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Reports on the Report

INQUEST. The Warren Commission and the Establishment of Truth. By Edward Jay Epstein. With an Introduction by Richard M. Rovere. 224 pp. New York: The Viking Press. \$5.00.

WHITEWASH. The Report on the Warren Report. By Harold Weisberg. Illustrated. 208 pp. Hyattstown, Md.: Harold Weisberg Paper, \$4.95.

By FRED GRAHAM

CRITICS of the Warren Commission's report on the assassination of President John F. Kennedy would do well to bear in mind the bard who wrote: "As you go on through life, brother, / Whatever be your goal— / Keep your eye upon the donut / And not upon the hole." For it obscures the truth to search for holes in the Warren Report without viewing it against the background of the Commission's peculiar nature and the possible alternatives to the conclusions it reached.

If President Kennedy had been killed by a disease, it would have been natural to call in the medical profession to clear up any mystery about its nature. Since he died by assassination, which is a crime, lawyers were called upon to arrive at the truth of the case.

But the parallel is not exact. Doctors are trained to discover medical truth, while lawyers are trained in expounding a point of view. (The best ones can believe passionately in every client's case, including the cases of great rascals.) Their truth-finding genius is not individual, it is institutional—the adversary system—and the record of Congressional investigating committees has long since established that the mere presence of skilled lawyers and legal trappings does not produce truth.

Yet when President Lyndon B. Johnson was faced with the need to expose the truth and settle doubts about the assassination, and with no precedents to guide him, he turned instinctively to lawyers and the law. He appointed the nation's most distinguished jurist, Chief Justice Earl Warren, to direct a commission of six leading citizens—all lawyers. In turn, the Commission retained J. Lee Rankin, a former U.S. Solicitor General, and a staff of 22 lawyers, nicely balanced between a few leading private attorneys (to give the staff prestige) and a number of top-ranked recent law graduates (to do most of the work).

They naturally adopted a forensic method. The witnesses and physical evidence were marshaled so that the story would unfold in a trial-like manner, with witnesses responding to questions and submitting exhibits for the record. Testimony was taken either in deposition form by the staff or before the Commission members themselves, somewhat as in a courtroom. The result was a verbatim rec-

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ord of 522 witnesses' testimony (94 of these witnesses testified before the Commission), which filled 26 volumes when published and read reassuringly like a trial transcript. Basing their findings on this evidence, the Commission issued its 816-page report, which documented in impressive detail the story of Lee Harvey Oswald's crime.

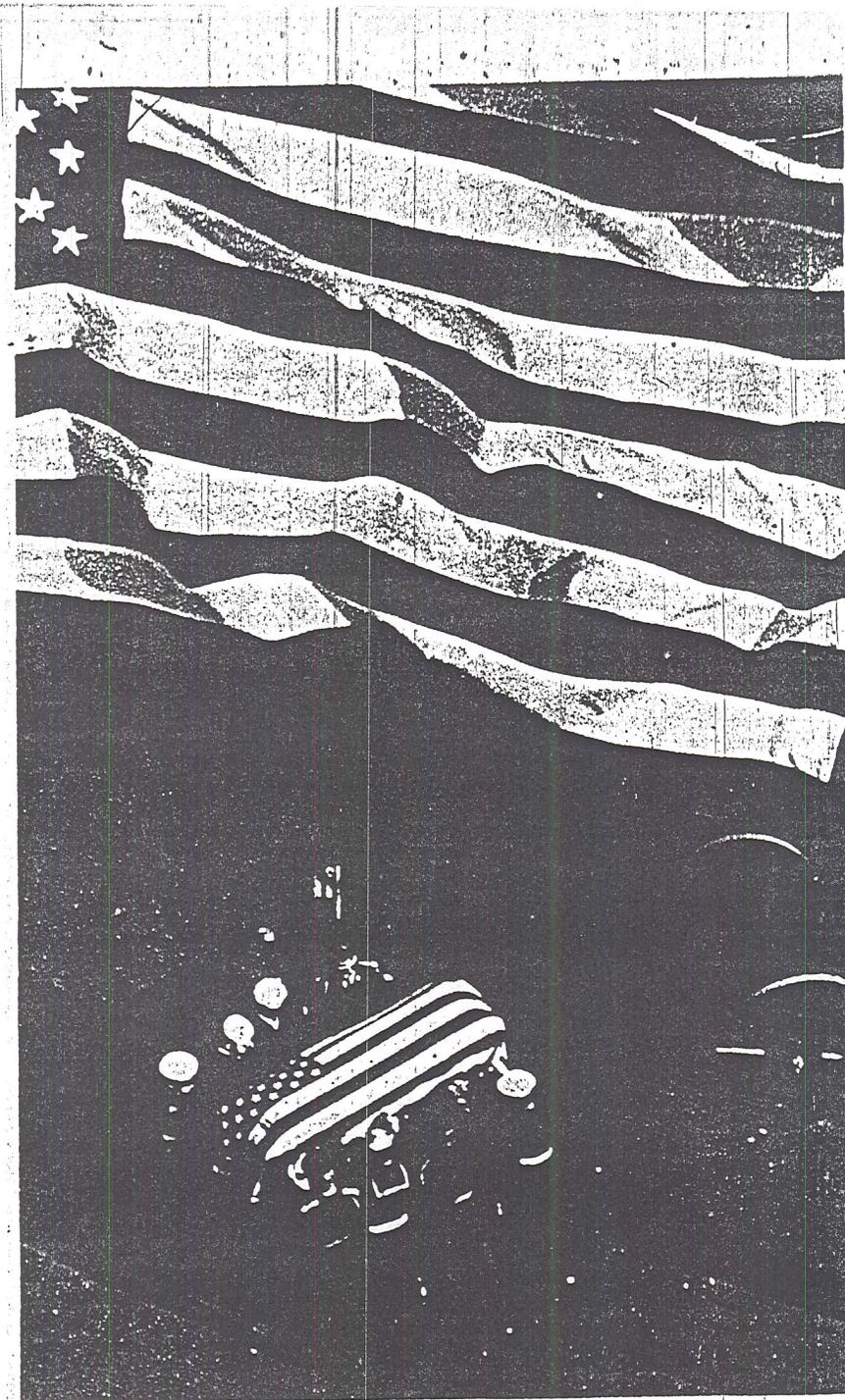
The report was an immediate popular success. It was persuasive, its conclusion that Oswald acted alone stilled the conspiracy rumors, and it came out before the November, 1964, Presidential election.

