

# THERE WAS NOTHING THEY COULD DO

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*Much has been written about what the Warren Commission found—  
but very little on why they found what they did. . . .  
It's the story of an investigation that wasn't.*

By Milton Viorst

More than three years have passed since President Kennedy was shot down on a Dallas street, yet the crime appears more mysterious now than it did the day it was committed. The Warren Commission has declared that Lee Harvey Oswald, by himself, was the killer, but more and more persons have come to doubt that the verdict is correct, and their arguments can no longer be dismissed out of hand. One wonders, how could the Warren Commission have gone so far astray that its efforts are the object of such numerous and such persuasive challenges? The answer emerges when one reconstructs the atmosphere in which the Commission was created and the psychology with which it went about its work. In setting out to resolve the mystery of the Kennedy assassination, the Warren Commission fell into an intellectual trap which determined the course of its investigation from beginning to end.

Think back, if it is not too painful, to those awful days in November 1963, and recall that amid the terrible confusion and dismay there was, at least, some comfort in the feeling that the assassin had been caught. Texas police officials, one after another, had announced before the television cameras that the crime had been solved and, as if their word was not enough, the FBI confirmed the claim. At the time, one had no reason to doubt that Oswald had killed the President. When Oswald was himself murdered, there was almost a sigh of relief that the country would be spared a trial that would, at best, be indecorous—and, most believed, would be superfluous, besides.

Lyndon Johnson's first impulse seemed to be to let the matter take its natural course. Although Anglo-Saxon jurispru-

dence contains no procedure for criminal action against a dead man, Johnson regarded the evidence against Oswald as so massive that the case would, through conventional channels of information, take care of itself.

It quickly became clear, however, that, despite Johnson, others were extremely interested in bringing to the public their own versions of events. Texas, looking for absolution, announced that a court of inquiry would be established. Senator Eastland of Mississippi, with uncertain motives, said that the Internal Security Subcommittee, of which he is chairman, would conduct an investigation. The House, never willing to surrender attention to the other body, began to talk of its own committee probe. Meanwhile, a grand jury was being contemplated and parallel investigations had been undertaken by the FBI and Texas law enforcement agencies. The imminent proliferation of inquiries generated consternation among those who took seriously the nation's dignity. It was not hard to foresee that they would degenerate into an unseemly rivalry, with the country becoming, in its moment of tragedy, an international laughing stock.

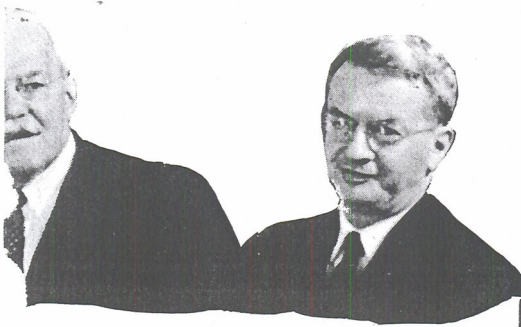
To President Johnson, Oswald's death indicated that the normal judicial channels—arrest, charge, indictment, trial—were closed. If there was to be an investigation at all, it had to be by some special body. To forestall a multiplicity of inquiries, he decided to appoint that body himself. He thus created the Warren Commission.

In retrospect, one understands better why Lyndon Johnson turned to the device of the Warren Commission. In November 1963, the new President's executive techniques were unknown.

Now one realizes that his method of handling difficult problems is not necessarily to resolve them but to neutralize them through politics. His conception of conducting an investigation into the assassination of President Kennedy was not to go straight for the truth, whatever its consequences; it was to nominate a body whose political credentials were so impeccable that, whatever was found, it would be immune to criticism.

He chose as the chairman the prestigious Chief Justice. But Earl Warren, a hero to liberals, was anathema to the South and to the extreme right, so he appointed as counterweights Senator Richard Russell of Georgia and Representative Hale Boggs of Louisiana. To be fair to Republicans, he named Senator John Sherman Cooper, a moderate, and Representative Gerald Ford, a conservative. To mollify the Establishment, he selected John J. McCloy, listed in *Who's Who* as a Wall Street banker, and to calm the bureaucracy, he picked Allen Dulles, former head of the CIA. If he were naming the Commission today, he would probably include a Negro and a Jew, but without them he did very well indeed in covering the major segments of the political panorama.

