at 380 (testimony of Dr. Malcolm Perry, surgeon, Parkland Memorial Hospital).

36. 2 *id.* at 363-64 (testimony of Comdr. James J. Humes).

37. 2 *id.* at 361-62 (testimony of Comdr. James J. Humes).

38. 2 *id.* at 361-64 (testimony of Comdr. James J. Humes).



enabled the bullet to strike Governor Connally in the rib cage, wrist, and thigh (all of these wounds being located on a straight line).<sup>39</sup>

Epstein's argument with reference to the President's wounds is basically a twofold attack on this reconstruction. He concludes that the bullet that struck the President did not go through his body<sup>40</sup> and further that the wound on the President's back was located much too low for the bullet to have described the path attributed to it by the Commission.<sup>41</sup> In support of the former attack, Epstein cites an FBI report made at the time of the autopsy that stated, "[T]here was no point of exit, and . . . the bullet was not only in the body."<sup>42</sup> A supplementary FBI report dated January 13, 1964, 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."<sup>43</sup>

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. . . . [I]f the FBI reports distorted such a basic fact of the assassination, doubt is cast upon the FBI's entire investigation . . . ." <sup>44</sup> Actually, this is far from clear. The fact is that there are many errors in the FBI reports, as, for that matter, there would be in any large-scale investigation by any agency. That an agency is not infallible—and the FBI most certainly is fallible—does not "cast doubt" upon its entire investigation. The explanation that several of the Commission's staff have given is that an FBI agent left before the autopsy was complete and telephoned in his report before the doctors had determined the path of the bullet through the President's body. (Actually, even this explanation is unnecessary, for until they spoke to the Parkland Hospital doctors the next morning even the autopsy surgeons thought that 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 FBI had the autopsy report by that time, grounds to imply, as Epstein does, that the infallible FBI was sticking to its guns despite a false autopsy report. First of all, anyone who has dealt with a governmental agency knows how information from a previous letter or report gets included in subsequent documents long after it has been shown to be wrong. Furthermore, even this aspect of Epstein's theory also involves fallibility on the part of the FBI since the proper course would have been

39. WARREN COMM'N REP. 105-09.

40. EPSTEIN 58-59.

41. *Id.* at 51-58.

42. *Id.* at 48.

43. *Ibid.*

44. *Id.* at 50.



to discuss and point out the error in the autopsy report. Finally, the assumption that the FBI did and does make errors does not, as does Epstein's theory, involve perjury on the part of at least the three autopsy surgeons (one of whom, Colonel Pierre Finck, did the one-bullet theory considerable damage in an entirely different connection).<sup>45</sup> Not only did these doctors have no reason to lie, but, perhaps more significantly, at the time of the autopsy they had no possible way to know of the evidence disclosed by the Zapruder films and hence no possible way to know that this aspect of their testimony and report would prove so crucial.

Epstein's other argument concerning 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 the wound in his throat. If this were so, the bullet which struck the President could not also have struck Governor Connally so as to cause his wounds, because his wounds clearly were made by a bullet which followed a downward path (the Commission calculated the angle at around eighteen degrees).<sup>46</sup> Again, Epstein's case is based primarily on the reports of the investigatory agencies rather than upon those of the autopsy surgeons. Thus the FBI and Secret Service reports, respectively, state that the wound was in President Kennedy's "back . . . approximately six inches below the top of the collar,"<sup>47</sup> and "about four inches down from the right shoulder."<sup>48</sup> Moreover (and Epstein regards this as crucial), the FBI reports show that the hole in the back of the President's jacket was  $5\frac{3}{8}$  inches below the top of the collar and that the bullet hole in the back of his shirt was  $5\frac{3}{4}$  inches below the top of the collar.<sup>49</sup> 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.<sup>50</sup> At first glance, anyone not familiar with anatomy would think this was so. But it just so happens 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 to a crowd as the President was doing, one can discover that a point  $5\frac{3}{4}$  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. Considering President Kennedy's exceptionally powerful shoulder development<sup>51</sup> and allowing for about an inch of "riding up" by his shirt and jacket, as would be expected since he wore a brace, it is not unreasonable to assume the en-

45. See text accompanying note 54 *infra*.

46. WARREN COMM'N REP. 106.

47. Quoted in EPSTEIN 198.

48. 18 WARREN COMM'N HEARINGS 760 (exhibit 1024).

49. See EPSTEIN 55.

50. *Ibid.*

51. See 2 WARREN COMM'N HEARINGS 366 (testimony of Comdr. James J. Humes).



trance wound would be approximately two inches higher than the exit wound, which would account for the eighteen-degree downward movement. Interestingly enough, the autopsy surgeons located the point of the entrance wound at fourteen centimeters below "the tip of the right mastoid process"<sup>52</sup>—a place, depending on the length of President Kennedy's neck, approximately two inches higher than the position of his 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 part of Epstein's assault upon the one-bullet theory concerns the condition of the bullet which the Commission concluded wounded both President Kennedy and Governor Connally. This argument is more difficult to answer than the first and perhaps has not had the full attention it deserves. Epstein's argument here is simply that the "one bullet," exhibit 399, is in too good condition to have done all of the damage to Governor Connally's rib cage, wrist, and thigh.<sup>53</sup> Indeed, Colonel Pierre Finck, the only witness to state categorically whether exhibit 399 could have caused Governor Connally's wrist wound, concluded, "No; for the reason that there are too many fragments described in that wrist."<sup>54</sup> 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, Colonel Finck had not seen Governor Connally's wounds,<sup>55</sup> and the description that he relied upon makes it quite clear that the fragments found in Governor Connally's wrist were minute.<sup>56</sup> Dr. Charles F. Gregory, who actually treated Governor Connally's wrist, testified that the missile that struck Governor Connally's wrist "could be virtually intact, insofar as mass was concerned."<sup>57</sup>

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

52. 2 *id.* at 361 (testimony of Comdr. James J. Humes). At one point on the same page this is referred to as the "top" of the mastoid process. This presumably is a misprint. See text accompanying note 151 *infra*.

53. EPSTEIN 118.

54. 2 WARREN COMM'N HEARINGS 382 (Army pathologist).

