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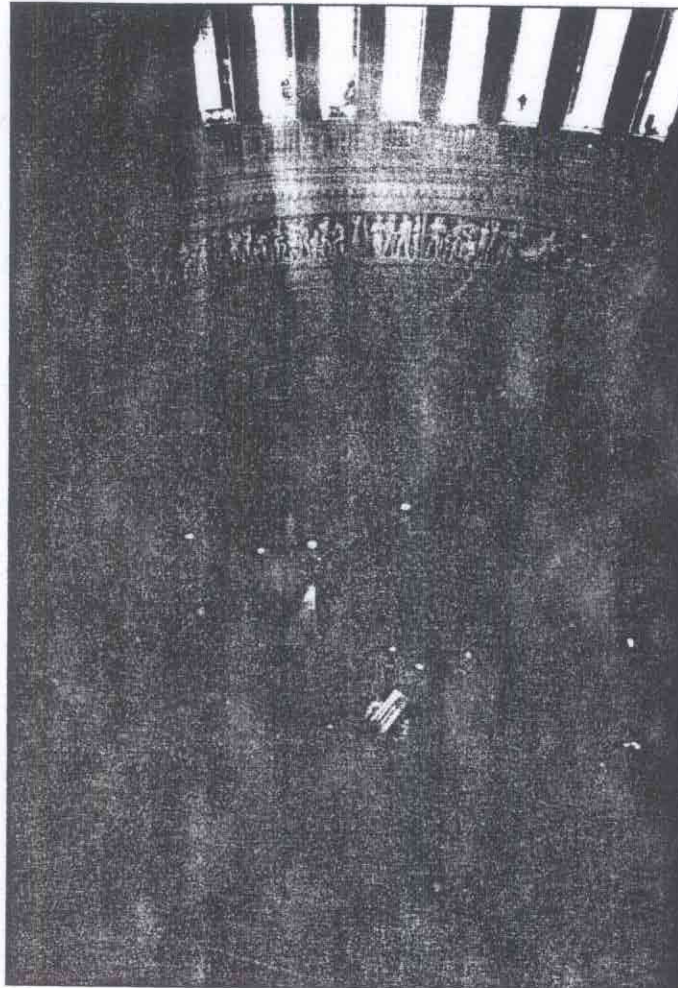
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MONDAY, DECEMBER 23, 1991

JFK CONUNDRUM



UPI/Bettmann

Twenty-eight years after President Kennedy's death, litigation attempting to pry data from reluctant federal agencies continues. Thousands of pages of documents released are in a Washington, D.C., archive run by the main JFK-Freedom of Information Act litigator. Pages 34-36.

Attorney Goodwill Increases

Doors slowly open on sales of law practices.

By RITA HENLEY JENSEN
National Law Journal Staff Reporter

IN SOME states, a lawyer's or a law firm's reputation now is worth cold cash.

In the past two years, several states have opened the door to the commercial sale of a lawyer's practice — and most include goodwill.

At the same time, however, other states are standing on traditional ethics and refusing to permit law firms to be sold.

Historically, codes of professional conduct have barred attorneys or a partnership of attorneys from selling a law practice. And if a law practice cannot be sold, the courts have reasoned in many, but not all cases, that goodwill — the money value of a law practice's reputation — cannot have a market value.

