
Books for Lawyers

RUSH TO JUDGMENT. By Mark Lane. New York: Holt, Rinehart & Winston. 1966. \$5.95. Pages 478. Reviewed by Arthur John Keeffe, Professor of Law at the Columbus School of Law of the Catholic University of America.

The author of this latest entry in the spate of books making critical examinations of the Warren Commission's investigation and conclusions, Mark Lane, is a New York lawyer who was the chosen counsel of Marguerite Oswald to defend her son, Lee Harvey Oswald, before the commission. But, much to what must now be the regrets of many, he was not permitted to appear, nor was a public defender appointed, because, as the commission's chief counsel, J. Lee Rankin, explained at the time, "The commission is not engaged in determining the guilt of anybody. It is a fact-finding body."

However, as its counterpart, the Congressional committee, is wont to do, this commission of the Executive not only collected facts but concluded that Oswald killed both President Kennedy and J. D. Tippit. In effect, it returned a judgment against Oswald. The Oswald judgment now is receiving an appellate review of a dangerous sort in the court of public opinion by newspaper and magazine writers, radio and television speakers and authors of books.

Just as the able assistant to Senator Richard Russell, Alfreda Scobey, pointed out in her splendid article in this *Journal* (51 A.B.A.J. 39), a great deal of the evidence adduced before the commission is not legally admissible nor credible. Mr. Lane makes the most of this.

For instance, the rifle, though sent in response to a request in Oswald's handwriting by a Chicago mail order firm to Oswald at his Dallas post office box addressed to "A. Hidell", was "returnable mail" unless in the third

section of his application Oswald authorized "Hidell" to receive mail at his box. Contrary to regulations, the Dallas post office failed to keep this third section. Is this adequate proof in a capital case that Oswald actually received the rifle?

The Federal Bureau of Investigation's fingerprint expert, Sebastian F. Latona, could not develop any identifiable fingerprints on the rifle. While Lieutenant J. C. Day of the Dallas police testified he "lifted a palm print" of Oswald's, Mr. Lane makes invidious comparisons between the qualifications of Day and Latona and emphasizes Latona's failure to corroborate Day.

Whereas the commission states that paraffin tests of an FBI agent using the rifle were "negative", Mr. Lane maintains that, when "tested by means of radioactivity", paraffin casts of the cheeks of a person who fired the rifle eight times were "positive in all eight cases", and he claims the commission has not disclosed the result of radioactive tests on paraffin casts of Oswald's cheeks.

Mr. Lane impressively attacks the credibility of Howard L. Brennan, who, standing 120 feet distant, saw a man aiming a rifle from the southeast corner of the Texas School Book Depository Building. Commission acceptance of Brennan's testimony involves repudiation of many witnesses who say the shots came from another direction, and on assassination day Brennan declined to identify Oswald from fear. Mr. Lane damages his argument, however, by contending Brennan had bad eyesight and needed glasses. Brennan was farsighted and his eyes were good until sandblasted in January, 1964, after the assassination. In this, Mr. Lane is inexcusably misleading.

For reasons that others have also given (see my review of Epstein's *Inquest* and Weisberg's *Whitewash* (52 A.B.A.J. 949)), Mr. Lane attacks

as fallacious the "one-bullet" theory of the commission—that the first shot entered the back of President Kennedy's neck and exited through his throat, injuring Governor Connally in the chest, wrist and thigh. The Zapruder motion picture confirms the testimony of Governor and Mrs. Connally that he was struck by a second shot and there was not time enough between the shots for Oswald to have reloaded and aimed the rifle. Moreover, Oswald was not a good shot and, if the fragments in Governor Connally's body were added, the alleged bullet would be too big for the rifle. Mr. Lane also questions the autopsy of Commander Humes at Bethesda Naval Hospital not only as contradictory of both the Dallas doctors and the FBI reports but also because Humes "burned" his "original notes".

A bystander, James T. Tague, was struck "in the face by an object during the shooting" and a deputy sheriff found a mark on the curb. Many months later the mark was "spectrographically determined to be essentially lead with a trace of antimony". The absence of copper indicates the bullet could not have come from Oswald's alleged rifle, and this has given rise to a belief, which Mr. Lane, who believes there were four shots and not three, apparently shares, that the fatal shot that exploded in President Kennedy's head came from a lead bullet.