55. See *ibid.*

56. Col. Finck apparently relied on the Parkland Hospital operative records, 17 *id.* at 18-20 (exhibit 392), describing Governor Connally's wounds and the X-rays taken before treatment, 17 *id.* at 347-48 (exhibits 690-91, wrist); 17 *id.* at 351-53 (exhibits 694-96, thigh), which show metal fragments. However, the fragments in Governor Connally's wrist were estimated by the attending physician, Dr. Charles F. Gregory, to be from 1/2 to 2 mm. in diameter and no more than 1/2 mm. thick, weighing less than a postage stamp. Dr. Gregory estimated the thigh fragment to be about the same size. He also testified that exhibit 399 could have been the bullet which left the fragments. 4 *id.* at 120, 125. Dr. George T. Shires, chairman of the Department of Surgery, Southwestern Medical School, also in attendance, estimated the weight of the thigh fragment to be about 0.1 grain. 6 *id.* at 106; see 17 *id.* at 841 (exhibit 842, fragments removed from Governor Connally's wrist).

57. 6 *id.* at 99 (chairman of division of orthopedic surgery, Southwestern Medical School).



scribed it: "The wound entrance was an elliptical wound. In other words, it had a long diameter and a short diameter. It didn't have the appearance of a wound caused by a high velocity bullet that had not struck anything else . . ."<sup>58</sup> This kind of wound is typical of that made by a bullet that has already hit another object and is tumbling.<sup>59</sup>

Third, there was expert testimony that a bullet striking Governor Connally's wrist without having gone through other objects would have done far more damage than actually occurred.<sup>60</sup>

Fourth, exhibit 399 was damaged only on the rear end,<sup>61</sup> as though it had hit bone rear end first—a condition consistent with the probable 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 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 one-bullet conclusion is by no means obvious, especially since the crucial testimony—that of Governor Connally's doctors—contains many inconsistencies, some of which point away from that theory.<sup>62</sup> On the other hand, in addition to raising all the above questions, the most significant of the alternative theories presupposes a second assassin who was firing from the same area as Oswald but who left no trace at all. Therefore, it was hardly unreasonable for the Commission to decide that the probabilities favored the one-bullet theory.

Although Epstein's first major substantive point is almost certainly wrong and the second is quite dubious, he spends most of his effort on what may well be a useful and reasonably accurate description of the Warren Commission's procedures. However, Epstein's treatment of the substantive issues, together with charges by many members of the Commission's staff that Epstein is guilty of flagrant misquotation, force one to withhold judgment on what might be the more significant aspect of Epstein's work.

However, one need not 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 it at least initially leaves the reader thinking that if only a tenth of Lane's implications are true, he has more than made his case that the Warren Commission's performance is a

58. 6 *id.* at 95 (testimony of Dr. Robert Shaw, chairman of division of thoracic surgery, Southwestern Medical School).

59. *Ibid.* Any other possibility is refuted by the length of the ellipse, 2.5 cm. See 4 *id.* at 124 (testimony of Dr. Charles F. Gregory).

60. 6 *id.* at 102 (testimony of Dr. Charles F. Gregory).

61. 3 *id.* at 430 (testimony of Robert A. Frazier).

62. See, e.g., 2 *id.* at 382 (testimony of Lt. Col. Pierre A. Finck).



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 again and again that he has been expertly gulled. Though the book is cleverly constructed to make more use of implication and innuendo than of fact, nowhere near one-tenth of what Lane says stands up to careful scrutiny.

The book is not an easy one to demolish. The enormous range of his attacks on the Commission has allowed Lane to profit not only by the reluctance of book reviewers to dig deeply into the evidence, but perhaps also by the decision of many periodicals not to give the book the respectability that would come from discussing it in detail. Moreover, Lane's book is especially difficult to review because he presents no coherent theory about the assassination. He instead presents a long string of weakly connected points without formulating any one central point from which his assertions can be attacked. Proving his points insubstantial, therefore, is an almost 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 rather from a grassy knoll in front of and to the right of the Presidential car. His argument makes two major points: first, that the noise of shots appeared to come from the area of the knoll rather than from the book depository,<sup>63</sup> and second, that a puff of smoke was seen rising from the area of the knoll at about the time the President was shot.<sup>64</sup> Indeed, he is able to make his case with a certain amount of persuasiveness—but only at the cost of completely distorting the evidence. Regarding the source of the noise, 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, 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. Bowers had noted the echo 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.<sup>65</sup> Moreover, although there were certainly many witnesses before the Commission who thought

63. LANE 36-37.

64. *Id.* at 39-40.

65. 6 WARREN COMM'N HEARINGS 287.



that the shots came from the grassy knoll area, Lane is not content merely with their recorded testimony. He quotes his own interview with witness James L. Simmons in which Simmons said that the sound of shots "came from the left and in front of us, toward the wooden fence."<sup>66</sup> But Lane does not mention that some two years earlier Simmons had stated to the FBI that he had the impression the shots came from the book depository.<sup>67</sup>

Lane's argument about the smoke over the knoll is equally interesting. Actually, it was not disputed that there was a puff above the knoll; one witness described it as "smoke or steam," and another said it was "a puff of smoke . . . about 6 or 8 feet above the ground."<sup>68</sup> The Commission did not attempt to deny this. Lane's sleight of hand is going from the smoke to the assumption that the puff came from a gun fired at the President. He quotes witness Clemon E. Johnson as saying that he saw white smoke,<sup>69</sup> 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."<sup>70</sup> Moreover, unless the assassin fired a fifteenth-century harquebus it is hard to see how a shot fired at the President could have made as much smoke as Lane implies was visible. In addition, the area was teeming with people. It is conceivable that a man with a rifle might have escaped notice. However, not only is this most unlikely, but attempting to assassinate from the knoll would be so dangerous that it is hard to believe any assassin with even minimum rationality would have chosen such a spot. Finally, and most important, the physical evidence indicates beyond any reasonable doubt that the two shots that struck the President and the Governor were fired from the rear and from above;<sup>71</sup> and though, of course, there might have been dozens of other would-be assassins firing and missing while concealed in other areas, we can say that, if so, they left no physical traces.

The question of the smoke over the grassy knoll further illustrates Lane's technique. 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.<sup>72</sup> The implications are, first, that in this matter the Commission did at best a slovenly job in not calling those witnesses (whose statements to the FBI were before the Commission), and second, that this testimony would (or could) have changed the Commission's conclusions. The untruth of the second implication shows why the first is also false.

66. LANE 40.

67. See 22 WARREN COMM'N HEARINGS 833 (exhibit 1416).

68. LANE 40.

69. *Ibid.*

70. 22 WARREN COMM'N HEARINGS 836 (exhibit 1422).