However, in one suit now pending in
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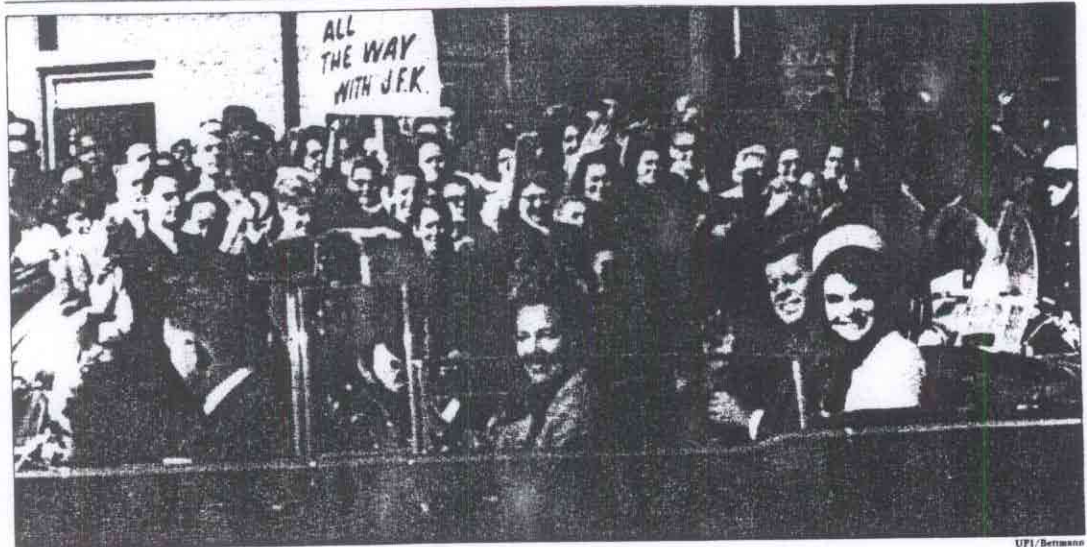
★ New lawyers are tapped for Noriega suits. Also, Newsline, Databook, Court Watch, Moves. Pages 15-19.

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UPI/Bettmann

OPEN QUESTION: The public, as one court put it, has 'an almost unending interest' in the Kennedy assassination. And a majority of Americans — including

some of the lawyers involved in litigation to open up government records — do not buy the Warren Commission's lone-assassin finding.

JFK Conundrum

Lawyers have become litigation pests to bureaucrats for JFK assassination records.

By **ANDREW BLUM**
National Law Journal Staff Reporter

WASHINGTON — Around the corner from Ford's Theater, a small group of lawyers and researchers has gathered what may be the most extensive records outside of government on the assassination of John F. Kennedy.

Situated in a nondescript building near FBI headquarters, the Assassination Archives and Research Center has become a litigation pest to bureaucrats under the Freedom of Information Act, and a resource for scholars, conspiracy buffs and the media examining the official lone-assassin theory of the Warren Commission.

Though national attention usually is focused on the 1963 slaying only on Nov. 22, for the AARC studying it and other assassinations is a full-time vocation. Its most prominent ongoing legal action stems from the 1979 report by the House Select Committee on Assassinations that there likely was another gunman besides Lee Harvey Oswald — and a plot to kill JFK. But the committee went out of existence and its files were sealed for 50 years. Today, 28 years after the assassination, some argue the key may lie there. But ex-HSCA Chief Counsel G. Robert Blakey says there is no evidence in government files that would answer who else was behind such a plot.

After an unsuccessful FOIA request, the AARC took legal action. And since 1981 the House and government agencies have been battling lawsuits seeking the data so the AARC, its members and others can probe the nooks and

* A second cottage industry, Page 35.
* The 'George Bush' link, Page 36.

crannies of government for information on the shooting. The common link in these suits and previous ones is FOIA, enacted in 1966 — and amended in 1974 — and denial of requests.

As with the entire JFK saga, even the HSCA's findings are questioned. Warren Commission counsel David W. Belin says Mr. Blakey, now a professor of law and perhaps best known as the father of the Racketeer Influenced and Corrupt Organizations Act, had a major role in formulating the conspiracy finding, a conclusion Professor Blakey denies. Mr. Belin, now a partner at Dea Moines, Iowa's Belin Harris Helmick Lamson McCormick P.C., derides charges of conspiracy by the CIA or others. Files, he says, should be open to debunk that myth.

That may not satisfy skeptics who

for years have not believed the official assassination account put forth by the Warren Commission. A recent Gallup Poll shows 73 percent of Americans do not believe one man killed JFK. The conflict in theories and the official version have led scholars to seek government records and to sue.

As the U.S. Circuit Court of Appeals for the District of Columbia said in a 1980 decision in a case focusing on a document involving information on Mr. Oswald's visits to Mexico City, the public has "an almost unending interest" in the assassination. *Allen v. CIA*, 636 F.2d 1287.

Mostly FOIA Requests

Examining the history of JFK litigation, one comes upon a veritable who's who of politics and law. George Bush, Professor Blakey, former New Orleans District Attorney Jim Garrison, Mr. Belin, Judge John J. Sirica of Watergate fame, Gerald Ford, Lyndon Johnson, Watergate burglar Frank Sturgis

and J. Edgar Hoover all surface in some way.

