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April 29, 1984

Ms. Phyllis Hubbell
Attorney-Advisor
Office of Law and Policy
U.S. Department of Justice
550 11th Street, N.W., Room 933
Washington, D.C. 20530

Re: Allen v. Dept. of Justice,
Civil Action No. 81-1206

Dear Ms. Hubbell:

The above case concerns the request of my client, Mr. Mark A. Allen, for records of the Federal Bureau of Investigation ("FBI") pertaining to the probe of the House Select Committee on Assassinations ("HSCA") into the murder of President John F. Kennedy.

As you are aware, Mr. Allen has agreed to restrict his administrative appeal in the above case to Exemptions 5 and 7(C). It is hoped that this administrative review will produce guidelines which can be applied throughout the course of this case, and that the guidelines will result in a substantially greater release of materials than is now being made. If this should occur, it will also greatly lessen the FBI's burden, since it is much more costly and time-consuming to withhold information than to release it.

The FBI's use of Exemption 7's (C) and (D) clauses in this case is a matter of great concern. It is my rough estimate that approximately three-fourths of all records processed in this case (other than the administrative files regarding HSCA) have been withheld, generally on the grounds that Exemption 7(C) and/or 7(D) apply. Indeed, in many instances entire files have been withheld under Exemption 7(C) or 7(C) in conjunction with 7(D), with the result that Mr. Allen and I do not even know the subject matter or character of the suppressed files. For the reasons given below, I believe that the vast majority of these withholdings cannot and should not be sustained.

Congress intended the Freedom of Information Act ("FOIA") to establish a general policy of disclosure of Government information. The nine specific exemptions from this policy are required by law to be narrowly construed. Moreover, these exemptions were

intended to be permissive, not mandatory. As the FBI's Freedom of Information/Privacy Act Reference Manual (hereafter "FBI Manual") states:

> The Senate Committee on the Judiciary Report of May 16, 1974, concerning the amendments to the FOIA, indicates the clear intent of Congress was that, nothwithstanding the applicability of an FOIA exemption, records be disclosed where there is no compelling reason for withholding.

Id. at 223. Or, as Senator Kennedy stated during the debate on the amendments on May 30, 1974:

> Agencies have no discretion to withhold information that does not fall within one of those exemptions. It is equally clear, however, that agencies have a definite obligation to release information even where the withholding may be authorized by the language of the statute--where the public interest lies in disclsoure.

Id., citing 1975 Freedom of Information Act Source Book at 286. (Emphasis added)

These precepts require a government agency desiring to abide by the spirit of the Act to "think disclosure". The FBI has not done that here. Instead, it continues to "think withhold". Exemption 7(C) is being applied woodenly, automatically, according to bureaucratic rote, without any thought being given to the public interest in the maximum possible disclosure of these materials. The perspective of the historian or scholar in such determinations is totally lacking.

This is not as it should be, either under the Freedom of Information Act or the Justice Department's own standards. This is a historical case, both in terms of the public importance of the events and in terms of the age of most of the records. The Department of Justice has long recognized that special considerations favor liberal disclosure of information in historical cases. In 1973 it promulgated a regulation allowing historical researchers access to "investigatory files compiled for law enforcement purposes that are more than fifteen years old and are no longer substantially related to current investigative or law enforcement activities, subject to deletions to the minimum extent necessary to protect law enforcement efficiency and the privacy, confidences, or other legitimate interests of any person named or identified in such files." 20 C.F.R. 50.8. (Emphasis added)

Perhaps the best statement of the historical case standard as it pertains to Exemption 7(C) is that contained in a letter

regarding the processing of records on the assassination of Dr. Martin Luther King, Jr., which I received from the former Director of the Office of Privacy and Information Appeals, Mr. Quinlan J. Shea, Jr. Mr. Shea wrote:

> . . . no 7(C) excision can be upheld unless a specific reason can be articulated for doing so, sounding in personal information essentially unrelated to the assassination of Dr. King, or to the F.B.I.'s investigation of the crime. Under this Department's long-since articulated standard for processing cases of historical importance and great public interest, no less stringent standard is appropriate. Invasions of personal privacy that would result from release are rarely unwarranted in the context of such a case. . . .

October 28, 1978 letter from Quinlan J. Shea, Jr. to James H. Lesar.

