

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ALAN L. FITZGIBBON,

Plaintiff

v.

CENTRAL INTELLIGENCE
AGENCY, et al.,

Defendants

CIVIL ACTION 76-700

FILED

OCT 29 1976

MEMORANDUM AND ORDER

JAMES F. DAVEY, CLERK

Plaintiff in the above-entitled action brings suit challenging the refusal of the Central Intelligence Agency to waive the fees involved in searching for certain records which the plaintiff has requested pursuant to the Freedom of Information Act. On December 13, 1974, plaintiff, a journalist and historian, asked the Central Intelligence Agency to supply him with its records relating to the abduction and murder of Jesus de Galindez by agents of the Trujillo regime. Plaintiff received no reply for nearly a year and on December 4, 1975, Plaintiff appealed the Agency's failure to respond. On December 16, 1975, the defendants answered that plaintiff would have to agree to pay an estimates fee of \$448.00 before the processing of plaintiff's claim could begin. Plaintiff appealed the requirement of search fee payment and on February 27, 1976, the defendants denied this appeal. On April 22, 1976, plaintiff initiated this lawsuit, alleging

Attachment 1

Civil Action No. 81-2543

2A

that the acts of the defendants in refusing to waive the imposition of search fees violated 5 U.S.C. §552(a)(4)(A).

There are two matters before the Court at this stage of the litigation. The defendants have filed a Motion to Dismiss and the plaintiff has filed a Motion to Compel Answers to Certain Interrogatories asking about agency search fee practices. For the reasons discussed below, this Court has reached the conclusion that both motions must be denied.

I. MOTION TO DISMISS

In their Motion to Dismiss, the defendants argue that this Court lacks jurisdiction to entertain the plaintiff's action. Defendants' argument is based upon claims that the plaintiff has failed to exhaust his administrative remedies, and that the agency refusal to waive fees is not reviewable under the Freedom of Information Act or the Administrative Procedure Act.

The Court rejects these contentions. The doctrine of exhaustion of administrative remedies requires resort to established procedural devices with the purpose of avoiding premature interruption of the administrative process and of facilitating administrative review. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938); Sterling Drug Inc. v. Federal Trade Commission, 450 F.2d 698 (D.C. Cir. 1971). The plaintiff here has followed the procedural scheme set out in §552(a)(6) of the Freedom of Information Act. He requested that the agency waive its requirement of search fee payment, was denied that request, and appealed

that denial. That is all that the law requires of him in this situation.

In regard to the defendants' claim that actions concerning fee waiver are nonreviewable, this Court is satisfied that it has subject matter jurisdiction to hear plaintiff's suit. 5 U.S.C. §552(a)(4)(B) provides the district courts with jurisdiction to order the production of any agency records improperly withheld from a complainant. §552(a)(4)(B) review is available for a violation of any portion of the Freedom of Information Act, American Mail Line v. Gulick, 441 F.2d 696 (D.C. Cir. 1969), and this review includes alleged violations of the search fee provisions of §552(a)(4)(A), Diapulse Corporation of America v. Food and Drug Administration of the Department of Health, Education and Welfare, 500 F.2d 75 (2d Cir. 1974).^{*/}

In their Motion to Dismiss, the defendants make a final argument that the plaintiff has failed to state a claim upon which relief can be granted because the defendants' actions here are neither arbitrary or capricious. The question whether the agency has abused its discretion and acted arbitrarily and capriciously in refusing to waive the search fee requirement involves factual issues which cannot be resolved adversely to the plaintiff on a motion to dismiss. Cruz v. Beto, 405 U.S. 319, 322 (1972). At this stage of the proceedings, this Court cannot say that the plaintiff could not prove a set of facts in support of

^{*/} Jurisdiction might also be based upon 5 U.S.C. §702, which provides judicial review for those persons adversely affected by agency action. See Fellner v. Department of Justice, No. 75-C-430, Slip Op. (W.D. Wisc. April 28, 1976).

his claim which would entitle him to the relief he desires. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Thus, the Motion to Dismiss must be denied.

II. MOTION TO COMPEL DISCOVERY


Plaintiff, in his Motion to Compel Discovery, seeks disclosure from the defendants of all letters written to the agency subsequent to February 19, 1975, requesting waiver of the fees involved in processing Freedom of Information Act searches. Plaintiff also seeks disclosure of all agency letters granting or denying such requests. It is the opinion of this Court that the discovery of this information is irrelevant to the issues before the Court in this lawsuit.

The language of 5 U.S.C. §552(a)(4)(A) controls the boundaries of relevancy here. The statute requires the agency to make a determination concerning fee waivers or fee reductions based upon its interpretation of where the public interest lies, and that interpretation is grounded upon the agency's judgment in regard to whether furnishing the information can be considered as primarily benefitting the general public. This is a discretionary decision and any review of that decision must be conducted on a case-by-case basis, and must be confined to the Administrative Record upon which the decision was based. What the agency did in past cases does not matter under §552(a)(4)(A). Thus the Motion to Compel Discovery must also be denied.

Accordingly, it is by the Court this 27th day of October, 1976,

ORDERED, that Defendants' Motion to Dismiss
be and it is hereby DENIED; and it is

FURTHER ORDERED, that Plaintiff's Motion to
Compel Discovery be and it is hereby DENIED..


Aubrey E. Robinson, Jr.
United States District Judge

DATE: October 29, 1976

FOR
Information & File

DEPARTMENT OF JUSTICE
CIVIL RIGHTS

1-19-77 J. Davy
JAMES E. DAVEY

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ALAN L. FITZGIBBON,

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants

CIVIL ACTION 76-703

FILED

JAN 16 1977

JAMES E. DAVEY, CL

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's and Defendants' Cross-Motions for Summary Judgment. At issue is the decision by Defendant agency denying a waiver of the search fees involved in processing Plaintiff's Freedom of Information Act request, in which Plaintiff seeks the Central Intelligence Agency records relating to the abduction in 1956 and murder of Jesus de Galindez by agents of the Trujillo regime.

Although 5 U.S.C. §552(a)(4)(A) gives the agency broad discretion in regard to fee waivers, the agency's determination cannot be arbitrary and capricious. An agency's decision not to waive fees is arbitrary and capricious when there is nothing in the agency's refusal of fee waiver which indicates that furnishing the information requested cannot be considered as primarily benefitting the general public.


Based upon the record developed in this case and upon the language employed by the agency in refusing a waiver of search fees, it is the opinion of this Court that the Defendant may have applied an inappropriate standard in reaching its decision to deny fee waiver, and that at the very least the Defendants' decision is arbitrary and capricious. The implication evident from Defendants' letter rejecting fee waiver is that the agency feels an obligation to the public to collect fees for processing Freedom of Information Act requests. Any such perceived obligation is irrelevant to the purposes of §552(a)(4)(A).

There has been no showing by the agency here that the Galindez affair was not newsworthy and of public interest at the time it first arose and there has been no showing by the agency that the Galindez affair does not continue to be of interest to the general public, in an historical sense at least. It is the judgment of this Court that furnishing information contained in CIA files regarding the abduction and murder of Jesus de Galindez can be considered as primarily benefitting the general public.

Accordingly, it is this 10th day of January, 1977,

ORDERED, that Defendants' Cross-Motions for Summary Judgment be and it is hereby DENIED; and it is

FURTHER ORDERED, that Plaintiffs' Motion for Summary Judgment be and it is hereby GRANTED and that Defendants shall waive all fees involved in processing Plaintiff's request under the Freedom of Information Act for all records in Defendants' possession relating to the Galindez case.


AUBREY E. ROBINSON, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DOCUMENT NUMBER 44
U. S. DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
APR 28 1976
JOSEPH P. ...
CLERK
NUMBER 75-C-4

MICHAEL LEE FELLNER,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF JUSTICE,

Defendant.

OPINION
AND
ORDER

75-C-430

Plaintiff has renewed an earlier motion for an order requiring defendants to waive the costs of processing and duplicating documents, the furnishing of which to plaintiff by defendant has been ordered by this court on December 17, 1975. Defendant opposes this motion. Defendant has moved to be relieved from furnishing any further documents as required by the December 17, 1975 order until plaintiff pays to defendant the unpaid balance of the search and copy fees generated to date, and defendant has moved for an order requiring plaintiff to remit any appropriate future copy fees within 10 days of his receipt of further documents.

This opinion and order are directed to these competing motions.

For the purpose of deciding these motions, I find as fact those matters set forth below under the heading "Facts."

Copy of this document has been mailed to the following:
Atty. General, U.S. Atty.
this 22nd day of April 1976
By *Ann E. Walsh*
Deputy Clerk

FACTS

Plaintiff is a journalist who intends to publish and disseminate the information which he has obtained and may yet obtain from the defendant pursuant to his request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. His purpose in doing so is "to enlighten the public as to possible abuses of power by agencies of the federal government." The records requested are those compiled by the Federal Bureau of Investigation (FBI): regarding the political activities, political involvements, political affiliations, and other activities of certain individuals who reside in the Madison, Wisconsin, area, or have resided there, or who may have engaged in activity there; regarding certain organizations which may have engaged in activity in the Madison area; regarding political activity that may have occurred in certain buildings in the Madison area; and regarding certain events that may have occurred in the Madison area.

There has been considerable national news coverage and national public interest in the existence and extent of possible political surveillance by the FBI in various parts of the country. There has been considerable news coverage and public interest in the Madison area in possible FBI political surveillance both locally and nationally, in this plaintiff's request for information from the defendant, and in this present law suit by this plaintiff to compel disclosure of the information requested.

In his attorney's initial March 25, 1975, letter of request for the information under the FOIA, plaintiff requested waiver of fees pursuant to § 552(a)(4)(A), stating only that the purpose of his request for the information was "to evaluate potential local violation of civil liberties by federal investigatory agencies." The waiver of fees was denied by defendant.

On about December 18, 1975, plaintiff submitted a renewed request to the defendant for waiver of the fees, this time providing the defendant with affidavits and a brief containing the matters which I have found as fact in the three preceding paragraphs of this opinion. On December 26, 1975, defendant denied the renewed request for waiver of fees, with the following explanation by the Deputy Attorney General:

The Department of Justice receives numerous requests for information -- accompanied by requests for waivers of fees -- from media personnel and others who assert that their work will benefit the general public. If every such request were to be granted simply because the information sought is of interest to some small portion of the American public and/or could be used by, for example, media personnel "in the Madison community," the resultant expenditure of public funds would be great. Although I personally waived a large search fee in the Meeropol [Rosenberg] case, that case involved sustained, national public interest and possibly unique historical significance. There is absolutely no parallel between Mr. Fellner's request involving an "important local news story" and the Rosenberg case, because your client's request simply does not involve any significant benefit to the general public. Accordingly, I have concluded, as did Director Kelley, that the interests of the general public appear

more likely to be served by the preservation of public funds. I am enclosing a copy of my statement at the time of the Meeropol search fee waiver which will, I trust, put the present situation into proper perspective.^{1/}

The statement referred to by the Deputy Attorney General concerning the Meeropol search fee waiver on December 1, 1975 was to the effect that the search fees in that case amounted to \$20,458; that the magnitude of the sum demonstrated that the defendant must review all such fee waiver requests with great care; that the defendant "cannot grant waivers unless an overriding public interest is convincingly established;" that the Rosenberg case (the subject of the Meeropol waiver request) was "close to being unique in terms of both current public interest and historical significance;" that requiring payment of the search fees could delay or even prevent the release of some or all of the records concerning which no compelling reason for withholding exists; that such delay or prevention of release would frustrate defendant's decision to release as much information as possible concerning the Rosenberg case; and that the waiver of the search fees was in the

1/ The words "in the Madison community" and "an important local news story" appear within quotation marks in the Deputy Attorney General's letter refusing the waiver, without explanation of the source of the quotes. The phrase "in the Madison community" appears in several of the affidavits submitted by the plaintiff in support of his waiver request in this context: "...the ultimate release to the public of documents...will be of general public benefit in informing the public as to the existence or nonexistence of the controversial activities by a federal government agency in the Madison community." If this is the source of the Deputy Attorney General's quotation, the significance of the words is not as it appears in his statement. I have been unable to locate the source of the quoted phrase "an important local news story." I appreciate, however, that the record in this court may not include everything submitted to the defendant by the plaintiff in support of the request for a waiver. In any event, while news of plaintiff's FOIA request to the defendant and news of the present lawsuit are probably fairly characterized as "a local story," it is much less clear whether news of the content of the documents disclosed and to be disclosed would be a local story only.

public interest in that particular case because the release of the records would "benefit the general public far more than it will any individual requester." (The waiver in Meeropol reached only the search, not the copying, fees.)

The unpaid balance of the search and copy fees generated to date is \$422. The fees yet to be generated will be copy fees at the rate of 10 cents per page released. It has been estimated by defendant that there were 15,600 pages to be reviewed for release or non-release. If the court's order of December 17, 1975 has been complied with, about 3,600 pages remain to be reviewed. If the 3,600 pages were to be released in their entirety, the additional copy fee would be \$360.

Furnishing copies of the pages and portions of pages to be released is the course of action which defendant prefers, as contrasted with permitting plaintiff to inspect the original records themselves. However, defendant has not been requested to permit inspection of the originals by the plaintiff (as compared with furnishing copies), and thus has not been called upon either to grant or deny such a request.

OPINION

The FOIA (552(a)(4)(A)) provides that in order to carry out its provisions, each agency shall specify a

schedule of fees "limited to reasonable standard charges for document search and duplication and [providing] for recovery of only the direct costs of such search and duplication." Thus, Congress has imposed upon users of the service a portion of that expense attributable to their use, but strictly limited to direct costs of search and duplication. This reflects both a desire that taxpayers generally not be saddled with the entire costs of services benefitting only or primarily specific persons, and a desire that access to public information not be impeded by excessive expense to those seeking access. The latter purpose is accentuated by the further sentence of the subsection, which contains the language presently at issue: "Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public."

