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The Kennedy Assassination in the Age of Open Secrets

 Kermit L. Hall *or ARRB*
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See also Anna K. Nelson, "JFK Assassination Records Review Board Releases Top Secret Records", *OAH Newsletter*, 26 (February).

Introduction

No event in twentieth-century American history has generated such persistent notions of conspiracy as the assassination of President John F. Kennedy. More than 400 books have been published on the subject; a major newsletter provides a continuing flow of new theories about the assassination; and a national organization, the Coalition on Political Assassinations, meets annually to debate the murder. Oliver Stone elevated the idea of conspiracy to epic proportions in the film *JFK*. That movie claims, among other things, that Lee Harvey Oswald did not act alone; instead, he was part of a plot hatched by the Central Intelligence Agency in collaboration with organized crime, the Federal Bureau of Investigation, and various other elements of the American government.

The Kennedy assassination presents us with an intriguing question: How, in a democracy, can we promote the openness necessary to conduct our public affairs while maintaining a level of secrecy appropriate to conduct those affairs successfully? As historians we believe that gaining access to secret documents is vital; as a citizen we worry about the cost to our security of broken confidences. As Justice Robert Jackson once observed, the Constitution is not a suicide pact.

The Business of Secrecy

Today, keeping information secret has become a huge industry in Washington. According to official estimates, in 1994 the government took 6.3 million classification actions, creating an estimated 19 million pages of information that only selected government officials can see. More than 32,000 government workers are employed full time to determine what should be secret, what level of secrecy the material should have, and whether the documents should be classified. There are hundreds of millions of pages of secret documents held by the government; indeed, the precise number has gone beyond the ability of the government to count.

The problem of what to do with classified documents is strangling some government agencies. Take, for example, the Department of Energy. For more than 50 years the department followed a scheme of classification that might best be called 'classified at birth.' Any document generated was presumed secret until proved otherwise. The department itself and its civilian contractors, have literally lost track of what needs to be kept quiet. Even more fundamental, what is genuinely in need of protection--the design of weapons and such--is lost in an ocean of documents no longer worthy of classified status, if they ever were.

The Clinton administration attempted in April 1995 to break this classification log jam. The President issued an executive order aimed at opening government's oldest secrets to public view in order to reduce the number of documents made secret and shorten the number of years they remain classified.

How well the new system will work remains to be seen. Presidents come and presidents go, but the security bureaucracy lives on. Not only do the intelligence agencies grumble about having to make public that which is most precious to them, but they plausibly argue that such declassification is costly and time consuming, especially in a time of diminished resources. In the case of the assassination of President Kennedy and its subsequent investigations, these issues--accountability, openness, and the need to protect national security interests--have become particularly thorny.

The Warren Commission

The Warren Commission and its report stand at the center of almost all Kennedy conspiracy theories and the debate about what Americans should and should not know about their government's intelligence activities. One year after the assassination, seven sober-minded Americans headed by Chief Justice Earl Warren issued their report, which initially received strong support. Before it was released only 29 percent of the public, according to polling data, believed that Oswald alone was responsible; following its release a year later, in 1964, that number increased to 87 percent; two years later, in 1966, only 36 percent of Americans indicated they believed the report. By the time *JFK* opened in the movie houses of America, public confidence in the Commission's report had sunk even further, with about 70 percent of Americans concluding that Oswald did not act alone. The movie, therefore, tapped a deep well-spring of distrust of the investigation rather than, as is sometimes implied, fostering it.

Events between 1964 and 1992 did much to undermine the trust in the *Warren Commission Report*. An assassination research community quickly appeared that raised troubling questions about the report and propagated theories of conspiracy. Books entitled *White Wash*, *Contract on America*, *Conspiracy*, and *Rush to Judgment* eroded the credibility of the Commission's findings as did the political killings of Robert F. Kennedy, Martin Luther King, Jr., and Malcolm X.

Under such circumstances, the Warren Commission's report would have been subjected to reevaluation even if it had been done perfectly. And, of course, it was not.

The Warren Commission, as Max Holland reminds us, labored at the height of the Cold War. As a result, the Commissioners adopted a strategy that depended on implicit public trust. The Cold War environment combined with other circumstances to handicap the Warren Commission and eventually erode that public trust in five significant ways.