Mr. Allen's request implicates an extraordinarily broad range of public interest concerns. A Presidential Commission headed by the Chief Justice of the United States Supreme Court officially concluded that President Kennedy had been assassinated by one man, and that the man who killed the assassin also acted alone. Amid charges of coverup, public skepticism of the official version grew apace, contributing to a general erosion of trust in the Government and its institutions. Disclosures over the next decade-plus, some forced by citizen investigator-scholars using the Freedom of Information Act, combined with revelations arising out of the Watergate scandal to compel Congress to examine anew the original investigation made by the Warren Commission and the federal agencies which assisted it. The Congressional committee encharged with this responsibility, after making the most expensive probe in the history of Congress, concluded, contrary to the Warren Commission, that the President was probably murdered as a result of a conspiracy. It also criticized the performance of federal agencies in their investigation of the assassination. However, the findings, methods and procedures of the Congressional committee were--and remain--highly controversial themselves.

This history necessarily involves several areas of major public concern. First, there is the concern of citizens that the Government not be allowed to slough off its responsibility to further investigate what Congress essentially concluded is an unsolved crime. It was persistent citizen criticism of the official Warren Commission findings which eventually forced Congress to reinvestigate the crime. The findings of the Congressional committee rested largely on acoustical evidence which was brought to HSCA's attention by citizen-investigators. Although HSCA requested that the Justice Department undertake certain investigations when it

disbanded, the Department has dragged its heels for the past five years. In light of these circumstances, and particularly given the Government's twenty-year history of resisting all efforts to obtain the honest and thorough investigation that is needed, there is a strong argument to be made for maximum possible public disclosure of all information possibly relevant to the assassination so that citizen-investigators may either carry forward the investigation themselves or adduce new evidence compelling further Government action.

A second area of significant public interest is scholarly evaluation of the performance of American institutions in response to the assassination, including such matters as (a) the performance of the Warren Commission, (b) the performance of the federal agencies which investigated the assassination and their cooperation (or lack thereof) with the Warren Commission, (c) the performance of the House Select Committee on Assassinations, and (d) the cooperation (or lack thereof) which federal agencies extended to HSCA.

The materials sought by this lawsuit are essential to scholarly study of the performance of the House Select Committee on Assassinations and the cooperation and assistance, or lack thereof, extended to it by the FBI. In order for historians to be able to write accurately and fully and to fairly assess the HSCA's performance, they must have as complete as access as possible to the same materials which the Committee reviewed and relied upon in reaching its findings, judgments and conclusions. Without such access, scholars cannot, for example, determine whether the misinterpreted evidence, took things out of context, overlooked important evidence (either supporting or contradictory) or failed to consider alternative explanations afforded by the available evidence.

The problem is particularly acute because: (1) HSCA's records are presently locked up and inaccessible to scholars under the House of Representatives' 50-year rule; and (2) individuals employed by HSCA and who had access to materials relied upon by HSCA but not published by it, have published their personal views of what the evidence amassed by the Committee shows. Thus, Prof. G. Robert Blakey, HSCA's Chief Counsel and Staff Director, has co-authored a book with Richard N. Billings, its Editorial Director, which lays the crime at the feet of "orgainzed crime." See The Plot to Kill the President: Organized Crime Assassinated J.F.K.: The Definitive Story (New York: New York Times Books, 1981). Another HSCA staff member has written an article suggesting, however, that the evidence points towards a former clandestine operative for the

Central Intelligence Agency. Gaeton Fonzi, "Who Killed Kennedy?", The Washingtonian (February, 1980).

The public, as the United States Court of Appeals for the District of Columbia has remarked, has demonstrated "an almost undending interest" in the Kennedy assassination. Allen v. Central Intelligence Agency, 205 U.S.App.D.C. 161, 636 F.2d 1287 (1980). There have been several official investigations by the Executive Branch (The Warren Commission, The Rockerfeller Commission) and Congress (The Senate Select Committee on Intelligence Activities, The House Select Committee on Assassinations). There have also been state and local probes (The Texas Commission of Inquiry headed by Leon Jaworski, the trial of Clay Shaw by New Orleans District Attorney Jim Garrison). The past twenty years has also seen the publication of innumerable books and magazine articles and massive news coverage by all the media on this subject. Even now, twenty years after the assassination and after all the many official investigations, including the most expensive probe ever undertaken by Congress, approximately 30 percent of the public are said to favor yet another "large-scale" investigation, indeed, to consider it "necessary," and 80 percent persist in disbelieving the official Executive Branch account of the slaying. See Attachment 1, a November 20, 1983 Washington Post article publishing the results of a nationwide Washington Post-ABC News telephone poll.

As matters now stand, scholars seeking to scrutinize the work of the HSCA are at an enormous disadvantage. They have only the Committee's published materials to work with, whereas those who worked for the Committee, such as Prof. Blakey, may draw on the experience and knowledge accumulated while they were so employed.

