

THE QUESTION OF THE WARREN REPORT

A scrupulous appraisal of a book that raises "monumental doubts"
about the work of the Commission

BY RICHARD N. GOODWIN

Richard N. Goodwin is presently a fellow at the Center for Advanced Studies at Wesleyan University. He was formerly Assistant Special Counsel to President Kennedy and Special Assistant to President Johnson

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During the blurred, unsleeping days after the assassination, the White House planning of the funeral and ceremonies of mourning was constantly interrupted by reports from Dallas. A man called Oswald had been arrested. A police chief claimed Oswald was the assassin. Ruby had shot Oswald. None of it stirred discussion or pause in the frantic labor which was diverting the contemplation of grief. Oswald, Ruby, Dallas were meaningless trivialities whose unfelt pronunciation could neither deepen nor relieve the web of anguish which bound us. In all the world there was only one fact: Kennedy was dead.

More than anything else this explains why those who worked with President Kennedy, even those in the outer rings of relationship such as myself, ^{ed}welcoming with such swift acceptance the conclusions of the Warren Report; even though few had read it thoroughly and almost no one had examined the evidence on which it was based. There was, of course, the fact that the integrity and purpose of the Commission were beyond question and its members were men of skill and intelligence. There was the almost unanimous praise of newspapers and commentators who we assumed, if we thought about it at all, had followed the course of investigation and studied the answers. This would not ordinarily have been enough for those who had learned the lesson of the Bay of Pigs: that neither position, conviction, sincerity, nor expert knowledge precluded the need for independent judgment of the evidence. This time, though, there was only room for grief; and a lone madman compelled neither hatred nor effort nor calculation.

In the months that followed, the demonologists, charlatans, and self-promoters -- with their unprovable theories of conspiracy and plot -- only deepened conviction. The ease of refutation and the often obvious motives made the Warren Report more certain. Still, few read the report and fewer examined the evidence.

Mr. Edward Jay Epstein has now written a book which, after the passage of three half-healing years, not only raises questions but demands exploration and answers. It calls upon us to look at the assassination without horror or wish and with the clearness of a passion for sure retribution.

Let us be clear what this book does not do. It does not show that anyone besides Lee Harvey Oswald was even remotely involved in the assassination. Therefore it does not prove that the basic conclusion of the Commission was wrong. It does not demonstrate or even contend that the Warren Commission tried to conceal or mask important evidence. Nor is there any doubt that the purpose of the Commission was to discover and disclose the vital facts. Rather than the assassination or the integrity of the Commission, the concern of this book is with the adequacy of the investigation. On that the author concludes, "Rather than ~~being~~ being 'exhaustive' ... (it) was actually an extremely superficial investigation limited in terms of both time and manpower, and consequently limited to the more prominent evidence."

I cannot finally judge the truth of this conclusion. It rests not simply on the force of reason or style, but the reliability of Mr. Epstein's evidence and his own truthfulness, detachment, and reliability in its interpretation. Some of the most damaging evidence, for example, comes from oral interviews with staff members, who are not known to us and whose criticism of the Commission may well be colored by the normal frustrations and grievances of those whose ideas are not always accepted by their superiors. Nor, since this book began as a master's thesis, are we sure that those interviewed realized that their opinions might be published; a knowledge which would have warned them against the hyperbole natural to a casual conversation destined for burial in a university library. Also, it is unfortunate that, as far as appears,

the final manuscript was not submitted to General Counsel J. Lee Rankin for comment and the chance to offer alternative views of specific evidence since, as the sole important contact between the Commission and its staff, he had different insights into motivations and reasoning. After all, we are not merely admiring an impressive work, which this is. We are assessing the deadly serious issue of a charge against the adequacy of the investigation of the murder of John F. Kennedy. On this issue, as Mr. Epstein asks^{us} to do on the findings of the Commission itself, we must make an independent judgment of the facts and their proper interpretation.

