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Lawyer Assays Warren Report as Trial Evidence

By **AUSTIN C. WEHRWEIN**
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CHICAGO, Jan. 10—Alfreda Scobey, a lawyer who was on the staff of the Warren Commission, has raised the question: If Lee Harvey Oswald had not been murdered, how much of the Warren report could have been used against him in a criminal trial?

Miss Scobey says the report was never intended as a brief for the prosecution, and that although it included the whole picture it is "crammed with facts that would not be admissible on the trial of a criminal case."

Miss Scobey, who has been law assistant with the Georgia Court of Appeals for 16 years, says that the circumstantial evidence against Oswald "is either more cogent or less subject to attack than the direct [evidence]."

Her analysis of the report made by the President's Commission on the Assassination of President John F. Kennedy is in the current American Bar Association Journal.

The commission found Oswald guilty of Mr. Kennedy's slaying in Dallas on Nov. 22,

1963. Oswald, who was captured, was slain two days afterward by Jack L. Ruby, a nightclub owner who has since been convicted of Oswald's murder.

Miss Scobey weighs the testimony amassed by the commission from the standpoint of a lawyer who might have defended Oswald, had he lived. Her interest is technical.

There is no Federal law against the assassination of a President. Oswald would have been tried under Texas state law.

A very lucky defense lawyer, Miss Scobey says, might have been able to exclude or impeach the testimony of "a large number of key persons" who added strength to the report.

"This is not to say that what would be left," she declares, "would leave room for a reasonable doubt of Oswald's guilt."

"There first must be deleted the testimony of his wife, Marina," she goes on.

Under Texas law, as is generally the case, a wife may not testify against her husband in a criminal case, Miss Scobey notes.

There are "many facts" that appear only in Mrs. Oswald's uncorroborated testimony, Miss Scobey continues. It is extremely doubtful, she says, whether

a court would admit in evidence Mrs. Oswald's testimony that related to Oswald's attempt on the life of former Maj. Gen. Edwin A. Walker on April 10, 1963, and a threat of assault on former Vice President Richard M. Nixon.

Texas law applicable to these instances, Miss Scobey says, follows the general rule that "distinct criminal transactions must tend to connect the defendant with the offense for which he is on trial."

She then lists a series of facts depending upon Mrs. Oswald's testimony—the identification of a blue jacket at the Texas School Book Depository Building as her husband's; the identification of a shirt, threads from which were caught in the assassination rifle; a white jacket found along the reconstructed escape route; a photograph of Oswald with the rifle.

More important, only Mrs. Oswald identified the weapon as the one he owned, Miss Scobey notes. This, she says, is the only eyewitness testimony connecting Oswald with the assassination weapon or definitely identifying the clothing.

Mrs. Oswald, Miss Scobey declares, was the only source of

a "wealth of background information" that included facts that provided the basis of the interpretation of Oswald's character on which the "motiveless motive" of the crime depends.

Miss Scobey also raises a question of illegal search and "personal security" in violation of the Fourth and the 14th Amendments of the Constitution.

She makes this point in connection with a police search, without a warrant, of the home where Mrs. Oswald was residing. They discovered the blanket in which the rifle had been wrapped, fibers from which were later identified as being like those found in the abandoned bag beneath the assassination window. Miss Scobey says there would seem to be a strong basis for excluding this evidence.

"The only eyewitness who ever identified him [Oswald] at the window first refused to make positive identification, saying only that Oswald looked like the man he saw," she declares. "Oswald's subsequent departure from the building was reasonably subject to his explanation that with all the commotion he did not think any more work would be done that day."