Because the Warren Commission had been a body apart in American legal history, this success inspired praise for the commission idea itself as a means of determining the truth in unusual circumstances. Arthur L. Goodhart, the noted authority on British and American law, compared it favorably with the British Royal Commission system and suggested that "a new and more satisfactory system of investigation has been found than ever existed in the past." The American Bar Association Journal carried an article pointing out that the Commission was able to get far more information on Oswald than a trial would have produced because court rules would have precluded Marina Oswald from testifying against her husband. Some observers were so impressed with this that they suggested substituting a Warren Commission type of procedure for trials in certain cases.

In fact, Marina Oswald's testimony was one of the most troubling aspects of the Commission's investigation. She was questioned at length several times; yet as the investigation progressed, she continued to volunteer new and important information about her husband. It did not appear that she wished to mislead the Commission, but rather the opposite—she seemed too anxious to say what she thought the Commission wanted to hear. When she finally appeared before the Commission itself, her testimony was so contradictory that one staff attorney threatened to quit unless the Commission called her back. When it did, she changed her story on several points.

THERE arises here an important fact about the Commission—it resembled a court, but its procedures lacked the crucial elements of a trial. There was no opposing counsel to cross-examine the witnesses; there was no division of function between investigator, attorney, judge and jury; there was no impending appellate review.

These were a few of the shortcomings that seem to have impressed Edward Jay Epstein as he studied the workings of the Commission for his Master's thesis in government at Cornell. As he delved deeper, he also concluded that the commission members themselves did not devote enough time to their study, that the use of F.B.I. men and Secret Service agents as investigators tended to perpetuate established theories, and that the re-



Washington, Nov. 24, 1963.

port was hastily issued to meet the election deadline.

Finally, Mr. Epstein found evidence that led him to doubt the essential premise of the Warren report — that Oswald acted alone. On Jan. 27 the staff had seen for the first time the remarkable color film sequence of the assassination, taken by an amateur photographer. It showed that the maximum time that could have elapsed between the first hits of President Kennedy and Governor Connally was only 1.8 seconds. Tests showed that Oswald's bolt-action rifle could not fire two rounds in less than 2.3 seconds, not including aiming time.

This necessitated the "single bullet" theory, because, as one staff lawyer told Mr. Epstein, "To say that they were hit by separate bullets is synonymous with saying that there were two assassins."

According to the written report of the autopsy performed at Bethesda Naval Hospital on the night of the

assassination and the testimony of the doctors who performed it, the first bullet struck President Kennedy on the back of the neck, passed through, without striking any bones or major muscles, and came out the front of his throat. Ballistics tests showed it could have retained enough velocity to cause the injuries to Governor Connally. However, Mr. Epstein found in the National Archives two newly declassified F.B.I. reports, dated Dec. 9, 1963, and Jan. 13, 1964. Both state flatly that the first bullet struck President Kennedy in the right shoulder and did not exit at the front. They do not say upon what evidence this conclusion was reached.

Mr. Epstein analyzes the other evidence (perhaps the most damaging, autopsy photos and X-rays of the corpse, which might prove that the bullet passed through as the doctors testified, are reportedly being held by the Secret Service and have never been released) (Continued on Page 22)