Yet this is not, as so many earlier books clearly were, an obviously self-seeking work with glaring gaps of reason and evidence. And with all the caveats, Mr. Epstein makes his case in so logical and detached a manner that it demands equally serious exploration and refutation to satisfy us that we have established the lone guilt of Oswald to the limit of human possibility. If we cannot deny this book, then the investigation must be reopened if we wish to approach the truth more closely.

The story behind the book adds to its weight. As a student at Cornell University Mr. Epstein began, at the suggestion of Professor Andrew Hacker, a master's thesis on the problem of how a government organization functions in an extraordinary situation without rules or precedents. When he began his study, he tells us in his preface, "I thought the problem far less complicated and intriguing than it proved to be." And it seems that throughout his research, he was not trying to prove a case of his own, not trying to support a theory, nor attempting to discredit the Commission. He examined an extraordinary range of evidence, including the Report and the 26 volumes of evidence and exhibits; the investigative reports in the National Archives (many of which were unclassified and made available to him); the working papers of the Commission itself, supplied by one of the members of the staff; and he conducted a series of revealing personal interviews with many members of the Commission and its staff. Obviously the seeming innocence of his scholarly task opened doors and files which might not have been so freely available to a crusading journalist, and some may have talked to the intelligent young scholar with a freedom they later regretted.

In addition, the book itself reflects the working of a first-class analytical intelligence, relatively invulnerable to the temptations of sensationalism.

Nevertheless, such a brief^{book} (154 widely-spaced pages of text) inevitably leaves many questions unanswered and many barely raised. Examination is limited to one or two issues, leaving untouched, for example, the manner in which Oswald's past life and associations were determined. At times assertion takes the place of demonstration, as when we are told of important contradictions in the testimony of Marina Oswald without any illustration of specific inconsistencies. Yet the issues examined are the vital ones which relate to the day of murder and the guilt of Oswald; and the book, for all its oversimplifications, raises monumental doubts.

Two approaches are fused in Epstein's inquiry. The first examines some specific problems of evidence, partly for their own sake but mainly to illustrate the process and reliability of the investigation. The second examines the nature, structure, quality, and exhaustiveness of the Commission's work.

The limits of my knowledge prevent any final assessment of the first effort, fascinating as it is. For example, the author devotes a great deal of space to the problem of the rifle shots. He states that the theory of the lone assassin depends on the conclusion that a single bullet struck both President Kennedy and Governor Connally; that if there were two shots, they were fired in too rapid succession for a single man. "(The) staff," he writes, "felt that this theory was the only reasonable way to explain the sequence of events in terms of a single assassin." He then examines evidence to show that the "single-shot" theory rested on very shaky ground, that alternative possibilities were not fully studied, and that, in fact, it was not accepted by some members of the Commission, the differences being finally smoothed over by a compromise of language which described the evidence as "persuasive" rather than "compelling." The presentation sounds logical enough and undeniably reflects on the quality of the investigation, but to accept its validity would require going through a large mass of documents, testimony, and expert conclusions. Without such an examination the reader cannot hope to judge these points of evidentiary interpretation.

However, the criticism^s of the work of the Commission are a different matter. They flow not from the facts of the assassination, but from the facts of the investigation, the working papers of the Commission, and the considered statements of those involved in its conduct. Much of it has been available only to the author. Even allowing for the possibility of error or misstatement, the book presents a most disturbing picture.

At the outset we should understand that even if the investigation was as defective as Mr. Epstein claims, the fault may be not so much that of the Commission itself, but of the basic premise on which it was established: the expectation that a small group of lawyers headed by men deeply involved in national affairs could, in a short space of time, investigate so complicated, difficult, and extensive a matter. The President was determined to find the truth and he selected the best men he could find. The Members of the Commission were men of invulnerable integrity, and, as a group, possessed outstanding ability, skill, and intelligence. Within the limits of its structure, the Commission probably did the best that could be done. Had the evidence been clear and conclusive, the job could have been completed with swift assurance. But the evidence was not clear. It was far from conclusive. And it ultimately revealed important areas of uncertainty and complexity. Under such circumstances a much larger group -- including scientists, trained investigators, and men who are highly skilled in determining credibility as well as analyzing and interpreting evidence -- could have conducted a far more thorough inquiry.