71. See text accompanying notes 3-5 *supra*.

72. See LANE 40-41.



Nor can we assume, as might be charitable, that Lane's distortions are simply rooted in his ignorance of what we might find relevant. Lane's treatment of his own testimony before the Commission provides conclusive refutation of this. Lane made two appearances before the Commission and refused to make available to it two different items of evidence. In both instances the difference in treatment between the record of Lane's statements before the Commission and his own versions of his testimony is more than merely dramatic—indeed, the English language lacks a word for his colossal gall.<sup>73</sup>

One of the incidents involved Lane's refusal to make available a tape recording of a conversation he had with Helen Markham, who was also a witness before the Commission. At the hearing he defended his refusal on the ground that he had been retained by Marguerite Oswald, the mother of Lee Oswald, as an attorney for Lee, and that

I have an attorney-client relationship existing. The Commission is now asking for working papers of an attorney. The Supreme Court has been quite plain, I think, on the question of the sanctity of working documents of attorneys. And I think, therefore, that the questions are no longer in a proper area.<sup>74</sup>

Lane's assertion that the *Hickman v. Taylor*<sup>75</sup> doctrine barred the Commission from getting such a transcript of a conversation between a witness and an attorney shows such an appalling lack of legal skill that it is hard to believe he meant it as more than a joke. Indeed, any first-year law student putting forth the same proposition could be certain of getting no more than a "C" on his civil procedure exam. Lane apparently now realizes this since in his book he gives an entirely different story:

Had the Commission been motivated by an authentic desire to know the truth, surely it would have directed me to give the tape recording up. I was eager to furnish this evidence, but I was reluctant to break the law, for to make and divulge a recording of a telephone conversation may be a violation of the Federal Communications Act. I had made the recording; if I divulged it by presenting it voluntarily to the Commission, I could be tried in a court of law.<sup>76</sup>

Not only is there no hint of this reasoning in Lane's testimony, but it is every bit as bad law as his first legal justification. The cases are legend that no criminal violation, or any other violation, of the Federal Communications Act inheres in a person recording a telephone conversation to which

73. My colleague, Dr. George Torzsay-Biber, has informed me that the Hungarian *van porfja* would be appropriate here. Certainly the Yiddish *chutzpah* is appropriate. *Chutzpah* is usually explicated rather than defined; its classic illustration is the man who took a taxi to the bankruptcy court and invited the cab driver in as one of the creditors.

74. 5 WARREN COMM'N HEARINGS 547.

75. 329 U.S. 495 (1947).

76. LANE 181-82.



he is a party.<sup>77</sup> Moreover, Lane's argument that he was hoping that the Commission would order him to give up the recording is hardly compatible with his answers to Commission questions such as "Are you refusing to disclose it, then?"<sup>78</sup> Lane's answer was, "I have a specific direction from Mrs. [Marguerite] Oswald . . . not to discuss this matter publicly . . ."<sup>79</sup>

The second incident in Lane's testimony is even more remarkable. Lane testified before the Commission that he had a witness who could testify that a meeting had taken place before the assassination between Bernard Weissman (the author of a violently anti-Kennedy ad which appeared in the Dallas papers on the morning of the assassination), Patrolman Tippit, and Jack Ruby.<sup>80</sup> Although the Commission was unable to find evidence that such a meeting had taken place<sup>81</sup>—and indeed there is very good reason to disbelieve its existence—Lane refused to name his informant on the ground that he had promised not to.<sup>82</sup> In discussing this in *Rush to Judgment*, Lane states:

But if the Commission had wanted his name, it need only have asked one of its witnesses, Thayer Waldo, a reputable journalist on the staff of the *Fort Worth Star-Telegram*, who was questioned by counsel in Dallas on June 27, 1964. Waldo, from whom I originally heard of the meeting, was well acquainted with the witness . . . Counsel, however, did not ask Waldo about the meeting.<sup>83</sup>

The problem with Lane's handling of the issue is that nowhere in his testimony did he mention Waldo's name, or indicate to the Commission that Waldo might have such information. Nor was there any hint in Waldo's testimony before the Commission that he might have such knowledge. Indeed, while Waldo was not asked specifically whether he had any information on the meeting alleged by Lane, he did state that apart from the testimony that he gave (which was primarily about Jack Ruby's behavior in the Dallas jail the night of the assassination)<sup>84</sup> he had nothing else to tell the Commission relevant to its inquiry.<sup>85</sup>

Going through Lane's book piece by piece consumes so much time and space that, after this brief taste, it is more appropriate merely to classify his techniques of distortion. First, there is the rank distortion of witnesses' testimony. For example, to bolster his argument that the shots came from the grassy knoll area, Lane discusses the testimony of Lee Bowers:

77. See, e.g., *Rathbun v. United States*, 355 U.S. 107 (1957).

78. 5 WARREN COMM'N HEARINGS 547.

79. 5 *id.* at 548.

80. 2 *id.* at 58, 60; WARREN COMM'N REP. 368.

81. See WARREN COMM'N REP. 368-69.

82. 2 WARREN COMM'N HEARINGS 60-61; 5 *id.* at 552.

83. LANE 249.

84. See 15 WARREN COMM'N HEARINGS 587-90.

85. 15 *id.* at 595.



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.<sup>86</sup>

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?

*Mr. BOWERS.* I just am 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.<sup>87</sup>

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

*Mr. BALL.* Did you see any activity in this high ground above Elm after the shot?

*Mr. 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.<sup>88</sup>

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

86. LANE 32 (footnotes omitted).

87. 6 WARREN COMM'N HEARINGS 288.

88. *Ibid.*



Mr. BALL. Is there anything that you told me that I haven't asked you about that you can think of?

Mr. BOWERS. Nothing that I recall.

Mr. BALL. You have told me all that you know about this, haven't you?

Mr. BOWERS. Yes; I believe that I have related everything which I have told the city police, and also told to the FBI.<sup>89</sup>

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 rejecting 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 FBI for examination, the Dallas Police had indicated on it a number of possible fingerprints—none of which could be positively identified as Oswald's.<sup>90</sup> 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 FBI.<sup>91</sup> It was then discovered that 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.<sup>92</sup> This palm print turned out to be the only print on the weapon positively identifiable as Oswald's.<sup>93</sup> The Dallas police officer who lifted the print stated that when the rifle was first sent to Washington he had not bothered noting that he had taken the print because he thought that enough of the lifted print was still identifiable on the weapon<sup>94</sup>—an assertion which Lane calls "incredible" in view of the fact that the FBI expert testified that no such print remained.<sup>95</sup>

With this evidence and the statement by Dallas Police Chief Jesse Curry that "[i]f 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—"<sup>96</sup> Lane has a field day. Indeed, he makes a very persuasive case for the proposition that the "lifted" print was a fabrication 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, an FBI fingerprint expert reexamined the lifted palm print and was able to determine that the interruptions in the print caused by the nicks and scratches on the surface of the material from

89. 6 *id.* at 288-89.

