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Articles

THE VIRULENCE OF THE NATIONAL APPETITE FOR BOGUS REVELATION

KERMIT L. HALL*

INTRODUCTION

The specter of conspiracy has haunted Americans throughout the second half of the twentieth century.¹ In the 1950s, Senator Joseph

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For the title of this Article, I am indebted to one of Baltimore's favorite citizens, H.L. Mencken, who, in another context, commented on "the virulence of the racial appetite for bogus revelation." H.L. MENCKEN, *A BOOK OF PREFACES* 23-24 (1917).

1. This phenomenon is not unique to the modern era. There are many comprehensive historical accounts of the specter of conspiracy in America. *See, e.g.*, VIRGINIA CARMICHAEL, *FRAMING HISTORY: THE ROSENBERG STORY AND THE COLD WAR* (1993) (analyzing and tracing the "politically motivated production of the official Rosenberg story and the historical and cultural critiques performed by its re-presentation in literature, drama and the visual arts"); DAVID BRION DAVIS, *THE SLAVE POWER CONSPIRACY AND THE PARANOID STYLE* (1969) (discussing the theory that slaveowners conspired against the rest of the country); *THE FEAR OF CONSPIRACY: IMAGES OF UN-AMERICAN SUBVERSION FROM THE REVOLUTION TO THE PRESENT* xxiii (David Brion Davis ed., 1971) ("[T]he main purpose of this book is to use images of conspiracy and subversion as a means of studying American tensions, values, and expectations . . ."); RICHARD HOFSTADER, *THE PARANOID STYLE IN AMERICAN POLITICS AND OTHER ESSAYS* (1965) (examining the popularity of conspiracy theories); GEORGE JOHNSON, *ARCHITECTS OF FEAR: CONSPIRACY THEORIES AND PARANOIA IN AMERICAN POLITICS* (1983) (demystifying conspiracy theorists and the objects of their theo-

McCarthy's Communist conspiracy theory—the "second Red Scare"—traumatized the nation and destroyed lives.² More recently, David Irving's explanation of the Holocaust as an enormous historical fabrication³ has defied logic and distorted reality.⁴ Even Abraham Lincoln rests uneasily in his grave, as theorists of his murder advance plots so tangled that only the exhumation of John Wilkes Booth's bones can unravel them.⁵

These are compelling examples of the American appetite for intrigue, but no other event in twentieth-century American history has generated such persistent notions of conspiracy as the assassination of President John F. Kennedy. More than four hundred books have been published on the subject;⁶ a major newsletter provides a continu-

ries); DONALD J. LISIO, *THE PRESIDENT AND PROTEST: HOOVER, CONSPIRACY, AND THE BONUS RIOT* (1974) (arguing that the proliferation of conspiracy theories causes "gross distortions" in our understanding of the Bonus Riot and Hoover's presidency); MICHAEL SAYERS & ALBERT E. KAHN, *THE GREAT CONSPIRACY: THE SECRET WAR AGAINST SOVIET RUSSIA* (1946) (recounting the history of espionage in the Soviet Union from 1917 to 1945).

2. DAVID M. OSHINSKY, *A CONSPIRACY SO IMMENSE: THE WORLD OF JOE MCCARTHY* 102 (1983) (chronicling the life of Joseph McCarthy and the effects of the "second Red Scare" on the American psyche).

3. See DAVID IRVING, *GOEBBELS* (1996); see also ARTHUR R. BUTZ, *THE HOAX OF THE TWENTIETH CENTURY: THE CASE AGAINST THE PRESUMED EXTERMINATION OF EUROPEAN JEWRY* 8 (1976) (calling the Holocaust a hoax and a "monstrous lie").

4. See DEBORAH E. LIPSTADT, *DENYING THE HOLOCAUST: THE GROWING ASSAULT ON TRUTH AND MEMORY* (1993) (examining and discrediting the arguments of Holocaust deniers).

5. See Edward Collmore, *The Search for Lincoln's Assassin*, PHILA. INQUIRER, Apr. 28, 1992, at C1, available in LEXIS, Nexis Library, Newspaper File; *Dentist Examines Lincoln Slaying: Seeks to Exhume Body Buried As Booth's, Compare Teeth with Record*, ST. LOUIS POST-DISPATCH, Apr. 18, 1994, (Illinois) at 6, available in 1994 WL 8195597; *Hmm, How Do We Really Know Who's Buried in Grant's Tomb?*, WASH. TIMES, Nov. 14, 1992, at C2, available in LEXIS, Nexis Library, Newspaper File; *Our American Corpses*, WASH. TIMES, Mar. 18, 1992, at F2, available in LEXIS, Nexis Library, Newspaper File; *Who's Buried in John Wilkes Booth's Tomb?*, U.P.I., Sept. 26, 1991, available in LEXIS, Nexis Library, UPI File.

6. See, e.g., ROBERT SAM ANSON, "THEY'VE KILLED THE PRESIDENT!": *THE SEARCH FOR THE MURDERERS OF JOHN F. KENNEDY* (1975) (calling for a new investigation of JFK's assassination); G. ROBERT BLAKEY & RICHARD BILLINGS, *THE PLOT TO KILL THE PRESIDENT* (1981) (explaining the conclusion of the Select Committee on Assassinations that organized crime was behind the plot to kill JFK); JOHN DAVIS, *MAFIA KINGFISH: CARLOS MARCELLO AND THE ASSASSINATION OF JOHN F. KENNEDY* (1989) (examining the theory that the New Orleans Mafia was behind JFK's assassination); EDWARD JAY EPSTEIN, *THE ASSASSINATION CHRONICLES: INQUEST, COUNTERPLOT, AND LEGEND* (1992) [hereinafter EPSTEIN, TRILOGY] (trilogy examining the *Warren Commission Report*, the investigation conducted by New Orleans District Attorney Jim Garrison, and the life of Lee Harvey Oswald); ROBERT J. GRODEN & HARRISON EDWARD LIVINGSTONE, *HIGH TREASON: THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY: WHAT REALLY HAPPENED* (1989) (claiming that the CIA, organized crime, and right-wing politicians killed JFK); HENRY HURT, *REASONABLE DOUBT* (1985) (concluding that Oswald did not act alone); MARK LANE, *RUSH TO JUDGMENT* (1986) (arguing that the Warren Commission admitted hearsay and ignored important evidence); DAVID S. LIPTON, *BEST EVIDENCE: DISGUISE AND DECEPTION IN THE ASSASSINATION OF JOHN F. KENNEDY* (1981)

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ing flow of new theories about the assassination;⁷ and a national organization, the Coalition on Political Assassinations, meets annually to debate the murder.⁸ Oliver Stone elevated the idea of conspiracy to epic proportions in the film *JFK*.⁹ That movie claims, among other things, that Lee Harvey Oswald did not act alone; rather, he was part of a plot hatched by the Central Intelligence Agency (CIA) in collaboration with organized crime, the Federal Bureau of Investigation (FBI), and other elements of the American government.¹⁰ Stone's follow-up to *JFK*, *Nixon*,¹¹ echoes this theme, intimating a connection between the Cuban burglars of the Watergate complex and the assassination of President Kennedy.¹²

(concluding that a second bullet was removed from JFK's head); JOHN NEWMAN, OSWALD AND THE CIA (1995) (arguing that the CIA was interested in Oswald since 1959, and that, "whether witting or not, Oswald became involved in CIA operations"); GERALD L. POSNER, CASE CLOSED: LEE HARVEY OSWALD AND THE ASSASSINATION OF JFK (1993) (concluding that Oswald acted alone); FRANK RAGANO & SELWYN RAAN, MOB LAWYER (1994) (identifying Mafia bosses who planned JFK's assassination); HAROLD WEISBERG, FRAME-UP: THE MARTIN LUTHER KING/JAMES EARL RAY CASE (1971) (drawing a parallel between the JFK conspiracy and the "framing" of James Earl Ray in Dr. King's murder).

7. See OPEN SECRETS (Coalition on Political Assassinations, Washington, D.C.), Aug. 1994.

8. See John Hanchette, *JFK Conspiracy Theorists Announce October Convention*, GANNETT NEWS SERVICE, Sept. 26, 1994, available in 1994 WL 11247865; *Washington Daybook; Today's Headliners*, WASH. TIMES, Oct. 20, 1995, at A11.

9. *JFK* (Warner Bros. 1991).

10. See David Ansen, *A Troublemaker for Our Times*, NEWSWEEK, Dec. 23, 1991, at 50; Robert Brustein, *JFK*, NEW REPUBLIC, Jan. 27, 1992, at 26, available in LEXIS, Nexis Library, Magazine File; Richard Corliss, *Who Killed JFK?*, TIME, Dec. 23, 1991, at 66, available in 1991 WL 3116696; Stuart Klawans, *JFK*, NATION, Jan. 20, 1992, at 62, available in LEXIS, Nexis Library, Magazine File; John Simon, *JFK*, NAT'L REV., Mar. 2, 1992, at 54, available in LEXIS, Nexis Library, Magazine File; Jay Carr, *Oliver Stone's 'JFK' Fights the Right Fight*, BOSTON GLOBE, Dec. 20, 1991, Arts & Film at 53, available in 1991 WL 7514478; Renee Loth, *Oliver Stone's 'JFK' Reopens Old Wounds in a Society That Often Views Life Through Pop Culture: Film May Force Reexamination*, BOSTON GLOBE, Dec. 22, 1991, at A19, available in 1991 WL 7514694; Kenneth Turan, *'JFK': Conspiracy in the Cross Hairs*, L.A. TIMES, Dec. 20, 1991, at F2, available in 1001 WL 2190825; *Crossfire* (CNN television broadcast, Dec. 23, 1992), available in LEXIS, Nexis Library, Transcript File.

11. *NIXON* (Walt Disney 1995).

12. See Stanley Kauffmann, *Cast of Character*, NEW REPUBLIC, Jan. 22, 1996, at 26; Christopher Sharrett, *Nixon*, USA TODAY, May 1996, Magazine at 49; Jay Carr, *Baring the Heart of Nixon*, BOSTON GLOBE, Dec. 20, 1995, Arts & Film at 39, available in 1995 WL 5966891; Stephen Hunter, *Resurrecting Nixon*, BALT. SUN, Dec. 20, 1995, at 1E, available in LEXIS, News Library, Majpap File; Barbara Shulgasser, *'Nixon': It Has All the Charm of a Lab Rat*, SAN. FRAN. EXAMINER, Dec. 20, 1995, at C1, available in LEXIS, Nexis Library, Newspaper File; Kenneth Turan, *'Nixon,' the Enigma*, L.A. TIMES, Dec. 20, 1995, at F1, available in LEXIS, News Library, Lat File; *Crossfire* (CNN television broadcast, Dec. 27, 1995), available in LEXIS, Nexis Library, Transcript File.

This Article addresses the Kennedy murder, generally; the work of the Assassination Records Review Board, primarily;¹³ and issues of secrecy and openness in government, specifically. In short, the Article considers the competing values of openness and secrecy in government.¹⁴ Gaining access to secret documents is vital, but one must consider the cost of broken confidences to our security. A sense of conflict between these views inspired this Article.

I. THE WARREN COMMISSION

The Warren Commission and its report stand at the center of almost all Kennedy conspiracy theories.¹⁵ A year after the assassination, the Report was issued by seven sober-minded Americans, headed by Chief Justice Earl Warren.¹⁶ Initially, the Report, which concluded that Oswald was the lone assassin,¹⁷ received strong support. Polling data indicates that prior to the Report's release, only twenty-nine percent of the public believed that Oswald was solely responsible for the assassination of President Kennedy; following its release a year later, in 1964, that number increased to eighty-seven percent. However, two years later, in 1966, only thirty-six percent of Americans indicated they

13. The author sits as a member of the Assassination Records Review Board. The views expressed herein are solely those of the author. They do not represent the views of the other members of the Board.

The other members of the Board are the Honorable John R. Tunheim, United States District Judge, District of Minnesota; Henry Graff, Professor Emeritus, Columbia University; William Joyce, Rare Books Librarian, Firestone Library, Princeton University; and Anna K. Nelson, Adjunct Professor of History, American University.

The Assassination Records Review Board will hereinafter be referred to as the "JFK Board" or the "Board."

Throughout this Article, references are made to the views of the various intelligence agencies. These references are based upon the author's knowledge of these representations made to the Assassination Records Review Board, the context of which remains classified.

14. See generally Benjamin S. DuVal, Jr., *The Occasions of Secrecy*, 47 U. PITT. L. REV. 579, 583 (1986) (arguing that secrecy issues "present a fundamentally different problem in terms of first amendment theory than those that have been central to the development of first amendment jurisprudence" and that "society is distinctly ambivalent about the benefits of increased knowledge").

15. See PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY, REPORT OF THE PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY (1964) [hereinafter WARREN COMMISSION REPORT].

16. The members of the Warren Commission were Chief Justice Earl Warren, Senator Richard B. Russell, Senator John Sherman Cooper, Representative Hale Boggs, Representative Gerald R. Ford, Allen W. Dulles, and John J. McCloy. See *id.* at v.

17. "On the basis of the evidence before the Commission it concludes that Oswald acted alone." *Id.* at 22.

believed the Report.¹⁸ By the time *JFK* opened in the movie houses of America,¹⁹ public confidence in the Commission's Report had sunk even further, with about seventy percent of Americans concluding that Oswald did not act alone.²⁰ The movie, therefore, tapped a deep wellspring of distrust of the Report rather than, as is sometimes implied,²¹ fostered it.

Events between 1964 and 1992 did much to undermine trust in the *Warren Commission Report*. An assassination research community quickly appeared, raising troubling questions about the Report and propagating theories of conspiracy.²² Books entitled *Whitewash*,²³ *Contract on America*,²⁴ *Conspiracy*,²⁵ and *Rush to Judgment*²⁶ eroded the credibility of the Commission's findings.²⁷ President Kennedy's murder, moreover, was only one of several prominent political killings. Assassins also gunned down Robert F. Kennedy, Martin Luther King, Jr., and Malcolm X and gravely wounded Governor George C. Wallace.²⁸

18. These figures are based on CBS and Gallup polling data recapitulated in a poll released a week before the thirtieth anniversary of the assassination. See *Nine Out of 10 Americans Doubt Oswald Acted Alone*, REUTERS, Nov. 15, 1993, available in LEXIS, News Library, Wires File; see also Max Holland, *The Key to the Warren Report*, AM. HERITAGE, Nov. 1995, at 50, 52 ("Prior to [the Report's] release, a Gallup poll found that only 29 percent of Americans thought Oswald had acted alone, afterward 87 percent believed so.").

19. See *JFK*, *supra* note 9.

20. See *82% in Poll Say the Truth Wasn't Told in JFK Death: Seven of 10 Suspect There Was a Conspiracy*, BUFF. NEWS, Nov. 22, 1993, at 1, available in 1993 WL 6126092 ("[S]even in 10 Americans suspect a conspiracy, and those who were young on Nov[ember] 22, 1963, are especially likely to be among the 82 percent who believe the truth has not been told. In keeping with many recent polls that show Americans are distrustful toward government, 78 percent think there was an official coverup."). Indeed, there is now a much more conspiracy-minded attitude toward the assassination than there was even 15 years ago. See *id.*

21. See, e.g., Brusteln, *supra* note 10 ("Viewers of *JFK* . . . might find themselves shaken in their views of government, society, the media.").

22. See POSNER, *supra* note 6, at 412-19 (describing the "network of amateur sleuths" who checked the accuracy of the *Warren Commission Report* and challenged its conclusions).

23. HAROLD WEISBERG, *WHITEWASH* (1965) (stating that the Warren Commission did not consider any alternatives to Oswald as sole assassin).

24. DAVID E. SCHEIM, *CONTRACT ON AMERICA: THE MAFIA MURDERS OF JOHN AND ROBERT KENNEDY* 263 (1983) (concluding that the Mafia killed President Kennedy).