Johnson picked his candidates on the basis of their reputations as politicians, not investigators. It is clear that he did not foresee an onerous inquiry. When Warren objected that he lacked the time to serve, Johnson, certain that the case was open and shut, assured him that he could still perform his duties at the Court. Johnson persuaded his candidates that it was their patriotic responsibility to accept appointment. He wanted the *right* men, not *right* as seekers of truth but for a crucial exercise in politics. For politics, as Johnson knows, is truly the "art of government."



# G ELSE

One need not impugn Johnson's motives in setting the standards for Commission membership. He regarded it as essential to the best interests of the nation that the Commission be politically perfect. The Commission members, for their part, understood their task as a service to the nation. It has been said—as the President intended it to be—that the members of the Warren Commission were all men of integrity. But, in a sense, their very integrity played tricks on them. Though they did not anticipate a conflict between truth and the national interest, when it occurred, they accepted President Johnson's contention that their duty was to the nation.

Having been given by the President whatever powers it needed, the Commission began by selecting a staff—a group of lawyers, which, like itself, was more politically representative than it was competent at investigation. Then the Commission made the major decisions that set the direction and the quality of the inquiry. Whatever their intent, these decisions destroyed the Commission's capacity to function as a free agency and drove it ineluctably to the verdict that Lee Oswald was, by himself, guilty of the murder. Like a Greek tragedy, the Commission marched to a foreordained climax.

By deciding not to retain its own body of investigators, the Warren Commission made itself dependent for its principal facts on the FBI. On December 9, five days after the first Commission meeting, the FBI submitted a report which declared categorically that Oswald was the killer. Thus, from the Commission's opening days, the FBI possessed a vested interest in a single story. Even more than other governmental agencies, the FBI has a profound sense of its

own rectitude. It was profoundly contrary to experience and reason to expect the FBI to put significant effort into providing information that could, by leading to an alternative explanation of the murder, cast discredit on itself. At best, the FBI was involved in a conflict of interests. The Warren commission was thus an investigative body without a reliable investigative arm.

Having decided to rely on it, the Commission could presumably have pressed the FBI to perform in a satisfactory manner. The Commission, after all, had been endowed by the President with the powers of a super-agency. But, in practice, the Commission did not exercise those powers and functioned on the FBI's sufferance. When the Commission was confronted with the allegation that Oswald had been an FBI agent, it dismissed the charge on the basis of a simple denial from J. Edgar Hoover. When there arose some suggestion that the FBI might have been remiss in helping to protect the President, Hoover replied testily that he had long before rejected police-state tactics. During the course of the investigation, Hoover's aggressiveness generated open feuding with the State Department and the Secret Service. Surely the members of the Commission felt that it was not in the best interests of the nation to have this bureaucratic bickering on display. It was far easier to accept meekly what the FBI had to offer than to risk an intra-governmental rupture.

To be sure, Robert Kennedy, then Attorney General, was J. Edgar Hoover's titular supervisor, but, even in his best days, Kennedy had found it hard to keep Hoover in line. And the melancholy months after the assassination were not Robert Kennedy's best days. President Johnson has since cited Kennedy's presence in the Justice Department as evidence of the authenticity of the Commission's findings. But even if Kennedy's objective was scientific truth, he exercised little power over the FBI and none over the Warren Commission during the investigation. Besides, there is no reason to believe that Robert Kennedy did not share the Commission's outlook that the service which was called for was not so much to truth as to the national well-being.

Having rejected establishing an investigative staff of its own, the Commission made a second momentous decision: It agreed to do its work under the pressure of time. Johnson believed that unless the Oswald case were quickly closed, the assassination might somehow become a political issue in the 1964 election campaign. He was anxious to have the Commission's report finished well before the Republican National Convention in July. Since the Commission could not do any serious examining before the termination of the Jack Ruby

trial in March, the time was short indeed. In consenting to the presidential deadline, the Commission precluded itself from any kind of painstaking investigation. It meant that the Committee would have to be selective in choosing its areas of inquiry. In practice, the decision meant that the Commission would seek, in Justice Warren's words, "to close doors, not to open them." It meant, of course, that the Commission would have time only to sustain the hypothesis that Lee Oswald alone was guilty. And that was precisely what the Commission sought to do.

By the time the Commission realized how complex the circumstances were, it was too late to reverse the momentum. Warren proved to have no stomach for rethinking and reorganizing the investigation. Impatient to get over with it, he drove the staff harder and harder to reach the preconceived conclusion. The end result became the opposite of his intention. The Commission report, instead of convincing the world of Oswald's culpability, has itself become the object of enormous mistrust.