The assassination remains a favorite in some 600 books and a number of movies. And now, perhaps most controversially, Oliver Stone's "JFK" is hitting the screens. In it, Kevin Costner plays Mr. Garrison, who brought — and lost — the only assassination-conspiracy case, and who retired Nov. 1 as a Louisiana appeals judge. Mr. Garrison has a cameo role as Supreme Court Chief Justice Earl Warren. The movie is based partly on his book.

Among the FOIA suits, according to "The Assassination of John F. Kennedy: A Comprehensive Historical and Legal Bibliography, 1963-1979," by DeLloyd J. Guh and David R. Wrona (Greenwood Press: Westport, Conn., 1980):

* *Lane v. U.S. Secret Service*, 76-0227 (D.D.C.). A suit by the American Civil Liberties Union on behalf of longtime Warren Commission critic and lawyer Mark Lane sought records under control of the Secret Service and Treasury Department relating to the assassination. Some records were released.

* *Erner v. FBI*, Civ 76-89-S (S.D. Calif.). Judith Exner, who says she was one of JFK's lovers, sued to compel the FBI to disclose records on her. The court ordered the FBI to comply.

* *Fensterwald v. Department of Justice*, 861-72 (D.D.C.). Lawyer Bernard Fensterwald sued for copies of three pictures of an unidentified man shown by federal agents to a Mexican official as the possible person he saw entering the Cuban mission in Mexico City in October 1963. The photographs, part of the Warren Commission record, were released.

* *Levy v. U.S. Secret Service*, 78-0307 (D.D.C.). A private researcher successfully sought 99 documents so he could test JFK evidence.

* *Weisberg v. General Services Administration*, 2052-73 (D.D.C.). Author Harold Weisberg sued for the release of the transcript of an executive sea-

Continued on page 36



PRESERVATION: James H. Lonsar says the archive's goal is not to prove that a conspiracy existed, but to collect and preserve information on assassinations.

In Second JFK Cottage Industry, Lawyers Opine On the Assassination

Beyond all the FOIA litigation, a second cottage industry — that of lawyers opining and writing on various assassination theories — also has consumed a lot of time. The books back sundry conspiracy theories, defend the Warren Commission and claim to solve the crime.

In 1988, ex-New Orleans District Attorney Jim Garrison wrote "On the Trail of the Assassins." It is "not just another of the many books analyzing the dry evidence in the assassination of President Kennedy," he writes. "It is, instead, a chronicle of the experiences of one man who tried to get to the truth about the murder and prosecute those responsible for it."

And while many books have raised questions about the assassination, much of this information remains unknown to the majority of Americans." He says a conspiracy involved the CIA, FBI and state and local officials.

Another lawyer/author, longtime conspiracy buff Mark Lane, wrote "Plausible Denial: Was the CIA Involved in the Assassination of JFK?" in 1991. Writing about his defense of a small magazine sued for libel over a story that Watergate burglar and ex-CIA agent E. Howard Hunt was in Dallas the day of the killing, Mr. Lane says his client was acquitted and the jury believed the possibility that the



David W. Belin



G. Robert Blakey

CIA was involved. CIA spokesman Mark Mansfield says, "There is absolutely no basis for such an allegation."

Another 1991 book, "Act of Treason: The Role of J. Edgar Hoover in the Assassination of President Kennedy," by attorney Mark North, claims Mr. Hoover failed to divulge advance knowledge of a Mafia plot. Mr. Hoover, the author claims, did so to make sure it would succeed. The book says the Carlos Marcello organized crime family of New Orleans was involved in the killing.

But perhaps the most controversial book, "Final Disclosure: The Full Truth About the Assassination of President Kennedy," by Warren Commission counsel David W. Belin in 1988, has led to disagreement between him, Prof. G. Robert Blakey of Notre Dame University Law School and the Assassination Archives and Research Center's James H. Lesar.

Mr. Belin defends the commission but criticizes Professor Blakey and movies for fanning conspiracy flames. Saying a recent Arts & Entertainment TV series ignored doctors whose review of autopsy data led to an unequivocal belief the fatal shots came from the rear, Mr. Belin, adds that "JFK" — the Oliver Stone movie out this month — is "a \$40 million worth of lies." "JFK" distributor Warner Brothers calls it "a landmark."

