RUSH TO JUDGMENT

by Mark Lane

A Critique of the Warren Commission's Inquiry into the murders of President John F. Kennedy, Officer J. D. Tippit and Lee Harvey Oswald, with an Introduction by Hugh Trevor-Roper.

- A pre-publication statement by Mark Lane
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ARTHUR A. COHEN
EDITOR IN CHIEF
GENERAL BOOK DIVISION

Popular reaction to the appearance of the Warren Commission Report investigating the assassination of President Kennedy was one of relief. The events with which it dealt were so shocking that the official explanation of them was gratefully accepted.

Since the publication of the Report critical doubts have, however, multiplied, not only abroad where there is a historical tradition which presumes the connection between conspiracy and assassination but here in the United States.

It would have been well for the nation if the Warren Commission Report could be accepted without question but, unfortunately, such is not the case. The questions which may be raised are these:

- Did President Kennedy and Officer Tippet die in the manner assumed by the Report or does the evidence point in other directions?
- How was it possible for Jack Ruby to have been able so easily to kill Lee Harvey Oswald?
- Did the Warren Commission fulfill its task with thoroughness and impartiality?

RUSH TO JUDGMENT by Mark Lane propounds no speculative theory of the assassination. Closely reasoned, quiet-toned, carefully documented and relying for its argument largely upon the actual testimony in the twenty-six volumes issued by the Commission, it provides a devastating commentary on the Commission's procedures and conclusions as to throw the credibility of its Report into great doubt.

Some of the criticisms that Mr. Lane makes are new and based on fresh evidence. Others have been made before, but never so cogently. One may disagree with him on detail, but his main conclusions seem inescapable: that the Commission frequently chose to rely on evidence that was no stronger and often decisively weaker than contrary evidence which was either ignored or rejected; that its working methods were ofttimes inefficient and perhaps prejudiced; and that many of its findings can be disproved by internal evidence alone.

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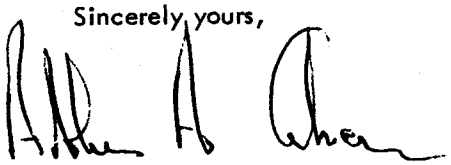
RUSH TO JUDGMENT is an exciting book. It is also one of the most profoundly disturbing books to read--and it is too seriously argued (there are more than 5,000 legal citations at the back of the book) to be either passed over or lightly dismissed.

RUSH TO JUDGMENT will spark international controversy. Such diverse English advance readers as Lord Bertrand Russell ("I believe this exhaustive and unchallengeable book to be a great historical document.") and Conor Cruise O'Brien ("In an argument of devastating cumulative force, Mr. Lane demonstrates that in case after case the Commission ignored or twisted the evidence before it in order to reach a preordained conclusion...") have already begun to set the tone.

Holt, Rinehart and Winston will publish RUSH TO JUDGMENT on September 8th with the dignity and quiet that befits any inquiry into events so gruesome and so near. Our first printing will be 30,000 copies and our announcement advertising, however restrained the tone, will cover the nation.

The Introduction reproduced here from RUSH TO JUDGMENT is written by Hugh Trevor-Roper, Regius Professor of History at Oxford University, and distinguished author of one of the major studies of modern German history, The Last Days of Hitler.

Sincerely yours,



Arthur A. Cohen
Vice President and Editor in Chief
General Book Division

Pre-Publication Statement
by Mark Lane

The murder of President John F. Kennedy affected each of us in some fashion. My own response was both personal and professional; personal because then-Senator Kennedy, a candidate for the Presidency, had been so kind to me in my first campaign for public office. It was 1960 and I was a candidate for the New York State Legislature. He endorsed me, sent letters to my constituents, posed for pictures with me; my election was in good part due to his assistance. My contact with President Kennedy was intermittent and brief, but during the time I spent with him, his humor and interest were apparent.

My response was also professional, because I had served as defense counsel in many trials. After my election I was determined to work for legislation limiting press comment upon pending trials for I was aware that trial by press, preceding a well publicized case, often made a fair trial impossible. A concept of instant guilt grew around Lee Harvey Oswald as various media simultaneously broadcast the claims of the Dallas police that Oswald was the "lone assassin". Those words alone encouraged doubt. In the absence of a confession, how could the police be satisfied at the outset that their suspect had acted alone, that no one had encouraged or assisted him? The "lone assassin theory" to which the prosecution became quickly wedded was the hallmark of the case and appeared to be more related to the momentary needs of society than to the result of thorough investigation.