90. 4 *id.* at 259-61 (testimony of Lt. J. C. Day, Dallas Police Department fingerprint expert).

91. 4 *id.* at 262 (testimony of Lt. J. C. Day).

92. 4 *id.* at 23 (testimony of Sebastian F. Latona).

93. 4 *id.* at 24 (testimony of Sebastian F. Latona).

94. 4 *id.* at 261-62 (testimony of Lt. J. C. Day).

95. See LANE 154-57.

96. 24 WARREN COMM'N HEARINGS 766.



which the print had been lifted exactly matched the nicks and scratches on Oswald's rifle—thus proving beyond question that Oswald's palm print had indeed been lifted from the rifle.<sup>97</sup>

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 head was fired from the right front rather than 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. He vigorously disputes the assertion of the Commission that the bullet which struck the President in the head entered from the rear, making a small hole in the back of his head and a much larger one on the right front side<sup>98</sup> (the President's head was turned to his left at the time the bullet struck). As evidence that no such smaller hole existed, Lane states that "eight doctors were unable to locate a smaller hole"<sup>99</sup> and does not mention that the doctors in Dallas did not turn the President over either before or after their attempt to save him.<sup>100</sup> Moreover, Lane does not set out the positive testimony of the three autopsy surgeons that the "coned out" inner surface of the rear of the President's skull established that the entrance wound was in the back of his head.<sup>101</sup>

Lane's third basic technique is to set himself up as his own expert witness. Thus, his only mention of the two fragments found in the Presidential car is "two fragments which experts agree are hardly suitable for identification purposes."<sup>102</sup> Lane later stated his expert opinion more flatly: "[T]he whole body of ballistics literature demonstrates that they are valueless for purposes of identification."<sup>103</sup> Not only do the two fragments deserve far more attention than this since it is hard to see where they could have come from other than from the bullet that struck the President's head, but one would think that Lane should have pointed out that the two experts who testified before the Commission—and whose conclusions were supported by affidavits from two other experts—disputed his expert opinion and positively identified the fragments as coming from Oswald's rifle.<sup>104</sup>

97. 25 *id.* at 897 (exhibit 2637, letter from J. Edgar Hoover positively identifying the lift as having come from the assassination weapon, and supporting photograph).

98. See WARREN COMM'N REP. 86.

99. LANE 57.

100. See, e.g., 3 WARREN COMM'N HEARINGS 363 (testimony of Dr. Charles J. Carrico).

101. See 2 *id.* at 379 (testimony of Lt. Col. Pierre A. Finck); 2 *id.* at 377 (testimony of Dr. J. Thornton Boswell, Navy Medical Corps); 2 *id.* at 352 (testimony of Comdr. James J. Hume).

102. LANE 76.

103. Interview With Mark Lane, in *Playboy*, Feb. 1967, at 41, 48. The restraint and guarded tone with which Lane creates innuendoes in *Rush to Judgment* are often lacking in his public appearances and informal articles.

104. See 3 WARREN COMM'N HEARINGS 502 (testimony of Joseph D. Nicol, superintendent of Illinois Bureau of Criminal Identification and Investigation); 3 *id.* at 435 (testimony of Robert A. Frazier); 7 *id.* at 591 (affidavits of Cortland Cunningham and Charles L. Killion).



The technique of acting as one's own expert witness can be combined with the previously mentioned technique of leaving out crucial evidence. Lane does this when he insists that the famous picture of Oswald carrying a rifle<sup>105</sup> is a composite of which only the head is Oswald's. Lane says he is led to this conclusion by his own observations of the shadows on the face and on the body.<sup>106</sup> The reader can examine the picture for himself, but it does not appear to me that the picture is 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 FBI photographic expert testified before the Commission that a microscopic examination of the picture led him to conclude that it was not a composite.<sup>107</sup> Moreover, although the negative of the photograph Lane attacks was not discovered,<sup>108</sup> the police found among Oswald's belongings the negative of another picture which also shows Oswald holding what is apparently the same rifle.<sup>109</sup> 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). 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,<sup>110</sup> but that it had been taken with Oswald's own camera.<sup>111</sup>

The fourth of Lane's basic techniques involves the use of the gross logical fallacy. For example, 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 implies that Oswald could not have been the assassin.<sup>112</sup> At first glance the logical connection between the propositions seems apparent, but a little thought reveals that inability to perform a task means two entirely different things. First, one's inability to lift, without aid, a 10,000-pound weight or run a mile in two 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

105. 16 WARREN COMM'N HEARINGS 510 (exhibit 133(A)).

106. LANE 361.

107. 4 WARREN COMM'N HEARINGS 288 (testimony of Lyndal L. Shaneyfelt, FBI photographic expert).

108. 4 *id.* at 289; 15 *id.* at 693 (testimony of Lyndal L. Shaneyfelt).

109. 4 *id.* at 226 (testimony of Dallas Police Captain J. W. Fritz); 4 *id.* at 283 (exhibit 133 (B)); 7 *id.* at 231 (testimony of Dallas Police Officer Guy F. Rose).

110. 4 *id.* at 288 (testimony of Lyndal L. Shaneyfelt).

111. *Ibid.* See also 5 *id.* at 405 (testimony of Mrs. Lee Harvey Oswald).

112. LANE 123-30.



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. The latter, of course, depends upon the strength of the other evidence that Oswald was the killer—an inquiry which Lane does not undertake in this context. In fact, if I were to estimate the probabilities involved, I would have to say that, as an *a priori* proposition, 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 was the assassin. 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.

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. Indeed, when one looks carefully at Lane's book and the evidence upon which he relied, it almost passes the point where one can call him fraudulent. Paradoxically, the very depth and thoroughness of the distortion in *Rush to Judgment* are perhaps strong evidence that Lane himself actually believes much of what he has written. While it is possible, of course, that he is secretly laughing all the way to the bank, it is hard to think of someone who just for the profit—admittedly considerable—could perpetrate as elaborate and tasteless a hoax as this.

Lane has defended himself on the ground that his 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 deemphasize others. But Lane carries this far beyond mere advocacy. The fact is that any lawyer who carried this latitude to such an extreme and employed for a client the type and volume of misrepresentation that Lane does would be in danger of either disbarment or commitment.

We may pass over *Whitewash*, by Harold Weisberg, in just a sentence.