25. ANTHONY SUMMERS, *CONSPIRACY* 523 (1980) (calling for a new investigation).

26. LANE, *supra* note 6.

27. See Weisberg, *supra* note 23, at 189 ("In writing this book, the author has had but one purpose. That was to show that the job assigned to and expected of the President's Commission on the Assassination of John F. Kennedy has not been done."); SCHEIM, *supra* note 24, at 2-3 (finding that "evidence that established [Jack Ruby's] criminal ties has been repeatedly suppressed or distorted by the Warren Commission"); SUMMERS, *supra* note 25; LANE, *supra* note 6, at 378 ("[T]he Report of the President's Commission on the Assassination of President Kennedy is less a report than a brief for the prosecution.").

28. See D'ARMY BAILEY, *MINE EYES HAVE SEEN: DR. MARTIN LUTHER KING, JR.'S FINAL JOURNEY* (1993) (providing a pictorial account of King's final journey to Memphis); GEORGE BREITMAN ET AL., *THE ASSASSINATION OF MALCOLM X* (1976) (arguing that the CIA

At the same time, the American government resorted to deception to disguise its policy failures.²⁹ The nation fought and lost a bloody conflict in Southeast Asia—an undeclared war fostering doctored casualty reports;³⁰ secret missions into Cambodia and Laos;³¹ purported attacks on the destroyers, *Maddox* and *C. Turner Joy*,³² and President Richard Nixon's "secret plan" to end the war.³³ The plan took five years, cost many thousands of additional American and Vietnamese

and FBI participated in the assassination of Malcolm X); KARL EVANZZ, *THE JUDAS FACTOR: THE PLOT TO KILL MALCOLM X* (1992) (concluding that government agencies were involved in the assassination); GEROLD FRANK, *AN AMERICAN DEATH: THE TRUE STORY OF THE ASSASSINATION OF DR. MARTIN LUTHER KING, JR.* (1972) (concluding that James Earl Ray alone killed King); MICHAEL FRIEDLY, *MALCOLM X: THE ASSASSINATION* (1992) (concluding that Muslims killed Malcolm X); ROBERT BLAIR KAISER, "R.F.K. MUST DIE!" (1970) (exploring various conspiracy theories); *THREE ASSASSINATIONS: THE DEATHS OF JOHN & ROBERT KENNEDY AND MARTIN LUTHER KING* (Janet M. Knight ed., 1971) (providing "a factual account of the assassinations" based on "FACTS ON FILE, the press, and U.S. government studies"); STEPHAN LESHER, *GEORGE WALLACE* (1994) (describing Arthur Bremer's attempt on Wallace's life); PHILIP H. MELANSON, *THE ROBERT F. KENNEDY ASSASSINATION 13* (1991) (concluding that Sirhan Sirhan was "hypnotically programmed to attack [Robert F.] Kennedy"); PHILIP MELANSON, *WHO KILLED MARTIN LUTHER KING?* (1993) (calling for an investigation of possible CIA and FBI involvement); DAN E. MOLDEA, *THE KILLING OF ROBERT F. KENNEDY 923* (1995) (concluding that Sirhan Sirhan assassinated Robert F. Kennedy to prove "that he still had his nerve"); WILLIAM W. TURNER & JOHN G. CHRISTIAN, *THE ASSASSINATION OF ROBERT F. KENNEDY* (1978) (claiming that there was a conspiracy); WEISBERG, *supra* note 6 (concluding that James Earl Ray was framed for the assassination of Martin Luther King, Jr.).

29. Regarding the government's use of intelligence materials in the Vietnam War and the bogus nature of much of the reporting about the War, see SAM ADAMS, *WAR OF NUMBERS* (1994); EDWARD S. HERMAN & RICHARD B. DUBOFF, *AMERICA'S VIETNAM POLICY: THE STRATEGY OF DECEPTION 79* (1966); JOHN M. NEWMAN, *JFK AND VIETNAM: DECEPTION, INTRIGUE, AND THE STRUGGLE FOR POWER 206-22* (1992); JOHN PRADOS, *PRESIDENTS' SECRET WARS 239-925* (1986); L. FLETCHER PROUTY, *JFK: THE CIA, VIETNAM, AND THE PLOT TO ASSASSINATE JOHN F. KENNEDY 42-117* (1992); PETER DALE SCOTT, *THE WAR CONSPIRACY: THE SECRET ROAD TO THE SECOND INDOCHINA WAR 51-75* (1972); NEIL SHEEHAN ET AL., *THE PENTAGON PAPERS AS PUBLISHED BY THE NEW YORK TIMES 241-78* (1971); SEDGEWICK TOURISON, *SECRET ARMY, SECRET WAR* (1995).

With regard to false "body counts," see LOCH K. JOHNSON, *AMERICA'S SECRET POWER 60-62* (1989); GABRIEL KOLKO, *ANATOMY OF A WAR 195-96* (1985); NEWMAN, *supra*, at 288-89, 298-99.

30. See VANCE HARTKE, *THE AMERICAN CRISIS IN VIETNAM 100-02* (1968); HERMAN & DUBOFF, *supra* note 29, at 122-23; SEYMOUR HERSH, *COVER-UP* (1972); KOLKO, *supra* note 29, at 195-96; *MAJOR PROBLEMS IN THE HISTORY OF THE VIETNAM WAR* (Robert J. McMahon ed., 2d ed. 1995); NEWMAN, *supra* note 29, at 229-34.

31. See NOAM CHOMSKY, *AT WAR WITH ASIA 117-258* (1970); *CREDIBILITY GAP: A DIGEST OF THE PENTAGON PAPERS 54-64* (Len Ackland compiler, 1972); FRANCES FITZGERALD, *FIRE IN THE LAKE 123, 264* (1972); BRUCE PALMER, JR., *THE 25-YEAR WAR 92, 95-116* (1984).

32. See THEODORE DRAPER, *ABUSE OF POWER 63-65* (1967); GEORGE C. HERRING, *AMERICA'S LONGEST WAR 134* (3d ed. 1996); ROBERT S. MCNAMARA & BRIAN VANDEMARK, *IN RETROSPECT: THE TRAGEDY AND LESSONS OF VIETNAM 132-34* (1995).

33. See HERRING, *supra* note 32, at 244-47; STANLEY KARNOW, *VIETNAM: A HISTORY 582-83* (1983).

lives, and left our former allies in the South to the tender mercies of their northern opponents.³⁴

The government's penchant for secrecy fueled the public's corrosively cynical view of politics and politicians. During the Watergate investigation, President Nixon proclaimed to the nation that he was "not a crook,"³⁵ but he soon abandoned the Oval Office and joined his disgraced vice president³⁶ in private life.³⁷ In one of the great ironies of modern American politics, the instrument of Nixon's downfall was a secret recording system installed in the White House.³⁸ What was supposed to be a tool to record reliably the President's triumphs became the chief means of exposing the Watergate cover-up.³⁹

Under such circumstances, the Warren Commission's Report would have been subjected to reevaluation even if it had been compiled perfectly. Furthermore, because the Warren Commission labored at the height of the Cold War,⁴⁰ 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 to erode that public trust in five significant ways.

First, the Commission had access to an enormous amount of information not otherwise accessible to the American press and public.⁴¹ This information was secret, top secret, and beyond, much of it compartmentalized cryptologic and signal intelligence material dealing with the Soviet Union, Cuba, and other foreign governments, such as Communist China.⁴² Because of the enormous Cold War paranoia, as well as the requirement to maintain tight secrecy around the sources and methods used to collect this information, the Commission could not argue its case fully to the American people. When the research community asserted that the government itself had been im-

34. See HERRING, *supra* note 32, at 282-83; STANLEY I. KUTLER, *THE WARS OF WATERGATE* 9-10, 80 (1990).

35. Question-and-Answer Session at the Annual Convention of the Associated Press Managing Editor's Association, Orlando, Fla., 1973 PUB. PAPERS 946, 956 (Nov. 17, 1973).

36. Vice President Spiro T. Agnew resigned on October 10, 1973, after entering a plea of *nolo contendere* to a federal charge of tax evasion. See KUTLER, *supra* note 34, at 397-98.

37. See *id.* at 532, 540, 544-45, 547-50, 620.

38. See *id.* at 452.

39. See *id.* at 287, 314-15, 324-25, 368-69, 447-49.

40. See Holland, *supra* note 18, at 52.

41. See HURT, *supra* note 6, at 432-33.

42. See Holland, *supra* note 18, at 64.

plicated in the assassination,⁴³ the evidence that the Commission had used to discount such a possibility was available only to the government charged with having abetted the crime. The cost 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, although the Commission had access to some high-quality intelligence information, it did not receive everything. The CIA, FBI, and Attorney General Robert F. Kennedy failed to reveal information that would have helped identify a motive for a conspiracy.⁴⁴ The failure to disclose all information to the Commission was particularly damaging because of the distinguished character of its seven members.⁴⁵ Its chairman was Chief Justice Earl Warren, a person noted for probity and fairness.⁴⁶ The Commission was really divided into two subgroups. Four of the members—Warren, Hale Boggs, Gerald Ford, and John Sherman Cooper—had relatively little experience with intelligence matters; however, the other three—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.⁴⁷

The Commission's success depended, in part, on the ability of the three intelligence-savvy members to raise the right questions. They seem not to have done so. For example, the Commission never discovered the existence of Operation MONGOOSE,⁴⁸ a covert scheme concocted by President Kennedy and his brother, Attorney General

43. See, e.g., HAROLD WEISBERG, *WHITWASH II: THE FBI-SECRET SERVICE COVERUP* 125 (1996) (concluding that "[t]he FBI and the Secret Service are not innocent" in the Warren Commission investigation).

44. See WARREN HINCKLE & WILLIAM W. TURNER, *DEADLY SECRETS: THE CIA-MAFIA WAR AGAINST CASTRO AND THE ASSASSINATION OF JFK* 16-17, 264-71, 403 (1992) [hereinafter HINCKLE & TURNER, *DEADLY SECRETS*]; WARREN HINCKLE & WILLIAM W. TURNER, *THE FISH IS RED: THE STORY OF THE SECRET WAR AGAINST CASTRO* 228-31, 396 (1981) [hereinafter HINCKLE & TURNER, *THE FISH IS RED*]; NEWMAN, *supra* note 6; PRADOS, *supra* note 29, at 211-17; Holland, *supra* note 18, at 62.

45. See *supra* note 16.

46. President Kennedy wrote that Warren had "borne [his] duties and responsibilities with unusual integrity, fairness, good humor and courage." JIM MARRS, *CROSSFIRE: THE PLOT THAT KILLED KENNEDY* 463 (1989) (quoting letter from President John F. Kennedy to Chief Justice Earl Warren).

47. See Holland, *supra* note 18, at 52.

48. See SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, *ALLEGED ASSASSINATION PLOTS INVOLVING FOREIGN LEADERS*, S. REP. NO. 94-465, at 139-46 (1975) [hereinafter CHURCH COMMITTEE]. Operation MONGOOSE was initiated by the United States government in 1962 as a covert action program to overthrow Castro, the Cuban leader. See *id.*

Robert F. Kennedy, to assassinate Fidel Castro with the help of organized crime.⁴⁹ When these plans reached the public several years later, critics of the Warren Commission had a field day.⁵⁰ The Commission's conclusion that a foreign government lacked a sufficient motive to murder the President now crumbled.⁵¹ Indeed, the Commission looked silly and, even worse, to be a part of the plot because its critics could plausibly assert that its distinguished members should have guessed at such a possibility.

Third, in appointing the Commission, President Lyndon Johnson had one goal: to check rumors that the assassination was a Communist plot.⁵² Johnson appropriately feared that Kennedy's murder could precipitate World War III.⁵³ Oswald's time in the Soviet Union and his trip to visit the Soviet Embassy in Mexico City just weeks before the murder pointed to Communist intrigue.⁵⁴ 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.⁵⁵ Thus, the Commission was under enormous pressure to produce an answer that discounted foreign influence.⁵⁶

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,⁵⁷ the alleged murder weapon,⁵⁸ the number and sequencing of the shots

49. See CHURCH COMMITTEE, *supra* note 48, at 139-46; HINCLE & TURNER, *THE FISH IS RED*, *supra* note 44, at 20, 111-26; Holland, *supra* note 18, at 62.

50. Even President Johnson expressed his belief that Castro could have planned Kennedy's assassination in retaliation. See HURT, *supra* note 6, at 91 (citing interview with Lyndon B. Johnson, *The CBS Evening News with Walter Cronkite* (CBS television broadcast, Apr. 25, 1975)).

51. *See id.*

52. *See* Holland, *supra* note 18, at 52.

53. *See id.* at 56-57.

54. *See id.* at 57.

55. *See id.* at 56; *see also* WARREN COMMISSION REPORT, *supra* note 15, at 290-92 (finding that Oswald purportedly distributed pamphlets on behalf of the Fair Play for Cuba Committee, but also finding that Oswald exaggerated the extent of his involvement).

56. *See* Holland, *supra* note 18, at 57.

57. *See* WARREN COMMISSION REPORT, *supra* note 15, at 19 ("President Kennedy was first struck by a bullet which entered at the back of his neck and exited through the lower front portion of his neck, causing a wound which would not necessarily have been lethal. The President was struck a second time by a bullet which entered the right-rear portion of his head, causing a massive and fatal wound.").

58. *See id.* at 81 (stating that the rifle found on the sixth floor of the Texas School Book Depository "was identified by the FBI as a 6.5-millimeter model 91/38 Mannlicher-Carcano rifle").

fired at the President,⁵⁹ and the condition of the so-called "magic bullet," which passed through the President and Governor John Connally with a minimum amount of damage.⁶⁰ We now know that the autopsy performed on the President was problematic, both in technique and organization.⁶¹ Yet, the Commission relied on it. On other matters, new forms of analysis have 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.⁶² Ironically, even when the latest techniques cor-

59. *See id.* at 111 (finding that "(a) one shot passed through the President's neck and then most probably passed through the Governor's body, (b) a subsequent shot penetrated the President's head, (c) no other shot struck any part of the automobile, and (d) three shots were fired. . . . The evidence is inconclusive as to whether it was the first, second, or third shot which missed.").

60. *See id.* at 79 ("A nearly whole bullet was found on Governor Connally's stretcher at Parkland Hospital after the assassination.").

61. *See* GRODEN & LIVINGSTONE, *supra* note 6, at 3.

62. *See* Charles J. Sanders & Mark S. Zaid, *The Declassification of Dealey Plaza: After Thirty Years, a New Disclosure Law at Last May Help to Clarify the Facts of the Kennedy Assassination*, 34 S. TEX. L. REV. 407 (1993).

