

Is CBS Standing on First Amendment Principle?
Or Does CBS Have Something To Hide?

The Mysterious Kennedy Out-Takes

By Florence Graves

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When the House Select Assassinations Committee began its hearings after Labor Day into the slaying of President John F. Kennedy, an impressive array of witnesses had been planned. Former Texas Governor John Connally was scheduled. So was Marina Oswald, widow of accused assassin Lee Harvey Oswald. Even a tape recording of Fidel Castro, in which he disclaimed any part in the November 22, 1963, assassination was to be presented.

But at least two key witnesses were not scheduled. Earlene Roberts, Oswald's housekeeper who saw him shortly after the assassination, and William Whaley, the cab driver who is supposed to have driven Oswald to his boarding house after the shooting, are dead. What they had to say, of course, is recorded in the controversial Warren Report.

But the animated and, in some cases perhaps contradictory, accounts of what both Roberts and Whaley (along with a host of others) had to say are also recorded on film. Film which was shot by CBS when those memories were fresh. Film which **WJR** has learned the House Assassinations Committee has never seen.

Furthermore, some of the film in question was seen 14 years ago by avant garde film maker Emile de Antonio (*Rush to Judgment, Millhouse, Point of Order*) and Warren Commission critic and author Mark Lane (*Rush to Judgment, A Citizen's Dissent*). Both said then and both say now that the CBS interviewer led witnesses, some of whom, they claim, were saying things contrary to what the Warren Commission and the ensuing 1964 CBS documentary reported.

CBS has hundreds of hours of film related to the Kennedy assassination. For four days following the slaying, CBS was on the air 24 hours a day. CBS also did three major documentaries on the assassination and the Warren Report in 1964, 1967 and 1975. Most of the film shot for these broadcasts was not seen by viewers—it's the film that was snipped away in the editing process. The film which is shown is referred to as "as-broadcast" material; the edited film is "out-takes." The film which Lane and de Antonio saw was in this category—out-takes.

CBS and the House Assassinations Committee give totally conflicting accounts concerning what film the House requested and received from CBS. Here's what the principals involved had to say: Richard Salant, president of CBS News, told us the committee had made both written and oral requests for everything CBS had on both the assassination of Kennedy and of Martin Luther King Jr. Salant said the requests included out-takes. CBS refused to give any out-takes, Salant confirmed.

In direct contrast, committee chief counsel G. Robert Blakey told us the committee had *never* requested out-takes from CBS. Blakey, who established a hush-hush policy on the inner workings of the committee, initially refused to elaborate except to say that CBS "has given us everything we asked for." In a surprising admission, Blakey said, "We sought no out-takes from any news source because we were aware of the First Amendment principle involved."