Such a state of affairs is not in the public interest. The search for truth and historical accuracy thrives when the public is allowed to sift all points of view and a variety of sources. The FOIA was intended to assist this process. The FOIA is a legislative implementation of the profound values of the First Amendment; and, in particular, its extension to the internal processes of government itself. See The New York Times v. Sullivan, 376 U.S. 254, 270 (1974)(First Amendment embodies "a profound national commitment to the principle that the debate on public issues should be uninhibited, robust and wide-open." The New York Times recognized the perils of allowing former government officials to write history based on their access to information denied to scholars. It argued editorially that if high officials, like former Secretary of State Alexander Haig, have the right to use secret documents to write personal histories of their government service, other analysts should be permitted access to the same reports, even if classified. See Attachment 2, a letter to the editor by Stephen C. Schlesinger referencing the Times' March 27, 1984 editorial.

A George Washington University professor, Ana Nelson, has summed up the problem confronting scholars: "You cannot write honest history when you use what you've got, not what you need." See Attachment 3, "Tightened Rules Keep Nation's Secret's Too Long, Historians Say," September 10, 1983, Washington Post.

The manner in which the FBI is processing the records in this case is totally at odds with the spirit and purpose of the FOIA. It is apparent that no consideration is being given to the interests of scholars, that no value has been placed upon their need to write as fully and accurately about historical events as is possible. The result is that the First Amendment values which the FOIA was intended to foster are being thwarted. The FBI's approach to disclosure of this important body of historical materials is bureaucratic and legalistic; it clearly is not in keeping with the spirit of the Freedom of Information Act.

Nor is the processing of these records in accordance with the letter of the law, either. I have reviewed the worksheets provided by the FBI for the segment of records subject to this special administrative review, as well as some of the records themselves. This has raised a number of issues which I wish to call to your attention in hopes that they will facilitate your review.

Exemption 7(C) "exists primarily for the purpose of preventing . . . the mental distress resulting from the public exposure of intimate or embarrassing personal details about the private life of an individual." Tennessean Newspaper, Inc. v. Levi, 403 F. Supp. 1318 n. 1 (1974). The FBI is not applying this standard to these records. Essentially, 7(C) is being applied to all information about named individuals in these files except where the individuals have been identified in the published materials of the Warren Commission of the HSCA. Even in the latter circumstance, only the information previously published by the Committee or the Commission is generally being released. Some of the 7(C) withholdings can only be described as bizarre, as where it has been employed to suppress newspaper articles (file 2-1566-10), and ancient (1959) ones at that, and to conceal plane flight numbers (149-5378-1,3) and the names of officials of the 111th M.I. unit (149-5378-3, p. 2).

Most of the records at issue in this action are at least twenty years old, and many date back thirty or even forty years. Although the FBI Manual acknowledges that "with the passage of time the protectable personal privacy considerations tend to fade," id. at 231, it is evident that age is not a factor that has been taken into account in the FBI's processing of these records. 62-62467-1, a 6-page document dated November 8, 1940 has been

withheld in its entirety under 7(C). (Since this is a "62" or "administrative" file, it would not seem to qualify for Exemption 7 at all.) 80-607-215, described as "Trenton letter," remains withheld in its entirety under 7(C),(D) despite the fact that its date, January 19, 1937, makes it less than three years short of being a half-century old. Surely there must be some date beyond which even the FBI will concede that an invasion of personal privacy is so remote as to be meaningless.

While it is possbile to conceive of invasions of personal privacy after the passage of 20 years or more, the liklihood of this is slim unless the personal information is extremely damaging. In Department of the Air Force v. Rose, 425 U.S. 352 (1976), the Supreme Court, in the context of an Exemption 6 case, "looked away from unlikely but possible invasions of privacy." FBI Manual at 62. The liklihood of actual invasion of privacy is diminished here by both the age of the records and the extensive publicity concerning the assassination of President Kennedy and the many official investigations thereof.

Even if there is a liklihood of a tangible invasion of privacy, Exemption 7(C) should not generally be applied to the records sought in this case because the invasion would not be unwarranted. "The logic behind the maximum disclosure concept in a historical case is that the public's right to know the facts of such an investigation overrides the privacy rights of those involved in the matter." FBI Manual at 229. Here the public has a right to know the facts of the House committee's investigation, including what information was made available to it by the FBI, since this information is essential to evaluating the HSCA's performance.