Conspiracy buffs tend to side with one of three general theories: that the

The various books back sundry conspiracy plots, defend the work of the Warren Commission or claim to solve the crime.

CIA or some intelligence/military group was behind the assassination; organized crime did it; or President Johnson was somehow involved. Also mentioned in connection with them are the failed Bay of Pigs invasion and anger of Cuban exiles, and JFK's plan for withdrawing from Vietnam.

To make the leap from the Warren Commission to any one of the conspiracy theories, Mr. Belin says one has to believe that Jack Ruby executed Mr. Oswald on behalf of other conspirators. But, he says, "Ruby happened upon the scene. If Ruby... were a hitman he would not kill Oswald in plain sight," says Mr. Belin.

Discussing the role of Professor Blakey, Mr. Belin says a preliminary House Select Committee on Assassinations report found that Mr. Oswald acted alone. But, "at the last minute Blakey brought in other acoustics experts from a Boston firm," says Mr. Belin. "They said with a 95 percent degree of accuracy there was a fourth shot." Later, the HSCA said there was a second gunman. Mr. Belin says a minority report found flaws, and he wonders why Professor Blakey did not withdraw the report after outside experts disagreed.

Professor Blakey denies any last-minute change at the HSCA; rather there were two sets of staff findings for the committee to use. One finding showed there was a second gunman who missed.

"We established the validity of the single-shot theory," says Professor Blakey, noting government records will not reveal anything more except for perhaps intelligence sources and operations. And by now, the second shooter "is probably selling hot dogs somewhere."

Professor Blakey says unpublished documents contradict any findings of a conspiracy and the outside experts neither negated the HSCA findings nor confirmed them. The HSCA called for a third test but none was done. Since the HSCA was out of existence it could not come back for any follow-up.

Because there is no evidence to show who was behind that assassination, Professor Blakey says it's better to let it rest. "The man is dead. He's in Arlington. This will not settle anything."

Mr. Lesar calls Professor Blakey an impediment to finding out the truth. "Blakey's protecting his own ass. He's the only one to write a book based on his knowledge of the documents," says Mr. Lesar, referring to the 1981 book "The Plot to Kill the President: Organized Crime Assassinated JFK — The Definitive Story."

Noting that there is a 375-page HSCA staff report on Mr. Oswald's activities in Mexico City, Mr. Lesar says "it's not possible that would not shed light on matters the House documented in its report."

— Andrew Blum

EUROPE 1 • 9 LAW & STRATEGY 9 • 2

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September 15, 1976

NOTE FOR: DDCI

A recent Jack Anderson story referred to a November 1963 (?) CIA cable, the subject matter of which had some UK journalist observing Jack Ruby visiting Trafficante in jail. Is there such a cable? If so I would like to see it.

This is the same cable that Mike Nadign, Minority Counsel for the SSC, has asked for.

CP
George Bush

DIRECTOR'S MEMO: George Bush, while CIA director, inquired about a story on Jack Ruby.

Documents Released Contain References To 'George Bush'

Among the documents uncovered in the search for JFK-related records are references to "George Bush" in the 1960s and a series of memos between him and CIA officials; President Bush headed the CIA from 1976-1977.

In one case, the Washington, D.C.-based Assassination Archives and Research Center sought JFK-related material seen or reviewed by President Bush while at the CIA. Of 20 documents released in 1990, they show "Bush was keenly interested in things relating to the assassination, like news stories," says Mr. Lesar. Among items that showed up were notes on memos between the CIA director and deputies. Assassination Archives and Research Center Inc. v. Central Intelligence Agency, CA 88-2600 (D.D.C.).

Among the notes was one written by Mr. Bush Sept. 15, 1976, to his chief deputy, which referred to a Jack Anderson story on a 1963 CIA cable that an English journalist saw Jack Ruby visit a mob figure in jail. "Is there such a cable?" Mr. Bush asked. "If so I would like to see it."

Another note from Mr. Bush to his deputy was about an Associated Press story on the FOIA release of data about Lee Harvey Oswald and if he was linked to the CIA. "Beymour, will this cause problems for [former CIA Director Richard] Helms?" wrote Mr. Bush.