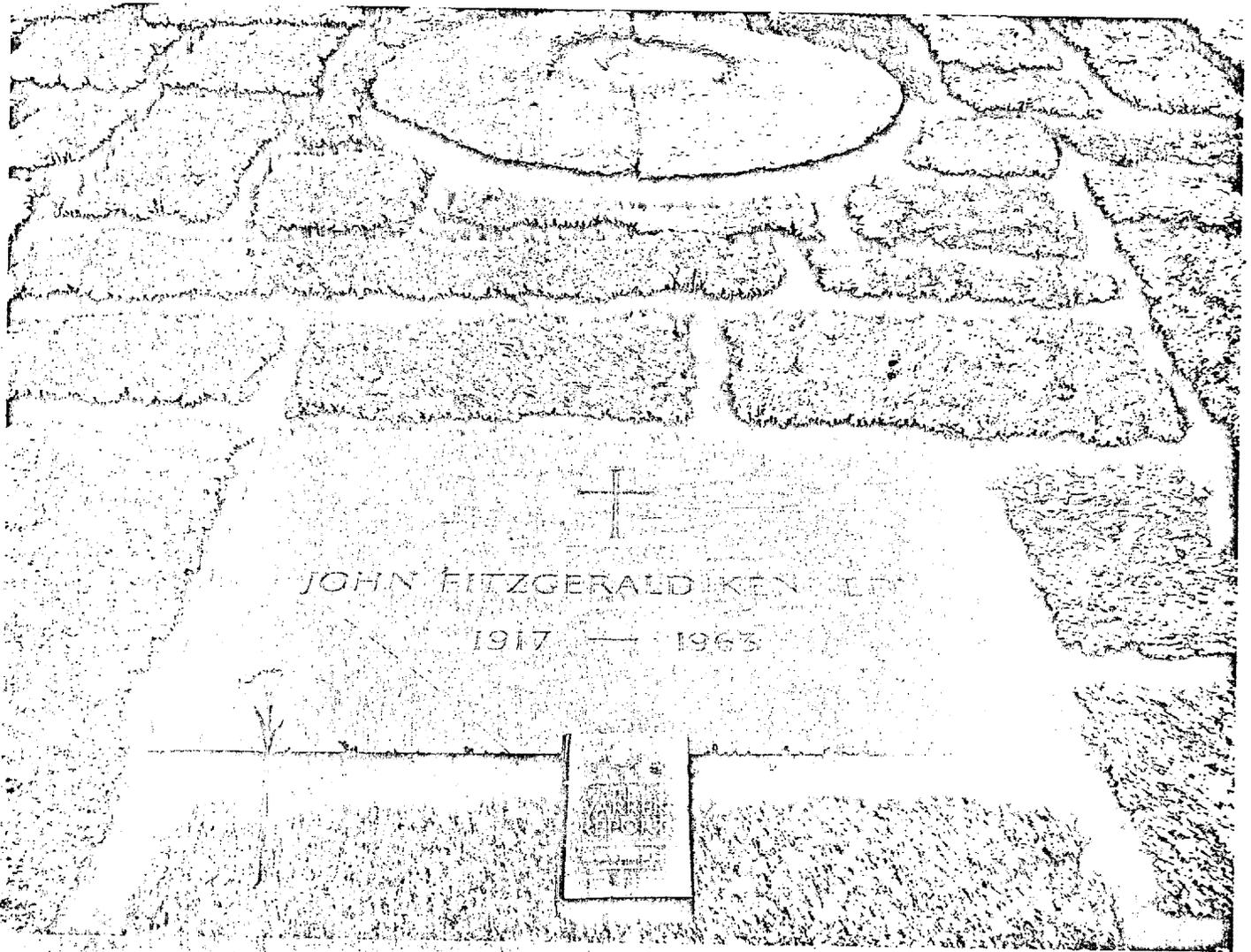
We talked with Sandy Socolow, former CBS Washington bureau

chief (now executive producer of the *CBS Evening News*) and the one most involved with the requests, according to Salant. He added to our confusion. We asked him what had transpired and he replied, "We invited them to subpoena us." Unquestionably irritated by the questions, Socolow claimed the "controversy" concerning the out-takes was over. In our second conversation, Socolow asserted that "out-takes were not an issue," adding that "there was never any formal muscle for out-takes." Then, "I can't deny that they did ask for out-takes, but it never went the subpoena route."

In our third conversation, Socolow had checked his files and reported the committee had made only one formal request—on July 28, 1977, they had requested all the film (which he conceded meant the as-broadcast film as well as out-takes) for the period of November 22-25, 1963, the days when CBS was broadcasting round-the-clock.

Socolow says CBS gave the committee the broadcasted material for those days only and volunteered the broadcasted material from the three documentaries. No out-takes were given, he said. He conceded that in addition to the formal request, there may have been some conversations among lawyers.

Here's what probably happened: Two committee sources maintain that indeed there was quite a controversy over the CBS out-takes, and that the committee initially took a hard line and demanded all film, out-takes and any affidavits involved with the Kennedy assassination. One source says CBS balked and said they wouldn't turn the out-takes over even if they



were subpoenaed. The source says the committee backed down, realizing that if they served CBS with a subpoena, CBS would inevitably resist and the legal battle could go on for years, diverting attention from the investigation. The committee also realized the legal maneuvering could last well beyond the life of the committee. The source says instead Blakey and Chairman Louis Stokes (D-Oh.) decided to court CBS' favor.

Let's assume for the moment that what Blakey says is true—that his committee did not ask for and furthermore did not subpoena the CBS out-takes. Was he not aware that de Antonio and Lane had previously charged that there was possibly valuable evidence on those out-takes? Trying to avoid specifics, Blakey said, "nothing was withheld from us, to our detriment." When asked how he could be certain since he had not seen the out-takes, Blakey said that was a question of substance which, under

his own rules, he could not answer.

Blakey explains they subpoenaed no out-takes "because we were aware of the First Amendment principle involved." It's a principle which Blakey implies is well-established; it's a principle Salant admits is not well-established at all.