Defendant's decision not to waive or reduce the fee in the present case is subject to judicial review.
5 U.S.C. § 702; Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 156 (1970); Barlow v. Collins, 397 U.S. 159, 166 (1970). See Paramount Farms, Inc. v. Morton, 527 F.2d 1301, 1303 (7th Cir. 1975). However, a large measure of discretion clearly has been vested in the defendant, and it appears that its

exercise of this discretion may be overturned only if found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law..." 5 U.S.C. § 706.

Were it not for some of the specific language employed by the Deputy Attorney General in denying a waiver to the plaintiff, I would be strongly disposed to refrain from any interference with the exercise of defendant's discretion in this case. More to the point, if the administrative decision to waive or not to waive the fees properly depends upon comparing a case like the Rosenberg case with the present case in terms of the scope and intensity of public interest in the release of information, there would be no basis for disturbing it.

However, in his letter to the present plaintiff and in his statement in connection with the waiver of fees in the Meeropol request (apparently intended by him to be incorporated by reference in his denial of this plaintiff's request), the Deputy Attorney General appears to have adopted one or more of the following standards in passing upon requests for waivers: whether the information sought is of interest to a large or small portion of the American public; whether the information sought relates to a subject of sustained, national public interest and possibly unique historical significance; whether a particular release of records will benefit the general public far more than it will any individual requester; and whether "an overriding

public interest is convincingly established." The Deputy Attorney General's statements do not make clear which of these varying standards has actually been applied in the present case, but the standard expressed most emphatically in his Meeropol statement is this: "...the Department... cannot grant waivers unless an overriding public interest is convincingly established."

This latter standard clearly does not conform to the statutory language: whether "...furnishing the information can be considered as primarily benefitting the general public." I think it appropriate that the Deputy Attorney General be provided the opportunity to review his decision in this case and, if he elects to do so, to make more explicit the standard by which the defendant proposes to exercise its discretion with respect to waivers or reductions of fees.

I am persuaded in this direction, too, by Department of the Air Force v. Rose (United States Supreme Court, No. 74-489, April 21, 1976), 44 Law Week 4503. Rose dealt with the exemptions from disclosure under FOIA, rather than with waiver or reduction of fees. However, those requesting the documents in Rose were editors or former editors of a publication (New York University Law Review) and their purpose was to explore certain systems and procedures within an executive department (disciplinary systems and procedures at the military service academies). The Court remarked

upon "the public's stake in the operation of the [Honor and Ethics] Codes [administered and enforced at the Air Force Academy] as they affect the training of future Air Force officers and their military careers...." and described these matters as "subject to such a genuine and significant public interest." 44 Law Week, at 4508. The present case also involves an intention to publish the information to be provided, and the public interest in the existence or non-existence of political surveillance by the FBI, and in the nature and scope of such surveillance if it exists, seems as genuine and significant as the public interest in the honor and ethics codes in the military service academies. I do not conclude, of course, that any information which is non-exempt must be furnished without requiring payment of search and copying fees. I consider Rose significant here only as it may bear on the meaning of the statutory language "primarily benefitting the general public."

With respect to plaintiff's motion for an order requiring defendant to waive the search and copying fees, I will refrain from entering a decision until June 1, 1976, or later, in order to provide the defendant the opportunity to reconsider the matter and, if it elects to do so, to clarify and amplify the basis upon which waiver is refused.

With respect to defendant's motion for relief from the December 17, 1975 order, it appears that although on

June 20, 1975, defendant initially denied plaintiff's request for a waiver of fees, it has not insisted until very recently upon prepayment. Also, it has made no showing whether the copying fees yet to be generated will be substantial. It does not appear that interruption of the disclosure schedule pending a resolution of the waiver of fees question is appropriate.


ORDER

It is ordered that defendant's motion filed April 19, 1976 for relief from the order of this court entered December 17, 1975 is DENIED.

It is further ordered that a ruling is reserved on plaintiff's motion filed April 21, 1976 for an order requiring defendant to waive fees for search and copying.

Entered this 28th day of April, 1976.

BY THE COURT:


JAMES E. DOYLE
District Judge



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

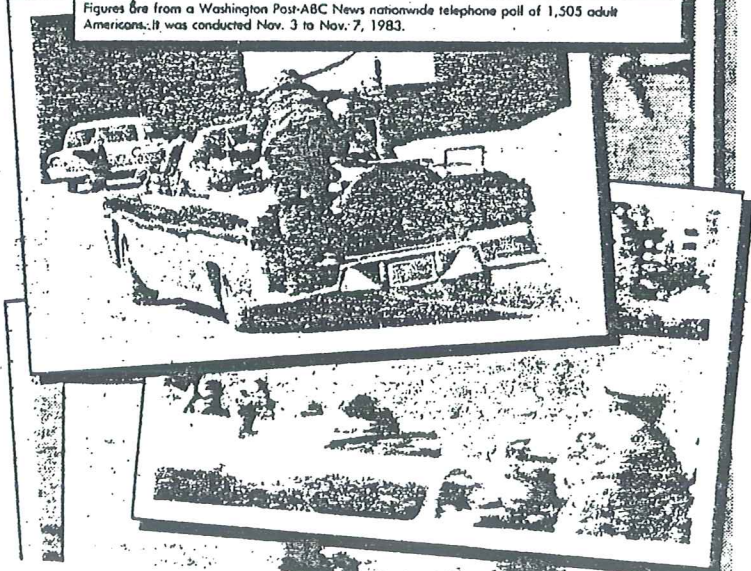
Q. Do you feel the Kennedy assassination was the work of one man or was it part of a broader plot?

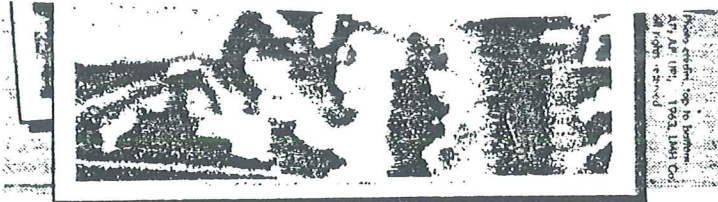
ONE MAN	13%
MORE THAN ONE MAN	80
DON'T KNOW/NO OPINION	7

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.





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.

Did Oswald Act Alone? We Evaded the Truth Then, And Now It Can't Be Found

By David E. Kaiser

THOSE OLD ENOUGH to remember the assassination of John F. Kennedy will also recall how quickly and easily Americans believed that Lee Harvey Oswald had committed the crime alone. In retrospect, this seems astonishing; it would have been hard to make up a more suspicious assassin than Oswald.

A former Marine, Oswald had defected to the Soviet Union in 1959 and returned in 1962. By 1963 he was a pro-Castro activist; shortly before the murder he had traveled to Mexico to ask Cuban officials for a visa to visit Cuba. Two days after his arrest, he was killed in the Dallas police station by Jack Ruby, a nightclub operator with numerous ties to organized crime.

Nonetheless, a poll taken soon after the assassination showed that four out of five Americans did not believe there had been a conspiracy. In part this reflected the innocent spirit of the early '60s; but the country's failure to investigate possible conspiracies more thoroughly also resulted from the political realities of the time. [Today public attitudes are more skeptical. See Page F2.]

Within hours of the crime, three of the nation's most powerful men — FBI Director J. Edgar Hoover, President Lyndon B. Johnson and Attorney General Robert F. Kennedy — had concluded that Oswald's background and connections raised questions they did not wish to have answered.

Of the three, Hoover was the first to react. On the afternoon of Nov. 22, 1963, the day of the murder, Dallas FBI agents informed him of the identity of the prime suspect. The news was highly unwelcome. FBI agents, he was told, had suspected both Oswald and his Russian bride, Marina, of involvement with Soviet intelligence since their return to the United States in 1962. Agents in Dallas knew about Oswald's recent trip to Mexico. Worst of all, Oswald had even left a threatening note at the local FBI office after agent James

Hosty interviewed Marina prior to the assassination.

Seldom if ever during J. Edgar Hoover's 40 years in office had he been faced with such embarrassing information. The FBI had failed to prevent a known communist and possible Soviet intelligence agent under bureau surveillance from assassinating the president of the United States.

Privately, Hoover censured 17 FBI officials involved in the case. But within three days — long before any full assessment of Oswald's motives and connections could be made — Hoover completely committed himself to the theory that Oswald had acted alone. This clearly was the least embarrassing theory for the bureau, and having adopted it, Hoover was certain to frown on anything that contradicted it.

On Nov. 26, Deputy Attorney General Nicholas Katzenbach, who agreed that Oswald had probably acted alone, recommended to Johnson's assistant Bill Moyers that the president appoint a special commission to investigate the case. "The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial," Katzenbach wrote Moyers in a memo.

In early December, Hoover gave the White House a four-volume report concluding that Oswald had acted alone, and the FBI subsequently took the position that nothing remained to be discovered. In February, 1964, when Soviet defector Yuri Nosenko told American authorities that Oswald had never had any connection with Soviet intelligence, Hoover eagerly seized upon his testimony. As author Edward Jay Epstein showed in his 1978 book, "Legend," Hoover insisted on believing Nosenko even after CIA investigators had developed extensive evidence suggesting that Nosenko's defection had been staged to deceive American intelligence.

President Johnson, who appointed the Warren Commission to resolve doubts about the murder, had a particularly potent reason for not wanting the full truth told: He feared it might force him into a disastrous war.

David Kaiser is an associate professor of history at Carnegie-Mellon Uni-

ASSASSIN, From Page F1

From the CIA, the new president probably learned not only about Oswald's Cuban connection, but also about the CIA's own plots against Fidel Castro's life. If it became known that Castro had retaliated through Oswald, it could mean war.

"Wild rumors" must be dispelled, Johnson told Chief Justice Earl Warren, the commission chairman. They could lead the United States "into a war which could cost 40 million lives. . . . If the public became aroused against Castro and Khrushchev, there might be war." The CIA never told the Warren Commission about its plots against Castro's life. Before leaving the White House, Johnson told Howard K. Smith of ABC that "Kennedy was trying to get Castro, but Castro got to him first."

Attorney General Robert Kennedy had his own reasons for limiting the investigation. Not only did he know of the CIA's vendetta against Castro, he had helped direct it. A full investigation conceivably might show that he shared the responsibility for his brother's death. And although Kennedy confided suspicions to Arthur Schlesinger that organized crime or Castro might have been behind the shooting, he knew that a full probe of this possibility would reveal the mob's role in CIA assassination plots, and might even stumble upon his dead brother's affair with Judith Campbell, who had been seeing Mafia figures at the same time. Deeply depressed, he remained silent publicly about his suspicions.

Nothing suggests that Hoover, Johnson or Robert Kennedy definitely knew of any broader conspiracy. But the concerns of Hoover and Johnson severely limited the inquiry by the Warren Commission, which was the sole official body charged with the investigation. The commission relied on the FBI and the CIA for most of its investigative field work. Its final report — completed under enormous time pressure — accepted everything tending to confirm the theory of the lone assassin, while ignoring or explaining away contrary evidence.

The Warren Report inevitably became controversial. For 13 years a steady stream of critiques and conspiracy theories found their way into print. In 1976, under the impact of Watergate and recent revelations regarding

CIA activities, the House of Representatives appointed a select committee to investigate the assassinations of President Kennedy and of Martin Luther King Jr.

Two years later, the House committee concluded that although Oswald did kill the president, he had not acted alone. The committee found no evidence definitely identifying any other individual or groups as members of the conspiracy, but stated that anti-Castro or mob figures might have been involved. It rested its conclusion on new acoustical evidence that two gunmen had fired at the president.

The evidence came from a tape of radio transmissions between Dallas motorcycle policemen and their dispatcher. The tape included a series of sharp sounds similar to static. In an effort to determine whether these sounds might have been made by the assassin's rifle, the congressional committee turned the recording over to the Cambridge, Mass., firm of Bolt, Beranek and Newman, the same acoustical specialists who had earlier analyzed the 18-minute gap on the White House tapes that were evidence in the impeachment of President Nixon.

Comparing the sounds on the tape to the sounds of gunfire recorded during a reconstruction of the assassination in Dallas's Dealey Plaza, James Barger concluded that the sounds included as many as four gunshots recorded through the open microphone of a police motorcycle about 120 feet behind the presidential limousine. He also estimated a probability of 50 percent that the third impulse, heard less than one second before the fourth, represented a shot not from Oswald's perch in the Texas School Book Depository, but from the so-called grassy knoll in front and to the right of the motorcade.

The significance of Barger's findings increased when photographic evidence revealed the presence of a motorcycle in exactly the position he had predicted. The timing of the four impulses on the tape also coincided with the findings of photographic experts who analyzed films and photographs of the assassination. Two other experts who investigated the third impulse on the tape more thoroughly concluded that the probability that it represented a shot from the grassy knoll was 95 percent. Although the committee concluded that the shot had missed, its findings still undermined the critical conclusion of the Warren Commission: the idea of the lone assassin.

In a 1980 evaluation of the House committee's findings, the FBI argued that the experts had not proven that a shot came from the grassy knoll. The Justice Department decided not to pursue the matter further.

Two years later, a panel of the National Academy of Sciences criticized the FBI's methodology, but also concluded that voices recorded on the tapes proved that the impulses thought to have been shots had occurred more than a minute after the assassination. They also argued that statistical errors had led the committee experts to assign excessive probabilities to their findings. The panel added that further analysis could be done but doubted the results would justify the cost. This controversy has added a layer of ambiguity to a case that hardly needed any more of it.

The tape, however, is far from being the only evidence that Oswald had confederates. Numerous eyewitnesses — all eventually discounted by the Warren Commission — thought they had heard a shot from the grassy knoll. A Dallas policeman who immediately ran behind the knoll told the Warren Commission that he had accosted a man who produced Secret Service credentials — credentials which must have been fake, since the Secret Service had no man in that location.

A second critical fact concerns the shot Oswald apparently fired in April 1963 at right-wing extremist and retired Army Gen. Edwin Walker. Marina Oswald told the Warren Commission her husband had tried to kill Walker, and a photograph of Walker's house was found among Oswald's effects. A few days before the incident, a friend of Walker's had seen two men looking into Walker's then empty house. A young witness to the actual shooting saw two men drive away in separate vehicles, and Walker himself also saw a vehicle leave the scene. No one has ever identified Oswald's companion or companions.