The so-called "magic bullet" or "single bullet" theory has been the subject of intense debate. *See, e.g.*, EDWARD JAY EPSTEIN, *INQUEST: THE WARREN COMMISSION AND THE ESTABLISHMENT OF TRUTH* 115-26 (1966) (criticizing the single bullet theory as based on a "misinterpretation" of ballistics testimony, the "extremely tenuous findings of the wound ballistics test," and the omission of conflicting testimony); MARSHALL HOUTS, *WHERE DEATH DELIGHTS: THE STORY OF DR. MILTON HELPERN AND FORENSIC MEDICINE* 62-63 (1967) (concluding that a single bullet could not have penetrated seven layers of "tough human skin" in addition to soft tissue and bones); HURT, *supra* note 6, at 61-86 (arguing that results of the spectrographic examination and neutron activity analysis did not support the single bullet theory); MICHAEL KURTZ, *CRIME OF THE CENTURY* 175-76, 180-81 (1982) (criticizing the single bullet theory in light of the condition of the bullet and the deficiencies in the neutron activity analysis tests); LANE, *supra* note 6, at 69-80 (concluding that the angles of impact and the condition of the bullet found at Parkland Hospital invalidated the single bullet theory); RAYMOND MARCUS, *THE BASTARD BULLET: A SEARCH FOR LEGITIMACY FOR COMMISSION EXHIBIT 399*, 1-77 (1966) (concluding that bullet 399 "was never fired at any human target" and that the bullet was "planted" on the hospital stretcher); MARRS, *supra* note 46, at 368-71 (concluding that findings from Kennedy's autopsy conflicted with the single bullet theory); SYLVIA MEAGHER, *ACCESSORIES AFTER THE FACT: THE WARREN COMMISSION, THE AUTHORITIES, AND THE REPORT* 27-35, 137, 167-70, 461 (1967) (concluding that the single bullet theory is weak because, of the three doctors whose testimony supports the theory, one retracted his original opinion, the second qualified his testimony, and the third was never shown the Zapruder film or the stretcher bullet); BONAR MENNINGER, *MORTAL ERROR: THE SHOT THAT KILLED JFK* 29-43 (1992) (arguing that the single bullet theory is inconsistent with eyewitness accounts and photographic evidence); F. PETER MODEL & ROBERT J. GRODEN, *JFK: THE CASE FOR CONSPIRACY* 61-77 (1977) (concluding that the angle of impact and the pristine condition of the bullet made the single bullet theory impossible); POSNER, *supra* note 6, at 317, 326-35, 474, 477-79 (relying on "the latest computer and film-enhancement technology" to conclude that a single bullet could cause both Kennedy's and Connally's wounds, and that a single bullet could have been fired from the sixth floor of the Texas School Book Depository); HOWARD RUFFMAN, *PRESUMED GUILTY* 53, 131-48, 226 (1975) (concluding that bullet 399 did not cause Kennedy's injuries); SUM-

roborate the Commission's findings, the result has not been greater confidence in those findings, but rather, a belief that the Commission got it wrong instead of almost getting it right.⁶³

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.⁶⁴ The final document reads like a legal brief supporting the argument that Oswald committed the crime. The Report ought to have been a dispassionate analysis of all of the implications surrounding the murder, some of which the Commission itself had no knowledge.⁶⁵ Instead, 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.⁶⁶ By generating

MERS, *supra* note 25, at 67-71 (concluding that the pristine condition of the bullet invalidated the single bullet theory); JOSIAH THOMPSON, SIX SECONDS IN DALLAS: A MICRO-STUDY OF THE KENNEDY ASSASSINATION 9, 30, 38, 56, 59-71, 75, 77, 196, 201-09, 213-14 (1967) (concluding that the single bullet theory is wrong because none of the shots missed and because the bullet did not go all the way through Kennedy's neck); Luis Alvarez, *A Physicist Examines the Kennedy Assassination Film*, 44 AM. J. PHYSICS 813-19 (1976) (using motions of Zapruder's camera to determine the number of shots fired); John Nichols, *The Wounding of Governor John Connally of Texas: November 22, 1963*, MD. ST. MED. J., 58, 76-77 (Oct. 1977) (concluding that there was no bullet fragment embedded in Connally's thigh and that, therefore, the single bullet theory is wrong); *Nova: Who Shot President Kennedy?* (PBS television broadcast, June 19, 1988); *The Warren Report* (CBS News television broadcast, Part I, June 25, 1967).

Recent analysis has discounted the acoustical evidence brought forward in the investigation of the House Select Committee on Assassinations. See *infra* note 63; *Frontline: Who Was Lee Harvey Oswald?* (PBS television broadcast, Nov. 16, 1999); *Who Killed JFK: The Final Chapter* (CBS television broadcast, Nov. 19, 1999).

63. See HOUSE SELECT COMMITTEE ON ASSASSINATIONS, REPORT OF THE SELECT COMMITTEE ON ASSASSINATIONS, H.R. REP. NO. 95-1828 pt. 2 (1979). The House Select Committee on Assassinations concluded that the acoustical evidence established that a fourth shot was fired, and, therefore, there was a "high probability" that two gunmen fired at President Kennedy. *Id.* at 65-79. The Committee relied on analyses of a dictabelt recording of the Dallas police channels. See *id.* at 66-67. Bolt Beranek and Newman Inc. performed the first analysis and concluded—based on impulse patterns detected from the recording and an acoustical reconstruction of the assassination—that there was a 50% chance of a fourth shot from the Grassy Knoll. See *id.* at 66-72. Mark Weiss and Ernest Aschkenasy performed a follow-up analysis for the Committee and concluded that there was a 95% chance there was a shot fired from the Grassy Knoll. See *id.* at 72-75. But see POSNER, *supra* note 6, at 240-42 (arguing that the House Select Committee misinterpreted the acoustical evidence, and, therefore, it "failed to establish the number of shots . . . scientifically").

64. See Holland, *supra* note 18, at 57-58.

65. See *id.*

66. For example, the Report made the following findings with regard to Oswald's character:

Many factors were undoubtedly involved in Oswald's motivation for the assassination, and the Commission does not believe that it can ascribe to him any one motive or group of motives. It is apparent, however, that Oswald was moved by an overriding hostility to his environment. He does not appear to have been able to

such a report, the Commission left open the opportunity for critics to complain that Oswald was a patsy who did not act alone.⁶⁷

The Report began to sink shortly after its release.⁶⁸ Researchers used its massive details to challenge the Commission's assumptions and findings.⁶⁹ However, the veil of secrecy thrown over the intelligence sources prevented the Commissioners and their defenders from rebutting their detractors.⁷⁰ 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.⁷¹

II. OTHER INVESTIGATIONS OF THE ASSASSINATION

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 by revelations of domestic political surveillance by both agencies and the military intelligence services.⁷² There were three other federal investigations that, in dealing with these issues, also addressed the Kennedy assassination: in the mid-1970s, the Rockefeller Commission,⁷³ the Pike Committee,⁷⁴ and

establish meaningful relationships with other people. He was perpetually discontented with the world around him.

WARREN COMMISSION REPORT, *supra* note 15, at 423.

67. See, e.g., MARRS, *supra* note 46, at 91-112 (examining Oswald's life and concluding that he was a spy for the United States); POSNER, *supra* note 6, at 410-19 (describing the rash of criticism following the publication of the *Warren Commission Report*).

68. In 1966 a public opinion poll revealed that Americans doubted the findings of the Warren Commission by a margin of three to five. The public's response is recounted in MEAGHER, *supra* note 62, at 463.

69. See, e.g., LANE, *supra* note 6 (criticizing the Warren Commission's interpretation of objective evidence in the Kennedy assassination); LIFTON, *supra* note 6 (discussing alternative interpretations of the Kennedy assassination evidence); MEAGHER, *supra* note 62 (comparing raw evidence of the Kennedy assassination with the presentation of that evidence in the *Warren Commission Report*).

70. See *supra* notes 41-43 and accompanying text.

71. See *supra* notes 40-47 and accompanying text.

72. For an example of the increased scrutiny of the CIA, see VICTOR MARCHETTI & JOHN D. MARKS, *THE CIA AND THE CULT OF INTELLIGENCE* 4-12 (1974). See generally JOHNSON, *supra* note 29 (discussing the problems of strategic intelligence in a democratic society).

73. See COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES, *REPORT TO THE PRESIDENT BY THE COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES* (1975) [hereinafter *ROCKEFELLER COMMISSION*].

74. The Pike Committee Report to the House Select Committee on Intelligence was never officially released. However, the *Village Voice* reprinted a substantial part of the Committee's findings. See *The CIA Report the CIA Doesn't Want You to Read*, *VILLAGE VOICE*, Feb. 16, 1976 (Supp.); *The Select Committee's Investigation Record*, *VILLAGE VOICE*, Feb. 16, 1976, at 72; *The Select Committee's Oversight Experience*, *VILLAGE VOICE*, Feb. 23, 1976, at 60.

the Church Committee⁷⁵ probed matters that touched on matters relating to the assassination and provided, most spectacularly, information about Operation MONGOOSE.⁷⁶ Operation MONGOOSE⁷⁷ involved CIA plans to destabilize the Cuban government, murder Castro and other leaders of hostile foreign nations, and relied on organized crime to assist with both.⁷⁸

The most powerful of the post-Warren Commission inquiries was that made by the House Select Committee on Assassinations (HSCA), which in 1976 reopened the investigation that had been seemingly closed a dozen years earlier.⁷⁹ The Committee, chaired by Congressman Louis Stokes of Ohio, explored several controversial areas of John F. Kennedy's assassination, along with those of his brother, Rob-

75. See CHURCH COMMITTEE, *supra* note 48.

76. According to Loch K. Johnson, a series of articles by *New York Times* reporter Seymour Hersh in December 1974 prompted the creation of all three committees. See JOHNSON, *supra* note 29, at 3-4, 207-08. Hersh revealed, among other abuses, that the CIA had compiled files on over 10,000 U.S. citizens as part of Operation CHAOS. See *id.* at 5.

To investigate Hersh's claims, President Gerald R. Ford created the Rockefeller Commission, named after its chairman, Nelson Rockefeller. See ROCKEFELLER COMMISSION, *supra* note 73, at ix; see also Exec. Order No. 11,828, 3 C.F.R. 933-34 (1975). The Senate created a special committee chaired by Frank Church. See CHURCH COMMITTEE, *supra* note 48, at 1-3 (stating the Church Committee's mandate and scope of investigation). Otis Pike, the chairman of the House's standing committee on intelligence, investigated for the House. See *supra* note 74. The Rockefeller Commission was to decide if the CIA had violated 50 U.S.C. § 403 (the statute creating the CIA), to determine whether there were adequate safeguards to prevent activities that violated the statute, and to make recommendations to the President and the director of the CIA. See *id.* at x. The Commission was to issue its final report within three months and to terminate one month after presenting its report. See Exec. Order No. 11,828, 3 C.F.R. 933-34. The Commission found, *inter alia*, that (1) the CIA's surveillance of mail between the United States and the Soviet Union was illegal; (2) the declared mission of Operation CHAOS to determine foreign influence on domestic dissidence was proper, but some activities exceeded the CIA's authority; (3) the infiltration of dissident groups exceeded its authority. See ROCKEFELLER COMMISSION, *supra* note 73, at 20-27.

The Church Committee was created by Senate Resolution 21 with a broad mandate to determine if there were any "illegal, improper or unethical" governmental intelligence activities. CHURCH COMMITTEE, *supra* note 48, at 1 (quoting S. Res. 21, 94th Cong. (1975)).

In his introduction to the Interim Report, Senator Church explained that the Committee took up the investigation of assassination plots to continue the task of the Rockefeller Commission. See *id.* at 2. The Church Committee investigated murder plots against Lumumba, Castro, Trujillo, Diem, and Schneider. See *id.* at 4-5. With regard to Castro, it concluded that "United States Government personnel plotted to kill Castro from 1960 to 1965." *Id.*

77. See *supra* note 48.

78. See CHURCH COMMITTEE, *supra* note 48, at 4-5. The Church Committee investigation revealed evidence that, from 1960 to 1965, the United States government used underworld figures and anti-Castro Cubans in a plot to kill Castro. See *id.*

79. See HOUSE SELECT COMMITTEE ON ASSASSINATIONS, REPORT OF THE SELECT COMMITTEE ON ASSASSINATIONS, H.R. REP. NO. 95-1828, pt. 2, at 9 (1979) [hereinafter HOUSE SELECT COMMITTEE].

ert, and Reverend King.⁸⁰ The HSCA suffered from its own limitations, which are beyond the scope of this Article.⁸¹ However, the HSCA's conclusions, which now seem to be in question, held that the Committee could not rule out a conspiracy to kill the President.⁸² This finding directly challenged the Warren Commission.⁸³ For example, the HSCA believed that advanced acoustical techniques demonstrated that there had been more than one shooter in Dealey Plaza.⁸⁴ That analysis was subsequently repudiated,⁸⁵ but it was too late to counter the damage done to the Warren Commission's credibility.

The HSCA exhausted its funds before it could complete its tasks and left mounds of records behind, including those dealing with organized crime, which the HSCA had subpoenaed, but was unable to process.⁸⁶ Today these materials are one of the chief objects of the Assassination Records Review Board.

III. THE ASSASSINATION RECORDS REVIEW BOARD

The findings of these investigations inspired Oliver Stone's 1991 movie.⁸⁷ Without endorsing the movie's sensational conclusions, many members of Congress decided that the government's refusal to release classified information about the assassination promoted an unhealthy level of distrust of government.⁸⁸ As a result, Congress passed the *John F. Kennedy Assassination Records Collection Act of 1992*⁸⁹ (the JFK Act or Act), which mandated the creation of a five-person Review Board.⁹⁰ The Act orders all federal agencies to assess whether they

80. *See id.* at 10.

81. *See* HINCKLE & TURNER, *DEADLY SECRETS*, *supra* note 44, at 271 (concluding that the HSCA suffered from lack of funding and that too much time had passed between the assassination and the Committee's investigation).

82. *See* HOUSE SELECT COMMITTEE, *supra* note 79, at 95 (stating that the Committee believed "on the basis of the evidence available to it that President John F. Kennedy was probably assassinated as a result of a conspiracy").

83. *See id.* at 104-09.

84. *See id.* at 46-47, 65-79.

85. *See supra* note 63.

86. *See* HINCKLE & TURNER, *DEADLY SECRETS*, *supra* note 44, at 271.

87. *See* JFK, *supra* note 9. This 1991 Warner Brothers movie fictionally described the investigations into the John F. Kennedy assassination. *See id.*

88. *See* H.R. REP. NO. 102-625, pt. 1, at 10 (1992) (stating that unjustified secrecy surrounding the assassination increases doubts and speculation and "fuels a growing distrust in the institutions of government").

89. 44 U.S.C. § 2107 (1994).

90. The legislative history and congressional discussion of the need for the Board can be found in H.R. REP. NO. 102-625, pt. 1, at 6; H.R. REP. NO. 102-625, pt. 2, at 7 (1992);

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possess records relating to the assassination.⁹¹ All records that an agency deems as not suitable for immediate release are subject to the Board's evaluation.⁹² All records identified as relating to the assassination must be opened by October 26, 2017, with the exception of records that the President certifies for continued postponement.⁹³

The Act defines several categories of information for which disclosure may be postponed, including national security, intelligence gathering, personal privacy, and presidential security.⁹⁴ However, because the Act declares a "presumption of immediate disclosure," the Board will not postpone the disclosure of material unless it is persuaded that there is "clear and convincing evidence" of some harm that outweighs the public's interest.⁹⁵

Congress intended for the Board to oversee the opening to the public of a substantial amount of material—perhaps in the millions of pages.⁹⁶ Congress, therefore, clothed the Board with broad subpoena and other powers.⁹⁷ The Board is without precedent in American history, with powers that reach far beyond, for example, the *Freedom of*

H.R. REP. NO. 103-587, at 2 (1994). The law establishing the Board is at 44 U.S.C. § 2107(6) (1994).

91. 44 U.S.C. § 2107(5).

92. *Id.* § 2107(7)(j).

93. See Sanders & Zaid, *supra* note 62, at 419; Harold C. Relyea & Suzanne Cavanaugh, *President John F. Kennedy Assassination Records Disclosure: An Overview, Congressional Research Service Report for Congress 13-17* (1993) (discussing which particular records can be postponed from release).

94. 44 U.S.C. § 2107(6).

95. *Id.* § 2107(2)(a).

96. The congressional hearings surrounding the passage of the Act make clear that Congress expected the Review Board to exercise its powers in favor of opening materials. See *The Assassination Materials Disclosure Act of 1992: Hearing Before the Senate Comm. on Gov'tal Affairs on S.J. Res. 282*, 102d Cong. (1992) [hereinafter *Assassination Materials Disclosure Act I*]; *Assassination Materials Disclosure Act of 1992: Hearings Before the Subcomm. on Econ. and Commercial Law of the House Comm. on the Judiciary on H.J. Res. 454*, 102d Cong. (1992) [hereinafter *Assassination Materials Disclosure Act II*]; *Assassination Materials Disclosure Act of 1992: Hearings Before the Legislation and Nat'l Sec. Subcomm. of the House Comm. on Gov't Operations on H.J. Res. 454*, 102d Cong. (1992) [hereinafter *Assassination Materials Disclosure Act III*]; *The Effectiveness of Public Law 102-526, the President John F. Kennedy Assassination Records Collection Act of 1992: Hearing Before the Legislation and Nat'l Sec. Subcomm. of the House Comm. on Gov't Operations*, 103d Cong. (1993) [hereinafter *Effectiveness of Public Law 102-526*]. The presumption was always to be in favor of opening a document rather than postponing it, thus making postponement the exception rather than the rule under the law. The Congress could only guess at the scope of materials to be opened.

97. 44 U.S.C. § 2107(7)(j).