The people who did conduct the investigation were organized in three layers. There were the Members of the Commission: the Chief Justice, four members of Congress, Allen Dulles, and John J. McCloy. Under them were Chief Counsel J. Lee Rankin, his two assistants or deputies, and about half a dozen senior lawyers with high reputations. The bottom layer was made up of seven or eight bright younger attorneys.

It might be expected that men as absorbed in other tasks as were the Members of the Commission could not devote full time to the work of the investigation. According to Epstein the average Member attended 45 per cent of the hearings which were themselves only a small part of the total inquiry. (One attended about 6 per cent of the time.) A senior lawyer told Epstein the Commission "had no idea of what was happening; we

did all the investigating, lined up the witnesses, solved the problems and wrote the report." At its mildest the consensus of the staff, as expressed by one of Rankin's two deputies, was that "the Commissioners were not in touch with the investigation at all times." These statements may be exaggerations but they, and others like the^m, come from those whose judgment and thoughtfulness were the mainstay of the Warren Report. If they are careless about this matter, how much weight can we give their analysis of the far more intricate questions which surrounded the assassination? It is quite possible that the Members and the staff had different conceptions of the role of the Commission. While the staff expected active participation, the Members of the Commission regarded themselves as judges making final decisions between alternative conclusions raised by others. However, if this was the Commission's view of its function, it deprived the investigation of the Members' independent evaluation of complex evidence.

Moreover, there was little direct contact between the Members and the working staff. Almost all information was filtered through Rankin and his assistants. One staff attorney even denied a Member access to his files until Rankin corrected him. Thus the Members deprived themselves of the direct relationship between fact-finder and decision-maker which is vital to an accurate assessment of data, and were often unaware of the many important and intense differences between various members of the staff.

Most of the senior lawyers worked only part-time on the Commission, meanwhile keeping up their private practices, commuting across the country, or even dropping out of sight completely. Few of them seem to have given as much time as would be required for the preparation of a complicated private litigation. Mr. Epstein tells us that in July, half-way through the investigation, "All five senior lawyers ... had to return to their private practices and made virtually no contribution to the writing of the final report." Thus most of the work, with some notable exceptions including Rankin and his deputies as well as one or two senior lawyers, devolved on the junior attorneys. In the eight or nine months of investigation — much of which was devoted to drafting the report — less than a dozen people had to read and evaluate 300 cubic feet of government reports including 25,000 reports from the FBI, analyze the issues, supervise the investigation of unresolved

problems, recommend additional investigation by the Commission, and draw conclusions. In addition, the lawyers took testimony from 418 witnesses, staged reconstructions of the assassination, traveled to Texas for interviews, and framed questions to government agencies in order to clear up inconsistencies or fill gaps in the information they were given. All this had to be done in a few months. Nor was the entire staff always available. During July, for example, Epstein calculates that only three men worked full time.

Epstein tells us this enormous burden had two major consequences. It compelled a drastic economy of procedures and made it inevitable that much evidence would be studied superficially, ignored, or missed.

The investigation was divided into five major areas, and each area was assigned to a different team. For example, Area I concerned the basic facts of the assassination; Area II, the identify of the assassin; etc. As a result, no single person read all the documents and reports. Evidence of potential importance to one team was probably missed because it was read by another team which found it irrelevant to their special concerns. Tremendous burdens were put on specific individuals. For example, the entire work of a most critical area -- the basic facts of the assassination -- fell to a single man working for 10 weeks. As he told a colleague, he therefore limited himself to a number of major problems.