Although no one saw Oswald leave the Depository, the commission finds he left at 12:33 P.M. and in the next forty-three minutes walked seven blocks on Elm Street, rode a bus back towards the building he had just left, walked several more blocks, took a taxi, walked to his rooming house, staying three or four minutes, paused at a bus stop and walked almost a mile to 10th and Patton Avenue, where he murdered Tippit.

Witness by witness Mr. Lane attacks the credibility of this remarkable journey. It is not hard. McWatters, the bus driver, confessed he mistook Oswald in the lineup for another; Mary Bledsoe, the bus passenger, was an enemy of Oswald and coached; William Whaley, the cab driver, admitted his own confusion and inaccurate log. Mr. Lane concedes that Oswald's landlady, Mrs. Earlene Roberts, spoke the truth when

she said she saw Oswald enter the house at 1:00 P.M. and leave in three or four minutes putting on a dark jacket that "zips up the front", but he claims the entire time table was adjusted to fit her testimony.

In another chapter, Mr. Lane points out that Mrs. Helen Markham, who testified Oswald killed Tippit, failed to identify Oswald in the police lineup, saw him west when he had to be east, leaning in an open window that was closed at a time he could not be there, and though instantly killed, he tried to speak to her. To top it off, on March 2, 1964, she made the mistake of talking on the telephone with Mark Lane and later denying to the commission she had. A recording forced her to confess she had lied.

As both Mr. Lane and Miss Scobey point out, the commission's acceptance of the Markham testimony involves rejection of the testimony of "Domingo Benavides, the eyewitness closest", who said he could not identify the man who fired the shots.

The commission's hearings paint a different story of Benavides. Benavides testified that he was driving his truck at about 25 M.P.H. down 10th Street when he noticed Tippit's police car and a man standing alongside. When he heard the first shot, Benavides turned his truck into the curb and ducked down below the dash while the next two shots were fired. When he finally peeked over the dash, he saw the man running down the street. Later Benavides did state to the police that he could not identify the man; however, the reason for saying this, Benavides later testified, was that he "wasn't going to say [he] could identify and go down [to the police station] and couldn't have [*sic*]". Days later, after seeing pictures of Oswald, Benavides stated Oswald "resembled the guy".

While the commission accepts part of Mrs. Roberts's testimony concerning the precise time Oswald returned to his apartment after the assassination, Mr. Lane says little emphasis is placed on her statement that while Oswald was in his room changing, she saw a police car drive up in front and sound its horn twice. Why?

Mr. Lane contends there is credible testimony to support the theory that

there was "another" if not "undercover" Oswald:

First, Dial D. Ryder of the Irving Sports Shop had a receipt for putting a telescopic sight on a rifle. The name on the receipt was "Oswald", and the rifle was different from the assassination rifle.

Second, although Oswald did not drive a car and was not in Dallas on November 9, a "Lee Oswald", saying that in a couple of weeks he would have "some money coming in", asked Albert G. Bogard in the presence of two other employees to demonstrate a Mercury. This "Oswald" drove the car at 60 to 70 miles an hour. After he testified to this, Bogard was badly beaten and left Dallas.

Third, in the weeks before the assassination, when the commission finds Oswald was in Mexico, a different "Lee Harvey Oswald", using a rifle other than the Italian carbine and "an excellent shot", was seen at the Sports Drome Rifle Range in Dallas. When "he left the range, he took all the used shell casings with him".

Fourth, at a time when the commission states that Oswald could not have been in Dallas, a "Leon Oswald", accompanied by two men, called on Mrs. Sylvia Odio, a Cuban citizen living in Dallas. They suggested that they could help in underground activities against Castro. The next day one of the visitors called and said that "Leon Oswald" was a former Marine and an expert rifleman. He also remarked that "Leon" had said that because of the Bay of Pigs, President Kennedy should have been assassinated. Another witness corroborates the visit by the three men.