Information Act (FOIA).⁹⁸ The Board's only task is to make the public record of one epic historical event as complete as possible.⁹⁹

Although the Board's mission is clear, in executing the law it continually confronts the powerful tensions generated by the principled claims of openness and secrecy. To choose is to lead, and the Board, in attempting to break new ground in 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 its national security protected, and the intelligence services' duty to safeguard those secrets and the sources and methods that produce them.¹⁰⁰

The Board's most difficult choices involve the disposition of classified intelligence documents. If a federal agency wants to open materials, it is not the Board's duty to prevent it. Rather, the Board's most important task is to decide what should not be opened immediately, in light of the Act's powerful admonition that there be "clear and convincing evidence" in favor of postponement.¹⁰¹ In simplest terms, the Board has to decide whether materials, if opened, would reveal:

- (A) an intelligence agent whose identity currently requires protection;
- (B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or
- (C) any other matter currently relating to the military defense, intelligence operations or the conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States¹⁰²

The Act provides other grounds for postponement. These include exposure of an informant to a "substantial risk of harm,"¹⁰³ exposure of a person to an "unwarranted invasion of personal

98. 5 U.S.C. § 552 (1994). For a discussion of the history and operation of the *Freedom of Information Act* (FOIA), see generally Patrick J. Carome & Thomas M. Susman, *American Bar Association Symposium on FOIA 25th Anniversary*, 9 *Gov't INFO. Q.* 223 (1992).

99. See Sanders & Zaid, *supra* note 62, at 417-18.

100. See DuVal, *supra* note 14, at 580-91.

101. 44 U.S.C. § 2107(6).

102. *Id.* § 2107(6)(1)(A), (B), (C).

103. *Id.* § 2107(6)(2).

privacy,"¹⁰⁴ the possibility of compromising a relationship between a United States government agent and a confidential source,¹⁰⁵ and the revelation of a security procedure used to protect the President.¹⁰⁶

IV. OPENNESS AND SECRECY—ORIGINAL INTENTIONS

History offers uncertain guidance about how the Board should weigh these grounds for postponement against the public's interest in knowing the facts about the assassination. The Framers of the United States Constitution did harbor doubts about government, doubts precipitated by their experience in the English Empire.¹⁰⁷ James Madison and Thomas Jefferson, among others, testified eloquently to the proposition that public accountability was an appropriate measure of the success of a republic.¹⁰⁸ Still, the Framers were also sophisticated statesmen who valued secrecy in fostering the public good.¹⁰⁹ For example, the Philadelphia Convention of 1787 conducted its deliberations in secret without any complete record of its debates.¹¹⁰ The Constitution provides for the maintenance of an executive journal for both Houses of Congress and permits government to publish its accounts and revenues from "time to time," rather than on demand.¹¹¹ Even more fundamental was President George Washington's assertion of a broad degree of presidential discretion in dealing with foreign relations, war, and peace.¹¹² In certain circumstances, secrecy could be justified to attain ends superior to a completely in-

104. *Id.* § 2107(6)(3).

105. *Id.* § 2107(6)(4).

106. *Id.* § 2107(6)(5).

107. See generally 9 JAMES MADISON, THE WRITINGS OF JAMES MADISON (Gaillard Hunt ed., 1910) (photo. reprint 1971) (discussing how the Framers of the Constitution were affected by their prior experiences with the English).

108. Madison wrote, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance; And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." *Id.* at 103. Jefferson stated: "No ground of support of the Executive will ever be so sure as a complete knowledge of their proceedings by the people; and it is only in cases where the public good would be injured, and because it would be injured, that proceedings should be secret." THOMAS JEFFERSON: WORD FOR WORD 409 (Maureen Harrison & Steve Gilbert eds., 1993).

109. See MADISON, *supra* note 107, at 104.

110. See THORNTON ANDERSON, CREATING THE CONSTITUTION 8-12 (1993); see also WILLIAM PETERS, A MORE PERFECT UNION 22-38 (1987) (quoting Thomas Jefferson: "I am sorry they begin their deliberations by so abominable a precedent as that of tying up the tongues of their members.").

111. U.S. CONST. art. I, § 5, cl. 3.

112. See *Refusal by President George Washington to Submit Confidential Correspondence with John Jay to the House of Representatives, March 30, 1796*, in WILLIAM M. GOLDSMITH, THE GROWTH OF PRESIDENTIAL POWER 418-20 (1984).

formed public. Indeed, the Constitution's Preamble declares that insuring "domestic Tranquility" and providing for the "common defence" are objectives equal to securing the "Blessings of Liberty."¹¹³

On the question of original intention, the evidence is mixed. Secrets were at once bad and useful, openness was an object to be pursued, but not at all costs. Since 1787, the government has become more rather than less accountable, its secrets more rather than less readily accessible to its citizens.¹¹⁴

V. OPENNESS AND SECRECY—FOIA

For more than 190 years, the American public did not have a legal right to gain access to information about its government.¹¹⁵ All of that changed, however, in 1966 when President Lyndon Johnson signed FOIA¹¹⁶ and thereby altered the historical relationship between the federal government and the public.¹¹⁷ FOIA presumes that government information is public information and is implemented by the judicially enforceable requirement that all federal agency records be made available promptly upon request, subject only to nine exemptions, which are to be narrowly construed.¹¹⁸

Critics of FOIA seldom doubt its good intentions, but they do doubt its effectiveness, complaining that the cost of implementing it

113. U.S. CONST. preamble. The Preamble to the Constitution states in full:

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Id.

114. See generally DANIEL N. HOFFMAN, *GOVERNMENTAL SECRECY AND THE FOUNDING FATHERS: A STUDY IN CONSTITUTIONAL CONTROLS* (1981) (stating that judicial doctrines and legislative controls on political speech and publication have toughened since 1787).

115. The issue of openness in government has historically been framed in terms of the right of the government to keep secrets, rather than the right of the public to have access to governmental records. See Seth F. Kreimer, *Sunlight Secrets and Scarlet Letters: The Tension Between Privacy and Disclosure in Constitutional Law*, 140 U. PA. L. REV. 1 (1991). The movement towards greater openness in the post-World War II period has been part of a broader movement in the twentieth century to hold government accountable for its actions. See *id.* As a result, since the progressive era of the early twentieth century, we have seen the institution of public records, open meetings, and "sunshine laws." See *id.*

116. 5 U.S.C. § 552 (1994).

117. The Act has come under criticism from both advocates of openness and proponents of secrecy. See, e.g., Carome & Susman, *supra* note 98, at 223 (criticizing the Act because the cost of implementation outweighs the benefits it is supposed to provide); *Non-Denial: How Attitudes and Inertia Combine to Subvert the Freedom of Information Act*, KIPLINGER PROGRAM REP. 1-32 (Summer 1994) (discussing the success of FOIA in providing Americans with a means of acquiring information about their government).

118. 5 U.S.C. § 552.

far outweighs its supposed benefits.¹¹⁹ The argument against FOIA was perhaps best summed up by Justice Antonin Scalia, who described the statute as "the Taj Mahal of the Doctrine of Unanticipated Consequences, the Sistine Chapel of Cost-Benefit Analysis ignored."¹²⁰ Critics like Justice Scalia charge that FOIA harms the government's and the public's legitimate need for secrecy.¹²¹

Many of the most important documents relating to President Kennedy's murder have been unobtainable through FOIA.¹²² Nevertheless, FOIA and the Assassination Records Review Board do share a common purpose: to break through government's historical habit of classifying information that otherwise could—and should—be open.¹²³

VI. THE BUSINESS OF SECRECY

Today, keeping information secret has become a massive industry in Washington.¹²⁴ According to official estimates, the government took 6.3 million classification actions in 1994, creating an estimated 19 million pages of information that only selected government officials can see.¹²⁵ 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.¹²⁶ The government holds hundreds of millions of pages of secret documents; indeed, the precise number has gone beyond the government's ability to count.¹²⁷

The problem of what to do with classified documents is strangling some government agencies. For example, consider the Department of Energy.¹²⁸ American makers of nuclear weapons have been classify-

119. See Carome & Susman, *supra* note 98, at 223; see also *supra* note 117.

120. Antonin Scalia, *The Freedom of Information Act Has No Clothes*, 14 AEI J. ON GOV'T & Soc'y 1026 (1982).

121. See *id.*

122. See Sanders & Zaid, *supra* note 62, at 408 & n.2 (stating that without the implementation of the *President John F. Kennedy Assassination Records Collection Act of 1992*, the records concerning the assassination would remain classified until the twenty-first century).

123. See 44 U.S.C. § 2107(b)(2) (1994) (stating the purpose of the *President John F. Kennedy Assassination Records Collection Act of 1992*); Carome & Susman, *supra* note 98, at 223 (discussing FOIA and the presumption that government information is public information).

124. See Ann Devroy, *Clinton Eases Government Secrecy Rules: Most Declassification to Become Automatic*, WASH. POST, Apr. 18, 1995, at A1, available in LEXIS, News Library, WPost File.

125. See *id.*

126. See *id.*

127. See *id.*

128. See Matthew L. Wald, *Millions of Secrets Burden Energy Agency*, N.Y. TIMES, Feb. 7, 1996, at A15, available in LEXIS, News Library, Nyt File.

ing virtually everything for so long that the Energy Department now has more secrets than it can handle.¹²⁹ The Department has 100 million pages of documents that it wants to review for possible release, but it does not have the resources to do so.¹³⁰ For more than fifty years, the Department followed a scheme of classification that might best be called "classified at birth."¹³¹ Any document generated was presumed secret until proved otherwise.¹³² The Department and its civilian contractors have literally lost track of what needs to be kept quiet.¹³³ 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).¹³⁴

In April 1995, the Clinton administration attempted to break this classification logjam.¹³⁵ The President issued an executive order aimed at opening government's oldest secrets to public view, thereby reducing the number of documents made secret and shortening the number of years they remain classified.¹³⁶ The primary element of the order is the automatic declassification without review of most documents that are twenty-five years old or older.¹³⁷ Previously, documents had remained classified indefinitely.¹³⁸ Now, unless the documents fit into a group of narrow exceptions, they will automatically be open to the public.¹³⁹

How well the new system will work remains to be seen. Presidents come and presidents go, but the security bureaucracy remains. Not only do the intelligence agencies grumble about having to make public that which is most precious to them, but they argue that such declassification is costly and time consuming, especially in an era of diminished resources.¹⁴⁰

129. *See id.*

130. *See id.*

131. *Id.*

132. *See id.*

133. *See id.*

134. *See id.*

135. *See* Exec. Order No. 12,958, 3 C.F.R. 395 (1995), *reprinted as amended in* 50 U.S.C. § 455 (1996).

136. *See id.*

137. *See id.*

138. *See* Devroy, *supra* note 124.

139. *See id.*

140. *See* Tim Weiner, *C.I.A. Is Slow to Tell Early Cold War Secrets*, N.Y. TIMES, Apr. 8, 1996, at A6, available in LEXIS, News Library, Nyt File.

VII. THE BOARD AND THE INTELLIGENCE SERVICES

The JFK Act is an attempt not only to deal with the issue of public confidence in government,¹⁴¹ but also to forge a model of how we might keep from sinking in our own secrets. Yet, the intelligence community resists the opening of classified materials, even those that are now a third-of-a-century old. This defiance is particularly ironic in the case of the Kennedy assassination, in that the intelligence agencies most troubled by the disclosures are the same ones that most often figure in conspiracy theories.¹⁴² Disclosing materials that the CIA and FBI want postponed might actually affirm that neither a foreign nor domestic conspiracy existed and demonstrate the vital role they played in supporting American interests in the Cold War.

Congress never contemplated total disclosure, otherwise it would not have created the JFK Board.¹⁴³ Disclosure is an important public interest, but so too is protecting sensitive information.¹⁴⁴ There are many occasions for secrecy. For example, most deliberative bodies make a virtue of secrecy, because it permits compromise by allowing individuals to make concessions without losing face.¹⁴⁵ The Supreme Court has observed: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process."¹⁴⁶ The Court knows whereof it speaks, as its decisionmaking process in conference remains entirely confidential.¹⁴⁷

141. See *Assassination Materials Disclosure Act I*, *supra* note 96, at 1 (opening statement of Chairman John Glenn) (observing that "[d]isclosure of information is the only reliable way to maintain the public trust and to dispel distrust").

142. See, e.g., Exhibit Nine *infra* p. 54. As early as 1976, the CIA itself acknowledged that "[c]onspiracy theories have frequently thrown suspicion on our organization." *Id.*

143. Both the plain reading of the statute and an examination of the legislative history make clear that Congress expected the Board to protect certain secrets from disclosure. See 44 U.S.C. § 2107(6) (1994) (identifying the grounds on which the Review Board may postpone release of assassination materials); Sanders & Zaid, *supra* note 62, at 419 (explaining the Board's obligations when it decides to postpone release of a document).

144. See DuVal, *supra* note 14, at 668-71 (identifying 10 justifications for nondisclosure).

145. See *id.* at 621-22 (observing that maintaining secrecy of advice, recommendations, and opinions allows officials to "propose, comment, and criticize without concern that their comments may seem foolish or contrary to popular sentiment" and to compromise "without loss of face").

146. *United States v. Nixon*, 418 U.S. 683, 705 (1974) (footnote omitted).

147. Secrecy in the High Court is a practice, a matter of the Court's culture and traditions, not of law. See BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS* xi (1979) ("The Court has developed certain traditions and rules, largely unwritten, that are designed to preserve the secrecy of its deliberations."). The Justice who tells what took place in conference is indiscreet and is likely to forfeit the respect of other Justices, but he breaks no law and neither do his law clerks. See *id.* Indeed, one of the arguments raised in the wake of

The virtues of openness in government, therefore, can be and often are overstated, especially by a self-interested press and media. Openness does mean that bad advice can be challenged, but the consequence may be that good decisions are never reached. Open records and "sunshine laws"¹⁴⁸ may only drive people to less easily documented forms of communication, such as the telephone.¹⁴⁹ Although the costs and benefits of secrecy and openness in government are not easily calculated, we do know that loose lips still sink ships, even in our own thermonuclear age.

In the case of the Kennedy assassination, how far are we willing to countenance secrecy when a fully illuminated rendition of the events surrounding the President's murder could go a long way to restore trust in government? At what point do the costs of concealing materials become sufficiently high to our government's credibility that they are no longer worth paying? At what point do the costs of disclosure become so great that we compromise our future security? Perhaps nowhere are these issues more acutely felt by the JFK Board than in those matters involving intelligence operations.

The assassination sparked a major intelligence effort.¹⁵⁰ In the days following the murder of President Kennedy,

[T]he entire intelligence community worked to learn everything it could about Oswald and his murky, superficially contradictory activities. New intelligence reports from Mexico City suggested a link between Oswald and the Cuban government. The supersecret National Security Agency and allied eavesdropping agencies went into overdrive to decipher in-

opening the papers of Justice Thurgood Marshall was that his written commentary on his colleagues may have made it more difficult for them to deal with one another now knowing that the public understood the reasons that they held certain positions. *See id.* at xii (observing that, because Justices are not elected but are appointed for life, they are not disposed to allow their decisionmaking to become public). The matter is posed differently, however, in Great Britain. The Official Secrets Acts make it unlawful for a government employee to make an unauthorized disclosure of official information or for anyone who has received the information in violation of the Act to communicate it to anyone else. Official Secrets Act, 1911, 1 & 2 Geo. 5 ch. 28, § 2.

148. *See Kreimer, supra* note 115.

149. *See Patricia M. Wald, The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values*, 33 EMORY L.J. 649, 664 (1984) (observing that "to some degree creative government officials and bureaucrats will always be able to devise ways to abort FOIA's disclosure requirements").