It is the most strident, bitter, and generally irrational of all the attacks on the Commission. Out of charity, we shall mention it no further and move on to Léo 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 is true with 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. Sauvage's technique, however, is a fairly simple one. 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 erroneous and garbled that they are sitting ducks now that a great deal more evidence has been made available. He then 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 the Commission for allowing them to leak out at all. Finally, when he comes to the evidence presented by the Commission, Sauvage has the reader psychologically prepared to find that, like everything before, it 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,"<sup>113</sup> and, "[I]t is logically untenable, legally indefensible, and morally inadmissible to declare Lee Harvey Oswald the assassin . . ."<sup>114</sup> 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 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."<sup>115</sup> Sauvage's reconstruction of the seizure of the revolver (exhibit 143) from Oswald is 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 not of his own knowledge be sure that it

<sup>113</sup> SAUVAGE 285.

<sup>114</sup> *Id.* at 398.

<sup>115</sup> Sauvage, *Prof. Bickel and the Warren Commission*, *The New Leader*, Nov. 11, 1966, at 16, 18.



was the same gun, since he had handed it to one Officer Carroll before his struggle with Oswald had ended.<sup>116</sup>

Sauvage next moves on to the testimony of Officer Carroll. When asked by the Commission who had hold of the pistol at the time he took it, Carroll stated: "I don't know, sir. I just saw the pistol pointing at me and I 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."<sup>117</sup> Carroll himself did not identify the gun but merely stated that he had given it to Officer Gerald Hill.<sup>118</sup> Officer Hill then testified that he had 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.<sup>119</sup>

Sauvage concludes from this testimony 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 . . ."<sup>120</sup> The flaw he finds is that Carroll said that he did not know who had hold of the pistol and that

[t]he 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 a pistol to someone.<sup>121</sup>

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 others involved in the incident. Officer C. T. Walker testified:

Mr. BELIN. When you saw Oswald's hand by his belt, which hand did you see then?

Mr. WALKER. He had ahold of the handle of it.

Mr. BELIN. Handle of what?

Mr. WALKER. The revolver.

Mr. BELIN. Was there a revolver there?

Mr. WALKER. Yes; there was.<sup>122</sup>

Detective Paul L. Bentley stated: "Just as I entered the lower floor I saw Patrolman McDonald fighting with this suspect. I saw this suspect pull a pistol from his shirt, so I went to Patrolman McDonald's aid immedi-

116. 3 WARREN COMM'N HEARINGS 300-01.

117. 7 *id.* at 20.

118. 7 *id.* at 22.

119. 7 *id.* at 54-55; 24 *id.* at 238-39 (exhibit 2003).

120. SAUVAGE 115.

121. *Ibid.*

122. 7 WARREN COMM'N HEARINGS 39.



ately.<sup>123</sup> 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 the gun in it. Officer Hutson had entered the row behind the suspect, and grabbed him around the neck . . ."<sup>124</sup> Patrolman T. A. Hutson stated: "Officer C. T. Waker [*sic*] came up and was 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 . . ."<sup>125</sup>

As if this were not enough, Oswald admitted to several 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.<sup>126</sup> Sauvage handles these statements with the assertion: "[T]he 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 said had killed Tippit would certainly tend to damage him. It would seem from the Report, therefore, that Oswald did not admit that."<sup>127</sup>

Mr. Sauvage carries his perversity to extremes in this quotation. Obviously, the reasonable construction of this sentence of the report is that Oswald admitted only that which he was completely convinced the authorities could prove. At the time, there was no ballistic determination of the gun used to shoot 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 everyone saw Oswald draw, where did it come from? Sauvage concedes that it did belong to Oswald, having been purchased by him some half a year earlier.<sup>128</sup> 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 of that evidence? 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, in any conceivable way, have known in advance where they would find Oswald. In the face of all this, a sufficiently desperate defense attorney might conceivably argue that it had not been proven conclusively that exhibit 143 was taken from

123. 24 *id.* at 233 (exhibit 2003).

124. 24 *id.* at 237-38 (exhibit 2003).

125. 24 *id.* at 240 (exhibit 2003).

126. See, e.g., 7 *id.* at 40-41 (testimony of Dallas Police Officer C. T. Walker); 7 *id.* at 58 (testimony of Dallas Police Officer Gerald C. Hill).

127. SAUVAGE 115-16.

128. *Id.* at 112-13. See also WARREN COMM'N REP. 174.



Oswald at the theater, in order to take the prosecution's time and confuse the jury. 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"<sup>129</sup>—for the most part their attitudes are quite different. Lane buries or omits any evidence other than that which leads his reader along his chosen path. Thus, Lane's only mention of the arrest is a passing reference on page 81; the reader who missed that 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 his treatment of the General Walker incident. The Commission concluded that one of the circumstances strengthening its belief that Oswald had killed the President was the fact that Oswald was the author of a previous assassination attempt on General Edwin A. Walker some seven months earlier.<sup>130</sup> To be sure, on this issue Commission evidence, based in great part on the somewhat unreliable testimony of Marina Oswald, was not overly strong. 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 told the Commission that her husband had left this note behind one night and explained that he had just attempted to kill General Walker.<sup>131</sup> 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.<sup>132</sup> (According to Marina's testimony, Oswald told her he had buried it far from Walker's house.)<sup>133</sup> Moreover, Sauvage points out that "the Dallas authorities never bothered to explain how Oswald got to Walker's house,"<sup>134</sup> since he had no car. Of course it is 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 a 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 all this without being noticed by anyone.<sup>135</sup>

129. SAUVAGE 398.

130. WARREN COMM'N REP. 404.

131. 1 WARREN COMM'N HEARINGS 16.

132. See SAUVAGE 154-57.

133. 1 WARREN COMM'N HEARINGS 16.

134. SAUVAGE 155.

135. *Id.* at 155-56 (paragraphing omitted).



Sauvage does point out a number of unlikely aspects of the story. On the other hand, we do know that among Oswald's possessions were found several photographs of General Walker's home,<sup>136</sup> and since microscopic examination revealed that at least one was taken with Oswald's camera,<sup>137</sup> we are not completely without evidence tying him to General Walker. Moreover, the dates involved may be relevant. One picture of the area by the house was taken between March 8 and 12, 1963 (this was determined from the progress on a building under construction shown in the background).<sup>138</sup> On March 12 Oswald, under an assumed name, bought the money order which he mailed in to purchase his rifle; on March 20 the rifle was mailed out to him and on April 10 the attempt on General Walker's life occurred.<sup>139</sup>

Sauvage's technique, however, requires him to mention the photographs, and he quotes the Commission as saying that "three photographs found among Oswald's possessions after the assassination were identified by Marina Oswald as photographs of General Walker's house."<sup>140</sup> He concentrates, however, on pointing out an inconsistency he finds between this statement and an earlier statement of the Commission: "[U]ntil December 3, 1963, the Walker shooting remained unsolved."<sup>141</sup> Since the pictures were found eleven or twelve days prior to this date, on November 22 or 23, Sauvage asks, "Wasn't it strange that the federal and local 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 Boy Scouts . . . ?"<sup>142</sup>

It seems hardly strange at all to me that in the first eleven days after the assassination no one had identified the pictures of General Walker's house. Presumably, police were investigating many 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 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. Here he reveals most clearly his talent for missing the point. Sauvage states: "I am ready to admit that Oswald was against fascists

136. See 1 WARREN COMM'N HEARINGS 37-38 (testimony of Mrs. Lee Harvey Oswald); WARREN COMM'N REP. 185.

137. 15 WARREN COMM'N HEARINGS 692-93 (testimony of Lyndal L. Shaneyfelt).