An equally troubling piece of evidence suggesting a conspiracy was given to the FBI by a Cuban refugee, Silvia Odio, in December 1963. She later told her story to the Warren Commission.

In late September 1963, when Oswald was on his way from New Orleans to Mexico, three men came to her Dallas apartment.

Odio's father was then in prison in Cuba as a result of his attempts to assassinate Castro — attempts assisted by the CIA. Two of the men seemed to be Cubans; the other was an American ex-Marine introduced to her, she said, as Leon Oswald. The two Hispanic men claimed to be friends of her father, and asked for her help in anti-Castro work, but she was noncommittal. The next day one of the men telephoned her and told her that he hoped to get "Leon" into the anti-Castro underground. Leon, he said, was an expert marksman who would "do anything," including killing Castro, and who had stated that Cubans should have shot President Kennedy after the Bay of Pigs.

Silvia Odio said she immediately recognized Oswald when she saw him on television after the murder. The Warren Commission made an extremely unconvincing attempt to discredit her story. But she subsequently convinced authors Edward Jay Epstein and Anthony Summers, as well as the House Committee, that her story is true. Moreover it is confirmed by other witnesses, and by some documentary evidence.

Of the many theories of the assassination that have been advanced, which seem most plausible in light of this evidence?

Ironically, Edward Jay Epstein, one of the first and most acute critics of the Warren Commission's work, has subsequently produced the most convincing "lone assassin" theory in his book, "Legend." Although Epstein implies that Oswald had been recruited by Soviet intelligence even before his defection to Russia, he does not argue that Oswald was acting on Soviet orders when he shot Kennedy. Instead, his book suggests that Oswald by 1961 had become disillusioned by Soviet communism and, like thousands of young Americans later in the decade, was searching for a new home on the left. Thus he subscribed to both Trotskyite and communist publications, became interested in Castro's revolution, and apparently converted himself to the idea of direct revolutionary action, as shown by his purchase of two guns in early 1963.

Epstein also found witnesses who recalled Oswald making bitter attacks upon Kennedy's imperialist and interventionist policy towards Cuba, and calling Gen. Walker a fascist as dangerous as Adolf Hitler. During the summer of 1963, Epstein argued, Oswald

tried to establish his pro-Castro bona fides in New Orleans by founding his one-man chapter of the Fair Play for Cuba Committee and making several public appearances. In late September he went to Mexico City to try to arrange to travel to Cuba, but the Cuban embassy would not grant him a visa without thoroughly checking his background. Epstein implies that Oswald shot Kennedy, in a fit of revolutionary fervor.

An extension of Epstein's theory to cover the evidence for conspiracy would suggest that Oswald could have been assisted by one or two other pro-Castro activists like himself. His visit to Silvia Odio could thus be seen as an attempt to infiltrate an anti-Castro group similar to an attempt he had made earlier in New Orleans. No theory fits all the facts; this one probably fits them as well as any other.

However, it also prompts one to ask whether Lyndon Johnson may have been right. If Oswald killed Kennedy on behalf of the Cuban revolution, could Castro himself have been responsible? The Cuban leader knew about CIA attempts to assassinate him and had recently warned Kennedy through a press correspondent that, if such intrigues continued, American leaders would not be immune from retaliation.

On the other hand, Castro was also in the midst of delicate negotiations at the United Nations aiming at normalization of Cuban-American relations. In any case, to have selected Oswald seems on the face of it to have been much too risky. For Castro to have trusted such a shady individual with such a critical mission would have been rash, to say the least. The Cubans strongly suspected that their Mexican embassy was bugged by the CIA, and according to a confidential intelligence source, Oswald actually discussed killing Kennedy when he visited that embassy.

As for the Soviet KGB, its motives for assassinating the American president — now actively working for Soviet-American detente — seem unfathomable.

Another theory, raised from the beginning by leftist critics of the Warren Commission, and argued most thoroughly by Anthony Summers' 1979 book, "Conspiracy," holds that Kennedy was a victim of a right-wing conspiracy involving anti-Castro Cubans and, possibly, elements within the CIA. Anti-Castro activists resented Kennedy's failure to follow up the Bay of Pigs invasion and his October 1962 pledge not to invade Cuba. Perhaps they hoped to provoke an American invasion of Cuba by pinning the assassination on Oswald — exactly the possibility that Johnson feared.

Some evidence to support this theory has surfaced since the Warren Report. Fair Play

for Cuba leaflets issued by Oswald in New Orleans in 1963 bore the address 544 Camp St. That address housed the offices of Guy Banister, a former FBI agent active in all manner of extreme right-wing causes and anti-Castro activities. Several witnesses have stated that Banister at least was aware of Oswald's existence, but whether they knew each other is unclear. The Warren Report did not mention Banister, and stated only that it found no evidence that Oswald ever maintained an office at 544 Camp St.

Oswald's meeting with Silvia Odio may also indicate an association with anti-Castro Cubans. An anti-Castro Cuban named Antonio Veciana, who claims a long relationship with the CIA, has stated that he met Oswald in September 1963 in Dallas together with his CIA case officer, a man he knew only as "Maurice Bishop;" but this statement remains unconfirmed.

This theory, however, is difficult to reconcile with what we know about Oswald. Given the wealth of evidence that his real sympathies were with the left, it seems more likely that his contacts with right-wing groups were efforts to infiltrate the enemy camp rather than reflections of his own sympathies. Some have therefore argued that Oswald did not really shoot Kennedy at all, but was framed by right-wing elements. However, given that Kennedy was killed by Oswald's rifle — and that Oswald had made a special trip home on the evening of Nov. 21 to pick it up and bring it to work — Oswald seems at the very least a willing participant in a conspiracy to kill the president. From what we know, he needed no inspiration and received no assistance from others to carry out the crime — except for that of the unknown accomplice, if there was one, who may have fired a shot from the grassy knoll. Some anti-Castro Cubans may have welcomed the news of Nov. 22, 1963, but the case against them is far from proven.

G. Robert Blakey, the Notre Dame law professor who served as counsel to the Assassinations Committee, and committee staffer Richard N. Billings argued in their 1981 book, "The Plot to Kill the President," that Kennedy was murdered by organized crime. The mob probably had the most powerful motive for the murder of the president. Attorney General Robert Kennedy had mobilized the full resources of the government to break their power. The murder of the attorney general would have incurred the vengeful wrath of the president, but the murder of the president could and did lead both to the replacement of the attorney general and the end of his aggressive campaign against organized crime.

In fact, illegal surveillance of mob figures in the early 1960s overheard talk of a presiden-

Mob figures with whom Oswald associated include his maternal uncle, Charles Murret, and pilot David Ferrie — both residents of New Orleans, where Oswald spent most of the summer of 1963, and both involved with Marcello. Jack Ruby, who shot Oswald in the Dallas police station, had been involved with the mob since childhood.

The idea that the mob selected an unstable Marxist ex-Marine for the assignment of killing the president will seem implausible to some; but Blakey and Billings note that in 1971 "Crazy Joe" Gallo, a New York mobster, employed Jerome Johnson, a black petty criminal known for mental instability, to assassinate fellow-mob boss Joseph Colombo at a public rally. Johnson himself was shot to death only seconds after his crime. Police regarded him as a crazed lone assassin until after Gallo was murdered by Colombo associates, in revenge. Perhaps mob chieftains call upon unlikely assassins for especially delicate assignments. Oswald may not have known the real background of the unidentified figures who approached him. But while appealing in many ways, the mob theory is not proven.

Twenty years after the crime the evidence boils down to possibilities and vague probabilities. Oswald may have been part of a large conspiracy or a very small one; he may even have acted alone. The full truth would have been difficult to discover even in 1963-64; now it is probably lost to us forever.

Instead, the Kennedy assassination stands as an example of what can happen when law collides with politics. Law enforcement professionals such as Dr. Cyril Wecht, a leading forensic pathologist and an early critic of the Warren Commission, have argued again and again that the case was handled far more sloppily and inefficiently than any run-of-the-mill homicide. This was no accident. The

magnetic personality of John F. Kennedy had won him devoted followers and powerful enemies. The men who had to deal with the aftermath of his death knew that the full facts might have devastating consequences. They made sure the investigation would not be a professional, disinterested search for the truth.

Even the dead president's body was a potential embarrassment. A thorough autopsy would reveal that he suffered from Addison's disease, a fact which had been denied for political reasons. Thus, on the afternoon of his death his body was forcibly removed from the custody of Texas officials attempting to enforce Texas law and turned over that night to Navy doctors at Bethesda Naval Hospital who had no qualifications as forensic pathologists. Their failure to do a thorough job has been another source of controversy.

Americans in 1963 shared many illusions. We believed that the FBI was an utterly reliable investigative body and that the CIA would not stoop to the assassination of a foreign leader. The idea that the president might share a woman's favors with mobsters would have seemed as outrageous as the idea that the president might successfully be assassinated for political reasons.

John Kennedy's inspirational rhetoric had encouraged our simple, self-confident view of ourselves. With Lyndorr Johnson calling us forward to complete the dead president's work, we had neither the time nor the inclination to consider the frightening possibilities surrounding the crime.

We have become more suspicious during the last two decades. A recent Washington Post poll [see accompanying box] shows that four out of five now believe Kennedy's assassination was the work of more than one man. We do not know for certain if that belief is correct, but we do know that our world is much more complicated than we allowed ourselves to believe in 1963.

tial hit. In the early 1970s, John Roselli, a mobster previously involved in CIA-Mafia assassination plots against Castro, told columnist Jack Anderson that Oswald had been recruited by mobster Santo Trafficante and that another gunman had fired at Kennedy from the front. Roselli was murdered after telling the same story to the Senate Intelligence Committee; his associate Sam Giancana was murdered before he could make a similar appearance. Other witnesses told the Assassinations Committee that both Trafficante and mob boss Carlos Marcello of New Orleans had talked about the possibility of assassinating Kennedy.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Mark A. Allen,

Plaintiff

v.

Civil Action
No. 81-1206

Federal Bureau of Investigations, et al.

Defendants

Affidavit

I, G. Robert Blakey, being duly sworn, depose and say as follows:

(1) I am currently a professor of law at the Notre Dame Law School, Notre Dame, Indiana 46556,

(2) From July of 1977 to January of 1979, I was the chief counsel and staff director of the U.S. House of Representatives Select Committee on Assassination that looked into the assassination of President John F. Kennedy, in which capacity I personally supervised and reviewed the compilation of all materials published by the Committee.

(3) I have also reviewed the affidavit of John N. Phillips, special agent, F.B.I., dated January 12, 1981, filed in this matter, including paragraph 5, which states:

The HSCA reviewed the material described in paragraph 4 supra spending approximately five million dollars. At the conclusion of their (sic) investigation the HSCA published a 260 page report with 12 volumes of exhibits in which they (sic) included everything which could be deemed as relating to the assassination of President Kennedy (emphasis added).

(4) Special Agent Phillips is in error. The Committee was not able to publish everything it wanted to publish or which was relevant to the President's assassination, as it ran out of time and appropriations. In fact, little of the F.B.I. files made available to the Committee was directly published. The Committee concentrated its efforts, in the main, on publishing original material not available elsewhere.

(5) Whatever the merits of the pending litigation, it should not be resolved, in whole or in part, on any contrary assumption.

G. Robert Blakey

G. Robert Blakey
Professor of Law
Notre Dame Law School
Notre Dame, IN 46556

Subscribed and sworn to before me this 15th day of
February, 1982.

Jacqueline M. Stanford
Notary Public

My Commission expires October 19, 1984.

THE ASSASSINATION OF JOHN F. KENNEDY

A COMPREHENSIVE HISTORICAL
AND LEGAL BIBLIOGRAPHY, 1963-1979

Compiled by DeLloyd J. Guth and David R. Wrone



GREENWOOD PRESS
WESTPORT, CONNECTICUT • LONDON, ENGLAND

Attachment 6

C.A. No. 81-2543

ace

In
ski

rs,
ts,

id

Introduction

Novus ordo saeculorum, a new order of the ages, reads the motto on the Great Seal of the United States. It captures what three centuries emblazoned before the world's eyes: America, located where Europe's western and Asia's eastern frontiers converged, where generations of hopeless, hapless, landless poor sought to redeem their misfortunes. From Thomas Jefferson's day through the early 1960s, American political rhetoric has sustained such hopes, emphasizing human renewal and the frontier spirit. With the arrival of "The New Frontier" in 1961, such rhetorical expressions of collective idealism found their culminating enthusiasm.

The murder of President John F. Kennedy jolted that image and reality, inside and outside the United States. Subsequent if unrelated assassinations, then Vietnam and Watergate have seemed sounding bells that many heard as heralding the end for that *pax Americana* forged by World War II. America's forefathers had celebrated its distance from the Old World's order, seen as tainted by monarchy, class, conspiracies, and cynicism about the capabilities of common humanity. Even more, America had traditionally defined its destiny as ruled by a written constitution and the impartial enforcement of law.

But that act of 22 November 1963, jeopardized this New World's self-perception and challenged its very commitment to pluralism, publicity, law, and competitive democracy. Agonizing self-appraisal continued despite the 1964 presidential Warren Commission's *Report*, and probably because of it. The Commission had acted as a hasty substitute for due process of law,

offering little more than an official quietus manufactured for domestic consciences and foreign skeptics. Four years later, Garrison's bungled investigation and the Kennedy-Manchester imbroglgio became mere publicity-seeking interludes before new killings and new questions. In retrospect, American idealism began to die on the streets of Dallas. Sixteen years later, for most people the question "who killed Kennedy?" remains open and confused.