Other agencies helped in the work of investigation. Primary reliance was placed on the FBI, though the work of that agency was one of the subjects of the inquiry. Since the FBI properly concluded that it must follow the lead and direction of the Commission, it largely restricted itself to answering specific questions and requests. Although all requests were met, this left the development of new lines of inquiry to the staff. The CIA, according to one staff member, was so secretive as to be virtually useless. As a result, some matters were inevitably left un-investigated. For example, in January the Texas Attorney General transmitted an allegation that Oswald had been a paid informer of the FBI while living in Dallas. The Commission was summoned into secret session and told by Rankin, "We do have a dirty rumor that ... must be wiped out." It is probably this incident that the Chief Justice referred to when he made his famous statement about matters that might not be disclosed "in your lifetime." Although this problem consumed the Commission in its early days, it was resolved solely on the basis of an FBI denial without independent investigation, and

was not even mentioned in the "Rumor" section of the final report. It is highly ~~unlikely~~ that Oswald was a paid informer, but the incident illuminates the way in which some important questions were resolved.

Mr. Epstein recounts many other flaws in the process of investigation. The large and sometimes unclear mass of technical, medical, and scientific evidence was not examined by an independent panel of experts nor were other experts called to refute it -- the customary procedure in an adversary proceeding. Witnesses were protected from the rough cross-examination usual to criminal proceedings. One investigator was reprimanded for accusing a Dallas police sergeant of lying when he found several inconsistencies in his testimony about Ruby's entrance into the Dallas city jail. The Chief Justice said that "no member of our staff has any right to tell any witness he is lying or that he is testifying falsely. That is not his business. It is the business of this Commission to appraise the testimony of all witnesses...." This was a considerable constraint since only 94 of the 552 witnesses testified at the hearings; fewer than one-third of the hearings (81 hours out of 244) dealt with the facts of the assassination; And most of the Commissioners were absent more than half the time. At one point, in a stormy meeting, an important senior counsel threatened to resign and others protested loudly, when Rankin informed them that no further examination of Marina Oswald would be allowed. A Rankin deputy wrote an impassioned memorandum saying that "Marina Oswald has lied to the Secret Service, the FBI, and this Commission repeatedly on matters which are of vital concern to the people of this country and the world." Finally, another examination was held. With the help of forceful questioning by Senator Russell, glaring inconsistencies were exposed, many of which were never resolved. Denied the right to vigorous cross-examination, some of the lawyers felt that "they were reduced to deposition takers."

The pressure of time, Epstein asserts, "limited not only the quantity of the investigation but also its quality." One Commission Member said he was concerned with the "ugly rumors" circulating in Europe and feared a delay in publishing would "cause them to spread like wildfire." Some of the Congressional Members, from both political parties, told Epstein they felt it was necessary to release the Report well before the election.

There were constant deadlines, reluctantly extended, to complete the investigation and write the Report. Undoubtedly, there was a national interest in making the findings of the Commission available as soon as the investigation had been completed, but certainly not before the most thorough possible inquiry had been ended, reflected upon, and adjudged convincing to the reasonable skeptic.

Although nearly all important witnesses were examined, and all available evidence was studied, the question remains whether the pressure of time made it difficult to uncover evidence which had been concealed or pursue lines of investigation still incomplete. We cannot know if evidence has been concealed, but Mr. Epstein gives several examples of aborted inquiry. One staff member who was trying to determine how Ruby entered the Dallas City Jail on his way to murder Oswald was ordered to proceed with other problems --presumably because he had already spent too much time on this question -- "despite his protests that the question of Ruby's entrance was of prime importance." The Commission Report concluded "Ruby entered the basement, unaided, probably via the Main Street Ramp....." (*italics mine*). An immediate ~~in~~informed reaction is to question how we can be certain he was unaided if we are not certain how he entered; but perhaps other evidence is conclusive on that problem. When another staff member submitted a memorandum attacking an earlier analysis which denied the possible veracity of testimony by a Mrs. Odio that Oswald had stopped at her apartment with two associates on his way to Mexico, he was told "At this stage we are supposed to be closing doors, not opening them." This particular memorandum was, in fact, read and then rejected, although the FBI investigation into the matter was still in progress when the Report went to press. In any event, the attitude, and not the particular incident, is most relevant.