After Oswald's death at the hands of Jack Ruby who was an intimate of the Dallas police—in the basement of the Police and Courts building and in the presence of the police—the district attorney presented the evidence which he said proved Oswald's guilt beyond any doubt. I read the text of his proof in The New York *Times*. It left me with a feeling of dissatisfaction for it seemed to contain grave and inexplicable contradictions. I said so in an article which I wrote not long afterwards. When the Warren Report was issued some ten months after the event, it confirmed the accuracy of my analysis, for the Commission concluded that the district attorney had been in error; he had, said the Commission, "lacked a thorough grasp of the evidence and made a number of errors."

In December, 1963, I received a telephone call from Marguerite Oswald, the mother of the deceased suspect. She said that she had read the article I had written. "I know that you don't say that my son was innocent but you do say that there is doubt and that he is entitled to be presumed innocent until he has had a trial. Well then I ask you now, will you be my son's lawyer before the Warren Commission?"

I accepted and thus began an investigation that has continued for more than two and one half years. I have read the Report of the Commission, the twenty-six volumes of testimony upon which it was presumably based, and the material that has been made available in the National Archives. I have traveled to Dallas seven times. I have interviewed witnesses on film and tape from Dallas to Maine. The force of the evidence is inescapable—the case against Oswald as the lone assassin is refuted by the very witnesses upon whom the Commission relied.

An examination of motion picture films taken at the time of the assassination reveals conclusively that all of the shots were fired in less than six seconds. Yet the antiquated Italian carbine which the Commission said was owned by Oswald and employed by him as the sole assassination weapon is a slow and inaccurate device. The testimony of the FBI firearms expert who tested the weapon shows that a period of more than three seconds is required in order to reload and re-aim the weapon.

In the face of irrefutable testimony showing that at least four shots were fired, the Commission held that just three had been fired. Clearly, if Oswald was the lone assassin and if he employed the rifle the Commission claimed he had, it would have been impossible for him to have fired more than three shots in less than six seconds. The Commission arrived at an imaginative explanation, that one bullet struck the President in the back, went through his neck and exited at his throat, and then went on to strike Governor Connally. Governor Connally rejected this thesis, stating that the President had been hit first and that when he, the Governor, turned to observe the President, another bullet struck him. Mrs. Connally was just as certain that the bullet that hit the President did not strike her husband. The motion picture films confirm the accuracy of the testimony of Governor and Mrs. Connally. The Commission held that they were mistaken, and certainly one cannot preclude the possibility of an error in judgment being made under the circumstances which prevailed. But the recent release of the FBI Report (declassified only recently and quoted here for the first time, but available from the National Archives and Records Service in Washington) submitted to the Commission on December 9, 1963, corroborates the view that the bullet which struck the Governor had not first traveled through the President's body.

The Commission referred to the FBI Report only once: "Of principal importance was the five-volume report of the Federal Bureau of Investigation, submitted on December 9, 1963, which summarized the results of the investigation conducted by the Bureau immediately after the assassination." Yet while the Commission published hundreds of other FBI reports it refrained from further reference to the document which was of "principal importance."

During April, 1966, I visited the National Archives and discovered that the FBI Report had been declassified. Page 18 of that report reads as follows:

"Immediately after President Kennedy and Governor Connally were admitted to Parkland Memorial Hospital, a bullet was found on one of the stretchers. Medical examination of the President's body revealed that one of the bullets had entered just below his shoulder to the right of the spinal column at an angle of 45 to 60 degrees downward, that there was no point of exit, and that the bullet was not in the body."

The autopsy upon the President's body was performed on November 22. Government police agents were in attendance. The autopsy report was submitted to the federal police immediately afterwards. There appears to be absolute proof that the autopsy revealed that the bullet which entered the President's back did not pass on through his body but rather fell out onto his stretcher. Obviously then, it did not cause the wound in the President's throat which had been described by the doctors at the Parkland Hospital as an entrance wound, and it did not strike Governor Connally.

The FBI Report devastates the Commission's conclusions that all of the shots were fired from the rear and that they were fired by a lone assassin.

In a book published by a member of the Warren Commission, the author stated:

"Twenty-six volumes of testimony, depositions and exhibits like this would undercut the speculations of the Mark Lanes, Sauvages, Feldmans, Buchanans, et al. *The most insidious schemer in the world could hardly rig the statements of 552 witnesses. Let those who scoff at the report bury themselves for ten months in the monumental record. After that, if they persist in their skepticism, that's their privilege. May they add to the truth so long as it is the truth and not mere speculation."*

For a decade and a half my professional discipline has required that I analyze testimony. For *far more than ten months* I have studied the body of evidence in this case. I have no theories as to who killed the president or as to why it was done. This book then, is, in a sense, a response to the invitation by Congressman Ford.