As part of a November 1963 political fence-mending effort, President Kennedy had taken his full entourage into Texas, making various appearances and speeches. Late in the morning of 22 November, Air Force One led at Love Field on the outskirts of Dallas, where a motorcade waited to take him through the city's center for lunch at the Trade Mart. There he planned to deliver a moderating speech against political extremism, racialism, and the mood for witch-hunting and scapegoating. He rode openly in the rear seat with Mrs. Kennedy; Governor and Mrs. John B. Connally sat one driving. Moving down Main Street the limousine entered Dealey Plaza, where it immediately turned hard right onto Houston Street, went one short block, slowed almost to a stop, turned very sharply left onto the curving Elm Street, where it passed beneath the seven-story Texas School Book Depository. Shots rang out. It was 12:30 P.M., Central Standard Time.

President Kennedy was clearly struck as he clutched for his throat, then the top of his head exploded as he slammed down into his wife's lap. Directly in front of him Governor Connally received five wounds and spun into his wife's arms. Several score feet away, standing near the triple underpass, citizen James T. Tague was sprayed by fragments created by a bullet that smashed into the curbstone at his feet. At 1:00 P.M. President Kennedy was pronounced dead at Parkland Hospital.

At 1:50 P.M., Lee Harvey Oswald, an employee at the Texas School Book Depository, was arrested in the Texas Theater, a cinema in another section of Dallas. Hours later Captain J. Will Fritz, Dallas's chief homicide inspector, charged Oswald with murdering Police Officer J. D. Tippit, who had been shot dead between the Texas Theater and the Texas School Book Depository sometime before 1:10 P.M. That night, at about 1:30 A.M. on the 23rd, Dallas police formally accused Oswald of the murder of President Kennedy. One day later, the operator of a Dallas striptease club, Jack Ruby, shot and killed Oswald while police tried to transfer Oswald from the city to the county jail, under a blaze of media publicity and five television lightings.

In the prevailing law, murder of a United States president remained ordinary homicide limited to state and local jurisdiction. Dallas's chaos and the manifest incompetence of all law officers in the circumstances, whether local or federal, translated instantly into a national anxiety about

the rule of law. A magisterial funeral in Washington, followed with macabre irony by the traditional Thanksgiving holiday, restored order without confidence. President Lyndon B. Johnson hastened to appoint a special presidential, blue-ribbon commission headed by the Chief Justice of the U.S. Supreme Court to inquire into the events and the law.

Knowledge of the origin, operation, and conclusions of the Warren Commission must precede any understanding of the swirls of controversy that still surround President Kennedy's murder. Its twenty-seven published volumes¹ effectively preempted the subject, shifting investigations away from the act itself over to Warren Commission data and its inadequacies. Its influence remains today a silent hand from the past, actively shaping perimeters of public belief and exerting intense pressure upon politicians and government attorneys. Every federal inquiry, both executive and legislative, into the murder and its attendant questions has accepted the Warren Commission's conclusions as the premise upon which to launch its probe. Senator Richard Schweiker, for example, specifically acknowledged the validity of the Commission's findings, then said that his inquiry would search out how a foreign conspiracy had actually operated through the person of Oswald.² The latest inquiry, by the House Select Committee on Assassinations, initially stated that one of its tasks would be to make the Warren Commission's findings "persuasive."³ Only on the last day of public hearings, during the Christmas season of 1978, did it openly stumble upon audio evidence of conspiracy that could not be refuted. The House Committee still accepted the mass of Warren Commission data, without challenge to specific items or comprehension of the circumstances in which all of it was compiled.⁴

Few realize even today that during the first days following the murder the world came close to nuclear war, at least according to the latest expert on the subject. American forces entered a "red alert" phase, the highest state of readiness for a preemptive nuclear strike.⁵ Vital federal intelligence channels clogged under the sheer mass of data being frantically transmitted. The new president, known for occasional impulsivity, proceeded with a commendable caution in his first hours and days, fearful of every international implication. In the midst of a constantly deteriorating situation, tension mounted as numerous bits of wrong or trivial information reached the White House. The CIA's Mexican substation immediately reported Oswald as Castro's hireling,⁶ while the FBI could produce five volumes of "facts" less than three weeks after the murder, on behalf of the Warren Commission.⁷ Opinions became truths, fiction achieved factuality, prejudices became official insights, and blame began to stick to everyone and everything.

Domestic conditions heightened the potential for rash reactions. Under the glare of camera lights and before several hundred reporters, Dallas

officials announced their capture of a "communist" who had killed the president. The media saturated the public with "facts" of Oswald's "communist" activities and Marxist beliefs. In Congress, several members moved for investigations, vying with each other for the chairmanship of proposed committees. Anticomunist hysteria in the United States, which predated the Russian Revolution, had cyclically reared its fevered head against presidents elected from the Democratic party. But cultivating it daily in the wake of Kennedy's murder, as many editors, reporters and politicians did, only exalted the conspiracy-minded and exacerbated the conduct of foreign policy. Added to perils of revived witch-hunting, no one knew with any certainty, despite unprecedented coverage by newsmen, what precisely had transpired in Dallas and why.

To allay fears and restore public confidence in law and elected officials, the executive branch directed that the murdered Oswald be identified as the sole killer. Oswald was dead; there could be no trial. In a 26 November 1963 memorandum to Presidential Assistant Bill Moyers, the Deputy Attorney General Nicholas Katzenbach defined the prosecution's position: "The public must be satisfied that Oswald was the assassin; that he did not have confederates who are still at large; and that the evidence was such that he would have been convicted at trial."¹ This day, then, while President Kennedy's requiem mass and burial were taking place, his own presidential appointees had begun the policy of burying the issues of fact, of guilt, and of law.

President Johnson implored Earl Warren, the Chief Justice, to head the presidential commission, arguing that only men with highest public respect could still the nation and abate any domestic military threat. In his memoirs, Chief Justice Warren stated that he took this chairmanship with extreme reluctance, only after President Johnson made an emotional appeal to his love of country. To refuse, it was suggested, could mean "40,000,000 lives lost" in a nuclear war.²

Johnson appointed six other members to his commission. Two Senators: John Sherman Cooper, Republican from Kentucky, and Richard Russell, Democrat from Georgia; two Congressmen: Gerald R. Ford, Republican from Michigan, and Hale Boggs, Democrat from Louisiana; the former head of the CIA, Allen Dulles; and a New York banker, John J. McCloy, completed the blue-ribbon panel. It remains a monument to Johnson's masterly political skills. Cooper, Ford, and Dulles neutralized the opposition Republican party; McCloy and Dulles reassured the financial-governmental nexus; and Southerners Boggs and Russell blocked any attack from the political right. Warren's acceptance immediately quieted the nation's liberals, especially the Eastern base of Kennedy supporters and university academicians, thereby eliminating from later controversies the single most effective potential sector of dissent to commission procedures and results. Silence

and apathy have greeted the entire subject of President Kennedy's murder ever since, among serious scholars generally and with U.S. historians in particular. Even that contemporary critic of federal policy and bureaucracy, J. F. Stone, placed himself well inside lines drawn by Johnson's choice of Warren. The Chief Justice's record for civil liberties and race relations was enough for Stone to "letter-whip" mercilessly the critics of the commission, facts notwithstanding.³

Like most federal committees, the Warren Commission worked through its own staff. The seven members, being busy public officials with full-time interests elsewhere, had little time and expertise for the exacting research requisite to a criminal case. They selected a staff of eighty-four and named as chief legal counsel J. Lee Rankin, a former Solicitor General of the United States. The commission did not, however, assemble a body of criminal law specialists, inspectors, and field investigators, choosing instead to rely entirely on several federal agencies, mainly the FBI. This decision to farm out the entire investigation doomed the Warren Commission inquiry from the start. No one at the time dared suggest that an objective inquiry ought, at some point, to include scrutiny of Hoover's FBI. *Quis custodiet ipsos custodes?*⁴

Thus, on 9 December 1963, the Warren Commission laid its inquiry upon the Procrustean bed of the FBI's five-volume report. So anxious was the commission to adhere to the FBI's hasty hodge-podge of data that Hoover's eyes and ears inside the Commission, Congressman Gerald Ford, soon promised a final *Report* for that winter.⁵ In fact, those five FBI volumes contained less than 500 words on the murder itself, being almost entirely a psychological profile of Oswald with much biographical detail about his pre-Marine Corps youth. Then the FBI departed from its usual investigatory practice and drew, in effect, a judicious conclusion: Oswald alone and unaided, for his own political and psychological motives, killed President Kennedy. Such a bold departure from set procedure shocked Rankin, the commission's chief counsel,⁶ but his reaction did not prevent him from countenancing this and other revealing prejudgments.

The list of these deliberate official manipulations of evidence is long and has been exposed elsewhere, but several examples urge at least passing notice. The FBI's immediate Oswald fixation extended to the absurdly different ways with which they, and the commission's agents, treated the two widows. Jacqueline Bouvier Kennedy, an eye-and-ear witness to murder if there ever was one, was interviewed for about ten minutes six months afterwards. Marina Oswald, who was diapering daughters in Irving, Texas, when Kennedy died, was put under FBI "house arrest," interrogated for weeks, and then made into a star witness, testifying before news cameras and *in camera*, to the Warren Commission and later congressional committees. Then there were such FBI omissions as one of the bullet wounds on Presi-

dent Kennedy's body, as well as any mention of Tague's wound, both excluded either through incompetence or by fear that such wounds might require more than one assassin. In such ways did Hoover fulfill the Katzenbach-Moyers directive, leaving the Warren Commission to orchestrate it fully and publicly.

The commission clearly knew of continuing FBI attempts to monopolize all assassination inquiries. Dallas police and the Texas Attorney General's office had been firmly, immediately squelched by the FBI, aided by Warren's personal intervention.¹¹ Even the Secret Service were left to watch from the sidelines. Hoover's FBI obsessively sought control, not only occasionally through Gerald Ford but also in a general climate of trepidation that is now known to have developed among the commissioners. On 22 January 1964, the Warren panel held a secret executive session that would surface only later in a stenotypist's notes:

Dulles: . . . *Why would it be in their [FBI] interest to say he [Oswald] is clearly the only guilty one? . . .*

[Rankin]: *They would like to have us fold up and quit.*

Boggs: *This closes the case, you see. Don't you see?*

Rankin: *They found the man. There is nothing more to do. The commission supports their conclusions, and we can go on home and that is the end of it. . . .*

Boggs: *I don't even like to see this being taken down.*

Dulles: *Yes. I think this record ought to be destroyed.¹²*

The commission's control over its own record, defeated by accidental survival in this instance, did lead to other deliberate suppressions. For one notorious example, two pages of Senator and Commissioner Russell's dissent from the lone-assassin theory were expunged, which utterly enraged the terminally ill Russell when he discovered it.¹³

The Warren Commission's *Report*, then, remains of lingering paradoxical value. Although its conclusions bear little conviction and less credibility, it remains an invaluable catalogue for much of the murder case's data, provided that its users see it for what it is: the product of "an investigation which has satisfied the Commission that it has ascertained the truth concerning the assassination of President Kennedy. . . ."¹⁴ Sadly for the commission's historical status and even more so for the truth itself, such satisfaction has proven contrivedly premature.

What, then, can a citizen know about the murder of President John F. Kennedy, nearly two decades later?

The past is always knowable only by present evidence, and we now have much more evidence than the Warren Commission sought, selected, or considered.¹⁵ For one thing, the sheer quantity of information and opinion available has created a pressing problem, which this bibliography addresses

in Sections II and III. But this measures only the literary responses during the first sixteen years. Even the most astute inquirer can become lost on the mountain of books, articles, and journalists' reports, all shouting their explanations for the murder into valleys empty of evidence. Unfortunately, most of this has created a cacophony of competing, often contradictory, echoes. Ultimate answers, when available, can be obtained only from the primary evidence, patiently and persistently accumulated. It is for this reason that all readers must first realize, by way of Section I, where most of the documents currently reside and how difficult it has often been, by recourse to federal law courts, to extract that evidence from governmental agencies.¹⁶

Among academic professionals in our society, historians ought to be the best trained for work with the evidence. They ought to combine reason and skepticism in their comprehensive perspective, in their attempt to put a past man or a past event back together after dissection into parts by economists, lawyers, journalists, psychologists, scientists, literateurs, moralists, and so on. But scholars generally, and our fellow historians particularly, have remained aloof from problems created by the JFK murder and subsequent investigations. Only the Regius Professor of Modern History at Oxford University, Hugh Trevor-Roper, offered professional scrutiny of Warren Commission documents.¹⁷ Since then, most historians have avoided the entire problem of evidence, accepting the published Warren *Hearings* as the sum total of obtainable data, while reasoned skepticism has been developed mainly by an ex-poultry farmer, several Washington lawyers, a Texas newspaper editor, two university philosophers, and several ex-graduate students.

One reason that serious scholars have absented themselves from the assassination's literature is the Warren *Report's* preemption of the subject, with its simple verdict against one man "perpetually discontented with the world around him."¹⁸ Rather than closing the case, this verdict openly invited theories of conspiracy. Oswald having been found guilty, the burden of proof shifted so that doubters must first prove Oswald "not guilty."¹⁹ To suggest this would raise the question "if not Oswald, then who did it?" Thus far, the best answer is that audio, ballistics, photographic, and eye-witness evidence gathered by and since the Warren Commission strongly suggests more than one gunman, which is all that the U. S. House Select Committee asserted in December 1978.²⁰

Although it takes two or more individuals to make a conspiracy, at least in the eyes of the law, this does not necessarily mean that "more than one gunman" equals a conspiracy in fact. It has been argued that Dealey Plaza that day attracted two or more individuals armed and motivated independently for the same act.²¹ Unlike as this may be, the record of bitter political hatred enveloping places like Dallas in 1963 raises two immediate points: the fact of this violent climate is neutral to the question of conspiracy, but the entire matter remains the unknown, unresearched context for the murder itself. Numerous murder threats against President Kennedy came in

the weeks preceding 22 November from groups active in that vicinity: the National States' Rights party, the Minutemen, anti-Castro militants, religious bigots, and other radical paramilitary, racist organizations. Anti-Kennedy hysteria was hardly limited to Dallas. The president's 2 November visit to Chicago was dropped because of local threats, and then his 18 November motorcade through Miami had to be cancelled at the very last moment for similar reasons.²¹ Neither the FBI nor the Warren Commission investigators showed more than routine interest in such coincidences of fact: they were too busy reconstructing a left-wing psychological profile, focused on Oswald.²²

The specter of some prearranged conspiracy easily haunts the case and its researchers, and it takes only the mere hint of conspiracy to drive most scholars away, into other topics. The word itself connotes a sort of intellectual bankruptcy, at least in the academic world and especially in this murder case, because other suspects have never been named. Explanations based on conspiracy are usually associated with irrational, prejudiced reactions, in sharp contrast to a prosecutor's clear, scientific, dispassionate reconstruction of homicidal fact. But after revelations about the workings of the Ku Klux Klan, American corporations courting Nazi Germany's cartels, Watergate, organized crime, CIA vs. KGB, or effective fabrications like the *Protocols of Zion*, conspiracies seem to strain the modern credibility less.