An important part of the Epstein criticism is that crucial sections of the Report were drafted so as to obscure unresolved difficulties, paper over differences of opinion among the staff, or to eliminate factual interpretations which might detract from the forcefulness of the Commission's conclusions. As far as it appears, this process took place almost entirely within the staff, and did not involve the Commission itself except in one stated and important case. Much of the basis for this criticism is rooted in the history of the vital Chapter IV which "identified the assassin as Lee Harvery Oswald." The original draft was written by senior attorney Joseph Ball. The re-draft had a substantially different emphasis: for example, it gave

important weight to eyewitness testimony of the Tippit murder and of Oswald's presence in the Book Depository window, both of which Ball had discarded as highly unreliable. The Commission itself was careful not to give decisive weight to the testimony of the man who claimed to have seen Oswald. When the redraft was completed one of the most active junior attorneys, Wesley J. Liebeler, wrote a 26-page memorandum attacking the chapter point by point, concluding that "this sort of selection from the record could seriously affect the integrity and credibility of the entire report." The chapter read, he later told Epstein, "like a brief for the prosecution." The initial reaction was "No more memorandums! The Report has to be published." According to Liebeler, the author of the redraft defended his work with the claim he had written the chapter exactly the way the Commission wanted it written. Finally the dispute was settled by Rankin, who accepted some of the criticisms, glossed over a few, and rejected most of them.

After a moderately detailed analysis of some of the objections to the chapter, Mr. Epstein concludes that Chapter IV is "not an impartial presentation of the facts." It is possible, perhaps even likely, however, that the final draft of the Chapter was a complete and accurate presentation, that Liebeler's objections were erroneous, and his later comments to Epstein self-serving. (He appears to be a principal source for the material in the book.) However, such important staff differences about the reliability of evidence and the selection of material might have better been the subject of intense and detailed examination by Members of the Commission. Again it is the process of investigation, and not the specific conclusions, which are under attack.

At the heart of Epstein's analysis is what he rightly calls the threshold question: Was Oswald the only assassin? If he was, then the matter is ended. If he was not, then we must move into long, twisting, and complicated paths of investigation and analysis. We all know, and have been told many times since the Report, that it is impossible to prove a negative: it can never be established to the limits of certainty that no other person had a hand in the assassination. Mr. Epstein, as he must, grants that limitation. He says, however, that the conclusion Oswald acted alone rests on two assumptions. The first is that all relevant evidence was brought before the Commission. The second is that all evidence was exhaustively analyzed, all alternatives were thoroughly

explored, and all possibilities were investigated and tested to the limit of human capacity. He claims that neither of these assumptions is true. Possibly relevant evidence was not brought before the Commission, including individuals who claimed to be eyewitnesses to a very different scene from the version most of us have accepted. Other possibilities were left unexplored, such as the statements of witnesses that they had heard shots and seen smoke from a "grassy knoll" between the overpass and the Texas Book Depository. Epstein concludes, and supports his conclusion with specific examples, that "the staff (did not) conduct an exhaustive investigation into the basic facts of the assassination. In fact, only the most prominent problems were investigated, and many of the crucial, albeit less salient, problems were left unresolved....."

None of this proves or even forcefully indicates that a single disturbed human being was not the cause of President Kennedy's death. Perhaps all the specific examples Epstein uses to strengthen his case will be easily refuted. If there are gaps, further study may swiftly close them. However, the attack on the nature and adequacy of the Commission's work is not easily dismissed. Even if Mr. Epstein is totally wrong in every discussion of specific evidence, and yet if he is right that the investigation itself was seriously incomplete, then we have not established to the limit of possibility that Lee Harvey Oswald acted alone to kill John F. Kennedy.

I find it hard to believe that the investigation was seriously flawed, but here is a book which presents such a case with a logic and a subdued and reasonable tone which have already disturbed the convictions of many responsible men. It may all rest of quicksand, but we will not know that until we make an even more extensive examination than the author has made. An independent group should look at these charges and determine whether the Commission investigation was so defective that another inquiry is necessary. Such a procedure will, perhaps unnecessarily, stimulate rumors and doubts and disturb the political scene. Yet there seems to be no other course if we want to be sure that we know as much as we can know about what happened on November 22, 1963.