The FBI is employing 7(C) particularly heavily to withhold en masse materials pertaining to (1) organized crime figures, and (2) Cuban refugees and Cuban refugee organizations. This may in part be the result of the FBI's belief that these materials are not relevant to the Kennedy assassination. Whether or not such individuals in fact had anything to do with the President's assassination, the possibility of their involvement was considered by both the Warren Commission and the HSCA, and their has been widespread speculation about their possible role. Information concerning them is essential to evaluating the performances of the HSCA and the federal agencies; thus, its release is not unwarranted. Moreover, individuals who comprise both categories have a diminished right of privacy because they are in effect "public figures" who have generally been subjected to extensive publicity. In addition, members of both categories have generally committed neutrality violations and all manner of crimes. Even apart from the Kennedy assassination, the public has an interest in knowing about the

activities of Cuban refugees engaged in neutrality violations, for example, as this bears on the important subject of Cuban-American diplomatic relations and American foreign policy in general. Similarly, the public has an interest, entirely apart from the Kennedy assassination, in the activities of organized crime figures and the FBI's efforts (or lack thereof) to bring them to justice. (At least since the publication of Fred J. Cook's The FBI Nobody Knows (New York: Pyramid Books, 1964), the FBI's efforts to combat organized crime have been heavily criticized.)

The FBI Manual itself takes the position that "if a person's 'prominence' is due to his criminal activities . . ., the disclosure by the FBI of information about his criminal activities to third parties would not be an unwarranted invasion of his personal privacy. Id. at 161. The case for disclosure of records on organized crime figures is enhanced by the fact that they have generally been subjected to extensive publicity over the years. The justification for disclosing materials on them is correspondingly increased where, as here, a Congressional committee has delved extensively into organized crime in connection with its investigation into the Kennedy assassination and its chief counsel has written a book laying the murder at the feet of "the Mob."

As you know, eligibility for Exemption 7(C) protection requires first that the materials qualify under certain threshold tests. The records must be "investigatory" and have been compiled "for law enforcement purposes." The FBI seems to assume that all of its files meet these requirements. I would like you to consider in your review whether the records contained in certain file classifications do in fact qualify for Exemption 7 protection under these threshold criteria.

For example, the FBI has cited 7(C) to withhold in their entirety two documents in file 94-52195-3 and two more in 94-55194-1. The "94" file classification, described by the FBI as containing "Research Matters," concerns general correspondence with the FBI and its relations with writers and reporters, not law enforcement proceedings. I ask you to examine whether materials in the FBI's "94" files meet the threshold requirements of Exemption 7.

Other file classifications which may give rise to questions about threshold entitlement to Exemption 7 are:

"62" ("Administrative Inquiries") files;

"63" ("Miscellaneous-Nonsubversive") said to concern correspondence from the public not relating to matters within FBI jurisdiction;

"80" ("Laboratory Research Matters") files, said to cover public affairs matters, field office contacts with the news media and other organizations, etc.;

"100" ("Domestic Security") files, suspect as being used for political surveillance, control or disruption of the lives and activities of dissidents;

"105" ("Foreign Counterintelligence Matters"); files, similar to the "100" files, this may be used for purposes unrelated to law enforcement proceedings;

"109" ("Foreign Political Matters") files; and

"190" ("Freedom of Information Act") files.

A list of some specific files you may want to take a look at in connection with these threshold questions follows. (Sometimes I have included specific serials, sometimes just the file number.)

62-7-9-1612
62-7-9-1614
62-3035
62-9-12-750
62-32509
62-38824
62-116056
62-62467-1
62-109081-11
62-109081-12

63-4296
63-7639
63-9420

64-44828

80-607-215

94-52195
94-55194

DL 100-9734
DL 100-9736
100-196
100-211419
100-131211-344

105-78016
105-93264-1
105-104340
105-135303
105-65100-NR

109-12-210-2490 (said to duplicate 105-93264-1)

190-905

This list is not all-inclusive, and I do not intend to limit your review to these files or serials.

The FBI seems also to assume that once a file is created for a law enforcement purpose, all subsequent materials in that file are entitled to Exemption 7 protection. In some instances the gap between serials is so long as to suggest that either later-added materials had no relation to the original investigation for which the file was created or that the FBI was simply stockpiling information on an individual without ever conducting an investigation of a specific law enforcement or national security violation. An example of this occurs in 105-165503-51, a February 8, 1971 memorandum which is dated approximately 15 months after the last previous activity in the file. In 105-93264 most of the records are dated in the 1960-1962 time period, then there is a big jump to 1967. In 159-1130 the documents basically fall with a less than one year time frame dating from June 25, 1962 to May 14, 1963. Activity then ceases until January 21, 1971, nearly eight years later, when the Bureau sends a two-page letter to the White House which is entirely withheld under 7(C). This is followed nearly four years later by serial 15, a one page document described as a "summary" which is also entirely withheld.