150. *See Assassination Materials Disclosure Act II, supra* note 96, at 93 (statement of Floyd I. Clarke, Deputy Director, FBI) (noting that "immediately following the assassination, the FBI began a massive and intense investigative effort"); EPSTEIN, TRILOGY, *supra* note 6, at 29 (describing Congress's formation of the Warren Commission less than two weeks after the assassination and the Commission's interaction with the FBI's intelligence efforts).

tercepted conversations, cable traffic, radio, and telephone communications at the highest levels of the Soviet and Cuban governments¹⁵¹

The FBI literally asked all of its informants whether they could shed light on the murder. In addition, there were efforts to tap the FBI's connection with organized crime to make certain that its members, angry at the President and his brother, had not ordered the murder and that Ruby's killing of Oswald was not a classic mob hit.¹⁵² The resulting cables and other documents laid bare most of the Cold War intelligence capacity of the United States.¹⁵³

Students of the assassination would benefit from opening the mass of information produced by the intelligence community's intense effort to get to the bottom of the President's murder. Yet, protecting America's foreign and domestic intelligence-gathering capabilities is essential to our national defense.¹⁵⁴ Thus, the intelligence agencies regularly assert that the identities of agents and informants must remain perpetually confidential;¹⁵⁵ that nothing should be revealed about the methods and sources used to gather intelligence;¹⁵⁶ that direct reports from United States intelligence agents should not be disclosed;¹⁵⁷ and that intelligence information provided by other nations to the United States, and, indeed, the very existence of such relationships, should not be disclosed.

VIII. INFORMANTS

Informants play a critical role in the world of intelligence operations, both domestic and foreign. For example, the FBI relied heavily on informants to infiltrate the Ku Klux Klan in the 1960s and

151. Holland, *supra* note 18, at 54.

152. See POSNER, *supra* note 6, at 463-64.

153. See Holland, *supra* note 18, at 54, 56.

154. See *Assassination Materials Disclosure Act III*, *supra* note 96, at 381 (prepared statement of FBI Director William Sessions) (stating that among 250,000 pages requested by the House Assassinations Committee are a large number of FBI documents that "implicate national security interests").

155. See *Assassination Materials Disclosure Act I*, *supra* note 96, at 7 (statement of CIA Director Robert M. Gates) (asserting that "we have an obligation to protect the confidentiality of our sources, regardless of the amount of time that has passed").

156. See *Assassination Materials Disclosure Act III*, *supra* note 96, at 363; 373-74 (statement of CIA Director Robert M. Gates) (stating assumption "that there still will be information that cannot be released to the public for a variety of reasons, including . . . the exposure of intelligence sources and methods"); *Assassination Materials Disclosure Act II*, *supra* note 96, at 109 (statement of Admiral William O. Studeman, Deputy Director, CIA) (echoing Gates's statement).

157. See *supra* note 154.

1970s.¹⁵⁸ Today, the FBI recruits informants to help thwart narcotics trafficking and international terrorism.¹⁵⁹ The internal security and general welfare of the United States depends heavily on the role of informants.¹⁶⁰

What duty does the government owe to persons who agree to serve as informants? There are many reasons why persons serve as informants. Money, revenge, and the sheer thrill explain some of this behavior. Yet, above all else, informants expect that they will be clothed in confidentiality in return for their information. An informant who is identified immediately loses value. All informants in the service of the various domestic and international intelligence operations are recruited with an understanding that they will be granted confidentiality—that they will never be “given-up” in the lingo of the intelligence community.¹⁶¹ The very nature of what they are asked to do—commit treason on their home government, report on the activities of groups like the American Communist Party, or shed light on the activities of organized crime and terrorist groups—exposes them to tremendous danger; if they are revealed, they and their families may suffer serious personal injury, or even death.

The Kennedy assassination documents contain thousands of names of informants drawn from every walk of life. The FBI has taken the position that these names must be protected indefinitely and that any disclosure will impair the Bureau’s ability to recruit new informants. Yet, all informants are not created equal. Some have greater value than others, both for the story of the Kennedy assassination and for providing information about organized crime and other activities. Moreover, the issue is not simply one of the quality of the information

158. See Clifford S. Zimmerman, *Toward a New Vision of Informants: A History of Abuses and Suggestions for Reform*, 22 HASTINGS CONST. L.Q. 81, 91-92 (1994) (describing the FBI’s mishandling of KKK informants).

159. See R. Jeffrey Smith, *Critics ‘Wrong,’ CIA Chief Says*, WASH. POST, Sept. 6, 1996, at A21, available in 1996 WL 12392255 (noting CIA Director John M. Deutch’s assertion that critics who allege that the CIA has done a poor job recruiting informants knowledgeable about terrorist activities are wrong).

160. See Ross Parker, *Confidential Informants and the Truth Finding Function*, 4 COOLEY L. REV. 565, 596 (1987) (citing an informal examination of federal investigations in the Eastern District of Michigan finding that about 50% of drug cases and 40% of public corruption cases involved the use of informants); Timothy A. Raezer, *Needed Weapons in the Army’s War on Drugs: Electronic Surveillance and Informants*, 116 MICH. L. REV. 1, 39-64 (1987) (extolling the benefits of informants to drug law enforcement); Zimmerman, *supra* note 158, at 178 (observing that law enforcement “has long reaped and extolled the benefits of informants”).

161. See *Assassination Materials Disclosure Act III*, *supra* note 96, at 53 (statement of CIA Director Robert M. Gates) (observing that the CIA files “contain the names of individuals who provided us information on a promise of confidentiality”).

that is provided. As Exhibit One demonstrates, the vast majority of documents involving informants has been opened in part; infrequently only the names of the informants and other key identifying language has been redacted.¹⁶² These redactions breed a sense of expectation among researchers, because in the climate of conspiracy that surrounds the Kennedy assassination, any material that is covered up is presumed to be an important missing link in the chain of explanation about the murder.

Exhibit One is perhaps representative of the issues raised about the Review Board's disclosure of informants. The Exhibit contains a message sent by the FBI Special Agent in Charge (SAC) in Houston to the SAC in Dallas and to FBI Director J. Edgar Hoover on November 26, 1963, four days after the murder of President Kennedy.¹⁶³ This document was originally reviewed by the FBI, and designated for release under the terms of the JFK Act with certain materials redacted. Those redactions appear in Exhibit One and indicate what material the FBI wanted to keep from the public.¹⁶⁴

As Exhibit Two reveals, the Board decided that much of the redacted material could be released, most notably the name of Mary Ann McCall, a hostess at a Dallas night spot.¹⁶⁵ By the time the informant had interviewed McCall, Jack Ruby had already killed Oswald. The Board decided that the historical record was well served by opening McCall's name, especially given her purported relationship with the Dallas police and organized crime. The Board, however, also accepted the FBI's argument that the name of the person who provided the information about McCall should be protected. Consequently, a document that had many redactions when it was sent from the FBI to the Board went into the public record with only one name redacted. The Board was satisfied that revealing the informant's name would harm the informant, thus outweighing the value of immediate disclosure. The Board used substitute language to make clear to students of the assassination that the redacted portion was the name of a "confidential informant" and ordered that the name be released in the year 2010.¹⁶⁶

Should it matter to the Board that many of these informants, when interviewed after the assassination, did not provide positive information about Oswald or Ruby? There are countless examples of

162. See Exhibit One *infra* p. 89.

163. See *id.*

164. See *id.*

165. See Exhibit Two *infra* p. 41.

166. See *id.*

individuals who, when contacted by intelligence services, indicated that they knew nothing about the assassination. The Board has taken the position that intelligence services must demonstrate that harm would come to the individual if her name were released. Agencies must be able to identify the individual, indicate that she is still alive, and establish that some harm will befall her.¹⁶⁷ The threshold issue, therefore, is whether an agency that seeks to protect an individual, regardless of the quality of the information provided, can substantiate the claim that harm will come to that person as a result of revealing her name. When an agency has failed to do so, the Board has released the name.¹⁶⁸ The record of events surrounding the assassination will never be complete until we know what blind alleys are not worth pursuing. As any good investigator knows, eliminating blind alleys is critical, because the elimination provides additional certainty about who knew nothing, a fact that can be helpful in discerning who knew something. In this context, knowing that an informant knew nothing, at least by her statement, is valuable itself, given the complexity of the conspiracy theories surrounding the assassination.

Spying is a feature of modern foreign affairs, and there can be no doubt that, as with informants, we owe some protection to those individuals employed in the clandestine service of the CIA.¹⁶⁹ Understanding how our clandestine services operate and what information they did or did not provide is critical to the assassination story. For example, the CIA sought to protect a considerable amount of information involving the use of double agents to infiltrate the Soviet Embassy in Mexico City. As Exhibit Three makes clear, the Agency originally wanted to protect broad sections of a message sent on November 29, 1963, one week after the murder of the President.¹⁷⁰ The CIA believed that releasing the information would compromise the

167. See 44 U.S.C. § 2107(6)(2) (1994) (permitting postponement of public disclosures when there is clear and convincing evidence that the "name or identity of a living person who provided confidential information to the United States . . . would pose a substantial risk of harm to that person"); see also *supra* notes 102-106 and accompanying text.

168. The McCall document cited above, and found at Exhibits One and Two, *infra* pp. 39-42, is an example of the Board's release of an individual's name after determining that no harm was likely to come to the individual and that public interest in the disclosure would be high. See *supra* notes 165-166 and accompanying text.

169. The JFK Act acknowledges the obligation of protecting the identity of intelligence officers. See 44 U.S.C. § 2107(6)(1)(A) (allowing postponement of the release of JFK documents if they involve public disclosure of "an intelligence agent whose identity currently requires protection"); see also *supra* note 102 and accompanying text.

170. See Exhibit Three *infra* p. 43. The CIA originally sought to postpone the information that is in the brackets. See *id.* In some cases, information was postponed, but substitute language, as provided by the statute, was inserted in its place. See *id.*

double agents and reveal the scope of the Agency's efforts against the former Soviet government. Yet, in terms of the story of the assassination, knowing the quality of the effort directed against the Soviets in Mexico City was considered crucial. As Exhibit Four reveals, only weeks before Lee Harvey Oswald was arrested for killing President Kennedy, Oswald had visited the Soviet Embassy in Mexico seeking a visa that would allow him to return to the Soviet Union by way of Cuba.¹⁷¹ The Board opened most of the information that the Agency previously wanted to postpone, and where the Board determined that disclosure would be harmful, it relied on substitute language, which is handwritten in Exhibit Three.¹⁷²

The CIA also worries about the status of its former employees and expects that these employees will not reveal the nature of their activities without first seeking the Agency's permission.¹⁷³ If an individual retires from the CIA undercover, does it follow that historical researchers must forever be denied access to that person's true name, especially when she is alive and able to answer questions? Does an agent in the clandestine service of the country have a right to be free from the prying questions of researchers and reporters? Does it make any difference, as in the case of informants, that an agent provided only negative information? Should we worry about whether an agent is alive or dead? Or does it follow that significant harm might come to the agent's family and friends through the revelation of her name? Are we willing, in the interest of providing the fullest and richest historical record of the assassination, to subject spouses, children, and parents to potential harassment or worse?

Weighing the potential harm to such persons against the public's right to know is challenging. We should recall that in 1975, Richard Welch, the CIA station chief in Athens, Greece, was murdered by unidentified gunmen as he returned to his home from a party at the ambassador's residence.¹⁷⁴ Former CIA Director William Colby attributed the death to a magazine account that had named Welch only a

171. See Exhibit Four *infra* p. 45.

172. See Exhibit Three *infra* p. 49.

173. See Melvin L. Wulf, *Introduction* to MARCHETTI & MARKS, *supra* note 72. In 1972, the CIA successfully sued former agent, Victor Marchetti, to require that his manuscript be submitted to the CIA for review prior to publication. See *id.* at xix.

174. See RHODRI JEFFREYS-JONES, *THE CIA AND AMERICAN DEMOCRACY* 211-12 (1989) (observing that "[p]ro-CIA partisans blamed Welch's death on Agency critics who had irresponsibly released too much information"); Jeremiah O'Leary, *Cover Blown, CIA Agent in Athens Killed*, WASH. STAR, Dec. 24, 1975, at A1 (noting that a United States publication's naming of Welch as the CIA station chief who was slain in Athens will fuel controversy about tragic consequences of public disclosure of CIA personnel).

month before.¹⁷⁵ For those agents who are still alive but in retirement, should we take their word that they are at grave risk? Does a lifetime of intrigue have as its cost a retirement filled with uncertainty?

The value of confidential FBI and CIA sources to the Warren Commission's work is underscored by the documents released thus far by the Board. For example, Exhibit Four is a letter dated June 17, 1964 from FBI Director J. Edgar Hoover to J. Lee Rankin, then General Counsel to the Warren Commission.¹⁷⁶ The letter details what the FBI knew about Fidel Castro's assessment of the assassination.¹⁷⁷ Originally classified as "Top Secret," this document indicates that the United States had a source sufficiently close to Castro to gauge the Cuban leader's evaluation of Oswald and the circumstances surrounding his visit to the Cuban embassy in Mexico City.¹⁷⁸ The FBI wished to redact much of this material. The FBI was concerned that Castro's tests were at variance with the FBI's test results. The Board decided that the information contained in the letter was critical to the assassination story;¹⁷⁹ therefore, the entire document was made available to the American public, illuminating the thinking of Castro and the credibility of the American intelligence community to assess the Cuban leader.

In matters of informants and agents, the JFK statute directs the agencies to provide the Board with "clear and convincing evidence" that disclosure will result in harm, either to an individual or to current operations.¹⁸⁰ If the FBI, for example, is unable to find a former informant, and thus does not know whether she is alive or dead, what is the Board's duty? The Board faces the dilemma of either erring on the side of protecting the individual's identity, even though there is no evidence that the person is alive and living under a current threat, or enriching the historical record by revealing the individual's identity while running the risk of causing unnecessary harm.

There is also the related question of how to treat the names of persons described in the reports of informants as being engaged in some illicit conduct when there is no proof, other than the informant's word, to support the accusation. Is that individual owed a right

175. See O'Leary, *supra* note 174, at A1.

176. See Exhibit Four *infra* p. 45.

177. See *id.*

178. See *id.*

179. Parts of the document had been declassified in 1976, but the FBI wanted to continue to postpone release of the portions in brackets. See *id.*

180. 44 U.S.C. § 2107(6) (1994).

to know that he or she was so identified, or is it the Board's duty to redact the person's name? Would disclosing false information be more damaging than retaining it in government records where only government officials have access to such information?

These questions indicate the range of issues associated with deciding whether to postpone releasing the names of informants and agents. Where does the requirement for a full historical record of the Kennedy assassination yield to the prudential uses of secrecy to preserve the nation's ability to gather intelligence?

IX. SOURCES AND METHODS

The JFK Act requires the Board to balance the need to protect sources and methods of intelligence collection with the public need for disclosure of information relating to the assassination.¹⁸¹ The inappropriate release of documents, either in part or in full, dealing with our intelligence agencies' sources and methods could afford hostile nations, organized crime, terrorists, and drug dealers an understanding of our intelligence capabilities. If another nation or a terrorist group knows how we are able to exercise surveillance over them, they are likely to adopt appropriate countermeasures. They also might seek to provide selectively misleading information, knowing that we are listening and how we are listening. Many of the documents already available in the JFK Collection at the National Archives indicate that the United States bugged, tapped, photographed, and otherwise conducted surveillance of persons and places. The question arises whether we should also reveal the precise kind of equipment that was used, how it was employed, and against whom it was targeted. Knowledge about equipment and technique would be important in evaluating the capability of the intelligence community, not only to ply its craft, but to organize a conspiracy on its own. Again, the question arises whether disclosing a source, method, or technique should turn on whether positive or negative information becomes available.

Exhibit Five provides a good indication of the kinds of issues involved in dealing with sources and methods.¹⁸² This document is a cable sent from the Director of the CIA on November 29, 1963, only hours after the murder of the President, seeking information about a surveillance operation conducted in Mexico City.¹⁸³ The message

181. See 44 U.S.C. § 2107(7) (authorizing postponement of the release of records if the threat of disclosure "is of such gravity that it outweighs the public interest"); see also *supra* note 102 and accompanying text.

182. See Exhibit Five *infra* p. 47.

183. *Id.*

sought information about what the CIA operatives in Mexico City knew about the existence of tapes and transcripts involving surveillance of the Soviet Embassy there.¹⁸⁴ The CIA originally requested the postponement of much of the information in this document; however, the Board decided that its centrality to understanding the assassination story required its release, with the only redaction being the name of the authenticating office, whose pseudonym was used in its place.¹⁸⁵ Because it helps to clarify the issue of whether the CIA taped Oswald's conversations in the Embassy, this document is one of the most significant released by the Board to date. This document also suggests the CIA's awareness of and interest in Oswald before he purportedly shot the President.