We are convinced that, in the JFK case, two conspiracies did exist. The first killed Kennedy and the second, conducted by essentially honorable men, has served to subvert and obscure this truth. The first was a conspiracy among individuals as yet unidentified. The second, an institutional conspiracy, grew from that mutually inclusive self-protective, group-protective identity that individuals can be expected to develop as members of any company or bureau. The White House, the FBI, the Justice Department, the Department of State, congressional committees, and even the National Archives, all under siege from public shock and skepticism after 22 November 1963, quietly closed ranks within and among their agencies in order to restore confidence at home and abroad. Such a motive may laudably justify members conspiring to reinforce national institutions, but the result has hardly served the muse Clio's search for truth. We at no time wish to suggest that individuals in any and all agencies conspired among themselves. That would constitute individual conspiracy prosecutable at law. What we do conclude is that members of governmental institutions worked primarily to protect their own agencies and secondarily to sustain confidence in the federal government generally, with only a tertiary concern for solving this murder case.

The literature since Dallas, on the other hand, possesses a uniform impulse to resolve the crime and its attendant mysteries. Yet certain facts may never be known, thanks in large part to the institutional conspiracy begun by

FBI and Warren Commission agents. Why did Oswald go to Mexico City that September? Why did Oswald go to the Texas Theater? Why was no transcript made and preserved from Oswald's twelve and more hours of police interrogation? How did President Kennedy's brain disappear after the Washington autopsy? Did law enforcement officers ever entertain explanations and suspects other than Oswald? We simply have no hard answers, to these and hundreds of other questions, although we now know that witnesses available at the time, who might have aided investigators, were either ignored or rudely rebuffed and a large amount of physical evidence was similarly treated. The impulse to resolve the crime continues in many often over-eager authors and despite so much culpable ignorance of actual evidence.

The assassination's literature can be divided into six categories: (1) works sustaining the official conclusions, (2) works entirely irrational, (3) works riddled with subjectivity and unsubstantiated theory, (4) the exploitative literature, (5) sinister publications, and (6) works focused on evidence about the murder that strive for objectivity.

The first category includes both conventional and psychological works, sustaining official conclusions in the *Warren Report*. Conventional accounts, premised on Oswald's guilt from start to finish, include David Belin's *November 22, 1963*,²³ Jim Bishop's *The Day Kennedy Was Shot*,²⁴ William Manchester's *The Death of a President*,²⁵ Priscilla McMillan Johnson's *Marina and Lee*,²⁶ and diverse biographies of the Oswald family, memoirs of leading figures, and several minor studies on physical evidence from the crime. Typical of such articles are those by Dr. John K. Latimer, a New York urologist,²⁷ and Professor Luis Alvarez, a California Nobel Laureate in physics.²⁸ The former, asserting authority in ballistics, proclaimed after studying the Warren Commission autopsy materials that they proved Oswald killed President Kennedy. From X-rays and photographs alone no one can determine who pulled any particular trigger. Latimer conveniently ignored the bullet(s) associated with the wounding of citizen James T. Tague, evidence which in itself shatters the official findings.²⁹ Alvarez studied the Zapruder film and asserted that that evidence affirmed official findings of Oswald's sole guilt. He too isolated the object of his study from contextual evidence, ignoring the trees that blocked the first shot, occurring around frame 190, he claimed, and also ignoring Tague.

In psychological studies the authors flee from the world of fact into the mental interstices of figures associated with the murder, mainly the dead Lee Harvey Oswald. These accounts are found mainly in articles, but Renato Harog's and Lucy Freeman's *The Two Assassins*³⁰ and Robert Thompson's *The Trial of Lee Harvey Oswald*,³¹ a screenplay for the American Broadcasting Company, are representative book titles. The former claimed to have "studied" Oswald's fifth-grade report card, which indicated his mental instability and predisposition to kill Kennedy; but they did not present

a single fact in critical context to link Oswald to the murder. Thompson converted Jack Ruby into an All-American hero driven by noble motives. The truth, conveniently excised by Thompson and ABC for the illusion, instead shows Ruby to be a "punk pining to be a hood,"³⁴ consumed by sensuality and crudity.

The titles in the irrational category embrace every conceivable explanation that unbridled imaginations can conjure up. The more outrageous examples include Pat Matteo, *This Captive Land*,³⁵ in which Kennedy is killed to prevent his escape from a miniature atomic bomb; Thothnu Tastimona, *It Is As If . . .*,³⁶ connects the case to origins with the nineteenth-century Mormon leader Brigham Young; and Bernard M. Bane, *Is John F. Kennedy Alive* . . . ,³⁷ ponders that very question. Sybil Leek, whose credentials include being "a certified witch," wrote with Bert Sugar, *The Assassination Chain*,³⁸ in which an evil link is found among various political murders. Robert Shea and Robert Anton Wilson, *Illuminatus . . .*,³⁹ seek an explanation in ancient Egypt. Neal Wilgus, *The Illuminoids*,⁴⁰ finds the Order of the Illuminati, or masonic conspiracy, behind the murder.

The irrational literature typically assumes the conclusions of the Warren Commission to be valid in terms of Oswald's participation, but it seeks larger motives and devices that manipulated his lonesome act. Oswald's guilt is constantly reaffirmed, when it should be questioned as rigorously as any other fact. The irrational publications often appeal to some pseudo-scientific fad in popular thought, like necromancy or astrology, and can usually be found in the supermarket newspapers. Lincoln Lawrence's *Were We Controlled?*⁴¹ even argues that a posthypnotic suggestion triggered radio transmissions operating through a neurological implant in the robot Oswald, causing him to kill Kennedy. William Smith's *Assassination by 'onsensur'*⁴² sinks in the same water, arguing that "psychic displacement" operated by a mastermind worked its design through more inferior minds. All of this, of course, drifts well beyond James Bond's world of evil conspiracies into some sort of certifiable madness.

The subjective category includes the literature of those who dissent from the Warren Commission's findings and have tried, at least, to wrestle with problems of evidence pertinent to the murder itself. Such writers do not blindly accept the official version and do show some critical analysis, but their literature remains saddled by theoretical assumptions and their fundamental question puts the who before the what. The prime question, we insist, is still: *what* happened on Dealey Plaza on 22 November 1963? After that factual base comes the question "who shot Kennedy?" We must reluctantly concede that we may never know the answer with reasonable certitude.

This third category, the subjective, can be broken into several subgroups. One theorizes that the murder was the work of the international Communist

movement, although proponents often differ as to the methods employed. In Carlos Bringer's *Red Friday*,⁴³ and in Revilo P. Oliver's series of articles,⁴⁴ Oswald is simply a Communist agent. Michael Eddowes, *The Oswald File*,⁴⁵ changes the emphasis and baldly asserts that his exhaustive search of all documents proves that JFK's killer was a Soviet fake sent into America to fulfill diabolical ends. All such works beg the two questions that ought to be put first: What is the evidence implicating Oswald? Does any of it connect *any* Oswald to the murder?

Edward Jay Epstein's *Legend*⁴⁶ continues to exploit the Oswald theme, modifying it to make him a Soviet agent converted to spying while stationed in Japan. To carry forward this thesis, Epstein ignores his critics as well as nonconforming court records. For example, to make Oswald a defector to his new Soviet masters, Epstein reports that he left London on 9 October 1959 to reach Finland on the 10th. But according to the passport stamps, he actually left London on the 10th and arrived in Finland on the 10th, a feat impossible according to all contemporary commercial airline schedules but not beyond the fertile machinations of American intelligence agencies. Like Bringer, Oliver, Eddowes, and others, Epstein attempts to hammer into the public mind the assertion without proof that Oswald killed Kennedy.

There is a substantial subgroup of theorists who try to prove, from the other side of the political spectrum, that the CIA killed Kennedy. Michael Canfield and Alan Weberman's *Coup d'Etat*,⁴⁷ Fletcher Prouly's *The Secret Team*,⁴⁸ and Sid Blumenthal and Harvey Yazjian's *Government by Gunplay*⁴⁹ represent this evidence-stretching effort. Aside from numerous factual errors and repeated distortions of evidence, the characteristic feature of this subgroup is their avoidance of the actual murder and of its bungled police investigation. Their hot chase after the CIA chimera is often connected with another subgroup of subjective writers.

Did organized crime kill Kennedy? This theory always had its followers, but beginning in the mid-1970s a series of volumes appeared that purported to find proofs, including those connected to Judith Campbell Exner. Typical expressions are Peter Noyes, *Legacy of Doubt*,⁵⁰ Seth Kantor's *Who Was Jack Ruby?*,⁵¹ the Assassination Information Bureau's *Clandestine America*,⁵² and Peter Dale Scott's *Crime and Cover-Up*.⁵³ Organized crime has become America's "diabolus ex machina," released in times of heightened public awareness to explain major crimes and minor social ailments. Elusive, without structure, and without a single body of facts, the accusation nevertheless finds most recent, albeit partial, endorsement in the U.S. House Select Committee on Assassination's *Final Report*.⁵⁴

Still another subgroup in subjectivity makes Chief Justice Earl Warren the malefactor, distorting all evidence to make this wish come true. The two best examples are Edward Jay Epstein's *Inquest*⁵⁵ and Mark Lane's *Rush to Judgment*.⁵⁶ Presented to the uninformed as a work of dispassionate

scholarly dissent, *Inquest* actually upholds the basic findings of the Warren Commission by dismissing its failures as the fault of its chairman, who allegedly went against the findings of his own staff and the FBI. Epstein used FBI reports as well as the files of some staff members in his attack. This brief and fierce polemic actually excoriates Hoover's Bureau, although that may not have been Epstein's intent.

Lane's *Rush to Judgment* provides a classic example of subjective gimmickry, with its scholarly cosmetic of 4,500 footnotes, containing hundreds of substantial errors and repetitions. Quotations within the text have been quietly changed in over two hundred instances from original documentary versions; important material has been excised from the evidence in order to highlight the trivial or to mislead. Ultimately the book charges Warren with the crime of cover-up, while exonerating the FBI. For example, one entire chapter, based on the testimony of Nancy Perrin Rich, who worked in Ruby's night club, pretends proof of an Oswald-Ruby link. Lane never noted that Rich gave three entirely different sets of testimony to investigators, that she suffered several mental breakdowns, and that she had habitually appeared at famous trials offering to testify.³⁷

One further subgroup has sifted the facts through a left-wing sieve to conclude that Kennedy died as a result of a right-wing conspiracy. Excellent illustrations of this subjectivity imposed upon reality are: Jim Garrison's *Heritage of Stone*,³⁸ Mort Sahl's *Heartland*,³⁹ Carl Oglesby's *Cowboy and Yankee War*,⁴⁰ and the later writings of Joachim Joesten.⁴¹ Hugh McDonald, *Appointment in Dallas*,⁴² posts a mysterious person lurking in another building who actually shot Kennedy and then framed Oswald as the "patsy." Oswald claimed to be when interrogated. Richard Popkin's *The Second Oswald*⁴³ plausibly assumes that a man posing as Oswald laid a track of damaging evidence around Dallas in the weeks before the murder. The evidence in no way precludes such an Oswald counterfeit, but Popkin's explanation still rests on acceptance of the Warren Commission's assertion of the real Oswald's role. Popkin more accurately might have entitled his valuable book "The Fake Oswald."

The fourth category, the exploiters, identifies a phenomenon extant since the week of the murder, ranging from the greedy merchants of grief, peddling JFK memorabilia, to the publishing financiers making ceaseless promotions of the official findings. The Warren Commission orchestrated five private publishers for versions of its *Report*,⁴⁴ coordinating the official release to make maximum impact and profits. The first exploiters, however, were Kennedy hagiographers who flooded the nation with special-edition newspapers, tabloids, trinkets, commemorative books, and memorial volumes. Reprints, collector's specials, and glossy inserts fell in scores from the national journals and local newspapers, none at reduced prices. *Four Days in November*,⁴⁵ assembled by the editors of United Press International

and American Heritage Publishing Company, contained lavish color photographs and an inaccurate text. Its sales copies reached into the hundreds of thousands, with additional income derived from their record promotion and a movie spin-off. The entire success story bore the marks of a necrophilia sell by an advertising agency: a garish, tasteless celebration of sacrificial death. Similar ventures served publishers well in packaging and selling the "martyred" president to the public.

From a long list of the publishing industry's promotional books, *The Death of a President* by William Manchester exemplifies best their impact and the sheer gall of their commercialism.⁴⁶ The book is perhaps what Norman Mailer means by "faction," because it certainly is not history based on evidence and professionalism. One promotional tease after another, with a stream of prepublication press releases, was coupled with regular television news coverage once the Kennedys intervened. Despite reviewers and critics who treated it mercifully, media magic transformed this error-laden volume into a sort of popular truth. In fact, it was little more than a narrative skeleton of the Warren *Report*, fleshed out with numerous insider interviews.