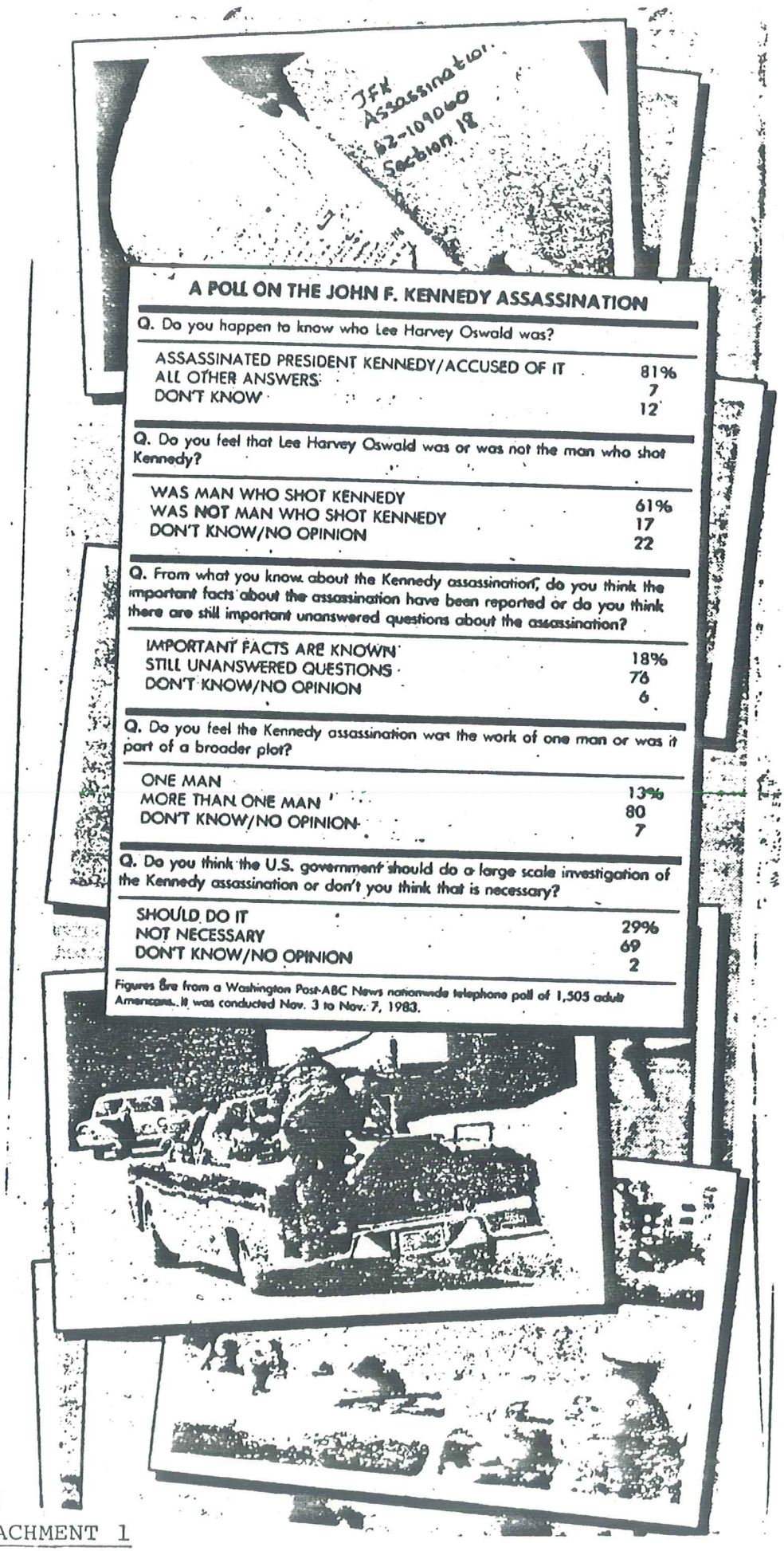
I hope that the foregoing will assist your review, help clarify some of the issues and enable us to resolve matters that are otherwise likely to consume large amounts of everybody's time in litigation.

Thank you for your patience in waiting for "input" into your review of the Exemption 7(C) excisions.

Sincerely yours,

James H. Lesar

James H. Lesar



A POLL ON THE JOHN F. KENNEDY ASSASSINATION

Q. Do you happen to know who Lee Harvey Oswald was?

ASSASSINATED PRESIDENT KENNEDY/ACCUSED OF IT	81%
ALL OTHER ANSWERS	7
DON'T KNOW	12

Q. Do you feel that Lee Harvey Oswald was or was not the man who shot Kennedy?

WAS MAN WHO SHOT KENNEDY	61%
WAS NOT MAN WHO SHOT KENNEDY	17
DON'T KNOW/NO OPINION	22

Q. From what you know about the Kennedy assassination, do you think the important facts about the assassination have been reported or do you think there are still important unanswered questions about the assassination?