Mark Lane

INTRODUCTION

THE assassination of President Kennedy during a visit to Dallas, Texas, on November 22, 1963, sent a shock through the whole world. The known policies of the President, and the known politics of many in the city of Dallas, had made some of his friends doubt the prudence of his visit, which was, in some sense, a gesture of defiance or at least of confidence. The tragic result naturally provoked a flood of rumours and speculation; and this speculation was multiplied beyond control when, only two days later, on November 24, the alleged assassin, Lee Harvey Oswald—who had stoutly denied the charge—was shot dead in front of the television cameras by an intruder into the jealously guarded Dallas gaol. This intruder was Jack Ruby, the proprietor of a Dallas club, an intimate of the Dallas police.

The record of the Dallas police in those two days had indeed been remarkable. It had failed to prevent the assassination. It had failed to protect the suspect. In the general indignation caused by this double failure, the new President, Mr Lyndon B. Johnson, procured an order transferring the investigation from the State to the Federal Government, and set up a special commission of investigation. This commission was a lay body consisting of Senators, Congressmen and administrators from both parties, assisted by professional attorneys. Its chairman was the most respected figure in the American judiciary, the Chief Justice of the United States, Earl Warren.

The Warren Commission started its work by receiving, on December 9, 1963, a five-volume report from the FBI, followed by all the supporting evidence on which that report was based. On this basis it worked out its programme and on February 3, 1964 it began its hearings. In the course of the next five months it held 44 sessions. Directly or indirectly, it examined thousands of documents and took the testimony of 552 witnesses. The Commissioners, being mainly active politicians or administrators, were naturally somewhat irregular in their attendance. Mr John J. McCloy, for instance, attended only 11 out of the 44 sessions, and Senator Russell, of Georgia, only two. No member of the Commission was constant in attendance, except the Chairman, who never failed. It is clear that the bulk of the work fell upon the Chairman and upon the assistant counsel and staff, who were divided into six panels to work on particular aspects of the case. By mid-September 1964 the last depositions were being received, and on September 24, thanks to a truly remarkable burst of speed, the Commission presented its conclusions to the President in a long report, since known as 'The Warren Report'.

How did the Commission carry out its investigation? It is important to note that, by its original terms of reference, the Commission had no independent machinery for finding facts. Its function was to pass independent judgment on facts collected for it and witnesses proposed to it. Of course, one fact might suggest another, one witness lead to another, and the Commission had power to summon whom it would, and to pursue any matter to its conclusion by further examination. But for the initial selection of witnesses and collection of evidence it was inevitably dependent on the existing agencies—that is, on the FBI, the Secret Service and the police. This limitation of the Commission's powers is perfectly understandable, but it remained a serious limitation. It was perhaps particularly serious because, by the time the Commission effectively took over from the FBI, the FBI had already reached its own conclusions, and the enormous mass of evidence

which it had collected, and which formed the basis of those conclusions, must have had some effect on the thinking of the Commission.

What were the conclusions with which the FBI ended and the Commission, in a sense, started? They are clear enough from the evidence which Mr J. Edgar Hoover, the head of the FBI, gave to the Commission when he appeared before it on May 14, 1964. Mr Hoover was nothing if not explicit. The conclusions of the FBI, he said, were final. They were: 'No. 1: that Oswald shot the President. No. 2: that he was not connected with any conspiracy of any kind, nature or description.' There was no 'scintilla of evidence' of any conspiracy. The only unresolved question was whether Oswald had actually aimed at the President or at Governor Connally; but even that was hardly in doubt: 'I personally,' declared Mr Hoover, 'believe it was the President, in view of the twisted mentality the man had.' Of course, Mr Hoover admitted, there would always be some extremists who would not yield to such reasoning, but the Commission must not be misled by them. For instance, there was Mrs Marguerite Oswald, Oswald's mother. She was 'emotionally unstable': she believed her son to be innocent and had gone about saying so 'for money': i.e. she had given public lectures. Mr Hoover believed that she had made 'a substantial sum'. For these reasons Marguerite Oswald must not be heeded. On the contrary, Marina Oswald, Oswald's widow, was 'a far more reliable person': she believed that her husband was guilty. Mr Hoover did not mention that she had made ten times as much money by publicising Oswald's guilt as her mother-in-law had made by protesting his innocence: that would not have suited his argument. He preferred to rely on a knock-out proof of Marguerite Oswald's unreliability: 'the first indication of her emotional instability', he said, 'was the retaining of a lawyer that anyone would not have retained if they really were serious in trying to get down to the facts'.* This lawyer was the author of this book, Mr Mark Lane.