According to its mandate, the Warren Commission had been established to find out *the truth* about the Kennedy assassination. President Johnson had instructed it to end, once and for all, speculation over the murder. The Commission, as a result, was denied the prerogative of saying that there were several possible theories, that its members could not agree on an explanation, that the puzzle demanded a further inquiry of indefinite duration. The Warren Commission was called upon to supply certainty. Lyndon Johnson and the American people demanded an answer. Under tremendous pressure, the Commission gave it to them—but it was the easiest answer available. It is ironic that the Commission's prestige persuaded some of the most renowned sages of American society to pronounce the work perfect before they had even read it.

The Warren Commission's conclusion is not necessarily the wrong one, but, by the same token, there is nothing compelling to indicate that it is the right one. The Commission selected facts as it needed them to sustain a hypothesis. Its critics have shown that it disregarded evidence which was contradictory. It is no exaggeration to say that the report of the Warren Commission fails to meet the highest standards of scientific methodology. Understandably, it has steadily been losing public confidence.

The defenders of the Warren Commission seem to be divided into several groups. Senator Philip Hart of Michigan, a member of the let's-not-rock-the-boat school, had this to say: "We should let this one rest now with the poets and the historians. I think the caliber of the men who composed that commission insures

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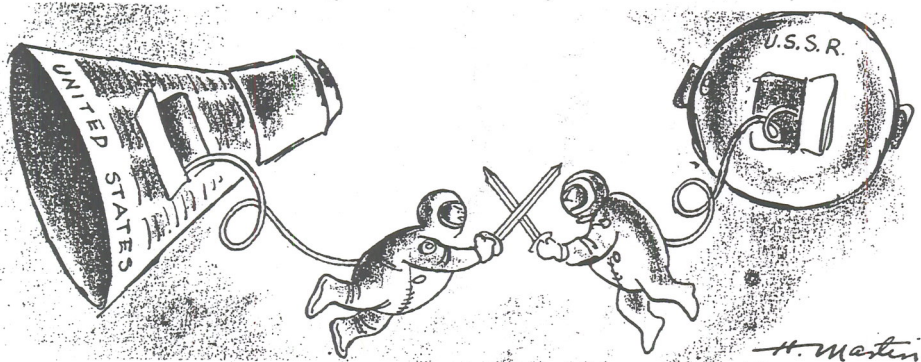
that the verdict, the general verdict, is sound." In contrast to Hart, others have been openly pugnacious and disparage the motives of the critics. Malcolm Kilduff, a former White House press aide, has characterized attacks on the report as "pure garbage," written for personal gain. A third group, of which the President is a member, declares loftily that the critics have brought forth insufficient evidence to justify reopening the case. "I know of no evidence," he said, "that would in any way cause any reasonable person to have a doubt about the Warren Commission." But this is to ignore the questions that quite reasonable persons and publications have raised on the basis of the Commission's own data. Virtually no effort has been put into the obvious instrumentality of refuting the critics' arguments.

For President Johnson to reopen the investigation now would, of course, be an enormous admission of failure. The prestige of the federal establishment is attached to the Warren report. Great Americans have a stake in its preservation. The FBI is sternly committed to its defense. The American people are most comfortable with its message. Right or wrong, it has stood for two years as official dogma. It now represents a vested interest to the American political system. For its critics to quash it would be a monumental task.

The pressure, however, may grow so severe that the President may not be

able to resist. But what will happen? To return the case to the Warren Commission would be to invite the same difficulties as before. The French Republic was rocked by the Dreyfus case, not because the original injustice was so shocking but because a government, by refusing to concede a small mistake, allowed the mistake to be compounded into an enormous official lie. However more stable this country may be, the American Government is not immune to a profound crisis of confidence.

But there should be a new investigation, as even *Life* magazine has said, and the lesson of the Warren Commission is that a new investigative body must be independent of the federal bureaucracy and dedicated to scientific truth. Its chairman must be esteemed but free, a responsible maverick, a figure like ex-Senator Paul Douglas, Admiral Rickover (if he left the Navy), or James Conant, former president of Harvard. On its staff must be highly qualified criminologists, the best experts in crime detection, and a squad of highly qualified detectives, none of them in the debt of the FBI or any other agency of the United States or Texas. They must have at their disposal the power to subpoena and to grant immunity, the capacity to pursue any lead, and the authority to spend whatever time and money they need. They must be willing to challenge the status quo and defy the vested interests. Most of all, a new investigative body would have to begin its work free of the conviction that there is a single truth which best serves American society. □



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