IMPORTANT FACTS ARE KNOWN	18%
STILL UNANSWERED QUESTIONS	76
DON'T KNOW/NO OPINION	6

Q. Do you feel the Kennedy assassination was the work of one man or was it part of a broader plot?

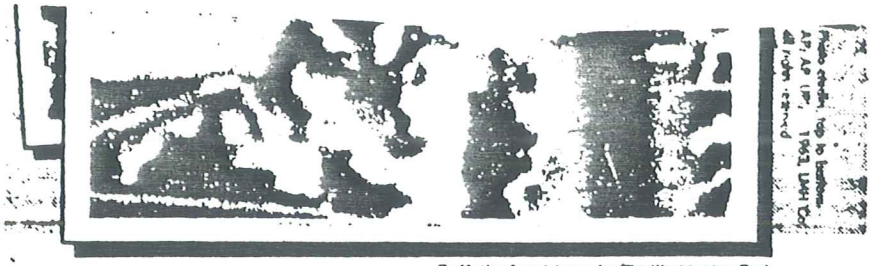
ONE MAN	13%
MORE THAN ONE MAN	80
DON'T KNOW/NO OPINION	7

Q. Do you think the U.S. government should do a large scale investigation of the Kennedy assassination or don't you think that is necessary?

SHOULD DO IT	29%
NOT NECESSARY	69
DON'T KNOW/NO OPINION	2

Figures are from a Washington Post-ABC News nationwide telephone poll of 1,505 adult Americans. It was conducted Nov. 3 to Nov. 7, 1983.

ATTACHMENT 1



By Kathy Jungjohann for The Washington Post

By Barry Sussman

TWENTY YEARS and two national investigations after the assassination of John F. Kennedy, most Americans think that the real facts behind the slaying of the 35th president have not come to light.

The great majority, 80 percent, feels that what led up to the fateful events in Dallas on Nov. 22, 1963, was a conspiracy of some kind and not the work of a lone gunman, a conclusion exactly opposite to that of the Warren Commission report, the government's first major inquiry.

Only 6 people in 10, in fact, believe that a shot fired by Lee Harvey Oswald was the one that took Kennedy's life.

Despite their doubts, though, most people appear satisfied to let matters rest as they are; 7 in 10 say there should be no new large-scale government investigation at this point.

These are some of the findings of a Washington Post-ABC News poll, conducted this month, examining what people think today about the first in a series of modern tragedies that jolted the nation. The chart provides more of the poll's findings.

Barry Sussman is director of polling for The Washington Post.

Freedom of Information's Broken Promise

To the Editor:

I commend your March 27 editorial "A Caveat for Memoirs." You argue, rightly, that if high officials, like former Secretary of State Alexander Haig, have the right to use secret documents to write personal histories of their government service, other analysts should be permitted access to the same classified reports.

I have just lost a seven-year-old case under the Freedom of Information Act to force the C.I.A. to disgorge its entire collection of files on its role in the 1954 coup in Guatemala. Although many ex-C.I.A. men have already written personal accounts of their roles in the affair drawing on secret C.I.A. cables, the Federal Court for the District of Columbia ruled on March 5 that release of the files might risk "danger to American foreign relations . . . particularly in Central America at this time in light of the delicate political situation."

Because of the C.I.A.'s refusal, starting in 1977, to consider any release of papers (it insisted then that there were only a few reports), my co-author, Stephen Kinzer, and I went ahead and in 1982 published our book on the coup, "Bitter Fruit," using over 1,000 documents obtained under the Freedom of Information Act from the State Department.

After my case against the C.I.A. reached court, the agency "discovered" some 180,000 documents on the coup in its library. However, it quickly denied access to a single file — for "national security" reasons — and the court agreed that not a page in this massive collection may be made available for public scrutiny.

It is a disgrace that it took seven years just to obtain a final determination under the Freedom of Information Act on what the C.I.A. should or should not release on Guatemala. But it is even more reprehensible that, after the passage of three full decades, the American people are still denied a chance to see the entire record of what their Government did unlawfully to depose an elected government in Guatemala.

It is also unfortunate that we shall not have at our disposal the full details of the coup so we can fairly assess what we are doing now against the Sandinista regime in Nicaragua.

Despite the promises of the Freedom of Information Act, cautious judges are making it practically impossible to obtain information even on long-ago and illegal C.I.A. covert activities. That is, unless you happen to be an ex-Secretary of State.

STEPHEN C. SCHLESINGER
New York, April 5, 1984

ATTACHMENT 2

Tightened Rules Keep Nation's Secrets Too Long, Historians Say

By Ian Black
Washington Post Staff Writer

A curious spin of the wheel that brought President Reagan to power just as government archivists were starting to declassify foreign policy documents from the Cold War years in the early 1950s has led to a heated conflict between the administration and the nation's historians.

The scholars say thousands of documents, many more than 30 years old, are being held back by the government under stringent new declassification rules that demand excessive secrecy about long-past events.