Mr Lane so annoyed Mr Hoover because, even at that time, he had ventured to suppose that Oswald might be innocent. He believed that before any tribunal which was, inevitably, judging a man's guilt or innocence, that man had the right to legal counsel; and he was disturbed by the fact that the Warren Commission, by its very structure, seemed likely to presume Oswald's guilt. He noted that although the Commission had set up panels to investigate *why* Oswald had shot the President, no panel had been set up to determine *whether* he had shot him. The fact seemed to be taken for granted. He therefore resolved, if possible, to represent Oswald's interests before the tribunal. However, the tribunal did not see eye-to-eye with him on this nice legal point, and his services were not admitted. The interests of Oswald, it was announced, would be adequately protected; and the tribunal appointed, as their protector, Mr Walter Craig, the President of the American Bar Association, who was invited to participate in the inquiry 'fully and without limitation', being allowed to cross-examine, to recall witnesses, and to make proposals. Mr Craig certainly gave the Commission much less trouble than Mr Lane would have done. He only attended three out of the 44 sessions of the Commission, and none of the separate hearings, and he only opened his mouth at one of the three. That single intervention was not on behalf of Oswald.*

* Warren Commission, *Hearings and Exhibits*, V. 105.

So the Commission went to work and the case of Oswald, in Mr Lane's view, went by default. But Mr Lane went to work too. The Commission worked faster than he did—it had, after all,

larger resources—and its report was published on September 27, 1964. First in the field, it received the prize. The applause was almost universal. To dissent was heresy, and journalists—many of whom seem only to have read the convenient 'Summary and Conclusions' which were printed before the text and published separately by the *New York Times*—vied with each other in their praise. Mr Louis Nizer, who wrote a panegyrical preface to the Report (portentously described as an 'analysis' of it), asserted confidently that the issue was now closed and only 'neurotics' clinging to 'pride or a more sordid interest' would refuse to submit. He thus repeated the assertion of Mr Hoover, just as the Report endorsed the conclusions of the FBI. The Commission, he concluded, had rendered an 'incalculable service' in 'effectuating domestic tranquillity and overcoming foreign skepticism. This is its contribution to history.'

But what about its contribution to historical truth? For ultimately the Warren Report must be judged not by its success as a tranquilliser but by the validity of its argument. I must confess that, when I first read the Report, I found myself unable to join the cry of triumph. It seemed to me that there were grave defects in it. Moreover, when one pressed the weak parts of the Report, they seemed even weaker. I ventured to draw attention to these weaknesses. I am afraid that, by doing so, I did not increase my popularity.

What most dismayed me, on reading the Report, was not the minor inconsistencies which can be found in it: those are to be expected in any work depending on a variety of human testimony, and it would be wrong to make too much of them. It was the evidence, rather, of a subtle but discernible process: the process whereby a pattern was made to emerge out of the evidence, and having emerged, seemed to subordinate the evidence to it. In order to be aware of this process, it is not enough to read the Report (although a reading of the Report is enough to sow the original doubt): one must turn to the 26 volumes of 'Hearings and Exhibits' which were published shortly after the Report and which I was able to procure and read in America. I found it fascinating reading. But it was also disquieting reading. To follow the same question through the three successive levels of 'Hearings and Exhibits', 'Report' and 'Summary and Conclusions' is to see, sometimes, a quiet transformation of evidence.

Let me take a concrete instance. One of the most important questions in this whole problem is, on what evidence did the Dallas police suspect Oswald? Oswald was arrested in a cinema for the alleged murder of a Dallas policeman, Patrolman Tippit: it was only later that he was identified as the man wanted for the murder of the President. But why then did Patrolman Tippit encounter Oswald? We are led to suppose that Tippit was seeking to arrest Oswald as the murderer of the President. But allowing this to be so, how was it that, in all Dallas, the police, in the person of Patrolman Tippit, contrived, almost at once, to pounce on one man and one man only, and that man, according to their subsequent insistence, the real murderer? According to the 'Summary and Conclusions', the attempted arrest was made in consequence of a description broadcast by the police, and this description in turn was based 'primarily' on the observation of one Howard L. Brennan, who is said to have seen Oswald, through the sixth-floor window of the Dallas Book Depository, from the street. 'Primarily' implies that Brennan's observation was the principal among several positive sources. But when we turn from the Summary to the full Report to discover these other sources, we find that they have disappeared, and that the identification of

Oswald rested not 'primarily' but 'most probably' on Brennan's evidence.* Thus there is no evidence of connexion, only prob-

* The Warren Report, p. 114.

ability. However, in the Report, this probability is supported by the statement that Brennan, having seen Oswald in a police line-up, made 'a certain identification', 'a positive identification' of him as the man he had seen fire the shots.† But, when we trace

† *Ibid*, pp. 146, 250.