Let's assume that Salant, as president of CBS News, knows what he is talking about, and the committee did indeed seek out-takes which were denied. Why were they denied? Because, he explains, "we're trying to establish the principle."

"The principle," Salant explains, is the same as that being challenged in the Myron Farber/*New York Times* case. Farber has refused to turn over his notes to a New Jersey court which has subpoenaed them because he contends his confidential sources would be revealed.

However, the CBS stand is not precisely parallel to the Farber case. To begin with, Bernie Birnbaum, an associate producer of the 1964 CBS Warren Report documentary, told us

the only guarantee they made to those interviewed was that they wouldn't release what they had said until the Warren Report had been officially released.

Moreover, some would find it hard to rationalize the contradiction between a source who would allow himself to be filmed, and then demand the privileges of confidentiality.

Confronted with these two arguments, Salant said the principle the network is trying to establish goes beyond confidentiality. They want to establish that out-takes are broadcast reporters' notes, period, and that broadcast reporters, like print reporters, have a responsibility to withhold those notes from any probe. Salant repeatedly emphasized that if CBS had acquiesced to the House request for out-takes, then CBS would have been setting an unhealthy precedent.

But the truth is, CBS could have established a precedent of its own without compromising the First

Amendment principle involved. In a public spirited gesture, CBS could have noted all of the emotion and confusion surrounding the case and volunteered all the material it had on the assassination with the hope that truth would prevail. CBS could have said the assassination of a United States president is in a category by itself.

There is at least one precedent which contradicts Salant's argument that such out-takes should be sacrosanct. In a 1967 documentary, *The JFK Conspiracy: The Case of Jim Garrison*, rival network NBC closed by saying, "The filmed testimony you have seen was edited. The unedited film (out-takes) is available to any authorized investigator with a legitimate reason to see it."

CBS' refusal to release the out-takes and the committee's refusal to pursue the out-takes via a subpoena because Blakey was "aware of the First Amendment principle involved" raises important, unanswered questions about the legal status of out-takes.

The principle upon which CBS stands is shaky—even Salant acknowledges that. "It's an argument we are fighting. It hasn't been decided by the courts."

The fact that CBS at one time sold out-takes weakens their argument that the film now should enjoy some exclusive status. Salant says their "no out-takes for sale" policy evolved; he believes it jelled in the late '60s or early '70s, "after we woke up to the legal implications of selling them." He explained it would be difficult to justify selling leftover film to the public while refusing to turn similar film over to governmental or law enforcement agencies. The "out-takes for sale" policy was "before any of us realized that out-takes are reporters' notes."

"I can't put a date on when it happened. We took them one at a time," he said. Lane and de Antonio think they were victims of this case-by-case discrimination. In late 1965, the two were collaborating (they've since had a falling out) on the film *Rush to Judgment* when then CBS film librarian Virginia Dillard called and offered more than 70 hours of out-takes from their 1964 Warren Report documentary.

(Several years earlier, de Antonio had purchased from CBS for \$50,000 all of the Army-McCarthy hearings of 1954 to make his film

Point of Order, which was featured at the Cannes Film Festival.)

de Antonio picks up the story: "Why did she offer those out-takes? Surmise (and that is all): she thought she would make a financial coup out of what appeared to be material just as dead and forgotten as the Army-McCarthy hearings until I made *Point of Order*. Lane and I looked at about six hours of out-takes. I ordered about one hour, both picture and magnetic track. I filled out the usual forms. A CBS editor was assigned to us and stayed there until long after closing to run the Movieola (a projection device used in editing which allows the viewer to control the speed of the film). I don't remember his name.

"I do recall that part of what I chose was interviews with people in Dallas who were present at the shooting gallery where the so-called 'second Oswald' appeared. I have the strongest impression that those interviewed contradicted what CBS telecast. There was an interview with the cab driver who allegedly drove Oswald on November 22, 1963, from Dealey plaza to his rooming house. It contained statements which did not appear in the Warren Report and which did not serve the Report's conclusions.

"Above all, the interviewing techniques were odd in that interviewees were led to conclusions. The interviewer was more like a prosecuting attorney leading a witness to support the state's case. Lane and I were jubilant. Here it was. A piece of cake. The kind of material you don't get unless you are part of the electronic monopoly. Very, very hot indeed.

"Cold water the next day. A chastened Virginia Dillard called and said CBS never sells out-takes. I said: 'But Christ, (this is not quotation but paraphrase) you called and offered it. Who cut it off?' She asked us not to go on. I talked to Dave Klinger, a CBS News vice-president, and also wrote to him and received replies from him."