Following the release of huge amounts of material dealing with World War II and its immediate aftermath, the historians now face a diminishing availability of documents from the 1950-1954 period and the increasingly tough criteria used to justify their retention as "classified information."

"Things have gradually got more and more conservative," said Anna Nelson of George Washington University. "With the Reagan administration, the release of documents has just closed up," complained Barry Rubin, another historian of U.S.-foreign relations.

Delays in declassification, the historians say, are making it "virtually impossible" to write American diplomatic history after 1950. The snail's pace of the process is also holding up State Department publication of the multi-volume Foreign Relations of the United States series, once admired as the finest work of its kind.

Current declassification policy is based on Reagan's Executive Order 12356 of August 1982, drafted by an interagency intelligence community committee to provide what administration officials describe as "a framework for the executive branch's information security system."

The main difference between the Reagan order and its predecessors is not so much in its standards of secrecy as in the mechanics of declassification that it requires.

Reagan dropped the Carter administration requirement that all government agencies systematically review their own documents and said that only the National Archives—its budget and staff drastically reduced—need examine records deposited there.

A year later, many historians and archivists are dismayed. "We think the principle ought to be 'When in doubt, declassify,' " said Dr. Sam Gammon, executive director of the American Historical Association. "But now it is 'When in doubt, classify.' "

He added: "We're going to be fighting a rear-guard action. I think we all have the sense that we're growling and retreating."

Even under Carter, declassification was not all that rapid, the historians say. Although he stipulated review of government documents after 20 years, instead of 30 under President Nixon, a growing awareness of Cold War sensitivities combined with budgetary and manpower problems rendered the theoretically more liberal approach ineffective.

Reagan's order, according to Milton Gustafson, head of the diplomatic records branch at the National Archives, "confirmed the practice of the Carter order and eliminated some of the anomalies. Carter's was liberal in theory and conservative in practice. The Reagan order simply eliminated the liberal part."

The declassification process goes on every working day in the State Department's Classification/Declassification Center (CDC) to determine whether historical material can be deposited for public use in the National Archives.

There are 160 retired foreign service officers involved. Using a 6-inch-thick set of highly-detailed country-by-country guidelines, which themselves remain classified, these reviewers weed out the sensitive material from tons of innocuous documents, leaving behind a record which the scholars say is incomplete and possibly misleading.

"We think the principle ought to be 'When in doubt, declassify,' " says Dr. Sam Gammon, executive director of the American Historical Association. "But now it is 'When in doubt, classify.' "

The classification decisions are quite complicated. When a visitor came to the classification center earlier this year, one of the "annuitants" employed there was reviewing a telegram sent from the U.S. Embassy in Damascus, Syria, to State on May 27, 1953, more than 30 years previously. He decided that it must remain secret because it contained "security/classified information."

"When you are an historian you recognize that one or two critical documents can completely change the nature of the story," said Barry Unterberger, a faculty member at Texas A&M University. "The public's right to know is being overshadowed by what bureaucrats say are security interests."

Control over declassification first began to tighten up under Carter in 1979, when the CDC was created within State's Bureau of Administration to centralize a process that had grown hugely because of requests for documents under the Freedom of Information Act.

Declassification was previously handled by the department's Office of the Historian in the Bureau of Public Affairs. The office was—and remains—responsible for publication of the Foreign Relations of the United States volumes, but it now depends on the CDC for authority to publish.

"The historian's office was perceived to be liberal, and the idea was to have a separate office to have responsibility for declassification," said Gustafson. "It was seen as an administrative problem rather than a public affairs matter."

William Z. Slany, the historian in the State Department office, makes the same point: "Historians obviously have a different view of documents from professional people whose concern is the effective application of regulations. We are moving toward different agendas. I regret that this office no longer has as much of a role as it used to."

And there is another problem: the very subject matter of American foreign relations in the aftermath of World War II.

"The world up to 1949 didn't have quite the same problems as afterward," said Edwin Thompson, director of the Archives' record declassification division.

"There was no NATO, no Iron Curtain, no East versus West, the whole deepening of the Cold War. And you didn't have Korea. Now much more detailed examination is necessary," he said.

Among the drafters of Reagan's executive order, said Slany, "there was a growing awareness that the material on foreign relations in the '50s was becoming more and more sensitive and that its declassification could no longer be handled in the same way as it had in the past."

John Burke, a former ambassador to Guyana and the career diplomat who heads the CDC, is defensive about the work done by his reviewers.

"They are people of long and broad experience," he said. "It's not so much what they

know about what happened then as the fact that they're still aware of what could be sensitive."

Burke knows of the concern among the historians, but says he feels that the transfer of State documents to the National Archives—a four-year project costing nearly $500,000—is going well. Much of what is still classified is information about foreign leaders who are still living, he said.