First, the Commission had access to an enormous amount of information that was not otherwise available to the American press and public. This information was secret, top secret, and beyond, much of it compartmentalized cryptologic and signals intelligence material dealing with the Soviet Union, Cuba, or other foreign governments, such as The Peoples Republic of China. Because of the enormous paranoia generated by the Cold War and the requirement to maintain tight secrecy around the sources and the methods used to collect this information, the Commission could not argue its case fully to the American people. Its inability to do so meant that when the research community asserted that the government itself had been implicated in the deed, the evidence that the Commission had used to discount such a possibility was available only to the government charged by some critics with having abetted the crime. The costs of secrecy was uncertainty, an uncertainty that turned to cynicism, much of it based on theories about the assassination that gained legitimacy simply because they could not be tested against the appropriate evidence.

Second, while the Commission had access to high quality intelligence information, it did not receive everything. The CIA, the FBI, and Attorney General Robert Kennedy failed to reveal information that would have helped to identify a motive for a conspiracy.

Three members of the Commission--Richard Russell, Allen Dulles, and John J. McCloy--were fully conversant with national security issues and the sources and methods used by the intelligence services. The success of the Commission depended, in part, on the ability of these three members to raise the right questions. They seem not to have done so. The Commission, for example, never discovered the existence of Operation Mongoose, a covert scheme concocted by JFK, his brother, Attorney General Robert Kennedy, and the CIA to assassinate Fidel Castro with the help of organized crime. When these plans reached the public several years later, critics of the Warren Commission had a field day. The Commission's conclusion that a foreign government lacked a sufficient motive to murder the president now crumbled. Indeed, the Commission looked silly and, even worse, culpable, since its critics could plausibly assert that its distinguished members should have guessed at such a possibility. Ironically, as recently disclosed documents indicate, the CIA deployed its network of contacts throughout the world to persuade the press and media that the Warren Commission--with which it had been less than forthcoming--had done its job well.

Third, President Lyndon Johnson in appointing the Commission had one goal--to check rumors that the assassination was a Communist plot. Johnson, appropriately enough, feared that Kennedy's murder could precipitate World War Three. Oswald's time in the Soviet Union and his trip to Mexico City to visit the Soviet Embassy only weeks before the murder pointed to communist intrigue. Such concerns were amplified because Oswald had identified himself with the Fair Play for Cuba Committee, an organization openly supportive of Castro and sharply critical of Kennedy's Cuba policy. As a result, the Commission was under enormous pressure to produce an answer that discounted foreign influence.

Fourth, as the science of forensic analysis has progressed over the past three decades, questions have inevitably arisen about the Warren Commission's conclusions involving the president's body, the weapon allegedly used by Oswald, the number and sequencing of the shots fired at the president, and the condition of the so-called magic bullet that passed through the President and Governor John Connolly with a minimum amount of damage. We know now that the autopsy performed on the president was problematic, both in technique and organization. Yet the Commission relied on it. On other matters the application of new forms of analysis has been generally supportive of the Commission's findings, although it now appears that the sequencing of the shots fired in Dealey Plaza was somewhat different from that described by the Commission. Yet even when the latest techniques corroborate the Commission's findings, the result has not been greater confidence in those findings, but a belief, instead, that the Commission got it wrong instead of almost getting it right.

Fifth, the Warren Commission report-- all 888 pages of it -- was the work of lawyers, who not only dominated the Commission but also its staff, the true authors of the report. The final document reads like a brief for the idea that Oswald committed the crime rather than a dispassionate analysis of all of the possibilities involved in the murder, some of which the Commission itself had no knowledge. The report was a mound of facts that obscured the issue of Oswald's motivation and portrayed him as a sullen, dysfunctional, and troubled loner. In so doing, the Commission left open the opportunity for subsequent critics to complain that Oswald was a patsy who did not act alone.

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The report began to sink shortly after its release. Researchers used the massive details assembled by the Commission to challenge its assumptions and findings. The veil of secrecy thrown over the intelligence sources, however, prevented the commissioners and their defenders from rebutting their detractors. The Commission's Cold-War induced commitment to secrecy inextricably linked its seven members to the intelligence community, and when that community subsequently came under attack the Commission's

reputation suffered as well.