Like wolves among ewes, major publishing houses have indiscriminately worked the entire fold, lavishly also promoting various books by Warren *Report* dissenters. The books by Anson, McDonald, and O'Toole exemplify this, with regional radio and newspaper saturation promising new discoveries and proofs. Hugh McDonald, in *Appointment in Dallas*, claimed to have interviewed the real assassin. His original manuscript had this real assassin hiding in a judge's chambers overlooking Dealey Plaza, but the published book put him at a window in a women's restroom.⁴⁷ Similar wizardry reached its most sophisticated exploitation with George O'Toole's *The Assassination Tapes*.⁴⁸ The book was actively marketed by the company manufacturing an "evaluator machine," which supposedly measured voice patterns for covert stress to prove that a conspiracy killed Kennedy. With numerous major errors O'Toole employed the faulty machine to test old video and audio tapes of witnesses to conclude that Oswald was framed. Police and sheriffs' departments across the land received advertisements for the instrument that had allegedly solved the crime of the century. But even this is child's play compared with the antics of Mark Lane.

Two books, two films, lectures, records, and articles have kept pace with sixteen years of changing fads in popular consciousness. When initial public skepticism focused on Chief Justice Warren, Lane's *Rush to Judgment* crudely misquoted documents, gave inaccurate footnotes, and skillfully selected facts literally to frame Warren.⁴⁹ When Garrison's investigation in New Orleans captured national headlines, Lane adjusted his writings and lectures with broad assertions that he was the district attorney's confidant.⁵⁰ At the height of student unrest, Lane staffed a booth at collegiate fairs,

pushing his literature and his lecturing services to youthful minds seeking a better world.⁷¹ When exposes of the CIA began piling up in the late 1960s, Lane's articles and speeches discovered that Kennedy had really been killed by the CIA.⁷² When political and media winds shifted in the early 1970s against the late J. Edgar Hoover's FBI, Lane found proofs of FBI guilt.⁷³ This only begins to document Lane as the leading opportunist in the sorry literary history of this murder mystery.

In *A Citizen's Dissent*, Lane alleged that the British Broadcasting Company did not pay him a "single farthing" when, in fact, he had received one of their largest fees, over \$40,000.⁷⁴ When he co-produced, with Emile de Antonio, the film version of *Rush to Judgment*, he pirated its soundtrack, provoking litigation by his irate co-producer.⁷⁵ When Lane put Donald Freed to work on a jointly written novel, *Executive Action*,⁷⁶ he knew they were exploiting an excellent plot line. Lane had been in New Orleans when the typescript for the James Hepburn book *Farwell America* had been delivered to District Attorney Garrison by Herve Lamarre, a person associated with French intelligence.⁷⁷ As of 1975, the filmed version of *Executive Action* had earned \$15,000,000.⁷⁸

Only Lane's initial article, published in December 1963 in the *National Guardian*, written with that weekly's editorial aid, contributed substantially to data publicly available immediately after the murder.⁷⁹ But his credibility began to collapse soon after, as he offered himself to any bidder in this case instant JFK expert, whether on campus or in Congress. Perhaps in this case the CIA got it right when their secret study of Warren *Report* critics concluded that Lane instinctively went for the capillaries, not the jugular.⁸⁰ The CIA obviously saw no adversarial threat from Lane's limited vision and faulty scholarship, but he has served governmental agencies well by obscuring basic evidence, upstaging serious researchers, publicizing tangential issues, and generally avoiding anything that required hard work for no profit and little publicity.⁸¹

Our fifth category, labeled sinister, includes those publications about the murder that focus on intelligence-gathering agencies and, in some cases, were written under their surreptitious sponsorship. These include Camille Gilles' 400,000 . . . , but the foremost example is James Hepburn's *Farwell America*, published in Liechtenstein in 1968, printed in Belgium, and distributed in Canada,⁸² but not in the United States, by individuals associated with SDECE, France's CIA. With potential libels on every other page, the author (or authors?) allege collaboration between right-wing oilmen and rogue CIA elements for the Kennedy kill. Commentaries on the book demonstrate little critical awareness and no comprehensive knowledge of the evidence and usually end up embracing the book's assumptions. Warren Hinckle's articles and one chapter in his *If You Have a Lemon . . .* display an intimate knowledge of the book, but the chronology as well as essential facts are in fundamental error.⁸³

The works of critics responsible to the evidence and to the truth comprise our final category of Kennedy murder-literature. These authors show knowledge of the complex factual base, the duty to treat the murder objectively and without distraction, and the need to stay free from theoretical distortions. This category can be subdivided between those early authors writing before the official published findings of the Warren Commission and those later researchers who started from the findings and evidence of the commission in launching their studies.

The early writers published a few articles, including the Mark Lane effort noted earlier, and three books: Thomas Buchanan's *Who Killed Kennedy?*,⁸⁴ Joachim Joesten's *Oswald: Assassin or Fall Guy*,⁸⁵ and Leo Sauvage's *The Oswald Affair*.⁸⁶ They remain substantially sound within the context of pre-Warren *Report* materials, and each is based on painstaking research and analytical argument; but all bear the subconscious marks of a pressing controversy and the murder of an uncommon man. They are essential reading for anyone interested in the mystery itself or in the mystery's later history.

After publication of the Warren *Report*, critics produced various articles, short studies and books, the most valuable being the works of Sylvia Meagher, Harold Weisberg, and Howard Roffman. There are also many valuable articles and book reviews in the monthly journal *The Minority of One*. Raymond Marcus published a short monograph *The Bastard Bullet*, which carefully analyzed the Zapruder film and remains a minor classic for its objectivity.⁸⁷ Sylvia Meagher's *Subject Index* to the Warren Commission's volumes has given students their essential tool for mastering that wilderness of published evidence.⁸⁸ It was her *Accessories after the Fact*, though, that provided a model for scholarly method.⁸⁹ It carefully scrutinized the *Report* and the twenty-six volumes, making orderly sense of the chaotic official evidence and providing intelligent, critical commentaries.

Weisberg's *Whitewash*, addressed to the general public, demonstrated that the Warren Commission failed because it accepted unquestioningly the theory, largely manufactured by the FBI, that Oswald killed the president.⁹⁰ Weisberg had served in the 1930s as an investigator for a Senate committee uncovering American fascist penetration of the government and Nazi influence in the Americas. During World War II he had been with the Office of Strategic Services and had also worked as an analyst for the State Department. Weisberg coupled this experience with his firm belief that the original documents ought to serve as the base upon which to build an account of the murder.

Weisberg has persisted in his attack, publishing *Whitewash II, Photographic Whitewash, Whitewash IV, Oswald in New Orleans*, and *Post Mortem*.⁹¹ This last volume, published privately as were all but two, gives an unparalleled examination of the evidence relating to the JFK autopsy, with hundreds of pages of documents photographically reproduced. All of

his, plus his score of FOIA suits, makes Weisberg the premier authority, and even governmental agents who are most annoyed by him must consult his work.

Roffman's *Presumed Guilty* defined the autopsy and ballistic evidence so show that the commission could not link Oswald to the crime with such evidence, given the questions asked and the techniques that they employed. The metallic fragments inside the president and the fragments of bullets outside his body were not matched, despite the existence of several scientific tests that could have done so conclusively.⁷²

The single most important characteristic making these critics responsible - their common goal to define, secure, and expose documentary evidence in this murder case, most of which governmental agencies choose to keep controlled and secret. Much has been accomplished by lawsuits brought under the Freedom of Information Act, mostly by Harold Weisberg and his legal counsel, James H. Lesar. These suits, at the very least, force agencies out of their ordinary cocoons of self-regulating, hence publicly irresponsible, bureaucracy into open legal and judicial accountability. This process has also blocked the destruction or dispersal of countless files and preserved hundreds of cubic feet of basic evidence, to be placed before the public. Section I of our bibliography provides detailed briefs of the sort of litigation required, showing the extraordinary difficulties that federal agencies and bureaucratically supportive federal judges can create for ordinary citizens. One important published example of such documents is David R. Wronne's *Legal Proceedings . . .* based on evidence that Federal Civil Action 2052-73 forced from federal files.⁷³

In this context of misplaced bureaucratic self-preservation, no one ought to be surprised to learn that the latest congressional reopening of the JFK murder case ignored much of the mass of materials compiled outside of Warren Commission evidence. The House Select Committee on Assassinations paid virtually no attention to evidence brought into the public domain by Freedom of Information Act litigation and shunned contact with responsible critics. Their entire investigation showed a marked preference for a selection of highly visible witnesses rather than for the documentary evidence and those few experts who know it best. We therefore must conclude our remarks with a brief analysis of this most recent official report on President Kennedy's death.

On 22 July 1979, after a six-month delay, the House Select Committee on Assassinations issued the *Final Report* of its two-year investigation into the murders of President John F. Kennedy and Dr. Martin Luther King, Jr. The 686-page paperback official printing is divided into five parts: Part I contains 261 pages on the murder of Kennedy; Part II has 250 pages on the murder of King; Part III is twenty pages of recommendations; Part IV is thirty pages of separate remarks by committee members, including the

important dissent by Rep. Christopher Dodd; and Part V is 171 pages of appendices and references.⁷⁴

One week prior to official publication, G. Robert Blakey, chief counsel for the HSCA, gave the Bantam Publishing Company an exclusive advance copy and received \$3,000 from them to write a fifteen-page introduction for their printing of the *Final Report*.⁷⁵ In July, the government completed their publication of the remaining twenty-seven volume appendix to the *HSCA Final Report*. Twelve volumes concern the Kennedy murder, thirteen volumes pertain to the killing of King, and two volumes focus on legislative and administrative reforms. None of the volumes is indexed, and only brief word-clues on the face of each suggest the contents to the reader.

The HSCA's *Final Report* and its twelve volumes of Kennedy documentation are blatantly, yet curiously, inconsistent with the final conclusion endorsing a conspiracy in Dallas. If anything, the bulk of their testimony and evidence remains true to the HSCA's originally stated purpose, to make the Warren *Report* "persuasive."⁷⁶ But then, as if in a mere afterthought to several sections of the *Final Report*, the reader is urged to reject the Warren *Report*'s cornerstone: Oswald, the lone assassin.

Obviously, the HSCA had gone public at the last moment over the audio evidence confirming a front gunman facing Kennedy. In fact, it was Warren *Report* critics Mary Ferrell, Gary Mack, and Penn Jones, Jr., who brought the tape and other data to the attention of the HSCA.⁷⁷ Another critic, Robert Groden, painstakingly located a key witness for the HSCA staff.⁷⁸ This not only exemplifies the level of the HSCA's competence as researchers but also its refusal to follow its congressional mandate to investigate the performance of earlier federal investigators. In 1964 the FBI claimed to have studied certain audio tapes and to have found no pertinent evidence on them.⁷⁹ The Warren Commission even printed versions of them.⁸⁰ Apparently no HSCA member or staff investigators thought to question the FBI on this fundamental for conspiracy.

Instead, the *Final Report* reassured its readers that "the Warren Commission conducted a thorough and professional investigation into the responsibility of Lee Harvey Oswald for the assassination."⁸¹ It then proceeded to knock down several "strawmen" theories left and right, at rather tiresome length, most of which we have noted in our categories of the irrational, subjective, exploitative, and sinister literature. So it was that sideshow dramas about "the umbrella man" and the Soviet-substituted, Oswald look-alike were demolished in a fanfare of media publicity from Capitol Hill. Yet, at crucial points in the *Final Report*, the HSCA would have us turned halfway around from the Warren *Report* to embrace the suggestion of "more than one gunman!"

In such bewildering circumstances, it is appropriate for us to examine briefly some key elements in the official explanations, now mainly updated

from the Warren *Report* by the HSCA for 1979. We must limit attention to several vital parts of this official case and the ways it uses and abuses evidence. We are not in the business of exculpating anyone, including Oswald. Rather, we wish only to measure the present HSCA's case by the total evidence available. We will examine seven points here.

First, with regard to the JFK autopsy report, the HSCA's *Final Report* states:

The secrecy that surrounds the autopsy proceedings, therefore, has led to considerable skepticism toward the Commission's findings. Concern has been expressed that authorities were less than candid, since the Navy doctor in charge of the autopsy conducted at Bethesda Naval Hospital destroyed his notes. . . .¹⁰²

This is not true. The problem began with the fact that the Warren Commission used a second draft, not the original autopsy report. The Navy doctor, J. J. Humes, burned the first autopsy protocol immediately after Oswald's murder by Ruby. That death eliminated the need for a trial, his testimony and cross-examination. The second draft was later changed, then modified again in the offices of a Navy admiral. The Warren Commission then masked the destruction of this original document by asserting that Humes' notes had been burned. In fact, the doctor destroyed his holographic draft, but he turned in his second draft, along with his notes, to federal agencies. These notes then disappeared, but the actual chain of evidence remains for anyone desiring to see it.

On Sunday, 24 November 1963, Humes executed two certificates. One stated that he had burned preliminary draft notes. The other, addressed to Captain J. H. Slover, his Commanding Officer, stated in part: "Autopsy notes and the holograph draft (i.e., the second one) of the final report were at 1700, 24 November 1963."¹⁰³ The next day, Admiral Galloway, Commanding Officer, National Naval Medical Center, transmitted by hand to Admiral George C. Burkley, Physician to the President, the protocol and "the work papers in the case of John F. Kennedy," recording this transaction with a memorandum.¹⁰⁴ On 26 November, Robert Bouck of the Secret Service accepted this from Burkley, signing a receipt for the "autopsy report and notes of the examining doctor which is described in a letter of transmittal Nov. 25, 1963, by Dr. Galloway *et al.*"¹⁰⁵ Here the record of the chain of possession ends, and these vital notes disappear from history. Humes however testified in 1964 before the Warren Commission that: "In the privacy of my own home, early in the morning of Sunday, November 24, I made a draft of this report. . . . That draft I personally burned. . . ."¹⁰⁶ The commission ignored the destruction and preferred to cover up the disappearance; HSCA did the same.

This leads to the related matter of the HSCA's false assertion that ". . . neither the members of the Warren Commission, nor its staff, nor the doctors who

performed the autopsy, look advantage of the X-rays and photographs of the president that were taken during the course of the autopsy."¹⁰⁷ This claim goes back to the Warren Commission's lone-assassin theory, which required that the alleged three bullets all came from behind and high to the right; one of them missing, one passing through Kennedy and Connally inflicting seven wounds, and the last shattering Kennedy's skull.¹⁰⁸ The single bullet that inflicted so many wounds had to have penetrated the president's body at a steep-enough angle to exit at his necktie knot and continue downward to hit Connally near his armpit. The commission had put the entry hole at the back of Kennedy's neck; but the HSCA found that the bullet hole in the autopsy was actually where various critics, particularly Weisberg and Roffman, had said it was: in the back.¹⁰⁹ To reconcile their contradiction of the Warren Commission's version, the HSCA concocted the tale of ignorance just quoted.