"We had to do something to get rid of the records," Burke insisted. "It wasn't just a question of finding room in the basement. The department is dedicated to this. We felt it would really be a disservice to scholars if the well dried up."

But the scholars are very unhappy. "When you have as reviewers retired foreign service officers who were affected by the Cold War, their view of the material is going to be very different from that of the historians," Unterberger said.

The CDC, the historians complain, is "inefficient and lackadaisical," and often unaware of material already published in biographies or memoirs. Huge deletions were ordered in 20 volumes of the Foreign Relations of the United States series that were awaiting publication when the office was created. On one occasion, information deemed still secret was found to have been published in a congressional document in the 1950s.

Burke, though, gets better marks from the historians and archivists than did his predecessor, Clayton E. McManaway. McManaway, according to one source, had a "terrible and vituperative emotional relationship" with David F. Trask, State's historian before Slany.

That period is remembered in the historian's office as "the horrors." McManaway, this source said, "saw spies under every door and thought all historians were subversives."

But the basic tensions remain, and, in recent weeks, have been heightened by a new directive from Burke, using the stipulations of Executive Order 12356, to extend the duration of classification to any State Department material scheduled for release under previous administrations if it contains "foreign government information."

"Some of this information," said Thompson, "could cause considerable disquiet in our relations with another country. Its release might completely disrupt our work there and we don't think the price is worth it. That's the way the world works."

But this, the historians complain, is a catchall category so wide as to threaten huge amounts of documents. "There are still great areas of discontinuity among agencies as to what constitutes foreign government information," said Slany. "This shibboleth is used by different people at different times. It's too inchoate right now to be an effective criterion."

This is a scratch-my-back-and-I'll-scratch-yours way of keeping friendly governments happy. GW's Anna Nelson said she was astonished to receive a 1949 National Security Council document with deletions of references to U.S. relations with Spain, Yugoslavia and Iceland.

The British, who apply a 30-year rule to their state papers, are especially jumpy about the release of information about them through the U.S. archives, and there are regular consultations with London, especially in borderline cases.

"Some of this information," says Edwin Thompson of the Archives, "could cause considerable disquiet in our relations with another country. Its release might completely disrupt our work there."

But, said Gustafson, "I think it is largely a myth that the American government has released British secrets." Gammon describes the claim as "hogwash."

Before last year's executive order, historians say, CIA Director William J. Casey asked his station chiefs abroad to generate complaints from foreign intelligence services about "leaks" from the United States in order to justify a tougher policy on declassification.

The information security oversight office, which handles declassification under NSC direction, said in a little-noticed report two months ago that the Carter order had created concern among foreign officials "about the ability of this government to protect shared information."

"They viewed the order as an extension of the Freedom of Information Act," the report said. "While these fears were largely unwarranted, this perception threatened to dry up actual and potential intelligence sources. The threat . . . highlighted the need to state fundamental classification policy and procedures in language that recognized legitimate security requirements."

Some figures are available on recent declassification of State Department documents, but they show only quantity, not quality.

Of a total of 412,000 pages of U.S. embassy files in Latin America from 1950 to 1954, for example, 24,720 pages—6 percent—were withdrawn.

Thus, while the officials point out that 94 percent of these documents are now available, the historians say that crucial material is missing.

There is virtually nothing in that batch, for example, on the CIA's widely acknowledged role in the 1954 right-wing coup in Guatemala.

"They took care of that very nicely," said Unterberger. "They just left out all the relevant documents." A State Department historian wrote an editorial commentary based on that material but without quoting from it. That, too, was banned by the CDC.

State Department material from the first half of the 1950s is coming out slowly now but it is often not worth the wait. The 1953 Damascus telegram was only one of large numbers of documents removed from a group of files dealing with Jordan, Lebanon, Iraq and Syria in the early years of the decade.

"I just can't figure it out," said Talcott Seeleye, now a retired ambassador, who was a junior official in the U.S. embassy in Amman in 1952. "I frankly can't imagine what could still be sensitive from that period. Pretty much everything that happened in the 50s is an open book by now."

Some historians take a philosophical view about the state of declassification. "Relatively," said one, "the record of the Reagan administration is better than that, say, of Calvin Coolidge's administration."

Others are less sanguine. "It's not that history doesn't get written and it's not that people don't comment and it's not that the international relations experts don't write," said Nelson. "They write inadequately and in a distorted fashion. And that's the tragedy.

"We are once again at the mercy of those who write memoirs. Who's to challenge the Henry Kissingers, or the Dean Achesons for that matter? We are depriving our next generation of policy-makers of the proper perspective of what went on . . . . You cannot write honest history when you use what you've got, not what you need."