Other Investigations of the Assassination

follow

Between 1964 and 1979 the American intelligence services were subjected to unparalleled scrutiny, much of it fueled by the CIA's and FBI's ties to the Watergate debacle and revelations of domestic political surveillance by both agencies and the military intelligence services. There were four other federal investigations that in dealing with these issues also treated the Kennedy assassination. In the mid-1970s the Rockefeller Commission, the Pike Committee, and the Church Committee issued reports that touched on matters relating to the assassination and provided, most spectacularly, information about Operation Mongoose, plans by the CIA to destabilize the Cuban government, murder Castro and other leaders of hostile foreign nations, and rely on organized crime to assist with both.

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The most powerful of the post-Warren Commission inquiries was the House Select Committee on Assassinations (HSCA) that in 1976 reopened the investigation seemingly closed a dozen years earlier. The committee, chaired by Congressman Louis Stokes of Ohio, explored several controversial areas of Kennedy's assassination and those of Robert Kennedy and Reverend King. The HSCA suffered from its own limitations, but its conclusions, which now seem themselves under question, held that a conspiracy to kill the President could not be ruled out, a finding that challenged the Warren Commission directly.

The HSCA exhausted its funds before it could complete its tasks, leaving behind mounds of records, including those dealing with organized crime, that it had subpoenaed but been unable to process. Today these materials are one of the chief objects of the John F. Kennedy Assassination Records Review Board.

The Assassination Records Review Board

The findings of these investigations inspired Oliver Stone's 1991 movie. Without endorsing the movie's sensational conclusions, many members of Congress decided that Washington's refusal to release classified information about the assassination promoted an unhealthy level of distrust in government. As a result, Congress in 1992 passed the President John F. Kennedy Assassination Records Collection Act, which mandated the creation of the five-person Review Board. The act orders all federal agencies to assess whether they possess records relating to the assassination. All records deemed by an agency as **not** suitable for immediate release are subject to evaluation by the Board. All records identified as relating to the assassination must be opened by 2017, with the exception of records certified for continued postponement by the President.

The act defines several categories of information for which disclosure may be postponed, including national security, intelligence gathering, personal privacy, and presidential security. To postpone the disclosure of material, however, the Board must be persuaded that there is "clear and convincing evidence" of some harm that outweighs the public's interest, since the act declares a "presumption of immediate disclosure" of all assassination records.

Congress intended for the Board to oversee the opening to the public of a substantial amount of material -- perhaps in the millions of pages. To that end, Congress clothed the Board with broad subpoena and other powers.

The Board is without precedent in American history, with powers that reach far beyond, for example, the Freedom of Information Act. The Board's only task is to make the public record of one epic historical event as complete as possible.

While the Board's mission is clear, in executing the law it confronts daily the powerful tensions generated by the competing claims of openness on the one hand and secrecy on the other. To choose is to lead, and the Board, in attempting to break new ground in the area of public disclosure, confronts some profound choices. Those choices have to be informed, moreover, by a shrewd assessment of the public's right to know, the public's need to have secrets vital to our national security protected, and the intelligence services' duty to safeguard those secrets and the sources and methods that produce them.

The most difficult choices before the Board involve the disposition of parts or all of classified intelligence documents. Remember, if an agency of the federal government wants to open materials, it is not the Board's duty to stop it. Rather, the Board's most important task is to decide what should **not** be opened immediately, doing so in light of the act's powerful admonition that there be clear and convincing evidence in favor of postponement. In simplest terms, the Board has to decide whether materials, if opened, would reveal:

First, the existence of an intelligence agent who currently requires protection;

Second, an intelligence source or method currently being utilized or reasonably expected to be utilized, the disclosure of which would interfere with the conduct of intelligence activities; and

Third, any other matter currently relating to the military defense, intelligence operations, or the conduct of foreign affairs, the disclosure of which would demonstrably impair national security.

The act provides other grounds for postponement. These include exposure of an informant to a substantial risk of harm; exposure of a person to an unwarranted invasion of privacy; the possibility of compromising a relationship between a United States government agent and a confidential source; and the revelation of a security procedure utilized to protect the president.

Progress

Some fifteen months ago, the JFK Board released to the public the first of more than 2,300 documents that have subsequently been made available. The release was historic. For the first time, a group of five private citizens told the federal government that previously secret information had to be made public. Since then the Board has brought directly into public light a wide range of materials dealing with the assassination. The precedents set by the Board in its decisions to release these documents have resulted in federal agencies, such as the CIA and the FBI, releasing documents rather than seeking to postpone records in whole or in part. Under the terms of the JFK Act, moreover, literally hundreds of thousands of pages of documents have been placed in the Kennedy Assassination Collection at the National Archives.