In a memo to Mr. Bush, a deputy told him about a Washington Star story in which Watergate burglar Frank Sturgis was quoted as saying Mr. Ruby had met with Fidel Castro 10 weeks before the assassination to discuss the "removal of the president." The aide told Mr. Bush that despite Mr. Sturgis' contentions that he worked for the CIA, there was no such relationship. CIA spokesman Mark Mansfield described such memos as "routine matters" for a CIA director.

And, Mr. Lesar notes, the name "George Bush" also came up in other documents. One item released under FOIA says that after the slaying, a George Bush at the CIA was briefed by the FBI on the reaction of Cuban exiles. Another said that a George Bush called the FBI in Texas the day of the slaying to report a threat against JFK by a member of the Young Republicans. The FBI was unavailable for comment. Mr. Mansfield says the George Bush referred to by the FBI "is not the president."

Mr. Mansfield says that in response to the 1988 lawsuit, the CIA "conducted exhaustive searches of its records for information on whether George Herbert Walker Bush... had a relationship with the agency prior to his appointment" as CIA director. The searches, he adds, produced absolutely no such evidence, "and we noted this fact in legal pleadings filed in that case."

— Andrew Blum

Probing Nooks and Crannies For Clues on Kennedy Murder

Continued from page 34

sion of the Warren Commission held on Jan. 27, 1964. It was denied on secrecy grounds, but commission member Gerald R. Ford published part of it in a book. Mr. Weisberg lost and was appealing when the transcript was released. The document, which showed the commission distrusted the FBI, later led to the discrediting of the commission and the formation of the HSCA, according to Mr. Wrons.

Data Collection

The AARC clearinghouse, which has worked with Mr. Weisberg, was founded in 1964 by the late Mr. Fensterwald, a classmate of and speechwriter for JFK and a drafter of FOIA. It is the main JFK-FOIA litigator and is now run by FOIA attorney James H. Lesar, who had worked at Mr. Fensterwald's law firm and with him at the AARC. (The AARC's predecessor was Mr. Fensterwald's Committee to Investigate Assassinations, founded in 1969.)

Mr. Lesar says AARC's goal is not to prove that a conspiracy existed, but to collect and preserve information on assassinations. "A lot of members want to get to the bottom of the JFK assassination, but the official position of the organization is there is no position on that." He says there seems to have been a conspiracy to kill JFK, but beyond that it's speculation.

Whatever its goal, the task is difficult. The AARC faces what it sees as a barrage of red tape and stonewalling by the government over information, FOIA exemption claims, national security assertions and what some have described as officialdom just not wanting to air its old linen in public.

On a recent fall day, the lack of government cooperation seemed far from Mr. Lesar's mind as he gave a quick tour of AARC offices. The offices — a clutter of boxes and file cabinets throughout several rooms — were reminiscent of those of a '60s activist group.

Available to 300 or so members and AARC officials — who include three lawyers and a legal secretary on the 13-member board — are more than 2,000 books on assassinations, intelligence operations, organized crime and narcotics trafficking; 100,000 pages of FBI headquarters files on the assassination; a 48,000-card index to files of the FBI Dallas office on the slaying; 80,000 pages of records the FBI gave to the HSCA, with data on organized crime figures; and an index of 30,000 intelligence-related names.

Despite this mass of information, the AARC believes the public record is incomplete and is pressing for more documents from federal agencies. Current targets for documents are the House, the CIA, the Department of Defense and the FBI. So far, about 200,000 pages of JFK documents have been released.

"At least that many more are still out there," Mr. Lesar says.

Reasons for Secrecy

One of the government's key objections to releasing more documents, Mr. Lesar says, is that intelligence-gathering operations would be compromised. He is now handling two cases in federal court here seeking documents from the House, DOD, the CIA and the FBI on behalf of Mark A. Allen, an attorney and AARC member. "With the Cold War over, what is the rationale for holding on to a lot of this stuff?" says Mr. Lesar.

In one case, U.S. District Judge Thomas A. Flannery said on Nov. 4 the AARC has until January to select documents for a "Vaughan Index" review that will use 100 documents to test government exemption claims only in this case. Mr. Lesar says the CIA has released 3,000 to 4,000 documents, many of them news clippings, but is withholding "98 to 99 percent of the material." The CIA is believed to have given thousands more pages to the House. Allen v. Department of Defense, 81-2543.