this episode still further back to the 'Hearings and Exhibits', we discover that this is a very misleading version of the facts. For there Brennan, whose description of Oswald, as seen momentarily through a window six storeys up, is alleged to have enabled the police to pick him out of the whole city of Dallas, himself *failed* to identify Oswald in the police line-up—in spite of the fact that, like almost everyone who did identify him in such line-ups, he had by then seen Oswald on television. Only afterwards, when Oswald was dead, did Brennan say that, as a matter of fact, though he had failed to pick him out in the line-up, he could have done so had he wished, had he not been afraid of 'communist' reprisals. This is the evidence which, in the Report, is transformed into a 'positive', 'certain' identification, and which, in turn, transforms Brennan into a 'primary' source in the Summary.

The plain fact is that there is no evidence at all to explain how or why the Dallas police instantly pounced on Oswald, and until some adequate explanation is given, no one can be blamed for entertaining the most likely hypothesis, *viz.*: that the Dallas police had undisclosed reasons for arresting Oswald even before they had avowable evidence pointing towards him. Once that hypothesis is admitted, almost all the evidence accepted by the Commission can be reinterpreted in a different way.

Other instances of this process could be given. It is fascinating, for instance, to watch the quiet transformation of the medical evidence. In the 'Summary and Conclusions' there is no hint that there was any difference of opinion among the doctors as to whether the President was shot from in front or from behind. In the Report, all the statements and conclusions suggesting that the shots came from behind are given prominence, since this is the conclusion reached. It is only in the 'Hearings and Exhibits' that we see the process by which this conclusion was reached: doctor after doctor at first insisting that the shots came from the front and then gradually, under pressure, with reservations and on conditions—sometimes impossible conditions—yielding to the insistence of the Commission that possibly they might have come from the rear. On this subject at least Mr J. Edgar Hoover spoke clearly: he admitted to the Commission that the doctors at the Parkland Hospital at first thought that the shots had come from the front.

I mention these instances because it was they which first caught my attention when I read the evidence. But the same process could be illustrated again and again, as readers of this book can see. The way in which Jack Ruby is quietly detached from Oswald and his interesting relations with the Dallas Police are attenuated is a particularly good example. But there are plenty of others. This all shows how important it is not to take the Report on trust, how essential it will be for future historians to go behind the Report to the evidence. This has not been done by those who have publicly defended the Report. They have assumed, too lightly as it seems to me, that the Report is a faithful summary of the evidence. Even Lord Devlin, the ablest and apparently most critical defender of the Report (and I am aware that to differ from Lord Devlin in such a matter is as bold as to differ from Mr Warren), does not go beyond the Report. I have no doubt that

Lord Devlin has seen the 26 volumes of 'Hearings and Exhibits', but the fact remains that his long article makes no apparent use of them, and his summing-up is a summing-up of the Report, not of the evidence.* If, as I believe, there are considerable discrepancies between them, such a summing-up cannot be final.

* Lord Devlin's article was published in America in the *Atlantic Monthly* (March 1965) and in Britain in the *New Statesman* (12 March, 1965).

So far, I have only dealt with the evidence which was available to the Commission and which has since been published. But of course there is also evidence which did not come before the Commission: evidence which the Commission did not think worth hearing, or which the 'existing agencies' did not think worth bringing to its notice, or which the witnesses concerned were afraid to offer or the agencies concerned did not wish to transmit. Such evidence is necessarily rather less effective than the evidence actually submitted to the Commission. It has not been tested in the same way; it is unsworn; and the characters of the witnesses have not been so clearly brought out. Nevertheless, it cannot be rejected out of hand. The mere fact that the Commission heard a witness does not necessarily make his evidence more credible than that of a witness who has not been heard, and indeed much of the testimony which was heard was of very little value. Mr Lane has therefore quite rightly not confined himself to re-examining the evidence which was taken (though not always exploited) by the Warren Commission, rich and fascinating though that evidence is. He has gone beyond it. He and the organisation which supported him, the Citizens' Committee of Inquiry, have followed up newspaper clues, investigated private or independent reports, examined witnesses whom the Commission did not examine, pursued trails beyond the point at which the Commission stopped. Such amateur detective-work is always a little suspect, and readers will no doubt preserve a critical attitude in reading it. All that Mr Lane would ask is that they should be no less critical when reading the Commission's evidence. Often it will seem that the amateur methods are not all on one side.