There are entertaining chapters about Jack Ruby, his call girls, his good police relations, his alleged presence at the Parkland Hospital and the assassination site (which he denies) and his murder of Oswald. Great stress is laid on an alleged meeting on November 24 of George Senator, Ruby's closest friend, and Wilfred James Martin of the Dallas Bar with one Tom Howard, a Dallas lawyer, and two newspapermen, James F. Koethe of Dallas and Bill Hunter of Long Beach, all three of whom are now dead. On the morning of the assassination

the *Dallas Morning News* carried an advertisement denouncing President Kennedy as a Communist. Mr. Lane alleges that Bernard Weissman, one of the persons who prepared and placed the ad, met Ruby and Tippit at Ruby's club on November 14. He also alleges many witnesses were threatened. Without more, none of this is relevant, however spicy reading.

There are serious charges that the commission both suppressed and altered photographs. Pictures of Robert Hughes, Hugh Betzner, Jr., and others have not been published. Slide 8 of twelve pictures Major Phillip L. Willis took has been trimmed so as to block out a man Mr. Lane believes to be Ruby. A picture that should show the license plate on a car behind General Walker's home has a hole where the license plate should be. Mr. Lane maintains the *standing* figure in the James Altgens picture looks and is dressed more like Oswald than Billy N. Lovelady, who was *sitting* on the Book Depository steps. Since photographers have found a picture of Lovelady hard to get, Mr. Lane thinks the commission should have published one and examined both Lovelady and Altgens orally. *Life*, the *Detroit Free Press* and *Newsweek* published retouched pictures of Oswald with his rifle in one hand and copies of the *Worker* and the *Militant* in the other. Mr. Lane claims these are false and Oswald denied they were of him.

I regret to state, however, that Mark Lane makes so many overstatements that I would not want to rely on his book without checking each footnote reference, most of which are to the commission's twenty-six volumes, without other explanation. For instance, in incident after incident, he takes statements out of context, creating innuendoes that the commission left many aspects unturned. A good example of this is in the chapter on Marina Oswald. Mr. Lane states that after Marina heard the news of the assassination she went into the garage to see if Lee's rifle was still there, "But the rifle which was wrapped in a blanket was there." Marina never stated that the rifle was there specifically. All she testified was that when she looked she saw the blanket

all wrapped up and assumed the rifle was inside.

Nevertheless, being rebel enough to believe no man, alive or dead, should be convicted of crime without evidence proving him guilty beyond a reasonable doubt and unless he has counsel, I rejoice that this book gives Oswald his day in court.

—ARTHUR JOHN KEEFFE

LORD JUSTICE: THE LIFE AND TIMES OF LORD BIRKETT OF ULVERSTON. By H. Montgomery Hyde. New York: Random House. 1965. \$7.95. Pages 638. *Reviewed by Walter P. Armstrong, Jr., of the Tennessee Bar (Memphis).*

I first met Lord Birkett (then Sir Norman) at the Annual Meeting of the American Bar Association in Indianapolis in 1941, where he was one of a series of distinguished visitors from the British Bar who have graced those meetings, and I, three months out of law school and three months away from the Army, was the son of the incoming President. Our respective positions brought us together in a way that the disparity in our ages would otherwise have made impossible; Sir Norman was most gracious to me and I, ripe for hero worship, idolized him. It did not take me long to realize that I was in the presence of a truly great man. I find nothing in this book to alter that view.

Clearly this is the official and authorized biography. Mr. Hyde has had access not only to the private journals of Lord Birkett but also to those of Lady Birkett as well as to many other family papers. The result is that, although the jacket describes him as "a master of understatement", he tends to overstate his case considerably in dealing with the earlier years. When the biographer not only records that his youthful subject won a newspaper competition with an essay on Dickens, but reproduces the essay in full in a footnote, one wonders if perhaps he has not gone too far and, in the words of another reviewer, told the reader more than he needs to know on the subject.