There is also the question of whether the Board should reveal the identities of those who handled information relating to the investigation of the assassination. America's intelligence machine is a huge bureaucracy that processes information in staggering quantities.¹⁸⁶ How and by whom information relating to the assassination was organized, processed, and distributed is central to evaluating the CIA's role in the assassination. For example, Exhibit Six pertains to the continuing debate about whether the Agency photographed Oswald entering the Soviet Embassy and whether a record of what he had to say there was ever sent to CIA headquarters.¹⁸⁷ Arguably, unraveling the chain of custody of that material is critical. Yet, to do so would require identifying the persons who handled it. In this instance, the Board decided that, on grounds of personal privacy and potential harm, it would not disclose the name of one CIA official involved with the Mexico City operation, although the names of other officials were released in cooperation with the CIA.

X. FOREIGN LIAISON

The American government conducts its intelligence operations in collaboration with the services of other nations.¹⁸⁸ For example, the most secret agreement ever entered into by the English-speaking world is the pact by which the United States, Great Britain, Canada,

184. *Id.*

185. *See id.* The material enclosed in brackets in Exhibit Five was originally withheld by the CIA. *See id.*

186. *See Assassination Materials Disclosure Act III, supra* note 96, at 897 (photograph depicting voluminous JFK assassination files); Wald, *supra* note 128 (describing the Department of Energy's accumulation of information).

187. *See Exhibit Six infra* p. 48.

188. *See STAFFORD T. THOMAS, THE U.S. INTELLIGENCE COMMUNITY 89-94 (1985).*

Australia, and New Zealand carved the world into spheres of cryptologic influence, assigning each nation targets and agreeing to standardize terminology, code words, and other operations procedures.¹⁸⁹ Revelations of these and other relationships could prove extremely embarrassing to the cooperating governments, especially when those governments profess to be neutral or have publicly stated that they have no connection with the CIA. However, a full understanding of the intelligence base upon which the Warren Commission and the intelligence community as a whole assessed the Kennedy assassination depends on a thorough accounting of such connections. Moreover, perhaps nowhere else is negative information more important than when the intelligence service of another country has access to unique sources. There is, as well, the related question of how much information was known at the top of the cooperating governments and the extent to which such knowledge would enhance our understanding of the assassination as being the work of foreign conspirators. If we compromise any of those relationships and consequently cause political damage to the cooperating government, we may find a valuable future source of intelligence closed.¹⁹⁰

Exhibit Seven poses some of these liaison issues.¹⁹¹ The FBI provided the Board with this heavily redacted document, arguing that release of the body of material in the message from the FBI field office in Paris to the Director of the FBI in Washington on October 12, 1960 (three years before the assassination), would damage the ability of the United States to work with the intelligence and police operations of a foreign nation. The cable, however, struck the Board as being particularly important, in that it showed that three years before the murder of the President the FBI was engaged in surveillance of Oswald's activities.¹⁹² The Board was also concerned that concealing so large an amount of material would only heighten speculation about the document's significance.

189. See JAMES BAMFORD, *THE PUZZLE PALACE: A REPORT ON AMERICA'S MOST SECRET AGENCY* 309, 315-17 (1982).

190. Congress acknowledged this concern in the JFK Act by allowing postponement of the release of documents, which clear and convincing evidence establishes will "compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a . . . foreign government." 44 U.S.C. § 2107(6)(4) (1994).

191. See Exhibit Seven *infra* p. 52.

192. See *id.*

As Exhibit Eight demonstrates, the contents of the cable were far more sinister when redacted than when they were disclosed in full.¹⁹³ To gain this release, the Board sought the cooperation of the Swiss ambassador to the United States, who consented to the release, only with the proviso that the names of specific Swiss officials not be divulged. As a result of the cable's release, we know that the FBI had knowledge of and interest in Oswald's activities well before the assassination, to the extent of relying on officials of the Swiss Federal Police to learn about his possible attendance at Albert Schweitzer College.¹⁹⁴

XI. OF TIMES AND THEORIES

How to address the host of issues raised by these intelligence materials depends on answers to two overriding questions. The first is whether the passage of time renders open that which currently requires postponement. The second is whether, by adopting a particular theory about what happened in Dallas, the Board so fundamentally shapes its assumptions about the significance of documents that it may actually fail to open the most critical of them.

More than a third of a century has passed since the murder of President Kennedy. When asked whether the sources, methods, and techniques used then are no longer worthy of protection today, the intelligence and law enforcement agencies appropriately answer no.¹⁹⁵ They argue that disclosure at any time will reduce their capabilities and, hence, our national security.¹⁹⁶ In the world of intelligence operations, all secrets must live forever, lest we be unable to find new secrets in the future.

The passage of time, however, has made a difference, and in some instances dramatically so. There is today no Soviet Union to which Lee Harvey Oswald could return. If he returned to Minsk, he would find it a capital of an independent nation, rather than a satellite of the Communist Empire. The Warsaw Pact has dissolved; the capitals of Eastern Europe now sport trendy shops and capitalist enterprises; Cuba survives by importing tourists from everywhere but the United States; and China has emerged as a major American market. Not only is the Cold War dead, but so too are many of the principal figures in the assassination—President Johnson, Robert F. Kennedy, John Connally, and Jacqueline Kennedy. The U-2 is regularly fea-

193. See Exhibit Eight *infra* p. 53 (observing that Oswald announced his plans to attend Swiss college, but that he never arrived to attend classes).

194. See *id.* (documenting FBI's request to Swiss police for information about Oswald).

195. See *supra* notes 154-157 and accompanying text.

196. See *supra* notes 154-157 and accompanying text.

tured on television documentaries; photographs from the once super-secret Keyhole surveillance satellites of the 1960s and early 1970s leap from the pages of the current issues of *Scientific American*.¹⁹⁷ There is no doubt that the CIA, FBI, and military intelligence services snooped on us and other nations, friend and foe.¹⁹⁸ The CIA in particular argues that current intelligence activities must remain plausibly deniable and that the Board's role should be to postpone the disclosure of actions taken a third-of-a-century ago that conceivably could compromise current operations. Yet, we might reasonably ask ourselves, as the Board has, whether, three decades later, we would compromise our security interests around the world by indicating that a CIA station once existed in Moscow.

If the passage of time makes no difference, then the American people would never have a right to all of the information used or denied by the Warren Commission. The passage of time neuters secrecy, and eventually, like Douglas MacArthur's old soldiers, secrets just fade away. If there are any secrets that a democratic government has a right to keep permanently from its people, surely the murder of the President would not be one such secret.

Then there is the problem of what theory the Board should adopt to explain events in Dallas. Gerald Posner, for example, has pub-

197. See Dino A. Brugioni, *The Art and Science of Photo Reconnaissance*, *Sci. Am.*, Mar. 1996, at 78. Few secrets were accorded more respect than the techniques associated with photo reconnaissance by spy planes and satellites. See *id.* (discussing 800,000 reconnaissance photographs taken by the CIA from 1960-72 and kept secret). There is now, however, growing information about the capabilities of the United States during the Cold War. See *id.*; see also Stuart F. Brown, *America's First Eyes in Space*, *POPULAR SCI.*, Feb. 1, 1996, at 42, available in 1996 WL 9275085 (describing the government's declassification of 800,000 photographs); Philip Chien, *High Spies: U.S. Reconnaissance Satellites*, *POPULAR MECHANICS*, Feb. 1996, at 47, available in LEXIS, News Library, Mag File (explaining that one of the original reconnaissance satellites of the 1960s will be displayed at the Smithsonian's Air and Space Museum).

198. See generally MICHAL R. BELKNAP, *COLD WAR POLITICAL JUSTICE* (1977) (describing the Department of Justice's nationwide campaign to bring down the Communist party of the United States); NELSON BLACKSTOCK, *COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM* (1976) (describing the FBI's counterintelligence operations and violations of constitutional rights); WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS X* (1990) (describing FBI documents that "expose the secret, systematic, and sometimes savage use of force and fraud, by all levels of government to sabotage progressive political activity"); FRANK J. DONNER, *THE AGE OF SURVEILLANCE* (1980) (describing U.S. domestic intelligence operations); BRIAN FREEMANTLE, *CIA* (1989) (attributing CIA excesses to lack of direction or misdirection from the Executive Branch and presidency); JEFFREYS-JONES, *supra* note 174 (describing how allegations of the CIA's failed operations in Bogota, Columbia led to an expansion of intelligence operations); MARK REIBLING, *WEDGE: THE SECRET WAR BETWEEN THE FBI AND CIA* (1994) (discussing the CIA's efforts to assassinate Fidel Castro); DAVID WISE, *THE AMERICAN POLICE STATE: THE GOVERNMENT AGAINST THE PEOPLE* (1976) (describing U.S. domestic intelligence operations).

lished a widely read book on the assassination entitled *Case Closed*.¹⁹⁹ It concludes that Lee Harvey Oswald murdered President Kennedy, that he did so acting alone, and that there is no evidence of a larger conspiracy, foreign or domestic.²⁰⁰ That notion of the assassination is countered by a host of critics that insist on just the opposite.²⁰¹

The general assumptions the Board holds about what happened inform how it assesses the value of a particular document to the public. If the Board assumes that Oswald murdered the President, and consequently looks only for information that speaks to his role, it is likely, on national security grounds, to postpone certain kinds of information. If the Board assumes that the murder was a conspiracy, then much of what seems irrelevant to the Oswald explanation may actually have great currency.²⁰² The intelligence agencies rely on the

199. POSNER, *supra* note 6.

200. *See id.* at 472.

201. *See, e.g.*, HARRISON E. LIVINGSTONE, *KILLING KENNEDY* 282-334 (1995) (arguing that Posner's book tricked the public with false scholarship); G. Robert Blakey, *Murdered by the Mob? 30 Years After the Kennedy Assassination, This Case Isn't Closed*, WASH. POST, Nov. 7, 1993, at C1, available in LEXIS, News Library, Wpost File (arguing that credible scientific and other evidence points to a conspiracy); Jeffrey A. Frank, *Who Shot JFK? The 30-Year Mystery*, WASH. POST, Oct. 21, 1993, Book World, at X4, available in LEXIS, News Library, Wpost File (arguing that Posner "rarely strays from paths staked out by the Warren Commission" and that the "book ultimately becomes an all-too-transparent brief for the prosecution"); Jonathan Kwitny, *Bad News: Your Mother Killed JFK*, L.A. TIMES, Nov. 7, 1993, at 1, available in LEXIS, News Library, Lat File (contending that Posner "presents only the evidence that supports the case he is trying to build").

Posner related that other reactions to his book included an accusation that he was a CIA agent, a computer network asking its members to discredit his book, and demonstrators in front of his hotel. *See* Geoffrey C. Ward, *The Most Durable Assassination Theory: Oswald Did It Alone*, N.Y. TIMES, Nov. 21, 1993, § 7, at 15, available in LEXIS, News Library, Nyt File (describing the reactions Posner received from his book).

202. The Board adopted a broad definition of an "assassination record" with just such issues in mind. *See* 96 C.F.R. pt. 1400 (1995). The pertinent sections dealing with the scope for interpreting the JFK statute read as follows:

§ 1400.1 SCOPE OF ASSASSINATION RECORD.

- (a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.
- (b) An *assassination record* further includes, without limitation:
 - (1) All records as defined in Section 3(2) of the JFK Act;
 - (2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any interagency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents

and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(5) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in § 1400.8 of this chapter.

§ 1400.2 SCOPE OF ADDITIONAL RECORDS AND INFORMATION.

The term *additional records and information* includes:

- (a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section.
- (b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.
- (c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.
- (d) Organizational charts of government agencies.
- (e) Records necessary and sufficient to describe the agency's:
 - (1) Records policies and schedules;
 - (2) Filing systems and organization;
 - (3) Storage facilities and locations;
 - (4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;
 - (5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and
 - (6) Reclassification to a higher level, transfer, destruction, or other information (e.g., theft) regarding the status of assassination records.
- (f) Any other record that does not fall within the scope of assassination record as described in § 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§ 1400.3 SOURCES OF ASSASSINATION RECORDS AND ADDITIONAL RECORDS AND INFORMATION.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

- (a) Agencies, offices, and entities of the executive, legislative, and judicial branches of the Federal Government;
- (b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;
- (c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;
- (d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;
- (e) Individuals who possess such records by virtue of service with a government agency, office, or entity;
- (f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;

theory that Oswald did it and that he did it alone.²⁰³ To support such a position, they turn, ironically, to the findings of the Warren Commission,²⁰⁴ a body that in some ways they attempted to deceive. Perhaps there is no better evidence of the CIA's attitude than its effort to sway public opinion abroad in the wake of the release of the *Warren Commission Report*.²⁰⁵ As Exhibit Nine makes clear, the CIA used its substantial resources to just that end.²⁰⁶

There is considerable irony in the CIA's position, both then and now. Much of the speculation about the murder of President Kennedy has centered on the role of that agency.²⁰⁷ The only way to sustain its innocence in this matter may well be to fully disclose the evidence, including selected sources and methods, that will reveal conclusively that neither it nor some foreign power was behind the murder.

CONCLUSION

The American public should not rely on the JFK Board to settle the question of what happened in Dallas and why. That is not the

(g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

§ 1400.4 TYPES OF MATERIALS INCLUDED IN SCOPE OF ASSASSINATION RECORD AND ADDITIONAL RECORDS AND INFORMATION.

The term *record* in *assassination record* and *additional records and information* includes, for purposes of interpreting and implementing the JFK Act:

(a) papers, maps, and other documentary material;

(b) photographs;

(c) motion pictures;

(d) sound and video recordings;

(e) machine readable information in any form; and

(f) artifacts.

203. See Exhibit Nine *infra* p. 54 (contending that "Oswald would not have been any sensible person's choice for a co-conspirator").

204. See *id.* (advising that in discussing assassination with "politicians and editors," CIA personnel point out that the Warren Commission "made as thorough an investigation as humanly possible").

205. See *id.*

206. See *id.* (noting that the American public's belief that Oswald did not act alone "is a matter of concern to the U.S. Government, including [the CIA]").

207. See, e.g., PROUTY, *supra* note 29 (reviewing the history of troubled relations between the CIA and President Kennedy); ALAN J. WEBERMAN & MICHAEL CANFIELD, *COUP D'ETAT IN AMERICA, THE CIA AND THE ASSASSINATION OF JOHN F. KENNEDY* (1992) (asking whether Lee Harvey Oswald was a CIA agent); JFK, *supra* note 9.

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Board's mandate.²⁰⁸ The Board 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.²⁰⁹

We are reminded almost daily by the press and media spokespersons that the maintenance of secrets is bad, that openness is good, and that accountability in all public matters is highly desirable.²¹⁰ Full disclosure is to be preferred over partial; the full truth is better than something less, 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.²¹¹ Secrecy in a democracy deserves better; it cannot be an end in itself, and it 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 the intelligence community and for the government it serves.

George Bernard Shaw was correct when he argued: "There are no secrets better kept than the secrets that everybody guesses."²¹² Shaw's words surely describe the approach of the intelligence agencies to the Kennedy assassination. In the absence of disclosure, the public, goaded by a news-hungry press and an activist research community, will be left to speculate in sensational ways about the assassination. Such speculation will continue to have predictably corrosive consequences.

We should all be stunned that, with countless documents still hidden in government filing cabinets, researchers, newspaper reporters,

208. See 44 U.S.C. § 2107(2)(b) (1994) (Identifying the purpose of the JFK Act as establishing the President John F. Kennedy Assassination Records Collection of the National Archives and Records Administration and requiring "the expeditious public transmission to the Archivist and public disclosure of such [assassination] records").

209. See *supra* note 14.

210. See, e.g., Weiner, *supra* note 140 (discussing the CIA's slow release of its files on the most important covert actions of the Cold War). The argument in support of openness and accountability in government is advanced carefully by NORMAN DORSEN & STEPHEN GILLERS, *NONE OF YOUR BUSINESS: GOVERNMENT SECRECY IN AMERICA* (1974).