When we have read the Report, and Mr Lane's critique of it, what is the impression that is left on us? I think it is clear. We are shown that, in the Report, a whole series of conclusions are based on carefully selected evidence and that the full body of evidence, to say the least, does not point necessarily to those conclusions. The writers of the Report have selected such evidence as may seem to sustain their conclusion. They have chosen to ignore a great deal of evidence which does not support but even traverses that conclusion. And in the collection and examination of evidence they have shown a remarkable preference for certain kinds of evidence, certain types of witnesses. The pattern which they have extracted from the evidence is certainly a pattern which can be made to emerge from it; but it does not emerge naturally, or from all the evidence: it has been coaxed and forced by a process which, had there been an advocate on the other side, might well have been totally discredited before judgment could be given. The worst that can be said of Mr Lane is that he is the necessary advocate; and who can deny that his advocacy might have prevailed? After all, even one of the lawyers employed by the Commission afterwards published an essay arguing that no court could legally have found Oswald guilty on such evidence; and although part of her argument was a purely technical argument that the testimony of Marina Oswald, though it might be true, could not in law be admitted against her husband, the reader of Mr Lane's book may well conclude that there are other

than purely technical arguments for rejecting Marina Oswald's testimony.*

* *The American Bar Association Journal*, Jan. 1965, V. 51, pp. 39–43. 'A Lawyer's Notes on the Warren Commission's Report', by Alfredda Scobey.

Of course there are arguments to put on the other side. It is easy to see what those arguments would be. If the champions of the Report were to lay aside the uncritical panegyrics and uncritical abuse in which they have too often indulged, they might well make certain admissions. They might admit that many, even most, of the onlookers thought that the firing had come from the front, not from behind. They might admit that all the Parkland doctors (the only doctors to see them before they were distorted by surgery) thought that the wounds had been inflicted from the front. They might admit that no one saw Oswald with the gun, or with a parcel that could contain the gun, or at the sixth-floor window, or in any compromising posture. They might admit that it seems unlikely, even impossible that such a man, with such a gun, could have shot so well. But even after all these admissions they would persist. Subjective evidence, they would say, must yield to objective evidence, fallible human observation to the certainties of scientific fact. The laboratories of the FBI have proved that those bullets came from that revolver, that rifle, those shreds from those clothes . . . In the face of these technically established facts, other doubts must yield. Shots are often confused with their echo. Doctors can err. Such accuracy may surprise, but it cannot be impossible: there is no arguing with matter of fact.

However, even this argument is not convincing. The line between subjective and objective evidence is not quite so easy to draw. For who interprets the objective evidence? Even experts can err, especially when they think that they know the answer in advance. This very case provides some interesting examples of changed 'proof' in such matters as finger-prints. Technical officers made public statements about technical facts, and this 'objective' evidence had to be adjusted afterwards to fit subsequent revelations. It is the duty of an 'independent' commission to be very critical of 'expert' evidence, especially if the expert body is under any suspicion of being interested in a particular conclusion. The Warren Commission, it is clear again and again, was insufficiently critical of expert evidence submitted by 'the existing agencies' on which it was so dependent. It did not press for explanations which might embarrass them. It did not test police statements. It politely accepted convenient evasions. This being so, it cannot complain if critics profess lack of confidence even in expert testimony.

Thus we come to the crux of the matter. It is a question of confidence. We have to admit that we lack confidence in the evidence submitted to the Commission and the Commission's handling of it. This is undoubtedly a serious admission, and once we have made it, we are faced by a further question. If we think that the Commission may have been deceived, or may have deceived itself, how do we explain such deception? Do we suppose that the 'existing agencies', or the Commission itself, deliberately sought to reach a certain conclusion, at the expense of the facts? Do we think—not to put too fine a point on it—that they, or it, were dishonest?

That would be the simple answer, and some people would no doubt accept it. They would declare that the assassination of the President, since the official explanation does not convince us, must have been the result of a conspiracy, and that the Warren Report was a 'whitewash job'. Others, unable to go to such lengths, come to an opposite conclusion. If there is no alternative but to believe either that the findings of the Report are true or that the

Chief Justice of the United States and a commission of respectable public figures and professional lawyers are all engaged in a conspiracy to cover up a crime, then moderate, rational men will naturally (and in my opinion rightly) prefer to believe the former proposition. Their answer to Mr Lane would be that, even if he has proved everything, he has proved too much.