While the documents released so far do not include any "smoking guns," they do provide important new information about events leading to and following the assassination. For example, they include the following:

--A top secret 1964 FBI document in which Director J. Edgar Hoover informed J. Lee Rankin, General Counsel to the Warren Commission, about Fidel Castro's efforts to duplicate the events in Dallas to learn if, in fact, it was possible for Lee Harvey Oswald to have committed the crime. Castro concluded that it was not. As interesting, the document makes clear that the U.S. government had sources sufficiently well placed in Cuba to make this assessment in the first place.

--Another 1964 FBI document that details the analysis done by the KGB's American operations of the assassination. The document reveals the extent to which the American intelligence services had

penetrated the KGB in this country and underscores the fact that the Russian intelligence service believed that President Lyndon Johnson had likely masterminded the operation.

--A cable sent from the Director of the CIA on November 23, 1963, only hours after the murder of the President, seeking information about a surveillance operation conducted in Mexico City, most notably whether tapes and transcripts of Oswald speaking with Soviet and Cuban officials existed. The Board has also released a related document that raises anew the debate about whether tapes of those conversations were sent to Washington in the wake of the assassination.

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--The Lopez Report, compiled in 1978 by Edwin Lopez, a senior staff investigator for the House Select Committee on Assassinations, has been released with few redactions. It contains extensive information about intelligence operations in Mexico at the time of the assassination and answers several outstanding questions about Oswald's actions while he was there.

The Board has essentially completed review of the CIA's Oswald 201 File. These records constitute the core collection of CIA records that previously have been identified as assassination records. The Board has conducted a word-by-word review of each of the postponements to documents in this collection requested by the CIA and in only a handful of instances did the Board decide to sustain them.

The Board has also conducted a similar review of FBI records. There, however, the process has been slower and the propensity of the Bureau to appeal Board decisions far greater. Until mid-December, 1996, the FBI had brought more than 43 pending appeals before President Clinton. However, shortly before the Bureau announced the spying activities of Earl Edwin Pitts, it withdrew most of these appeals and indicated that it was reevaluating the others. The Bureau originally claimed that the release of these documents would have undermined its ability to recruit and maintain a network of informants and operatives, that their methods of operation would be compromised, and that, in any case, the public's interest in these materials as assassination records was offset by the public's need to be confident that the FBI could keep its secrets.

The Board is now turning its attention to several other areas. It has begun the daunting task of unraveling all of the records left by the HSCA. Among the most important records in the HSCA collection are those relating to the role of organized crime in the assassination, a matter that has shadowed the Kennedy assassination for the past quarter century. Moreover, the HSCA staff gathered a larger amount of material than it was able to analyze completely. All of these materials have value not just in helping us understand the assassination, but also the investigations that followed it.

The Board has also begun review of the CIA's so-called Sequestered (or Segregated) Collection. This collection comprises approximately 300,000 pages of records that the HSCA requested access to during its investigation. It is known as the "sequestered collection" because, at the end of the HSCA's investigation, its General Counsel, G. Robert Blakey, negotiated a deal with the CIA which required it to maintain the records that the HSCA had requested in a special collection for thirty years.

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The Sequestered Collection clearly has value for understanding the assassination. It contains, for example, materials relating to organized crime figures, Cuban exile activities, the investigation conducted by New Orleans District Attorney Jim Garrison, and a range of other issues that stirred the HSCA's investigatory fancy. Of the last of these, some have relevance to the assassination, others clearly do not. Yet they are all related to the assassination, and therefore assassination records, because the HSCA, an entity of the federal government investigating the Kennedy murder, requested them. Doing the word-by-word analysis required of these documents will consume a considerable amount of the Board's time, energy, and resources. These materials also raise, perhaps even more than was the case

with the Oswald 201 file, issues of great sensitivity to the CIA in particular and the intelligence community in general. Sifting quickly through the wheat and chaff of these records is essential if the Board is to complete the review of them by the time its commission expires in October, 1997.