In an article in *Take One* film magazine, Mark Lane recalled: "de Antonio and I were astonished by what we saw. What we saw, in essence, was a whole series of events, where eye witnesses, interviewed by CBS, were making statements which were completely contrary to what CBS put on the air."

In his book *A Citizen's Dissent*,

Lane charges that "CBS evidently began with a script. Although the Warren Report was published the same day that the program was broadcast, the master script had been available for some time. The Report contained no surprises, the press reported when it was released."

Birnbaum, one of the producers, told us recently that indeed there were leaks from the Warren Commission, and that in the months they spent interviewing in Dallas, they were specifically interviewing those the Commission had interviewed. Birnbaum agrees with de Antonio when he describes the film as "really an oral history. . . . At the time it was a milestone. It's the first look at any of the major people. The only record on film. A lot of them have passed away." He added that some of the filmed interviews were as long as an hour.

Many believe the murder of President Kennedy was more complex than indicated in the findings of the Warren Commission. They have raised questions, as Robert Sam Anson did in his book, *They've Killed the President*, about the possibility of "two Oswalds."

"Was it possible," Anson asked, "that Oswald was telling the truth, that he had been framed, that an imposter had been used to implicate him in the crime of the century?"

Those who lean toward answering "yes" point to the recollections of some witnesses who say they saw Oswald, or a man who looked like Oswald at a rifle range in Dallas on several occasions, a man they say went out of his way to draw attention to himself. The Warren Report dismissed the possibility of this man being Oswald. But the critics still ask, was someone deliberately impersonating Oswald?

Cab driver William Whaley's story is important because some critics assert, as part of the "second Oswald" theory, that the man Whaley transported may not have been Oswald, but someone who looked like him. Others say if he was Oswald, he was not Oswald, the assassin.

For a decade and a half, Warren Commission critics have pointed to a number of persons within hearing distance of the shots, who are certain one or more shots came not from the Texas School Book Depository Building, but from what has come to be known as "the grassy knoll." Shots coming from the grassy

knoll—from the front of the motorcade—would account for, in some critics' minds, what appears to be the violent backward motion of the president's head (when hit) as shown in the Zapruder film.

Now here's what Lane remembers seeing in those out-takes, as recounted in *A Citizen's Dissent*. "Many hours of interviews were filmed, some with important witnesses. When a witness said something that challenged the script, that portion of the interview was snipped away and thus turned into an out-take. If the witness said, for example, that he heard shots and, at the time believed that they had come from the knoll, the interview might be halted and then begun again.

"When the filming resumed, the witness might say that while at the time he thought the shots originated from the knoll area, he now believed that the evidence showed that the shots came from the Book Depository. When asked to repeat his conclusions as to where the shots originated, he might say, 'well, from the Book Depository.'"

Although no one at CBS is certain when the permanent policy not to sell out-takes was established, everyone we talked to was certain it didn't go into effect specifically with Lane and de Antonio. Copies of de Antonio's correspondence with Klinger indicate the case-by-case rule was in effect. Klinger wrote: "The fact is, we will not be making out-takes of *that* (our italics) broadcast available for outside use."

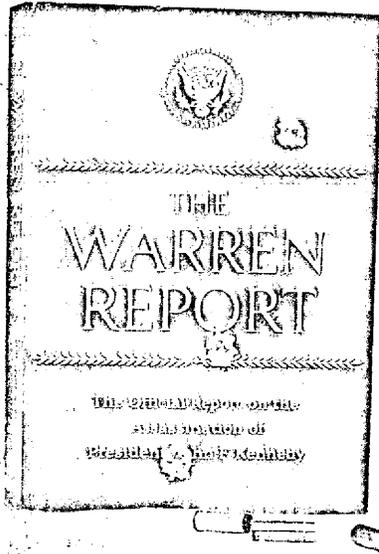
To de Antonio, the issue concerning his desire to buy the film was long ago transcended by what he considers the principle involved. "It is my contention that CBS has a duty to the American people which is greater than profits or covering up errors. Klinger told me over the phone that the out-takes were going to be destroyed." (Klinger now denies having said that: "That's a very priceless asset CBS has. I would never have dreamed of destroying them.")

de Antonio continues: "I didn't believe him. I don't think they were destroyed. I do think CBS should air them, all of them. This was the greatest and most important murder of our time. Why is CBS withholding those out-takes? Does CBS have an Official Secrets Act like the CIA? What is it afraid of? Doesn't it want the specialists in the assassination of

JFK to have an opportunity to study living, filmic evidence. Doesn't CBS want to share its unique and special film? If not, why not? What is CBS hiding? I won't guess."