However, I do not believe that this is a proper dilemma. Between complete acceptance of a questionable argument and the assumption that such an argument is deliberately fraudulent there are many gradations, and miscarriages of justice, or misinterpretations of history, when they arise, generally arise not from corrupt purpose but from human error. When a man, or a body of men, are seeking the truth in a tangle of evidence, they are inevitably engaged in a process of simplification. We cannot complain that they seem eager to extract a clear pattern out of an amorphous mass of testimony. That is their business. But it is very easy to see the pattern for which one is looking too soon; and once it has been seen, it is even easier to read the evidence as sustaining that pattern: to emphasise such evidence as seems to support it and to overlook or extenuate or explain away such evidence as might undermine it. There is no dishonesty in this, no indecency in suggesting it. It is a well-known psychological fact, and the most reputable scholars fall into the error. The more reputable they are, the more ready they are to admit it, the more careful to guard against it. They discipline themselves. But it is unreasonable for us to rely entirely on their self-discipline. The best guarantee against the emergence of a false pattern which will then dominate the evidence is public criticism. Ideally public criticism should take place before judgment, lest the judges be convinced by unilateral advocacy. If that is not done, if the verdict is given before the advocates of one side have been subjected to the best arguments that can be opposed to them, there is no alternative to public criticism after judgment. If the Warren Commission had allowed Mr Lane to contest their evidence before judgment, there would have been no need of his book.

Thus I do not suppose that the Commission itself was consciously working towards a preconceived answer. I assume that all its members were conscientiously looking for the truth. Where a sinister interpretation can be placed upon their method of examination and of argument, I prefer always to look for an innocent interpretation. Such an interpretation can generally be found. Nevertheless, I believe with Mr Lane that their examination was defective and their argument unsound: defective because they overlooked inconvenient evidence; unsound because they applied different standards to the evidence which they accepted. They insensibly and progressively emphasised the evidence which seemed to support the conclusion of Oswald's sole guilt, and they insensibly and progressively attenuated the evidence which pointed away from it. And they did this, I believe, essentially because the material was presented to them in a quantity, and in a pattern, and under a pressure of time, which together precluded objective re-examination. When in doubt, they invariably accepted the interpretation which supported the conclusion which had already been accepted when the material was presented to them.

Unfortunately, there were too many occasions for legitimate doubt. When we re-examine the evidence free from the pressures to which the Commission was subjected, we are astonished at its easy solution of so many intractable problems. Even on the fairest construction, and making the most liberal allowances for the natural confusion of human testimony, there are many points, and those of crucial importance, on which the uncertainties of

the evidence crowned themselves assured in the Report. Mr Lane is unquestionably right to bring us back from the Report to the evidence.

It is enough here to mention the principal questions. Whence were the shots fired? What put the police on the trail of Oswald? In what circumstances was Tippit shot? How certain is Oswald's connexion with the rifle, the rifle with the shots? In spite of all the material presented to the Commission, these problems are still mysteries. And yet are they necessary mysteries? If the available witnesses, including the police witnesses, had been more critically examined, more insistently pressed, or if the additional witnesses named by Mr Lane had been summoned, who can be sure that the truth, or a new clue leading to the truth, might not have been revealed? Deputy Sheriff Craig gave an important and perhaps illuminating piece of evidence immediately after the assassination. If his evidence had been confirmed, the whole official story would have been suspect from the start. Why was his evidence cut short and dismissed by the police, at that early stage, on the grounds that it 'didn't fit with what we know to be true'*—i.e. with the immediate police version of Oswald's

* *Hearings and Exhibits*, IV, 245.

movements? What indeed were Oswald's movements, both before and after the assassination? Mr Lane gives reason to suppose that the official version of his movements after the assassination is quite incorrect. Even Lord Devlin expresses his amazement at the indifference of the Commission to his movements and contacts before it. The Commission solemnly took evidence about the pre-natal dreams of Oswald's mother but evidently did not seek to establish Oswald's own activities in the week before the assassination. 'This', as Lord Devlin remarks, 'is rather surprising.' And what about Ruby? How did he gain access to that closely guarded police-station? However he did it, it was undeniably either by the negligence or by the connivance of the police, and yet no policeman individually, nor any responsible spokesman of the police, would admit to either. And was the murder of Oswald by Ruby premeditated or not? The relevant testimony, both direct and indirect, shows that it was. I believe that this evidence is inescapable. The positive testimony of Wanda Helmick,* the flight of Larry Crafard,† the timing of

* *Hearings and Exhibits XV*, 396-403.
† *Hearings and Exhibits*, 418-488, XIV, 1-195.

Ruby's entry, the evidence of Sergeant Dean‡ all point to that

‡ *Hearings and Exhibits, XII*, 418-444.

conclusion. And yet when Sergeant Dean gave his evidence to the Commission's lawyer, Mr Griffin, what happened? Mr Griffin suddenly stopped the recording and privately put pressure on Dean to change his evidence. He accused him of perjury and promised him immunity if he would change his tsory. Dean declined to change and afterwards insisted on revealing, for the record, the pressure to which he had been subjected: otherwise we would never have known about it.* Ruby's intimate, corrupt

* *Hearings and Exhibits, V*, 254-8.

connexion with the police was sufficiently revealed by numerous witnesses, whose evidence Mr Lane presents. It was denied or softened out of recognition by the Commission. Ruby's movements and contacts before the assassination, like those of Oswald, were unexplored. Today Ruby is the only man who might still, at first hand, reveal the truth. But his requests to give evidence outside the state of Texas were refused, and he remains, to this day, in the custody of his old intimates, the Dallas police.