As important, the Board hopes to have time to work with the CIA and the FBI to explore other records relating to counterintelligence and related activities directed at various foreign and domestic groups not included in the main collections. So, far, for example, the Board has encountered few records involving James Angleton, one of the CIA's legendary figures. The Board, however, concluded early on that it had to address the core collections, since they were of high interest to researchers. Nonetheless, the recent discovery of a large collection of materials dealing with the assassination assembled by Russell Holmes, who worked as a file manager for the CIA, prompts some members of the Board to believe that there are still other documents collections in the Agency that deserve close scrutiny.

The JFK Act also directs the Board to attempt to secure records relating to the assassination that are held by foreign governments. In November, 1996, a Board delegation visited KGB headquarters in Minsk, Belarus, in an effort to identify and then secure copies of documents relating to Oswald's time there. The author Norman Mailer relied on KGB surveillance materials to compile *Oswald's Tale*, an analysis of the character and behavior of Lee Harvey Oswald. The records Mailer used, however, have not been made available to the public and their authenticity as a result will remain in doubt until they are subjected to scrutiny. The KGB showed the Board six volumes of materials that it had gathered on Oswald and indicated its interest in negotiating an agreement to make copies of them available. In Moscow, the Board secured a promise of cooperation from the director of the archives of the Foreign Ministry to explore their records holdings. The Ministry also gave the Board five documents as examples of the kinds of materials it holds. Finally, the Board has initiated contacts with representatives of the Cuban government in the hope of winning its cooperation.

The Board also remains locked in a legal battle with New Orleans District Attorney Harry Connick, Sr. Following a public hearing in New Orleans in the summer of 1995, the Board received a large box of materials containing the grand jury proceedings in the case brought by Jim Garrison against Clay Shaw. That proceeding, of course, forms the background for Oliver Stone's movie. The Board has yet to examine and determine the fate of these documents as well as others from Connick's office which are now being reviewed by the federal courts in Louisiana. The Board, however, has gained access to an extensive set of materials from the New Orleans Metropolitan Crime Commission that will soon be added to the JFK Collection.

Finally, the Board has secured new photographic evidence and medical testimony related to the assassination. With the cooperation of CBS News, it has made public previously unseen out-takes from a television cameraman the day of the assassination. In addition, the Board also released film taken by Dave Powers, a trusted Kennedy aide, made during the trip to Dallas. Powers' camera ran out of film only minutes before the shooting in Dealey Plaza.

The Board has taken a number of depositions under oath from various medical personnel, including some of the attending physicians, involved in the autopsy conducted on President Kennedy. Those depositions will be open to researchers in the next several months once processing is completed.

The Virulence of the National Appetite for Bogus Revelation

H. L. Mencken once ridiculed "the virulence of the national appetite for bogus revelation." Little has changed since Mencken's time. The Review Board is a unique and, in many ways, unprecedented institution in American history to deal precisely with the problem Mencken identified. Never before has

a group of private citizens been given the opportunity to bring some order to the record of one great historical event. The Board, we should remember, is not charged with answering the question of who murdered President Kennedy. It is not running an investigation; it is, instead, seeking to disclose documents in an age of open secrets, an age in which we have come to embrace the idea that openness is to be preferred and that accountability is the touchstone for public confidence in government. Full disclosure is more desirable than partial, and the more we know about what government has done, is doing, and plans to do, the more secure we will be in our liberties.

Yet the intelligence community charged with making the case for secrecy often does so as a matter of routine rooted in tradition. Secrecy in a democracy deserves better, since it cannot be an end in itself and certainly cannot be justified simply to obscure the intelligence services that generate much of it in the first place. Such an approach is ultimately self-defeating, both for our clandestine services and for the government they serve.

What Americans require is a greater sense that they can trust their government to protect the secrets that are genuinely important. The government's persistent inability to distinguish between what is vital and what is peripheral lies at the heart of the debate about openness and secrecy in government, the historical verdict on the Kennedy assassination, and the legitimacy of our intelligence services in an admittedly dangerous world. The Board is essential because it is able to make the case for openness, and at the same time accept the importance of secrets in a democracy and, in so doing, be able to protect what is truly valuable and, thereby, in the public interest.

Kermit L. Hall is the Dean of the College of Humanities, the Executive Dean of the Colleges of Arts and Sciences, and Professor of History and Law at The Ohio State University, and was nominated by the OAH to serve on the Assassination Records Review Board.