Salant's reply to de Antonio's charges: "Tell him to say it to my face. He's a goddamn liar." Salant continued that he trusts all his people implicitly and refuses to believe the critic's charges have any element of truth.

Perhaps this would be a good time to point out that Lane and CBS have been trading insults for years. Lane is often thought of as a churlish kook who has exploited the assassinations of Kennedy and King. CBS included Lane in one of the documentaries and discredited him by having Walter Cronkite, the most trusted man in America, say, "But



Mr. Lane, who accuses the Commission of playing fast and loose with the evidence, does not always allow facts to get in the way of his own theories." Then CBS presented an assassination witness who seemed to say Lane had misquoted him.

Lane responded by devoting an entire chapter of his book, *A Citizen's Dissent*, to pointing out numerous discrepancies in the 1967 documentary. (It should be noted that many of the same discrepancies were detailed in a 1975 *New Times* article by Jerry Policoff.)

Emile de Antonio is not only an avant garde film maker, but also an "avowed Marxist." He was high on Richard Nixon's enemies list. He was denounced in the *Congressional Record* by Rep. Larry McDonald of Georgia in 1975. Noting that the Weather Underground Organization

terrorists have taken responsibility for a number of bombings, McDonald adds that, "Now a group of Hollywood's left-wing crackpots are planning to do a propaganda puff piece film on these criminals.

"The ring leader of the Hollywood crew is the notorious Emile de Antonio, the maker of a number of pseudo-documentary left-wing propaganda films, including one smearing the late Joseph McCarthy and another supporting the Communist aggressors in Vietnam."

It would be easy to dismiss both Lane and de Antonio as "crackpots." They don't conform; they're on the fringe. One would expect the venerable CBS officials to do so—to dismiss the whole issue of out-takes by dismissing Lane and de Antonio. And, indeed, Salant at first took this easy way out, claiming charges that CBS is hiding something surface every few years and one should merely consider the sources.

But then Salant thought about it. He called us, saying while he isn't going to the trouble of viewing all 70 hours in question, he had ordered the out-takes out of storage. He planned to look at them to see if witnesses had been coached or led to conclusions.

(There's still one problem: only someone intimately familiar with the Kennedy assassination testimony would be able to tell, as Lane and de Antonio charge, that some persons were saying things contrary to what they had told the Warren Commission and contrary to what CBS reported.)

But on the other issue, Salant says, "I personally will look at the film, and if I find anybody coaching, (a) I'll fire them and (b) I'll make a public apology."

We suggested that if Salant did see irregular questioning, it is almost impossible to believe he would make his findings public. His reply: "You don't know me."

Later, Salant called and said if we could think of a way to satisfy ourselves that the CBS interviews were straight, some way to satisfy ourselves "without creating a precedent," but so that "you don't have to take my word," then he would oblige us.

Salant repeatedly refers to his fear of setting a "precedent," yet the networks' history of dealing with out-takes is already inconsistent.

NBC's out-take policy is similar

to CBS'. A spokesman said NBC does not sell out-takes "which are considered to be reporters' notes and thus protected by the First Amendment." ABC's policy, however, is not as rigid. An official said they do not sell out-takes of their investigative reports on *ABC World News Tonight*, *20/20* or the *ABC Closeup*. Out-takes of what they call "generic" material, are sold. But the out-takes for sale are "carefully screened." ABC, too, considers the withheld out-takes, "reporters' notes."

Salant concedes that his desire to establish a "principle" is weakened by ABC's policy of selling some out-takes.

Salant does not concede that CBS' own inconsistent policy weakens his case. It is clear the principle is not written in stone. And at least one instance indicates that CBS' principle has been tied to its pocketbook. In a 1974 *Columbia Journalism Review* article, Maurice Schonfeld, one-time vice-president and general manager of UPI Television News, remembers when CBS requested out-takes which UPI had filmed. CBS cameraman Laurens Pierce was attacked outside the courtroom of a civil rights murder trial in Mississippi. In the scuffle, Pierce's camera hit the head of a man who sued CBS for \$500,000.