However, if one has the patience to

suffer through the first hundred or so pages, the result is most rewarding. After that the book ceases to be a biography and becomes a case book; and although this is fully justified by the fact that after the 1920's Birkett spent most of his life in the courts, one regrets that so little personal detail accompanies the accounts of his trials. These in themselves, however, make fascinating reading. Beginning with the so-called green bicycle case, the list continues through such classics of the bar as the Dennistoun case, the Gladstone libel case, the Radclyffe Hall case, the Portuguese bank note case, the Rouse murder case, the Mountbatten libel case, the Brighton trunk murder case, the Ruxton murder case, and the Simpson divorce case, to name only a few.

Mr. Hyde describes each of them (and many others in which Birkett participated) in detail, wisely interspersing his commentary with copious extracts from the actual transcripts of the trials, which serve to illustrate Birkett's brilliance as an advocate, particularly in the field of cross-examination. For it was in the daily thrust and parry of the trial courts, not in the study of the scholar, that Birkett's reputation was formed and maintained. As Mr. Hyde quite correctly puts it:

Most of the cases in which Birkett appeared were widely noticed in the newspapers by reason of their public interest at the time, although many of them have now been forgotten. Comparatively few, however, found a place in the official Law Reports, since these cases were mostly heard before special juries where the matter at issue was usually one of fact and seldom involved an important or novel point of law.

Birkett himself recognized this limitation, and to some extent deplored it. In 1949 he wrote in his journal: "I can see that my advancement has been held up because of my career as an advocate, my facility in public speaking, etc., which detract from my reputation as a lawyer pure and simple."

Nevertheless, twenty-eight years, literally hundreds of cases and more than 400 pages in Mr. Hyde's biography after his admission to the Bar,

Birkett was elevated to the High Court of King's Bench. Although he served the remainder of his life except for the final five years in a judicial capacity, not only upon that court but as alternate member of the War Crimes Tribunal at Nuremberg and as Lord Justice of Appeal, Birkett never felt the involvement in the judicial process that he did in the field of advocacy. On April 27, 1944, he confided to his journal: "Feel I shall never be the perfect judge. I haven't enough impudence to believe that I am always right!"

Later, after two years as an appeal judge, he made another revealing entry in 1951: "The work of the Court of Appeal retained its dullness."

And, in a radio broadcast after his retirement, he confessed: "To be quite honest, sometimes when I listened to cases being conducted, I felt how much I would like to be down there doing it."

This frustration found its fullest expression in his criticisms of the conduct of the Nuremberg trials, recorded in his journal at the time and here reproduced at length by Mr. Hyde. Added to his other irritants was the fact that, as a mere alternate, he had little or no voice in determining the course which the proceedings would take. It is, therefore, with understandable bitterness that on March 30, 1946, he writes: "The trial is now completely out of hand."

Less understandable (except as a product of this frustration) are his strictures upon the American chief prosecutor, Justice Robert H. Jackson. Of him he says:

Jackson has no real knowledge of the art of cross-examination. Almost the chief quality of a cross-examiner is to have a complete grasp of the case he proposes to make, so that he may attack the witness wherever a weak place appears, with the knowledge he carries in his head. If he is unsure of his case or his facts, so he stumbles or delays, the richest opportunity of the cross-examiner is lost. This is one of the first and main weaknesses of Jackson.

Perhaps Birkett felt that Justice Jackson's five years on the Supreme Court had somewhat dulled his advo-

cate's rapier and instilled in him too much of the judicial temperament, just as he himself chafed against the restrictions which prevented him from taking a more active part in the trials. No doubt the thought occurred to him that both might prefer the positions to be reversed, with himself as the advocate and Justice Jackson as the judge. But whatever he may have thought of the chief prosecutor's methods, he surely must have found in him the basic quality of the advocate which he himself so well exemplified and which he later described in these words:

The advocate has a duty to his client, a duty to the Court, and a duty to the State; but he has above all a duty to himself that he shall be, as far as lies in his power, a man of integrity. No profession calls for higher standards of honour and uprightness, and no profession, perhaps, offers greater temptations to forsake them; but whatever gifts an advocate may possess, be they never so dazzling, without the supreme qualification of an inner integrity he will fall short of the highest.