211. See Wald, *supra* note 128 (observing that, at the Department of Energy, "Ideas are 'classified at birth,' or presumed secret until proved otherwise"); see also *supra* notes 124-134 and accompanying text.

212. CHRISTOPHER MORLEY & LOUELLA D. EVERETT, *FAMILIAR QUOTATIONS: A COLLECTION OF PASSAGES, PHRASES AND PROVERBS, TRACED TO THEIR SOURCES IN ANCIENT AND MODERN LITERATURE* BY JOHN BARTLETT 720 (12th ed. 1948) (quoting George Bernard Shaw).

columnists, and movie and TV producers have managed to convey a broadly held view that the Warren Commission failed and that the government knows more than it is telling.²¹³ We should stand in awe of their capacity to explain the assassination in such breathtaking terms when so much still remains under lock and key. By breaking confidences with former informants and disclosing clandestine CIA and FBI operations, a fuller record will put to the test the most sinister of all conspiracy theories: that the President was murdered by his own government. Such a matter cannot be left to chance explanation because it eats away at the foundation of public confidence in government, which neither well-intentioned secrecy nor covert operations can restore.

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 not²¹⁴ 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.

Americans have been left guessing about the Kennedy assassination since the Warren Commission issued its report. When everything is secret, everything is secret—and that is how the intelligence business operates.²¹⁵ In the case of the Kennedy murder, however, that strategy has taken a heavy toll. Our task is to accept on a principled basis the importance of secrets in a democracy and to protect what is truly valuable and in the public interest to keep secret. Only then will it be possible to assess whether charges of a conspiracy to murder President Kennedy are but another example of the virulence of the national appetite for bogus revelation.

213. See *supra* notes 6-10 and accompanying text.

214. See Wald, *supra* note 128 (noting that the Department of Energy is spending \$9 million on a computer program that will make an initial assessment regarding possible disclosure of 100 million pages of documents to reduce the number of secret documents to a manageable quantity for further human assessment).

215. See generally MARCHETTI & MARKS, *supra* note 72, at 370 (concluding that secrecy has become a "way of life" for U.S. intelligence operations).

EXHIBIT ONE

URGENT 11-26-63 8-05 PM VBR
 TO DIRECTOR AND SAC, DALLAS
 FROM SAC, HOUSTON 44-939 2P
 JACK LEON RUBY, AKA. LEE HARVEY OSWALD, AKA. DASH
 VICTIM. CR.

ON NOVEMBER TWENTY SIX INSTANT, [REDACTED]
 [REDACTED] REPORTED TELEPHONE CONVERSATION HAD WITH [REDACTED]
 [REDACTED] DALLAS ON NOVEMBER TWENTY FIVE
 LAST. [REDACTED] KNOWN TO INFORMANT FOR A NUMBER OF YEARS,
 IS REPORTED TO BE QUOTE FIXER UNQUOTE AND QUOTE PAY OFF
 CONTACT UNQUOTE BETWEEN [REDACTED]

3.4

DURING PHONE CONVERSATION INFORMANT ASKED [REDACTED]
 IF SHOOTING OF OSWALD WAS AN ACCIDENT AND SHE REPORTEDLY
 STATED QUOTE NO, I DON-T THINK SO UNQUOTE. [REDACTED] WAS
 ASKED TWO OR THREE TIMES IF IT WAS ACCIDENT AND EACH TIME
 SHE SAID IT WAS NOT BUT REFUSED TO MAKE FURTHER
 STATEMENT OR CLARIFICATION ON PHONE, STATING TO INFORMANT
 QUOTE YOU KNOW HOW IT WORKS UNQUOTE.
 END PAGE ONE

X ref Bureau 1343

44-1639-299

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SERIALIZED	FILED
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FBI - DALLAS	

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PAGE TWO

INFORMANT TO PERSONALLY CONTACT [REDACTED] WHILE IN DALLAS
ON LEGITIMATE BUSINESS ON NOVEMBER TWENTY SEVEN OR TWENTY
EIGHT, NEXT. HOUSTON WILL FOLLOW AND REPORT RESULTS OF
CONTACT.

INFORMANT STATES [REDACTED] WILL NOT COOPERATE WITH BUREAU
AND WILL DENY ANY KNOWLEDGE OF INCIDENT.

HOUSTON RECOMMENDS [REDACTED] NOT BE INTERVIEWED AT THIS TIME
IN ORDER THAT INFORMANT WILL NOT BE COMPROMISED.

END AND ACK

WA ADV SEP

DL HOLD

DL 8 8-09 PM EST OK FBI DL LJH

3.4

4

EXHIBIT TWO

URGENT 11-26-63 7-49 PM VBR

TO DIRECTOR AND SAC, DALLAS

FROM SAC, HOUSTON 44-939 2P

JACK LEON RUBY, AKA. LEE HARVEY OSWALD, AKA. DASH
VICTIM. CR.

COND. INFO. [REDACTED] DASH
ON NOVEMBER TWENTY SIX INSTANT, [MC CALL] [REDACTED] [DASH]
4 [REDACTED] REPORTED TELEPHONE CONVERSATION HAD WITH [MARY ANN MC CALL],
HOSTESS, BACHELOR-S CLUB, DALLAS ON NOVEMBER TWENTY FIVE
LAST. [MC CALL] KNOWN TO INFORMANT FOR A NUMBER OF YEARS,
IS REPORTED TO BE QUOTE FIXER UNQUOTE AND QUOTE PAY OFF
CONTACT UNQUOTE [BETWEEN DALLAS POLICE AND CRIMINAL ELEMENT.]

DURING PHONE CONVERSATION INFORMANT ASKED [MC CALL]
IF SHOOTING OF OSWALD WAS AN ACCIDENT AND SHE REPORTEDLY
STATED QUOTE NO, I DON-T THINK SO UNQUOTE. [MC CALL] WAS
ASKED TWO OR THREE TIMES IF IT WAS ACCIDENT AND EACH TIME
SHE SAID IT WAS NOT BUT REFUSED TO MAKE FURTHER
STATEMENT OR CLARIFICATION ON PHONE, STATING TO INFORMANT
QUOTE YOU KNOW HOW IT WORKS UNQUOTE.

END PAGE ONE

44-2401-329-114

PAGE TWO

INFORMANT TO PERSONALLY CONTACT [MC CALL] WHILE IN DALLAS ON LEGITIMATE BUSINESS ON NOVEMBER TWENTY SEVEN OR TWENTY EIGHT, NEXT. HOUSTON WILL FOLLOW AND REPORT RESULTS OF CONTACT.

INFORMANT STATES [MC CALL] WILL NOT COOPERATE WITH BUREAU AND WILL DENY ANY KNOWLEDGE OF INCIDENT.

HOUSTON RECOMMENDS [MC CALL] NOT BE INTERVIEWED AT THIS TIME IN ORDER THAT INFORMANT WILL NOT BE COMPROMISED.

END AND ACK

DL ADV SEP

WA KS-93 PM OK FBI WA LLD

TU CLR

EXHIBIT THREE

CIA HISTORICAL REVIEW PROGRAM
RELEASE AS SANITIZED
1995

(4)

FORM 137 1374

ORIG: [G.F. GESTETNER]

EXT:

CLASSIFIED MESSAGE

DATE: 29 NOVEMBER 1963

DISTR: COMMO
CHRONO (DUMMY)

~~SECRET~~
CLASSIFICATION

FILE: ~~SECRET~~
SovEmbActivities

DEFERRED	<input checked="" type="checkbox"/>	PRIORITY	INITIALS	BY:	NUMBER
ROUTINE		OPERATIONAL IMMEDIATE	INITIALS		

TO PRITY DIR INFO CITE MEXI 7150
NUMBER

[RYRAT GPFLOOR LCIMPROVE]

DUP OF
254-666

NO NIGHT ACTION

1. AS HQS AWARE, STATION'S [DOUBLE] AGENTS HAVE NOT HAD MEETINGS WITH SOVS SINCE ASSASSINATION. THIS PRINCIPALLY DUE FACT THAT PRIOR 22 NOV THE SOVS SCHEDULED FUTURE SESSIONS FOR PERIOD BEGINNING CIRCA [DEC] ALSO DUE FACTOR THAT ONE AGENT [LIJENNET-1] OUT OF TOUCH WITH SOV C/O [] AND THAT ANOTHER AGENT [LIMILE-1] OUT OF COUNTRY.

2. [LIJENNET-1] WILL HAVE MEETING SOV ON EVE ^{designated meeting times} [LITEASE-1] HAS MEET ^{designated meeting times} [LISTEED-2] ABOUT ^{designated meeting times} . WILL HAVE [LIMILE-1] MEET SOV EARLY ^{designated meeting times} . HAVE SEPARATELY ADVISED HQS RE STATION'S PROPOSAL RE [LINEB-1] MEETING WITH SOV.

3. REQUEST INSTRUCTIONS ON WHAT TACTIC OR ELICITATION EFFORT IF ANY THAT [DOUBLES] SHOULD MAKE.

4. ALSO REQUEST SIMILAR INSTRUCTIONS RE STATION'S SOV [ACCESS] AGENTS [LICRAVE-1] AND [LICUFF-1]. [LICANNY-1] MAY ALSO HAVE

CHK AUTHENTICATING OFFICER

COORDINATING OFFICERS
~~SECRET~~
CLASSIFICATION

RELEASING OFFICER

FORM 1304

(44)

ORIG:

EXT:

DISTR:

CLASSIFIED MESSAGE

DATE:

FILE:

~~SECRET~~
CLASSIFICATION

Page 2.

	DEFERRED	PRIORITY	INITIALS	DTG	NUMBER
	ROUTINE	OPERATIONAL IMMEDIATE	INITIALS		

TO

INFO.

CHE

7150
NUMBER

OPPORTUNITY MEET SOVS IF STATION WANTS.

END OF MSG

COORDINATING OFFICERS

AUTHENTICATING OFFICER

~~SECRET~~
CLASSIFICATION

RELEASING OFFICER

EXHIBIT FOUR

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

~~TOP SECRET~~
~~SECRET~~

- 1 - Mr. Belmont
- 1 - Mr. Sullivan
- 1 - Mr. Malley
- 1 - Mr. Branigan
- 1 - Mr. Baumgardner
- 1 - Mr. Lenzman

June 17, 1964

DECLASSIFIED BY 5170 HOS/SAT
ON 11/6/93

BY COURIER SERVICE
12/1/93
4/15/99 9803 EDD/IGAT
Class. by 1565 SD/AMR
Date of Review 8/20/00
(JFK/Amiel) (over)

Honorable J. Lee Rankin
General Counsel
The President's Commission
200 Maryland Avenue, Northeast
Washington, D. C.

Dear Mr. Rankin:

Through a confidential source which has furnished reliable information in the past, we have been advised of some statements made by Fidel Castro, Cuban Prime Minister, concerning the assassination of President Kennedy.

In connection with these statements of Castro, your attention is called to the speech made by Castro on November 27, 1963, in Havana, Cuba, during which Castro made similar statements concerning this matter. The pertinent portions of this speech are set out in the report of Special Agent James S. O'Connor dated May 8, 1964, at Miami, Florida, beginning on page 30.

According to our source, Castro reportedly reported to have said, "Our people in Mexico gave us the details in a full report of how he (Oswald) acted when he came to Mexico to their embassy (uncertain whether he means Cuban or Russian Embassy)." Castro further related, "First of all, nobody ever goes that way for a visa. Second, it costs money to go that distance. He (Oswald) stormed into the embassy, demanded the visa, and when it was refused to him, headed out saying, 'I'm going to kill Kennedy for this.'" Castro is alleged to have continued and asked, "What is your government doing to catch the other assassins?" and speculated, "It took about three people."

Our source then advised that Castro's speculation was based on tests which Castro and his men allegedly made under similar conditions with a similar rifle and telescope.

NOTE: See memo Baumgardner to Sullivan, 6-12-64, re "Lee Harvey Oswald, Internal Security - Cuba." (Info continued)

TO: JAS:mtb
FROM: [redacted]
DATE: JUN 18 1964
SUBJECT: [redacted]

JAS:mtb
(8)
JUN 18 1964

Excluded from automatic
downgrading and
declassification

SECRET

LITTON
REC'D-READING ROOM
FBI

IN USE BY RESEARCH

~~TOP SECRET~~~~SECRET~~

Honorable J. Lee Rankin

eight. Castro is said to have expressed the conclusion that Oswald could not have fired three times in succession and hit the target with the telescopic sight in the available time, that he would have needed two other men in order for the three shots to have been fired in the time interval. The source commented that on the basis of Castro's remarks, it was clear that his beliefs were based on theory as a result of Cuban experiments and not on any firsthand information in Castro's possession. In this connection, it should be noted that the FBI Laboratory firearms experts made tests and determined that three shots could be fired with the kind of rifle and sight used by Oswald in the five to six seconds which were available. The Laboratory noted, however, that the timing did not begin until after the firing of the first shot. (u) ↑

It will be noted that the information furnished by our source at this time as having come from Castro is consistent with and substantially the same as that which appears in Castro's speech of November 27, 1963, and which is referred to above. (u)

This additional material is set forth for the Commission's information and no further action is contemplated by this Bureau concerning it. (u)

Sincerely yours,

J. Edgar Hoover.

NOTE: (continued)

This letter is classified "Top Secret" in view of the nature of our source, the disclosure of which would seriously damage national defense interests. (u)

~~TOP SECRET~~~~SECRET~~

EXHIBIT FIVE

CLASSIFIED MESSAGE

ORIG: BIRCH O'NEAL
 JMT: C/CI/SIG
 EXT: 5367
 DATE: 23 NOV 63

INDEX
 NO INDEX
 FILE IN CS FILE NO.

TO: MEXICO CITY
 FROM: DIRECTOR
 CONF: CI/SI
 INFO: DCI, D/DCI, DDP, ADDP (CI), CI/OPS, CI/IC 2, FI, SR 7, WH 7,
 OS 2, VR

23 NOV 63 17 18 Z

ROUTING

DISPATCH

ROUTINE

IMMEDIATE

TO: IMMEDIATE MEXI INFO CIA HISTORICAL REVIEW PROGRAM 8 4 8 8 6
 RELEASE AS SANITIZED 1995
 REF: MEXI 6453 (IN 56017)*

1. IMPORTANT YOU REVIEW ALL LIENVOY TAPES AND TRANSCRIPTS SINCE 27 SEPTEMBER TO LOCATE ALL MATERIAL POSSIBLY PERTINENT TO SUBJECT REF.
2. DISPATCH SOONEST BY SPECIAL COURIER, STAFFER IF NECESSARY, FULL TRANSCRIPTS AND ORIGINAL TAPES IF AVAILABLE ALL PERTINENT MATERIAL.
3. [ARE ORIGINAL TAPES AVAILABLE?]

CLASSIFICATION REVIEW
 CONDUCTED ON 18 APR 1976
 BY: [Signature]

END OF MESSAGE

CS Comment: *Reported that on 1 October 63, an American male who said his name was Lee Oswald was at the Soviet Embassy in Mexico City.

Document Number 40-541 201-289248
 for FOIA Review of APR 1976 200-5-41
 23 NOV 63

[Signature]
 RELEASING OFFICER
 LC/WH

COORDINATING OFFICERS

WH/3 AUTHENTICATING OFFICER

SC/ASO

REPRODUCTION BY OTHER THAN THE ISSUING OFFICE IS PROHIBITED.

Copy No.