CIA spokesman Mark Mansfield and Justice Department attorney Richard R. Brown declined to comment on the case. But in an Aug. 5 status report with the court, the CIA said it recently processed 2,400 documents, 139 of which were referred to other agencies for handling. The CIA said it asked them to expedite processing. In July, the CIA said that among records referred to other agencies or coordinated with CIA records since June 1988 are seven CIA, 94 FBI, 35 State Department and four Secret Service documents.

Of House documents, 800 boxes are sealed at the National Archives, and Mr. Lesar says short of winning the case, the only way to open them is a House resolution.

The House has supported its right to keep files secret by claiming the clerk is vested with that power under House rules, and other agencies ought not

release any data that includes those. According to Mike Murray, senior assistant counsel to the clerk, the House is no longer an active defendant, having been dismissed because of its FOIA exemption.

In a glimpse at how red tape can sometimes work to the government's advantage — especially when agencies are dragged into litigation — the CIA said in earlier court papers that when the plaintiff sought records pertaining to the HSCA, he did not specifically request access to the CIA's segregated collection of HSCA-related materials. "Accordingly, when the CIA received plaintiff's FOIA request, its only obligation was to search for possibly responsive documents in those components or records systems reasonably likely to possess or contain responsive documents."

'Antithetical' to FOIA

Mr. Lesar doesn't buy that argument or the CIA claim that release of the material would not be "of significant benefit or usefulness to the public." That, he says, puts the CIA "in the position of determining what is important for the American people to know. This... is antithetical to the... FOIA."

Yet another defense, by the DOD's Defense Intelligence Agency, is that people would not want their names publicly connected with the JFK probe. "Neither the public's understanding of the HSCA's investigation nor its insight into the Kennedy assassination would be further enhanced by knowing the identities of individuals about whom the HSCA inquired to the DIA," a defense motion said. The DIA added that "to have one's name associated with an investigation of the assassination of a sitting President of the United States and thus be subject to nationwide media attention... is beyond doubt a clearly unwarranted invasion of personal privacy."

Asking for unredacted materials, the plaintiff argues the Warren Commission — most of whose documents are now public — and HSCA list more than 3,300 names. "In view of this, it is virtually inevitable that at least some of the names deleted by the DIA are publicly known to have had some connection with the various investigations," says a brief by Mr. Lesar. "There has always been, and there will be always be, an overriding public interest in the fullest possible disclosure of information concerning all aspects of this tragedy."

In the other Allen case, the FBI is withholding 20 percent to 25 percent of the material, says Mr. Lesar. Allen v. Federal Bureau of Investigation, 81-1206.

The FBI claimed in an Aug. 15 status report that 29 agencies were involved in consultation review of documents. To date, it added, about 31 percent of FBI documents referred to other agencies were returned to the FBI and provided to the plaintiff or withheld pursuant to FOIA exemptions. The FBI noted that the parties were discussing narrowing the case's scope.

Withholding Information

One of the more curious FOIA requests was made by Warren Commission defender Mr. Belin, who in 1978 sought CIA records. He had served on the Rockefeller Commission, which probed CIA activities, and used FOIA to check on the availability of documents he saw when on the commission and which he knew contained no secrets. He got little. "I knew how little I got because I'd already seen it."

The Rockefeller Commission found that the CIA had withheld data from the Warren Commission on its assassination plots against Fidel Castro. The CIA had said that the material was classified. "My response was that at the time of the Warren Commission investigation they had an obligation... to disclose everything," says Mr. Belin. "They failed to do this, and when they failed they do not have clean hands to come into court to say, 'We can't do it.' Now they should pay the penalty."

Oliver Stone's "JFK" likely will rekindle the public debate over the assassination. In the film's plot, Mr. Garrison's true story plays a pivotal role. Suffering from heart trouble, he declined through his chambers to give an interview, but the former DA remains convinced there was a conspiracy. In 1968, Mr. Garrison unsuccessfully prosecuted New Orleans businessman Clay Shaw on conspiracy charges.

Mr. Lesar says the film also may bring crackpots out of the woodwork. Still, he remains anxious to pursue information about the assassination. In a 1984 letter to the Justice Department decrying delays, he said: "In light of... the government's 20-year history of resisting all efforts to obtain the honest and thorough investigation that is needed, there is a strong argument to be made for maximum possible public disclosure."