138. 22 *id.* at 585 (exhibit 1351, FBI report).

139. WARREN COMM'N REP. 185.

140. SAUVAGE 165, quoting WARREN COMM'N REP. 185.

141. SAUVAGE 165, quoting WARREN COMM'N REP. 183.

142. *Ibid.*



and that he might have been led to undertake some action against a Walker. Would the same reasoning have led him to kill a Kennedy?"<sup>143</sup>

To me, evidence (though admittedly inconclusive) that Oswald had attempted to kill General Walker would be highly relevant to the question of whether he had killed President Kennedy. True, in a criminal prosecution such evidence would probably have been held inadmissible, but the reason for its inadmissibility would be not so much that it is not probative, but rather that it is, in a sense, too probative and therefore prejudicial. And though Sauvage, of course, is perfectly correct in stating that the absence of a motive to kill the President is some reason to believe that Oswald did not do it, it seems that the significant thing the attempt to kill Walker would indicate is that, in Oswald, we had a man who could try to kill from ambush a man who had done him no personal harm and from whose death he could not expect to profit.

We must be very careful not to use up all our synonyms for perversity on Mr. Sauvage's book lest we run out before coming to Richard Popkin's *The Second Oswald*. *The Second Oswald* is actually only a thin paperback that has had to be padded with nine appendices to make it as long as it is. The book 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*.<sup>144</sup>

Popkin, chairman of the philosophy department 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 a single coherent theory. Popkin understands the fallacy of agreeing with Epstein that there probably was a second 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 fatal 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 did 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

<sup>143</sup>. *Id.* at 392.

<sup>144</sup>. Popkin, *The Second Oswald: The Case for a Conspiracy Theory*, *The New York Review of Books*, July 28, 1966, at 11.



General Walker's house. The discipline required in formulating 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—which he very well may not be.

In many ways this is quite unfortunate, because several of Popkin's ideas might well have been made into a theory considerably more plausible than the one he finally chooses. Essentially, the problem which Popkin tries to explain and which 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 proven to be elsewhere at the time. If Popkin had decided, as the Commission did, that these witnesses were either lying or unintentionally wrong, 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 basically correct in their identification of an "Oswald," but were misled by an extremely complicated scheme to set up a false trail.

The crime was supposedly 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, could then disappear. When the evidence all came in it would be so confused that it would be impossible to convict the actual Oswald.

In one of his chapters Mark Lane uses a variant of this theory in which Oswald was an innocent patsy. Under Lane's version, however, the incident in the Texas Theater becomes most difficult to explain. Moreover, framing poor Lee Oswald does seem a great deal of trouble for the conspirators to go to. 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 have been certain that Oswald would still be working at the depository, they could not possibly have known 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 plan, one might point out that 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 since he would end up being tried before a Texas jury that, having heard about his Marxist past, might not require a vast amount of evidence to give him the death penalty.



But the more basic problem with Popkin's conspiracy theory is that no sane or even mildly insane person would have done it the way Popkin 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.)<sup>145</sup> If it turns out—and 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 399 was planted beside Governor Connally's stretcher,<sup>146</sup> 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 hostage. If Popkin's conspirators to assassinate President Kennedy from the Texas School Book Depository were as clever as he makes them out, they could have had Oswald, who worked there, and the other marksman fire their shots, put their rifles in a previously prepared box full of either 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. Oswald obviously 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 a very different thing to say, as Mr. Popkin does, that it was planned without even a minimum 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)<sup>147</sup> also has to be accorded a legitimate portion of this stage. A number of magazines, the most publicized of which is *Ramparts*, have published stories commenting on and drawing the most

145. See POPKIN 96-97, 113.

146. *Id.* at 55-56.

147. See LANE 273-75.



sinister implications from the "mysterious" deaths of "witnesses" somehow connected with the assassination.<sup>148</sup> 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. 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 entire population. Moreover, before we could tell whether 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 any 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 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 in light of 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 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 the abysmal quality of their thought and integrity, why the third-stage writings have attracted so much attention.

To my mind it is only a partial answer to rely on the dictum of P. T. Barnum. Three more basic reasons come immediately to mind. 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, a host of subsidiary questions still remain as to just how he committed the crime and whether he had help. In the typical criminal trial these questions,

148. See, e.g., Welsh, *The Legacy of Penn Jones, Jr.*, *Ramparts*, Nov. 1966, at 39.



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 he had employed one of them.

Uncertainty about many issues is an inevitable by-product of any large-scale investigation, and where the issue is important there will of course be disputes. The evidence for the one-bullet theory is ambiguous, and, as often happens when ambiguity exists, some people assert one possibility while others disagree with equal fervor. In all probability we will never know, to 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 one-bullet theory was an issue until after both the Zapruder film and Oswald's gun had been closely examined. By that time the autopsy on President Kennedy had been completed 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.<sup>149</sup>

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. The first defect is that it was obviously rushed out. Epstein gives a most plausible explanation why,<sup>150</sup> 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,<sup>151</sup> 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 first put out what it did put out, or even something considerably more sketchy, as a preliminary report. The Commission could then have assembled its discussion of the evidence and its conclusions carefully and deliberately in the extra six or eight months this would have taken.

149. 5 WARREN COMM'N HEARINGS 63-64 (testimony of Robert A. Frazier).

150. See EPSTEIN 100-01.

151. This makes all the more valuable the comprehensive index in S. MEAGHER, SUBJECT INDEX TO THE WARREN REPORT AND HEARINGS & EXHIBITS (1966).