While all these doubts remain, who can say that the case is closed? In a sense it is still *sub judice*. The Report of the Warren

Commission is an advocate's summing-up. The fact that the advocate believes his own version is not relevant: advocates often do. Before judgment can be given, the advocate of the other side must also be heard. That advocate is Mr Lane. He too believes in his brief. Thanks to that belief, he too may err in detail. But at least he has the right, which in America has often been denied to him, to a fair hearing. When both sides have been heard, and not before, posterity may judge.

Hugh Trevor-Roper

'An assassination is an act of patricide in which the witnesses, jury and even the judges are the children. It is fit on that account that there be a solemn pause before we rush to judgment.'

Lord Chancellor Thomas Erskine in defence of James Hadfield, charged with the attempted assassination of King George III (*London*, 1800).

About the Author

Mark Lane is a New York lawyer who has practised law for more than fifteen years, almost exclusively as a defense counsel involved in the trial of criminal cases. Through his courtroom challenges he has played a leading role in reforming the jury system to end the exclusion of Negroes and Puerto Ricans from the jury panels in New York and has filed a milestone brief showing the effect of widespread pre-trial publicity upon the rights of the defendant.

In 1959, Mr. Lane, along with Mrs. Eleanor Roosevelt and Senator Herbert Lehman, (former United States Senator from New York and former Governor of New York State) and others, founded the Reform Democratic Movement within the New York Democratic Party. Mr. Lane was called upon to draft the original constitution for the organization. The following year when candidates were offered for office Mark Lane was unanimously chosen by the Democratic Reform Movement as the first candidate to be endorsed. With the active support of both Mrs. Roosevelt, who spoke at meetings on behalf of Lane's candidacy, and of Senator Lehman, Lane was nominated as the Democratic candidate for the New York Legislature.

During the 1960 election Mark Lane was warmly endorsed for election by the then-Senator and Presidential candidate, John F. Kennedy. Senator Hubert Humphrey, Senator Eugene McCarthy, and other leaders of the Democratic Party supported Lane's candidacy and he was elected during November 1960.

Among the first bills that Lane introduced were those calling for abolition of capital punishment (a law since enacted in New York) and a bill preventing pre-trial comments upon the probability of the defendant's guilt, a custom regularly engaged in by American prosecutors. The bill, modeled after the English law, was defeated.

As a freshman legislator Lane discovered that the Speaker of the Assembly, who had urged the passage of a bill authorizing the appropriation of one-hundred-million dollars for the construction of "fall-out shelters" was a member of the board of directors of the one firm that produced such shelters in New York. The ensuing investigation, while resulting in no official reprimand for the Speaker, was responsible for the abandonment of the entire program, viewed as worthless by leading scientists. At that time the New York *Times* awarded Lane the title of "Man in the News," and published his biography.

In the Legislature, Lane concentrated upon working for a solution to the housing problem in New York and upon efforts to make the Democratic Party more democratic. His work in those areas was recognized in 1961 by Robert F. Wagner, Mayor of New York. Mayor Wagner appointed Lane to write papers relative to the housing problems and need for party reform which were used as the program for the Mayor's successful campaign for re-election. During that general period Lane also served as the campaign manager for the United States Congressman, and later as his community representative, and as campaign manager for successful candidates for election to the Democratic Party position of District Leader.

Lane twice testified before the Warren Commission, at their request. He has lectured widely throughout America and Europe, including appearances at 75 American Universities (including the University of Texas) often to the largest audiences in the schools' histories. He has lectured at Oxford University, Cambridge, University College, Imperial College, The London School of Economics, The University of Edinburgh and at public meetings in Britain.

Lane is particularly well qualified for the task of investigator as a result of his legal training and experience. More than a decade ago when charges of brutality against mentally retarded children by New York State employees at a State school for the mentally retarded were brought to his attention he began an investigation that uncovered amazing conditions. He was then appointed by the Governor of the State to make formal charges at hearings especially created for the purpose. His presentation of evidence was so compelling that the procedures for the confinement of almost 100,000 persons were drastically altered. At Lane's suggestion rules were adopted so that public officials were accessible to those confined to such institutions who had specific complaints of mistreatment to make. The New York *Times* and other responsible newspapers as well as professional organizations active in the field publicly supported Lane's efforts.

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