Again, the chain of evidence puts the lie to all of this. The Warren Commission and its staff did have access to the X-rays, photographs, and other documentary evidence that placed the bullet entry hole on the back and too low to enable the single bullet to transit two bodies and cause seven wounds. In the minutes of the executive session of 27 January 1964, Chief Counsel J. Lee Rankin informed the members of the commission: ". . . it seems quite apparent now, since we have the picture of where the bullet entered in the back, that the bullet entered below the shoulder blade to the right of the backbone. . . ."¹¹⁰ On 21 June 1966, the Secret Service issued an untitled press release that stated in part: "The X-ray films were used for the briefing of the Warren Commission's staff on the autopsy procedure and results."¹¹¹ Secret Service Chief Tom Kelley, then an Inspector, told Harold Weisberg that he had shown the films to the staff.¹¹² Staff member Arlen Specter stated, in an interview with *U.S. News & World Report* on 10 October 1966 that: "I was shown one picture of the back. . . ."¹¹³ In another interview, this time with Joseph Whalen, the biographer of President Kennedy's father, Specter admitted that he had seen the autopsy films at the time: "Why should the HSCA try to bury all of this?"

The third, and related, illustration is the falsification of the description of President Kennedy's shirt collar. The "slits" on his shirt collar may appear to be of minor significance, but in fact they are a major part of the simple and concrete evidence. In order to embrace the single-bullet theory, the Warren Commission as well as the HSCA had to prove that the bullet that transited the president's neck proceeded on a steep-enough downward angle to line up with the governor's back wound. Only by lowering the exit wound to the level of the necktie knot could that downward angle fit their preconceived solution for the transit. The slightest variation in angle will completely negate the commission's attempt to tie the lone assassin and his hardworking single bullet to the murder. The HSCA, too, put all of its argument on this line.

The HSCA's team of medical specialists described the president's shirt collar through which the bullet had to pass, in order to hit the governor's neck, in this manner:

Examination of the shirt reveals a slit-like defect in the upper left front portion, 1.4 centimeters below the topmost buttonhole. This defect measures 1.4 centimeters in length, with its long axis parallel to the long axis of the body. There is a corresponding slit-like defect 1.5 centimeters below the center of the button on the right. This defect measures 1.5 centimeters in length and is also parallel to the long axis of the body (See fig. 3, a photograph of the shirt).¹¹

11 of this will, of course, sustain the single-bullet theory and its requisite analyst, as intended. The photograph of the shirt collar, however, was taken from fifteen feet away, rendering it indistinct, perhaps also as intended.

That slit below the buttonhole is indeed parallel to the long axis of the body, but it also extends halfway into the neckband. The slit on the button side is perpendicular to the body axis and below the seam of the neckband and shirt, much closer to the edge than the other. The primary problem that the slits do not coincide when the shirt is buttoned! Moreover, these slits were devoid of any traces of metal typically found when a bullet passes through cloth.¹² In fact, these slits were made by the Parkland Hospital emergency room staff in Dallas following surgical procedures by which they urridely but deftly cut away the shirt with scalpels. The attending physician, Dr. Charles James Carrico, and the duty nurse verified that this is precisely what they did.¹³ Carrico testified to the Warren Commission that the bullet hole in the throat was above the shirt collar. When asked by Commissioner Dulles to demonstrate where, precisely, the wound was, Carrico tied it out on his own body, and Dulles responded: "I see. And you put your hand right above where your tie is?"¹⁴ Needless to say, the resultant angle renders the single-bullet theory inoperable and demolishes the official case on this point.

Fourth, the HSCA *Final Report* reasserted the Warren *Report's* claim that Oswald's palm print was found on the stock of the rifle discovered on the sixth floor of the Texas School Book Depository building.¹⁵ But the HSCA omitted the fact that the print had been mailed into FBI headquarters by the Dallas police days after the rifle had left Dallas for laboratory testing; the Dallas officer who lifted the print from the stock refused point-blank to execute an affidavit for the Warren Commission stating where the print had originated.¹⁶

Fifth, the Warren Commission had claimed that Oswald carried the disassembled rifle into the building in a paper sack found on the sixth floor near the alleged scene of the crime.¹⁷ An array of scientific data was then mustered to prove that "several" fibers discovered on the sack came from a blanket found among Oswald's possessions in a garage where the rifle was

allegedly stored. The rifle "could have picked up the fibers from the blanket and transmitted them to the paper bag," but the commission, as well as HSCA's clear assertion of its findings, did not report the fact that the Dallas police took no precautions at all to keep the several articles of evidence from coming into contact with each other prior to examination.¹⁸ Likewise, the HSCA simply eliminated the testimony of Book Depository employee Dougherty, who waited just inside the building's entrance that morning and emphatically swore that Oswald entered empty-handed.¹⁹ Furthermore, to assert that the sack could accommodate the disassembled rifle parts is to contravene the sack's linear measurement.²⁰ To charge that Oswald's fingerprints were on the empty sack proves nothing. Oswald worked on the sixth floor during preceding weeks; his prints ought to be there and elsewhere. What the HSCA did not report is the fact that the fingerprints of police officers who picked up the sack and carelessly handled it did not appear when it was tested,²¹ which surely suggests something about their testing procedures.

Sixth, the HSCA *Final Report* repeated the Warren *Report's* conclusion that Oswald fired three shots, two of which had to occur prior to the movement of the presidential limousine behind the Stemmons' Street sign in the Zapruder film, at frame 210. The shot that they state was fired "at about frames 188-191" is the bullet that is said to have caused seven wounds on two men.²² No mention is made of the live oak trees in front of the Book Depository that blocked the vision of any sniper from that alleged hair between Zapruder frames 170 and 210.²³ Frames 188-191, then, could arguably even eliminate Oswald, or anyone else, firing from that particular location at that particular point in time. Obviously this would require the presence of another assassin, or other assassins, firing from another location, or other locations, at that very same time. Once again, we are forced to wonder at the methods and purposes of the recent HSCA investigation.

Seventh, the omission of James T. Tague from the *Final Report*, as well as from the twelve volumes and the entire investigation, sufficiently discredits the HSCA's commitment to truth. Incredibly, such an extensive congressional probe did not call as a witness, nor even investigate, one of the victims of the crime. The *Final Report* does not even mention his name.²⁴ Just thirty minutes from HSCA's staff offices, on Judiciary Square, there are innumerable legal records from the FBI's testing of the material dug from the curbstone hit that caused citizen Tague to bleed that day.²⁵ Did it not seem important to official investigators, in 1964²⁶ and 1978, to know where exactly Tague stood, the location of his wound, and the whereabouts of later photographs that he took of all of this? That curbstone, apparently shattered by one of the bullets, is now in the National Archives, with that bit of primary evidence, the FBI subsequently cleaned its files of key analytical reports on the curbstone itself.²⁷

As if these seven points are not enough to undermine confidence in the HSCA's recent investigation, several additional and more general observations must be made. The most obvious failure is the congressional refusal to make an honest inquiry into the FBI's role in the original probe, which is all the more serious if we recall the Warren Commission's own misgivings about FBI pressures. It is compounded by the fact that the FBI controlled all security clearances for Warren Commission and HSCA staff and consultants. Perhaps a few more examples of the FBI's curious ways with the evidence will suffice.

Mrs. R. E. Arnold, in a handwritten statement for the FBI, stated that she saw Oswald on the first floor at about 12:25 P.M., which is five minutes before the gunshots and over ten minutes after an armed figure was seen on the upper floors by outside witnesses. When the FBI typed her original statement, the time changed to 12:15.¹³¹

Several score prisoners crowded the windows of the top floor of the Dallas Criminal Courts Building to view the motorcade. What they saw, from perhaps the best vantage point in the entire Dealey Plaza, had urgent value to any investigation of the murder, but their attempts to submit testimony to what they saw were firmly turned away. When at least one prisoner pressed the matter through his attorney, the FBI returned his request to testify that he saw two men in the alleged sniper's lair, none of them fitting the description of Oswald, with the annotation "not pertinent."¹³²

Akin to this is the example of Charles Bronson, who took slides and motion pictures of the assassination. He made his film and slides available to the FBI on Monday, 25 November 1963. The FBI viewed them promptly, after the Eastman Kodak Company finished processing them in Dallas, and evaluated them. The FBI Special Agents said the pictures were "not sufficiently clear" for identification purposes and "these films failed to show the building from which the shots were fired." In 1978 Earl Golz of the *Dallas Morning News* and Gary Mack of Ft. Worth radio station KFJZ located Bronson, who made the pictures available to photographic experts and to a reluctant HSCA. The film clearly shows the Texas School Book Depository and what appears to be two figures in the windows of the alleged sniper's lair.¹³³

This leads us to a final observation about the FBI in the context of the HSCA's recent investigation, specifically with regard to the case against Oswald. Some relationship clearly existed between the two in New Orleans between May and September 1963. For example, the FBI negotiator at any point told anyone associated with the official investigation of Kennedy's killing that the address Oswald stamped on his New Orleans literature¹³⁴ was the same address used by an anti-Castro group and coincidentally as well by a close associate of the FBI. Oswald used 544 Camp, which was one side of the same corner building having the dual address of 531 LaFayette.¹³⁵ The

anti-Castro Cubans worked out of offices at 544 Camp, while a certain Guy Banister kept an office at 531 LaFayette. By May 1963, Banister was a freelance detective and former FBI agent, maintaining close contact with local FBI ex-colleagues. The unpublished record, which was muddled by Garrison's grand inquisition, did establish the meetings held in Banister's office with the anti-Castro groups. David Ferrie, a shadowy figure in right-wing fringe groups around New Orleans, also met with such groups and had a "close" relationship with Banister.¹³⁶ These anti-Castro groups operated as paramilitary units, no doubt waiting for the next invasion call. Whether connected specifically to them or not, Banister also acted in certain gun-smuggling projects in and outside New Orleans.¹³⁷ The FBI reported none of the Banister associations to the Warren investigators, and the HSCA discounted the entire topic by invoking a sort of devil theory that made "organized crime" the culprit.¹³⁸

The FBI also never reported or explained the appearance in Oswald's address book of three nonexistent addresses.¹³⁹ Some have suggested that these may possibly relate to intelligence connections, as coded locations. In addition, the FBI never identified the person associated with Oswald at several handbill operations in New Orleans, when the two openly circulated pro-Castro literature. These Oswald activities were recorded on the films by Martin, Doyle, WWL, and WDSU-TV.¹⁴⁰ The FBI privately examined all of the films but managed, for some inexplicable reason, to excise, blur, and modify those portions that showed Oswald's associate.¹⁴¹ Finally, the FBI never identified the "other" person's fingerprint, only Oswald's, on the handbill or flyer they passed around on the Dumaine Wharf.¹⁴² Obviously the entire tale remains to be told, but we believe that Oswald's New Orleans adventures will provide keys to future doors. For that reason, we have supplied a map that identifies some of Oswald's known locations in New Orleans during the four months prior to his fatal move to Dallas.

While much of this account remains circumstantial, coincidental, and cover, there are also some substantial links between Oswald and the CIA still overlooked in the latest official study by the HSCA. The ex-Attorney General Nicholas Katzenbach testified before the HSCA, with regard to political assassinations generally, that "whenever they [CIA] wanted a book suppressed they came to me and I told them not to do it."¹⁴³ Tenuous as this undoubtedly is, it at least suggests a CIA working-interest, an exerted control in the unfolding tragedy of U.S. political assassinations that began anew in 1963. Their desire to control aspects of such stories within domestic news media and publishing houses at that time is now so well exposed as to require no further comment. With specific reference to the case against Oswald, the former CIA Director Allen Dulles, a Warren Commission member, secretly met with the CIA officials to help them prepare for the commission's questions and to suggest to them how they could limit responses

concerning Oswald.¹⁴⁴ The CIA also withheld crucial photographic intelligence from the commission in 1964, after secretly obtaining a print of the Zapruder film and submitting it quietly to the National Photographic Interpretation Center for technical analysis. That study found that shots occurred at times which excluded Oswald as a lone assassin.¹⁴⁵ None of this critical information ever came before the Warren Commission but although it surfaced in the Rockefeller Commission's investigation of the CIA, reported in 1975, the point conveniently sank without trace and remained submerged for the HSCA's study.¹⁴⁶

We remain painfully aware of the ignorance that still surrounds this murder case. We reluctantly must assert, after a careful study of the HSCA's *Final Report*, that this most recent official version does not satisfy the need for a thorough inquiry into what happened that day in Dallas. It does, however, mark a major erosion in this case among federal agencies. Perhaps in time the HSCA's halting endorsement of a probable conspiracy will be seen as excessive scrupulousity rather than political timidity. Their *Report* takes a first official step away from the Warren *Report*, and we hope that the next step will be into the context of the case, to explain how every major institution, except for the federal judiciary, has failed to meet its subsequent obligation to the American public in this case.

While the media became mainly docile mouthpieces for officialdom, our legislative and executive branches were showing themselves manifestly unable to investigate themselves, much less the killing of a president. Only our federal law courts, with their adversary procedure and the Freedom of Information Act, have permitted the citizenry to break through deliberate clouds of official obfuscation. No one dares gainsay the special role that their decisions have played, in most cases, for the freeing of this murder mystery from bureaucratic bondage. Future scholars will owe their first debt to the access to the evidence that federal judges and private litigants have forced.

We are confident that more affirmative answers will some day emerge to the questions of what happened and who did it. Only the full primary evidence, once it emerges into the light of day, will provide a systematic map for the road back from Dallas. When that happens, the United States can again realize the meaning in its motto on the reverse side of its Great Seal: *Annuit Coeptis*.¹⁴⁷

NOTES

1. See [102, 684].
2. See [85], p. 1.
3. See [79, 80], and especially [80], p. 329, "The Warren Commission conducted a thorough and professional investigation into the responsibility of Lee Harvey Oswald for the assassination."