In all probability, however, a second basic decision of the Commission was even more detrimental to the report's ultimate value than the decision to get it out so 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 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 marshaled 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.<sup>152</sup> 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. It could have recognized fully the fact that the one-bullet theory 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 accurate 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 detracts from 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 “possessed the capability with a rifle . . . to commit the assassination.”<sup>153</sup> 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 eyewitness identification by one Helen Markham, whose credibility had been completely destroyed during the hearings.<sup>154</sup>

It is difficult 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 best 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

152. See WARREN COMM'N REP. 97-109.

153. See *id.* at 195.

154. See 3 WARREN COMM'N HEARINGS 306-21.



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, the decisions to publish the report so hastily and from the perspective of an advocate were serious errors, and if the decisions are responsible for even a tiny part of the third stage, the Commissioners have suffered for them.

The third reason for the attention given the third-stage writings is the failure of the Commission to disclose the full contents of all the evidence before it. Although certain governmental privileges of secrecy do apply in a criminal trial, the strong presumption is nonetheless 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 admissible in a criminal trial, would have created no issue of 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 CIA might reasonably prefer to have undisclosed. The question, then, is where the line should be drawn between the public's right to know and the legitimate demands of secrecy.

Although much of the material before the Commission as "evidence" was cleared for public access by the individual executive agencies which originated it, the Commission itself made no effort to determine which of the documents originating with the Commission, such as correspondence, minutes, and working papers, should and which should not be released to the public. Instead it turned over all of 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, in consultation with the executive agencies involved, then worked out a set of general guidelines for this purpose, leaving the application of these guidelines, on a document-by-document basis, to the Archivists.<sup>155</sup> These guidelines, as one might expect, were vague, providing that statutory restrictions and security classifications must be respected but at the same time calling on the agencies involved

<sup>155</sup> Guidelines for Review of Materials Submitted to the President's Commission on the Assassination of President Kennedy (undated), copy on file with the *Stanford Law Review*.



to reevaluate the security classifications to determine whether the information could be released.<sup>156</sup>

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. The object was primarily to prevent the disclosure of documents that “[m]ight reveal the identity of confidential sources of information and [thereby] impede or jeopardize future investigations,” or “[w]ould be a source of embarrassment to innocent persons . . . because [the documents] . . . contain gossip and rumor or details of a personal nature having no significant connection with the assassination . . . .”<sup>157</sup> 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.”<sup>158</sup> Moreover, the classifications of documents are to be reviewed after five years, ten years, and every subsequent ten years to determine what documents may then be made available.<sup>159</sup>

Although the standards for releasing documents seem completely reasonable, at least on the surface, there have been incidents of nondisclosure 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 available any documents without the Commission’s approval. Unfortunately, by the time the guidelines were formulated 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 . . . .”<sup>160</sup>

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 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 the exhibits are now at the Archives, and have already been made available to the autopsy surgeons (who have announced that their earlier conclusions have thereby been confirmed).<sup>161</sup> Until those exhibits

156. *Id.* at 1.

157. *Ibid.*

158. *Id.* at 2.

159. *Ibid.*

160. Letter From Frank M. Wozencraft, U.S. Assistant Attorney General, Office of Legal Counsel, to Dr. Robert H. Bahmer, Archivist of the United States, August 17, 1966, on file with the *Stanford Law Review*.

161. *N.Y. Times*, Nov. 25, 1966, at 30, col. 3.



are made public, however, there will be many who feel that the 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, there are overriding security reasons for not releasing some of the documents; but clearly as long as any evidence exists that has not been made public, many Americans (especially those who do not recognize any distinction among governmental organs such as the Warren Commission and the National Archives) will view the restrictions as powerful evidence of a conspiracy.

Obviously, however, the lack of certainty, the defects in the report, and the nondisclosure of evidence 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?" One cannot, of course, know for sure, but I would suggest that one basic cause is the Vietnam issue. A major indication of this is that the great volume of both protest against the Vietnam involvement and complaint about the Commission has come from the left.<sup>162</sup> Hatred is not a pretty thing, and the hatred that the extreme left has developed for Lyndon Johnson, although it possibly matches that which the right wing had for Franklin D. Roosevelt, is something 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 established the Commission and selected its members as well. Thus the widespread feeling, originating in the Vietnam issue, that the Government has forfeited the citizen's confidence in its integrity need only be extended somewhat to include the Commissioners within the ambit of those who have merely been loyal to the President in suppressing the truth.

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162. The widely publicized New Orleans investigation into a possible conspiracy to assassinate President Kennedy does not, of course, fit into this pattern. The fact that the case is now pending trial precludes comment on the strength of the prosecution's case. But even if the charge that Clay Shaw agreed with Oswald to assassinate the President were taken as true, the voluminous newspaper coverage indicates that it is hard to connect this agreement with the actual killing. First, there is no indication that the alleged agreement to have more than one person participate in the killing was followed. Moreover, at the time of the plot there was no way to know that President Kennedy would go to Dallas, where Oswald lived. And Oswald's job at the Texas School Book Depository was secured through means clearly unrelated to a conspiracy at a time when there was no indication that even if the President came to Dallas his route would take him past the depository. Second, this conspiracy seems completely unrelated to the kinds of conspiracies envisioned by those involved in the third stage. The New Orleans publicity has smacked far more of a conspiracy by sex deviates (with perhaps a slight touch of Castroite intrigue) than by the "racists" envisioned by Sauvage, the "Texas oil interests" envisioned by Buchanan, see T. BUCHANAN, WHO KILLED KENNEDY? (1964), or the "rightists" envisioned by Lane. Finally, the New Orleans investigation sheds no real discredit on the Warren Commission, for the key witnesses of the new investigation, those who "heard" the plot, did not bother to tell anyone until three years after the assassination.



Furthermore, in the background there is an even less pretty thought, one which is very rarely mentioned. 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."<sup>163</sup>

*The Movement*, the newspaper of the Student Non-Violent Coordinating Committee, in its November 1966 issue, points out: "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."<sup>164</sup> Although it is hardly clear in print, it should be clear that there is a sizable number of people in the United States who wish nothing more than to be able to pin the blame for President Kennedy's assassination on his successor. For them this would ease the frustrations of Vietnam involvement; avenge the death of one who after his death (although by no means before it) became a hero to them; and, finally, punish President Johnson for his transgressions.

Nor is this hypothesis pure conjecture. 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 at the "Establishment" from the left. 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.

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

The fourth stage, when organized mass media for the first time began paying serious attention to the outcries over the *Warren Commission Report*, began during the week of November 25, 1966. In the same week both *Life*<sup>165</sup> and the *New York Times*<sup>166</sup> demanded that something be done.

*Life*, which owns the original of the Zapruder film, reproduced (en-

<sup>163</sup>. POPKIN 20.