EXHIBIT SIX

CIA HISTORICAL REVIEW PROGRAM
RELEASE AS SANITIZED
1995

XAAZ 35907

0 SUMMARY of Relevant Information on Lee Harvey OSWALD at OTCO
24 November 1963.

DATE	1963
TIME	10:00
BY	OSWALD
TO	OSWALD
FROM	OSWALD
SUBJECT	OSWALD
CLASS	SECRET
FORM	OSWALD
FILE	OSWALD
INDEX	OSWALD
SEARCHED	OSWALD
SERIALIZED	OSWALD
FILED	OSWALD

1. Our first information on OSWALD came from [] technical operation [] in Mexico City and was cabled in on 9 October 1963. It revealed that on 1 October 1963 Lee OSWALD had been in touch there with Soviet Consul Valery KOSTIKOV about a telegram which the Soviet Embassy was supposed to send on him to the Soviet Embassy in Washington. The data showed that OSWALD had also been at the Soviet Embassy on 28 September. Traces showed OSWALD was a former U. S. defector to the USSR and on 10 October CIA Headquarters notified the FBI, State and the Navy (OSWALD had been a Marine). Our Mexico Station was told to pass its information on OSWALD to the Mexico City offices of the FBI, the Immigration and Naturalisation Service and the Embassy. Since our Agency is not supposed to investigate U. S. citizens abroad without special request, we did nothing further on the case.

2. After the assassination of President Kennedy on 22 November, Mexico Station, which immediately recalled its earlier report on OSWALD and cabled us about it, began researching all its files and records for reports which might relate to him. It turned up pictures of a man believed to be OSWALD entering the Soviet and Cuban Embassies on various days in October, including 1 October, but when some of these pictures were sent to the FBI in Dallas they proved to be someone other

Document Number 130-592
for FOIA Review on APR 1975

CLASSIFICATION REVIEW
CONDUCTED ON 24 MAY 1975
IMPORT CL BY 012108

RECORD COPY

26 Nov 63
201-289248

-2-

than OSWALD. Mexico Station has, to date, found no pictures of OSWALD entering the Soviet or Cuban Embassy.

3. The search did reveal more data from [technical operations,] however. This information, which comes in in great masses, had not been previously associated with OSWALD because his name is not actually mentioned in it, but the subject matter shows it is about him, [and our expert monitor says the voice is identical with the voice of 1 October known to be OSWALD's.]

4. This further [technical] information covers a round-robin of telephone calls and visits which OSWALD made to the Soviet and Cuban Embassies in Mexico City between 27 September and 3 October 1963. This has been supplemented by reports on his travel in and out of Mexico obtained by the U. S. Consulate in the border town of Nuevo Laredo from Mexican Immigration Service records.

5. In brief, all this information shows that Lee Harvey OSWALD entered Mexico (apparently by car) at Nuevo Laredo on 26 September 1963, claiming he was a photographer, living in New Orleans and bound for Mexico City. On 27 September he was in Mexico City phoning the Soviet Embassy to ask for a visa so he could go to Odessa, USSR. On 28 September, he was at the Cuban Embassy, and Silvia DURAN, a Mexican Employee of the Cuban Embassy, telephoned the Soviet Embassy about his problem. It seems that OSWALD (whose name is not mentioned) wanted a Cuban transit visa so he could go to Cuba and wait there for a Soviet

~~SECRET~~

-3-

visa which would permit him and his wife to go on to the Soviet Union. Silvia DURAN asked assurance that the Russians would grant him the visa. A while later a Soviet official calls Silvia DURAN back and explains that the visa applicant had been dealing with the Soviet Consulate in Washington about the same matter and that they could not be sure that he would ever get the Soviet visa. The Soviet official added that the applicant had a letter showing he belonged to an organization in favor of Cuba. Silvia DURAN and the Soviet official agree to table the matter.

6. On 26 September 1963, OSWALD again visits the Cuban Embassy and talks to Silvia DURAN about the same matter, and she phones the Soviet Embassy. OSWALD also talks to a Soviet official on her phone and says he will come to the Soviet Embassy and give him what is apparently a forwarding address where he can be reached. There is some hint this address may be in Cuba.

7. On 1 October, OSWALD has his phone conversation with Soviet Consul KOSTIKOV about his visa, and on the same day, OSWALD phones the Soviet Military Attache about the same matter. The Military Attache gives him the number of the Consul. Finally, on 3 October, OSWALD phoned the Military Attache again and tried to talk about a visa, but the Military Attache again referred him to the Consul and give him the right phone number.

8. That same day, 3 October 1963, OSWALD drove back into the United States at the Nuevo Laredo-Laredo, Texas crossing point. He

11.

-4-

had travelled on a Mexican Tourist Card in lieu of passport.

9. On 23 November 1963, Mexican authorities, [] and who had noticed the name of Lee OSWALD in it, arrested Silvia DURAN and her husband and interrogated them. She confirmed the information given above, saying that Lee OSWALD had professed to be a Communist and an admirer of Castro. She and her husband are being held incommunicado and their arrest will not be made known, for the time being.

10. Observation of the Soviet and Cuban Embassies in Mexico and of their principal intelligence officers, including KOSTIKOV, since the assassination of President Kennedy, by [both technical and] physical surveillance, shows nothing unusual.

11. Mexican President Lopez Mateos is aware of this case [] He will doubtless support any further police action which is necessary.

11.

EXHIBIT SEVEN

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA
American Embassy
Paris 8, France

AA
dup

Date: October 12, 1960
To: Director, FBI (105-82555)
From: Legat, Paris (105-1067)
Subject: LEE HARVEY OSWALD
INTERNAL SECURITY - R

SECRET

4/6/82
Classified by 9803 ad/fel
Declassify on: OADR
#JFK

Re Paris letter 9/27/60.

[REDACTED] 4
[REDACTED] 16
[REDACTED] 13

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

RUC
2 - Bureau
1 - Paris
NWP:mas
(3)

SECRET 105-82555-10

OCT 18 1960

59 OCT 20 1960

Classified by 2442 JLB
Exempt from GDS, Category 1, 2, 3, 4
Date of Declassification Indefinite

SECRET

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

EXHIBIT EIGHT



THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA American Embassy Paris 8, France

MA
dup

Date: October 12, 1960
To: Director, FBI (105-80555)
From: Legat, Paris (105-1067)
Subject: LEE HARVEY OSWALD
INTERNAL SECURITY - R

DECLASSIFIED BY ~~SP5/SLK/...~~
ON 04/18/80 (Per 6005 (a)(1)-(3))
SECRET

DECLASSIFIED BY 9802/SLK/...

Re Paris letter 9/27/60.

The Swiss Federal Police furnished the following report on October 1, 1960 (S)(u)

INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08/14/01 BY 60322/UC/...

The investigation at the "Albert Schweitzer College" located at Churwalden, Switzerland, revealed that OSWALD actually had announced his planned attendance at this school for the course beginning in the fall of 1959. Inquiry at the college revealed that he has not arrived there up to the present time. He had originally written a letter from Moscow indicating his intention to attend there. A letter which was addressed to him at this address by his mother was returned to her since his whereabouts are unknown to the college. The Swiss Federal Police advised that it is unlikely that he would have attended the course under a different name. The Swiss Federal Police advised that courses for the fall of 1960 commence on October 2, 1960, and that it is [redacted] that the school may now receive further correspondence [redacted]. At the present time, there is no record of a person possibly identical with the subject who is registered for the courses beginning October 2, 1960. (S)(u)

The Swiss Federal Police advised that if further information comes to the attention of the Albert Schweitzer College [redacted] is advised a [redacted] in turn will advise us. (S)(u)

RUC
2 - Bureau
1 - Paris
NWP:mas
(3)

REC-41 107-302515-10
EX-109
OCT 18 1960

59 OCT 20 1960
09

DECLASSIFIED BY ~~SP5/SLK/...~~
EXEMPT FROM AUTOMATIC
DECLASSIFICATION
SECRET

EXHIBIT NINE

C/L KIT

DISPATCH		PROCESSING ACTION	
APPROVED FOR RELEASE 1992 CIA HISTORICAL REVIEW PROGRAM		ONLY QUALIFIED PERSONS CAN JUDGE SECURITY	
Chief, [redacted]		MICROWAVE	
Counteracting Criticism of the Warren Report			
Document Number 1035-960 for FOIA Review on SEP 1976 PARTIAL OF			
<p>PSYCH</p> <p>1. <u>Our Concern.</u> From the day of President Kennedy's assassination on, there has been speculation about the responsibility for his murder. Although this was stemmed for a time by the Warren Commission report (which appeared at the end of September 1964), various writers have now had time to scan the Commission's published report and documents for new pretenses for questioning, and there has been a new wave of books and articles criticizing the Commission's findings. In most cases the critics have speculated as to the existence of some kind of conspiracy, and often they have implied that the Commission itself was involved. Presumably as a result of the increasing challenge to the Warren Commission's Report, a public opinion poll recently indicated that 46% of the American public did not think that Oswald acted alone, while more than half of those polled thought that the Commission had left some questions unresolved. Doubtless polls abroad would show similar, or possibly more adverse, results.</p> <p>2. This trend of opinion is a matter of concern to the U.S. government, including our organization. The members of the Warren Commission were naturally chosen for their integrity, experience, and prominence. They represented both major parties, and they and their staff were deliberately drawn from all sections of the country. Just because of the standing of the Commissioners, efforts to impugn their rectitude and wisdom tend to cast doubt on the whole leadership of American society. Moreover, there seems to be an increasing tendency to hint that President Johnson himself, as the one person who might be said to have benefited, was in some way responsible for the assassination. Innuendo of such seriousness affects not only the individual concerned, but also the whole reputation of the American government. Our organization itself is directly involved: among other facts, we contributed information to the investigation. Conspiracy theories have frequently thrown suspicion on our organization, for example by falsely alleging that Lee Harvey Oswald worked for us. The aim of this dispatch is to provide material for countering and discrediting the claims of the conspiracy theorists, so as to inhibit the circulation of such claims in other countries. Background information is supplied in a classified section and in a number of unclassified attachments.</p> <p>3. <u>Action.</u> We do not recommend that discussion of the assassination question be initiated where it is not already taking place. Where discussion is active, however, addresses are requested:</p>			
CS COPY: 200-5-44 201-0289248			
SOURCE REFERENCE NO 9 attachments h/v	DISPATCH SYMBOL AND NUMBER ED 5047	DATE 4/12/67	
1 - SECRET 8 - Unclassified	CLASSIFICATION SECRET	WHO FILE NUMBER DESTROY-WHEN-NO-LONGER-NEEDED	
[redacted] ABSTRACT [redacted]	ORIGINATING		
	OFFICE CA/TROP/G	EXT. 78611	
	COORDINATING		
	OFFICE SYMBOL CT/RAA AF/CA FE/CA NE/COFS EUR/CA VE/CA	DATE 11 23 67	OFFICER'S NAME Coordinated in draft Coordinated in draft Coordinated in draft Coordinated in draft Coordinated in draft Coordinated in draft
	RELEASING		
OFFICE SYMBOL C/CA	DATE 12 Jan 67	OFFICER'S INITIALS [Signature]	
FORM 53 USE PREVIOUS EDITIONS. DISPATCH			

CONTINUATION OF DISPATCH	CLASSIFICATION SECRET	DISPATCH SYMBOL AND NUMBER RD 5847
<p>a. To discuss the publicity problem with liaison and friendly elite contacts (especially politicians and editors), pointing out that the Warren Commission made as thorough an investigation as humanly possible, that the charges of the critics are without serious foundation, and that further speculative discussion only plays into the hands of the opposition. Point out also that parts of the conspiracy talk appear to be deliberately generated by Communist propagandists. Urge them to use their influence to discourage unfounded and irresponsible speculation.</p> <p>b. To employ propaganda assets to answer and refute the attacks of the critics. Book reviews and feature articles are particularly appropriate for this purpose. The unclassified attachments to this guidance should provide useful background material for passage to assets. Our play should point out, as applicable, that the critics are (i) wedded to theories adopted before the evidence was in, (ii) politically interested, (iii) financially interested, (iv) hasty and inaccurate in their research, or (v) infatuated with their own theories. In the course of discussions of the whole phenomenon of criticism, a useful strategy may be to single out Epstein's theory for attack, using the attached Fletcher Knebel article and Spectator piece for background. (Although Mark Lane's book is much less convincing than Epstein's and comes off badly where contested by knowledgeable critics, it is also much more difficult to answer as a whole, as one becomes lost in a morass of unrelated details.)</p> <p>4. In private or media discussion not directed at any particular writer, or in attacking publications which may be yet forthcoming, the following arguments should be useful:</p> <p>a. <u>No significant new evidence</u> has emerged which the Commission did not consider. The assassination is sometimes compared (e.g., by Joachim Joesten and Bertrand Russell) with the Dreyfus case; however, unlike that case, the attacks on the Warren Commission have produced no new evidence, no new subplots have been convincingly identified, and there is no agreement among the critics. (A better parallel, though an imperfect one, might be with the Reichstag fire of 1933, which some competent historians (Fritz Tobias, A.J.P. Taylor, D.C. Watt) now believe was set by Van der Lubbe on his own initiative, without acting for either Nazis or Communists; the Nazis tried to pin the blame on the Communists, but the latter have been much more successful in convincing the world that the Nazis were to blame.)</p> <p>b. Critics usually overvalue particular items and ignore others. They tend to place more emphasis on the recollections of individual eyewitnesses (which are less reliable and more divergent — and hence offer more hand-holds for criticism) and less on ballistic, autopsy, and photographic evidence. A close examination of the Commission's records will usually show that the conflicting eyewitness accounts are quoted out of context, or were discarded by the Commission for good and sufficient reason.</p> <p>c. Conspiracy on the large scale often suggested would be impossible to conceal in the United States, esp. since informants could expect to receive large royalties, etc. Note that Robert Kennedy, Attorney General at the time and John F. Kennedy's brother, would be the last man to overlook or conceal any conspiracy. And as one reviewer pointed out, Congressman Gerald R. Ford would hardly have held his tongue for the sake of the Democratic administration, and Senator Russell would have had every political interest in exposing any misdeeds on the part of Chief Justice Warren. A conspirator moreover would hardly choose a location for a shooting where so much depended on conditions beyond his control: the route, the speed of the cars, the moving target, the risk that the assassin would be discovered. A group of wealthy conspirators could have arranged much more secure conditions.</p> <p>d. Critics have often been enticed by a form of intellectual pride: they light on some theory and fall in love with it; they also scoff at the Commission because it did not always answer every question with a flat decision one way or the other. Actually, the make-up of the Commission and its staff was an excellent safeguard against over-commitment to any one theory, or against the illicit transformation of probabilities into certainties.</p>		
FORM 530 USE PREVIOUS EDITION.	CLASSIFICATION SECRET	PAGE NO. TWO

CONTINUATION OF DISPATCH	CLASSIFICATION SECRET	DISPATCH SYMBOL AND NUMBER SD 5847
<p>d. Oswald would not have been any sensible person's choice for a co-conspirator. He was a "loser," mixed-up, of questionable reliability and an unknown quantity to any professional intelligence service.</p> <p>e. As to charges that the Commission's report was a rush job, it emerged three months after the deadline originally set. But to the degree that the Commission tried to speed up its reporting, this was largely due to the pressure of irresponsible speculation already appearing, in some cases coming from the same critics who, refusing to admit their errors, are now putting out new criticisms.</p> <p>f. Such vague accusations as that "more than ten people have died mysteriously" can always be explained in some more natural way: e.g., the individuals concerned have for the most part died of natural causes; the Commission staff questioned 418 witnesses (the FBI interviewed far more people, conducting 25,000 interviews and reinterviews), and in such a large group, a certain number of deaths are to be expected. (When Penn Jones, one of the originators of the "ten mysterious deaths" line, appeared on television, it emerged that two of the deaths on his list were from heart attacks, one from cancer, one was from a head-on collision on a bridge, and one occurred when a driver drifted into a bridge abutment.)</p> <p>g. Where possible, counter speculation by encouraging reference to the Commission's Report itself. Open-minded foreign readers should still be impressed by the care, thoroughness, objectivity and speed with which the Commission worked. Reviewers or other books might be encouraged to add to their account the idea that, checking back with the Report itself, they found it far superior to the work of its critics.</p> <div data-bbox="678 865 938 961" style="background-color: black; width: 150px; height: 40px; margin: 10px auto;"></div> <p style="text-align: center;">SECRET</p> <p style="text-align: center;">SECRET</p> <p style="text-align: right;">201-0229240 2-200-5-41</p>		
FORM 500 USE PREVIOUS EDITION	CLASSIFICATION SECRET	PAGE NO. THREE