Schonfeld elaborates: "CBS believed that the film taken by our cameraman most clearly showed that Pierce had been the victim rather than the aggressor in the incident. Therefore, the CBS lawyers wanted the film as evidence."

Schonfeld told them if they wanted it, they would have to subpoena it, which they did. "Under subpoena, we delivered the film, and after two trials, CBS won its case."

In 1975 *CJR* reported in a case involving mafia chieftain Joseph Colombo, "CBS, in contrast to its formal opposition to the surrender of out-takes under subpoena, has informally cooperated with police investigators. Richard Salant, president of CBS News, who is also a lawyer, says, 'If you have real evidence in a murder, it's a different situation.'"

Here's another exception: Following Martin Luther King's funeral, Salant says authorities asked to see the out-takes from his funeral because they thought the film might help identify the murder suspect. The FBI got to look at those.

When we suggested to Salant the

policy seems inconsistent, he replied, "I think it's a consistent policy; you don't. Your definition of consistent is always or never. It's a policy we are still building. You have to figure it out and make reasonable exceptions. That's the way to do it."

CBS' most celebrated encounter with an out-takes request involved their documentary, *The Selling of the Pentagon*, in 1971. It was an inflammatory hour-long examination of the Defense Department's public relations efforts, and came at the close of the Vietnam War when feelings were on edge. Charges that CBS had purposefully distorted some interviews through its film editing prompted a congressional investigation. A House committee subpoenaed the out-takes, and when CBS President Frank Stanton refused, a move was made to cite him for contempt of Congress.

Stanton's argument was the familiar one—that compliance would infringe upon the First Amendment and have a "chilling effect" on CBS' reporting on the government. Salant cites this case as the one which made them realize the First Amendment importance of out-takes.

In a more recent case, CBS' *Sixty Minutes* producers were ordered by a California court to turn over all out-takes of a drug investigation filmed in cooperation with authorities. After the filming, a narcotics agent said he met with one man who was filmed and says he arrested him for selling him cigarettes containing angel dust (PCP). After an indictment, attorneys for the defense subpoenaed all CBS film even though none of the segment was ever broadcast. CBS contested the subpoena on the grounds that it violated the California shield law which protects any unpublished information gathered during the preparation of a story. The court rejected all of CBS' arguments and ordered it to comply. CBS is appealing, arguing that the shield laws in 25 states have no meaning if they do not protect news organizations subpoenaed during the course of criminal proceedings.

What is interesting about CBS is that sometimes it seems their stands on the free flow of information are rooted in self-interest. For example: In the 1967 documentary reexamining the Warren Report, Walter Cronkite declared: "There is one further piece of evidence which we feel must now be made available to

the entire public: Abraham Zapruder's film of the actual assassination. The original is now the private property of *Life* magazine. A *Life* executive refused CBS News permission to show you that film at any price, on the ground that it is 'an invaluable asset of Time, Inc.'

"*Life's* decision means you cannot see the Zapruder film in its proper form, as motion picture film. We believe that the Zapruder film is an invaluable asset, not of Time, Inc., but of the people of the United States."

Eight years later, after the network had been able to buy the film from Zapruder's estate, CBS reexamined the Kennedy assassination and called for a new inquiry into JFK's death. Correspondent Dan Rather said then that "history will be less confused, we believe, if there are congressional investigations. . ."

Rather concluded, noting that a CBS News poll found "that only 15% of Americans believe the official account of the murder as set out in the Warren Report. Regrettably, some of our own institutions, the very agencies that should have helped to dispel public doubts, have only fueled those doubts. . ."

We suggested to Salant that some people might include CBS as one of those "institutions." Asked if he did not consider Rather's words, at the very least ironic, in light of the out-take controversy, he replied, "I can see how you might think so."

We can see how others might think so, too. CBS has had a less than consistent policy on out-takes in the past. In fact, if there is any consistent thread in the exceptions Salant has cited, it is the presence of an act of violence in the case. But Salant says the significant criterion is "where the authorities think we have film that might identify a murder suspect. When it's a question of murder, someone's life, we'll let them look at it."

But, again, it is easy to argue that the assassination of a president is in a category by itself, especially in light of the other exceptions CBS has made. CBS could have easily justified offering the out-takes while still maintaining "the principle."

Therefore, isn't it fair to ask, did CBS refuse to release the Kennedy out-takes out of fear of demonstrating an inconsistent policy? Or, does CBS, as de Antonio and Lane charge, have something to hide? ●

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