Birkett had this supreme qualification of the advocate to the highest degree. This is why he was a lawyer's lawyer, as his many friends in the American Bar Association can testify. He attended its Annual Meeting in Atlantic City in 1946, where he spoke on the Nuremberg trials, and again in Washington in 1950, where his subject was "Law and Literature". He was disappointed in both speeches; but his audience, which in the latter case numbered 3,100, did not share that disappointment. He was welcomed by an old friend, and his visits did much to strengthen the bonds between the Bars of the two countries and between the countries themselves.

I last saw him at the American Bar Association meeting in London in 1957. I was Chairman of the Criminal Law Section, and although he had recently retired from the bench, he did us the honor of attending our luncheon. He was his usual charming and gracious self, and it appeared that the years had dealt kindly with him. Although it was to be only five years until his death, those years were full (including another visit to the United

States), and he never faltered until the last.

It is difficult to evaluate the life of such a man. Rather than attempt to do so, let me quote the words his great contemporary, Winston Churchill, spoke of him early in his career:

One cannot listen to Mr. Birkett, and one cannot know him however slightly, without feeling a most comfortable confidence in his capacity and in his character. Surely it is a miracle that, despite his professional contact with much that is disillusioning in human relations, he has retained so unspoiled a courtesy and understanding.

I knew him only slightly; but, despite the disparity in our ages and stations, I found in him not only an example to be emulated, but, because of that courtesy and understanding, a friend to be treasured. I could not presume to speak for all of his many friends in the American Bar Association, but perhaps in bidding farewell to this extraordinary man I can apply to his life the words which my father as President of the Association telegraphed to him in 1941 upon his return to his homeland, already torn by a war in which we too were soon to be combatants:

Your visit is a demonstration of the fellowship, understanding and essential unity of English and American lawyers. You have earned the respect, admiration and affectionate regard of all the members of our Association who saw or heard you. Our hearts are with you and your brethren of the Bar in this time of their ordeal.

—WALTER P. ARMSTRONG, JR.

MILWAUKEE'S ALL-AMERICAN MAYOR: PORTRAIT OF DANIEL WEBSTER HOAN. By Edward S. Kerstein. Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1966. \$5.95. Pages 237. Reviewed by Thomas P. Maroney of the Wisconsin Bar (*Milwaukee*).

This is an inspirational, spellbinding biography of a courageous, visionary, humanitarian lawyer who established an all-American record as mayor of a city he deeply loved. The rise of Daniel Webster Hoan from a small town orphan to Milwaukee's mayor reads like

a success story in true Horatio Alger fashion. As the author states in his preface, Dan Hoan's idolators contended through the years, and rightly so, that he was a true visionary, while his critics had perfect 20/20 hindsight.

Mayor Hoan, during his twenty-four year tenure as Milwaukee's top municipal executive, converted his city government from one of the most corrupt in the country to a model administration. Prior to serving as mayor from 1916 to 1940, Hoan served as city attorney for six years, during which time he fought the utilities in the Wisconsin Supreme Court to compel them to pay their just taxes and to maintain their properties at their own expense, rather than at the expense of the city, as had been the practice for years.

Under Hoan's administration, Milwaukee was declared by the Wickersham Commission as the "most crime free city in the United States". It was also awarded honors by the United States Chamber of Commerce for being the "healthiest" city and by the National Safety Council as the "safest".

During his lifetime, Dan Hoan was awarded a doctorate by his alma mater, the University of Wisconsin, for his outstanding municipal leadership. He also was selected as one of the ten greatest living Badgers of his time by librarians and historians. Included in that group were Frank Lloyd Wright and Senator Wayne Morse.

A longtime member of the American Bar Association, the State Bar of Wisconsin and the Milwaukee Bar Association, Dan Hoan was the "father" of the first industrial compensation act in the United States. The Wisconsin legislature adopted the act in 1911, although Dan Hoan drafted it and proved its constitutionality in a brief in 1909 as counsel for the Wisconsin Federation of Labor.

The biographer, Edward S. Kerstein, a veteran writer and reporter for the *Milwaukee Journal*, succinctly describes Dan Hoan in this fashion:

Daniel Webster Hoan in his lifetime was a legend and a symbol of American municipal government, having risen from a poor, orphaned youth in a small town to distinguish himself as a man of great courage, leadership and