<sup>164</sup>. *The Movement*, Nov. 1966.

<sup>165</sup>. *Life*, Nov. 25, 1966, at 38.

<sup>166</sup>. *N.Y. Times*, Nov. 25, 1966, at 36, col. 2 (editorial).



larged and in 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 some of the arguments in its favor, as set out by one of the Commission’s former staff members, Arlen Specter, along with 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 two 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 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 it this way: “Nor can much importance be given to lining up Connally’s three wounds—Specter’s ‘alignment of holes’ theory. Hitting 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.”<sup>167</sup> *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. Robert Shaw, who operated on Governor Connally at the Parkland Hospital:

Mr. SPECTER. Would the shattering of the rib have had any effect in deflecting the path of the bullet from a straight line?

Dr. SHAW. It could have, except that in the case of this injury, the rib was obviously struck so that [a] not too dense cancellus portion of the rib in this position was carried away by the bullet and probably there was very little in the way of deflection.<sup>168</sup>

In addition, the pictures reproduced by *Life* support the one-bullet theory in another way. If the “alignment of holes theory” is incorrect and if the Governor was hit at frame 234, the bullet that struck the Governor would have had to be deflected not only 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 describe instances where reactions to or knowledge of wounds have been delayed considerably longer than this period.)

167. *Life*, Nov. 25, 1966, at 53.

168. 6 WARREN COMM’N HEARINGS 86.



The *New York Times* also contributed relatively little in the way of enlightenment. It quoted one S. M. Holland, a railroad supervisor, who was standing on the overpass by the grassy knoll. "[T]here definitely was a shot fired from behind that fence [near the grassy knoll]."<sup>169</sup> Holland's interview with the Warren Commission, however, cast some light on his views:

Mr. STERN. You had no idea, I take it, that the shots were coming from your area?

Mr. HOLLAND. No.

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

Mr. HOLLAND. As far as the sound was concerned they did not.<sup>170</sup>

Moreover, Holland's answer to the usual final question, "Anything else occur to you?" was, "No, that is about all of it. If I have been of any help, I am tickled."<sup>171</sup> And finally, 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.<sup>172</sup>

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."<sup>173</sup> Unfortunately, Mr. Kilduff was not specific about the size of the fragment in the Governor's leg. However, Governor Connally's doctor, Dr. George T. Shires, testified before the Commission that there was indeed a remnant of the bullet in Governor Connally's leg but that its weight was "[i]n grains—a fraction of a grain, maybe, a tenth of a grain—very small."<sup>174</sup> 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-grain fragment.

Far more important than the new light *Life* and the *New York Times* have shed on the issues have been their calls 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.<sup>175</sup>

169. N.Y. Times, Nov. 23, 1966, at 25, col. 8.

170. 6 WARREN COMM'N HEARINGS 245.

171. 6 *id.* at 247-48.

172. 6 *id.* at 248.

173. N.Y. Times, Nov. 25, 1966, at 30, col. 3.

174. 6 WARREN COMM'N HEARINGS 106.

175. *Life*, Nov. 25, 1966, at 53.



The *Times* editorial was less specific; it merely called on the members of the Commission and its staff to give "clarification and answers to unanswered questions."<sup>176</sup> 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."<sup>177</sup>

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. Entirely apart from the photographs, the evidence that the autopsy surgeons were correct is overwhelming. Of course, the photographs should be examined, but if 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 what might be imminent exposure.

More important, however, is the fact that the real controversy does not lie with the photographs themselves. Even though we might wish that the autopsy on President Kennedy had been done by more experienced forensic pathologists, that it was not 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. In any case, 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 have put together a report better than that of the Warren Commission. But this is beside the point today. More importantly, 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 about which 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. Still 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 selecting a group that

176. *N.Y. Times*, Nov. 25, 1966, at 36, col. 2.

177. *Id.*, Nov. 25, 1966, at 36, col. 2.



would repeat anew the decision process would be a great—and unwise—step indeed. To say as *Life* does that the new investigators should “consider other evidence the Warren Commission failed to evaluate”<sup>178</sup> is somewhat unfair. Although the Commission’s report does not make this clear at all, there may well be no reliable evidence that it 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 a great number of problems are 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 reputation for integrity and prestige 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 trail has gone cold. It is almost inconceivable that any new hard evidence will be turned up on the one-bullet problem, or for that matter on any other important issue in the case—though for a generation we will probably be treated to revelations by eyewitnesses, either to the assassination itself or to a conspiracy, who for some reason did not come forward during the investigation.

One should ask whether a whole new report and new evidence produced by a new commission would quiet the critics of the third stage. My guess is that they would not, and for every point upon which one of those critics was satisfied, other critics would place the issues and the integrity of the investigators more in doubt.<sup>179</sup> The fact is that any amount of evidence can be explained if one is willing to envision a big enough conspiracy; the mine of stories that have been given currency and swallowed 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

<sup>178</sup> *Life*, Nov. 25, 1966, at 53.

<sup>179</sup> Lane has already publicly stated that if the X-ray photographs are now released he would not be surprised if they were doctored. Debate Between Mark Lane and Wesley J. Liebler, University of California at Los Angeles, Jan. 25, 1967.



never be known. This is partly 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 by it. 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.

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## Reviewed

REAPPORTIONMENT: THE LAW AND POLITICS OF EQUAL REPRESENTATION. By Robert B. McKay. New York: The Twentieth Century Fund, 1965. x + 498 pages. \$7.00.

THE POLITICAL THICKET: REAPPORTIONMENT AND CONSTITUTIONAL DEMOCRACY. By Royce Hanson. Englewood Cliffs, N.J.: Prentice-Hall, Inc. 1966. xii + 143 pages. \$4.95.

Prior to 1962 at least one legislative chamber in virtually every state was malapportioned, and wide disparities of population among congressional districts were also common. Unequal representation, though resting in uneasy tension with democratic notions of fairness, had become an important aspect of our system of government and was apparently protected against significant alteration both by the ordinary political process and by judicial decision. *Baker v. Carr*<sup>1</sup> dispelled the illusion of permanence; and a short two years later, in *Wesberry v. Sanders*<sup>2</sup> and *Reynolds v. Sims*,<sup>3</sup> the Supreme Court disclosed that the judicial corrective promised without detail in *Baker* was strong medicine indeed. Almost no state legislative apportionments have survived intact the requirement of substantial equality of representation imposed by *Reynolds*, and we may expect the impact of that decision on local governments to be no less striking.

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1. 369 U.S. 186 (1962).  
2. 376 U.S. 1 (1964).  
3. 377 U.S. 533 (1964).