4. William R. Corson, *The Armies of Ignorance: The Rise of the American Intelligence Empire* (New York: Dial, 1977).

5. See [2].
6. See [91].
7. See [85], p. 23.
8. See [531], p. 358.
9. See [745, 877].
10. Who will investigate the investigators?
11. See *The New York Times* [3392].
12. See [110], p. 234.
13. See [571] and the Dallas documents reproduced in [109], pp. 13, 141-65.
14. See [110], p. 236, and also in [973], pp. 486-87.
15. See [109], pp. 131-32, where the faked pages are photographically reproduced, and [110], pp. 109-10.
16. See [684], p. 18.
17. The Warren Commission's nine months and fifteen million dollar budget produced 300 cubic feet of paper, now in the National Archives, Washington, D. C. Secondary writers such as David Belin [699], Priscilla Johnson McMillan [2423], Jim Bishop [2160], and Alfred Newman [726] do not stray from official explanations because they rely entirely and credulously on Warren Commission evidence.
18. For example, beyond Warren Commission evidence, 500 cubic feet of FBI files are relevant, especially from its Dallas and New Orleans offices, along with hundreds of cubic feet each from other official agencies, private investigators, FOIA litigants, and state or local records.
19. See [389, 719, 882-84].
20. See [684], p. 423.
21. See [80], pp. 104-9; [735], pp. 333-39.
22. See [880], where Thompson posits three: Congressmen Samuel Devine and Robert Edgar of the HSCA raised this possibility in their separate views [80], p. 651.
23. See the Thomas Vallee file in CD 149, especially the 10 December 1964 report; the Joseph Adams Miller documents, N.A., are partially reproduced in Weisberg, *Frame Up* (New York: Outerbidge & Densifrey, 1971), pp. 468-88.
24. See the letter of 23 July 1964 from J. Edgar Hoover to J. Lee Rankin, General Counsel W.C. CD No. 1286, which in part states: "Regarding your request concerning the John Birch Society and 'Minutemen,' this is to advise this Bureau did not conduct any investigation of those organizations or its members in the State of Texas during 1963." This is distinguishable, to say the least, because the FBI had many research reports on file for John Birch Society members and Minutemen members threatening the life of Kennedy; for example, file 1107, pp. 1055-56 and file CR 301, p. 315.
25. See [699].
26. See [2160].
27. See [2026].
28. See [418].
29. See [936-92].
30. See [1081].
31. See the background to Lattimer's articles as well as additional critique in [973], pp. 386-402, and [993, 999].
32. See [382].
33. See Robert E. Thompson, *The Trial of Lee Harvey Oswald* (New York: Ace Books, 1977).
34. Interview with Harold Weisberg, June 1978, based on his extensive interviews and documentary research.

35. See [2194].
 36. See [2220].
 37. See [2157].
 38. See [1725]. Columnist Jack Anderson praised the volume for its objectivity and insights [sic] and wrote a blurb for the introduction.
 39. See [2628].
 40. See [2636].
 41. See [1723].
 42. See [2218].
 43. See [1890].
 44. See [1488, 1490, 1496, 3498].
 45. See [2168]. The HSCA's treatment of this book from several scientific perspectives is sound; see [79], vol. 8.
 46. See [381]; 18 H 162, 26 H 132.
 47. See [1774].
 48. See [1780].
 49. See [1717].
 50. See [2202].
 51. See [2480].
 52. See [307].
 53. See [1781].
 54. See [80], p. 222.
 55. See [703].
 56. See [719].
 57. See [2485] and Garry Wills, "A Word for the Warren Commission," *The Washington Star*, 1 May 1975, p. A-5.
 58. See [1894].
 59. See [1899].
 60. See [1732].
 61. See [2182-83].
 62. See [2188].
 63. See [727].
 64. See [688-95] and *The New York Times* [3739-94].
 65. See [1539].
 66. See [2026].
 67. See [2188]: copy of original manuscript in Harold Weisberg "McDonald" files; see [30].
 68. See [2203]. An example of his factual errors is his reference on page 35 to the original and final autopsy reports. Actually there were not two but five different versions; see [973].
 69. See [719].
 70. See [1915, 1931, 1800].
 71. Interviews with student leaders, Madison, Wisconsin, by David R. Wrono.
 72. See [1800].
 73. Merrill Perlman, *The Southern Illinoisian*, "Lane . . .," January 1976, is representative of many reports of his campus speeches. Lane said: "Oswald and Jack Ruby, the man who killed Oswald, were both FBI agents."
 74. See [718]. See "Television Hired Film Agreement No. HF 9981," 23 November 1966, BBC, correspondence in [23], *The New York Times* [4102]. Another example of the numerous errors is found in footnote 19, page 14. The footnote reads: "See index to Basic Source Materials in possession of Commission, National Archives." This is false. The greatest single impediment to JFK research in the National Archives is the total lack of any index. The cited material actually appears in facsimile reproduction in [522], p. 39, which obviates the use of a finding note.

75. See [23] and the folders on the film contained there.
 76. See [2607].
 77. See [1899]. Interviews with Bernard Fensterwald, Jim Garrison and Harold Weisberg. Weisberg was in Garrison's office the day Lamarre first called on the district attorney.
 78. *The New York Post*, 8 December 1977.
 79. See [421].
 80. See [2].
 81. A basic article is: Bob Katz, "Mark Lane: The Left's Leading Hearse-Chaser," *Mother Jones* 4 (August 1979): 22-32.
 82. See [2172]: several critics have received copies of untitled typescripts and letters that appear to have intelligence origins; see [1776], interviews with critics, including one who viewed the film version and spoke with the person called Lamarre at SDECE offices in Paris, conducted by David R. Wrono.
 83. See [1797, 1895].
 84. See [527].
 85. See [383].
 86. See [728, 729].
 87. See [972].
 88. See [697].
 89. See [722].
 90. See [735].
 91. See [532, 1075, 736, 1901, 973].
 92. See [389].
 93. See [110].
 94. See [80]. Assistant Public Printer, C. A. Labarre, in letter of 23 October 1979, to David R. Wrono, states 12,333 copies were printed; of [79], JFK appendix volumes, the following numbers were printed: 1:5099; 2:5380; 3:5299; 4:5349; 5:5808; 6:5513; 7:5411; 8:5439; 9:5210; 10:5692; 11:5340; 12:5262.
 95. *The Washington Post*, 19 July 1979.
 96. See [70, 71] and the interview with Congressman Richardson Preyer, chairman of the subcommittee on the assassination of John F. Kennedy, appearing in *The New York Times* [5062].
 97. In Penn Jones, Jr., *The Continuing Inquiry* [308], 22 August 1977, Mack summarized his study of Ferrill's original discovery. The HSCA hired the prestigious scientific testing firm of Bolt, Beranek & Newman to analyze the audio tape. This firm reported that their study of the tape proved inconclusive. In March 1978 the original, badly worn dictabel plus a good copy of it surfaced in Dallas. The HSCA decided to restrict the location and number of tests performed in Dealey Plaza to the north grassy knoll and the Texas School Book Depository. On 11 September, Bolt, Beranek & Newman reported a fifty-fifty chance of a grassy knoll gunshot. On 28 December, Mark Weiss and Ernest Aschkenasy, acoustical experts using more refined techniques, appeared before the HSCA and demonstrated a 95 percent probability for the north grassy knoll gunshot. But they had not been permitted to perform their tests at locations on Dealey Plaza other than with respect to the north grassy knoll. A majority of the HSCA accepted their findings and ignored the implications of the unfinished task.
 98. Interview with Robert Groden, by David R. Wrono.
 99. See CE 1974, 23 H 832-940, with no reference to other versions.
 100. There were three *different* versions of the tapes introduced into evidence: CE 1974, 23 H 832-940; Sawyer Exhibits A and B, 21 H 388-400; CE 705, 17 H 361-494.
 101. See [80], p. 329.
 102. See [80], p. 32.
 103. J. J. Humes, CERTIFICATE, 24 November 1963, to Captain J. H. Stover, WC Records NA, reproduced in [973], p. 525; 17 H 47.

104. Admiral Galloway, Commanding Officer, National Naval Medical Center, to George Burkle, White House Physician, Memorandum 25 November 1963, WC Records NA, reproduced in [1973], p. 526.
105. Receipt, Robert I. Bouck, Secret Service, 26 November 1963, WC Records NA, reproduced in [1973], p. 527.
106. 2 H 373; confirmed by J. J. Humes, CERTIFICATE, 24 November 1963, 17 H 48, and WC Records NA, holograph approval on certificate by Admiral George Burkle, Physician to the President, reproduced in [1973], p. 524. Five versions of the autopsy existed: the burned original; the holograph second with "QGB" initials on the margin in two places; is in WC Records NA and reproduced in [1973]; pp. 509-23; the holograph copy sans initials is in WC volumes as CE 397, 17 H 30-44; the holographic alterations of the second draft, CE 397; and the final printed copy which differs slightly, CE 387, 16 H 979-983.
107. See [80], p. 41.
108. See [80], pp. 34-38.
109. See [79], vol. 7.
110. See [110], p. 212.
111. See [1973], p. 555.
112. "Kelly" file, Weisberg Archives.
113. See [447].
114. "Whalen" file, Weisberg Archives.
115. See [79], p. 89.
116. See [1973], p. 353.
117. 6 H 136, 139, 21 H 203-204; interview of Weisberg with Carrico, [1973], pp. 358, 375-76.
118. 3 H 361-362.
119. See [80], p. 49.
120. See [735], pp. 73, 79-84; [322], pp. 38-39.
121. See [389], pp. 151-174.
122. See [389], p. 171; CE 738; Warren Report, p. 137.
123. 6 H 376-377.
124. See [389], p. 173.
125. See [735], p. 62.
126. See [80], p. 87.
127. See [735], pp. 97-109.
28. See [80], p. 71.
129. See [165, 168].
130. The WC paid no attention to the curbstone until 7 July 1964; testimony and depositions from eyewitnesses and Tague appear in the 26 volumes, e.g., 21 H 474, 17 H 547, and 15 H 699, and in its Report, p. 116. The staff and the FBI took extreme care to obfuscate the Report, destroying implications of the evidence. The FBI did not mention the Tague shot in its five-volume report to the commission on 9 December 1963, CD 1 [191].
131. One of the pictures, snapped by professional journalist Tom Dillard on 22 November 1963 appears in Shaneyfelt Exhibit 29, 21 H 479; the patched curb is in the NA available for public viewing.
132. See [168].
133. See the discussion in [389], pp. 184-87. As Roffman notes, p. 276, even the FBI modification removes Oswald from the scene of the crime and demolishes the official findings. "The Warren Commission stated in its Report that it knew of no Book Depository employee who claimed to have seen Oswald between 11:55 and 12:30 on the day of the assassination. This was false, as . . . the FBI report [on Mrs. Arnold] from the commission's files reveals. The [Warren] Report never mentions Mrs. Arnold . . ."
134. Earl Golz, *Dallas Morning News*, 26 November 1978.
135. *Ibid.*, DFO 89-43-493.

136. According to Secret Service Agent A. E. Gerrets, 22 H 828.
137. See the photograph of the now demolished building in [1893] and the discussions of the organizations frequenting it in [1901]; see map 4.
138. See [1901] for discussion, particularly at pp. 327-48. Haynes Johnson of *The Washington Star*, a Pulitzer Prize-winning reporter with many informants among the Cuban leaders, is the source for the Banister intimacy with the anti-Castro associate, Ferrer; see [1901], pp. 329-30.
139. See [1901], especially pp. 329, 351; Haynes Johnson, *The Washington Star*, 26 February 1967, front page.
140. An illustration of the deception practiced by the FBI is found in WC file 75, folio 683, where FBI Agent Ernest C. Wall, Jr., reported on 25 November 1963:
- GUY BANISTER, Guy Banister Associates, Inc., 531 Lafayette Street, New Orleans, was telephonically contacted on November 25, 1963, and advised that SERGIO ARCACHA SMITH of the Cuban Revolutionary Council, who was the head of that organization in New Orleans, Louisiana, some time ago, had told him on one occasion that he, SMITH, had an office in the building located at 544 Camp Street. Mr. BANISTER stated that he had seen a young Cuban man with SMITH on a number of occasions in the vicinity of 544 Camp Street, but could not recall the name of this young man.
- See [1901], p. 331.
141. The book is found in 16 H 67; the addresses are partially discussed in [1901], p. 79; see map of New Orleans; research in New Orleans by David R. Wrono.
142. Based on files assembled by Weisberg as well as his affidavits submitted in FOIA Civil Action No. 78-420 [181].
143. Tourists who filmed the Canal Street operation informed Harold Weisberg of this, as did persons associated with the filming of the Trade Mart operation. Their interviews, e.g., Patrick Doyle's, are in his files. His research was utilized in his affidavits in Civil Action No. 78-420 [181]. These references, plus the film itself, plus the viewing of the film by journalist Earl Golz, demonstrate a change was made. For example, the Doyle film was returned with many frames missing and on a different commercial film base than used by Doyle; the edges of the film depicting the associate which appeared originally as clear and distinct are now blurred, and so forth. See [181].
144. Document released to Weisberg as a result of his Privacy Act request. The FBI processing blurred the finding number, but the serial number is NO 100 16601 and the report is dated 10/19/70.
145. See [79], vol. 3, p. 663.
146. CIA Document No. 657-831. See [2]. Reproduced with discussion in [1075], pp. 304-10, 312.
147. See [1075], pp. 295-304, where the few pages of the study released are reproduced. The Warren Commission clearly knew of the National Photographic Interpretation Center and its reputation for excellence, but the commission did not seek their aid. Had it done so, and if the CIA's commissioned project can be trusted, then the single-assassin theory would have suffered serious damage.
148. It never appeared in the report submitted by the Rocketteller Commission [101] but was the subject of a staff inquiry; see [1075], p. 295.
149. He has favored our undertakings: from Virgil, *Aeneid*, 9, 625.