Attacked for Secrecy on Records

By George Lardner Jr.
Washington Post Staff Writer

When the House Assassinations Committee issued its final report two years ago, it proclaimed its dedication to public disclosure of the facts surrounding the murders of President John F. Kennedy and the Rev. Dr. Martin Luther King Jr. and the investigations of those murders.

"It is essential," the now-defunct committee said, "not only that persons be able to judge the performance of the executive agencies, but that they be able to judge this committee's performance as well. Such is the very essence of representative democracy."

The report was released in July 1979. By then, the moribund committee's chairman and its chief counsel had already quietly arranged to lock up — for a period of 50 years — all the backup records and transcripts that it didn't publish. The chairman, Rep. Louis Stokes (D-Ohio), also asked the Justice Department, the CIA and other executive branch agencies to treat the records they compiled for the investigation in the same fashion, as "congressional material" not to be released to the public.

Some agencies, such as the Federal Aviation Administration, didn't even get their records back. Others, such as the Army, sealed the files they put together — including, apparently, documents that had been sought under the Freedom of Information Act before the House committee was even created.

The extent of the extraordinary secrecy is just now coming to light, as the result of inquiries by assassination critics seeking to pursue their own research and to assess the House committee's performance. They suspect a deliberate effort to avoid the kind of scrutiny that eventually tarnished the work of the Warren Commission in probing the 1963 Kennedy slaying.

In fact, the Warren Commission is now an open book in comparison to the House Assassinations Committee.

"What Stokes has done is arrange it so that the mechanism by which people can correct the errors of government don't apply to Congress," protests Harold Weisberg, author of several books on both the Kennedy and King assassinations. "He's arranged for his own private coverup."

"There's even less disclosure than I thought was possible," Mark Allen, a Kennedy assassination researcher, said after obtaining a copy of one of the letters Stokes wrote.

"A great deal of material has been generated by your department in response to specific requests or concerns of the Select Committee," Stokes said in the letter, dated March 27, 1979, and addressed to Griffin B. Bell, then attorney general. "In addition, your department is in physical custody of a variety of materials originating from the Select Committee. It can be anticipated that your department will receive requests under the Freedom of Information Act for access to these materials.

"The purpose of this letter is to request specifically that this congressional material and related information in a form connected to the committee not be disclosed outside your department without the written concurrence of the House of Representatives."

"Now that I see this letter," Allen said, "it makes me wonder whether these people sat around and said, 'We don't want our work subject to the intensive scrutiny that the Warren Commission's was. Let's not subject ourselves to embarrassment.' I think that's what they're up to."

Stokes and his former chief counsel, G. Robert Blakey, brush aside such talk and insist they did the best they could after the committee went out of business in January 1979 with a last-minute finding of probable conspiracy in the Kennedy case — and a final report still to be written. Blakey and a skeleton staff finished up the work, technically as employes of the clerk of the House.

"We released all we could release," Stokes said. As for the rest of the records, he protested, "all I have done is follow the advice of counsel for the House."

Blakey, now a professor at the Notre Dame law school, took a similar position.

"If you lay on me the charge that we kept too much secret, it's a bum rap," he declared. As for the merits of the House investigation, Blakey, who is now about 45, added:

"I'll rest on the historians' judgment 50 years from now when everything becomes available. I'll rest on the historical judgment that is made on us in 50 years."

Blakey acknowledged that the committee had intended to sift through all its records as well as those furnished by executive agencies and publish more, but he said the committee ran out of time and money.

"The best of intentions runs up into the reality of limited time and resources," he said. "There were all kinds of classified information in those [unpublished] documents."

And what of the objections of Weisberg and other critics that there was now no way of adequately assessing the committee's performance?

"He [Weisberg] can kiss my a--," responded the professor from Notre Dame. "And you can quote me on that."

When the Warren Commission completed its work in 1964 with the publication of a final report and 26 companion volumes, its backup records, consisting of some 300 cubic feet of material, were transferred to the National Archives, where officials planned to keep them under seal for 75 years. That was then general policy for the records of investigatory agencies. But a public outcry prompted the White House to order an about-face. Periodic reviews and releases of the documents were decreed with the aim of "fullest possible disclosure."

By now, according to archivist Marion Johnson, who has long been in charge of the Warren Commission records, more than 90 percent of those hundreds of thousands of pages have been made public.

By contrast, the House committee's records, which are just as voluminous and which apparently include documents from the State Department as well as other agencies, have been tucked away in a high-security area of the Archives. According to a Nov. 5, 1979, internal memo, only one archivist, a man with a "secret" security clearance, is supposed to have access to the materials — and even he has to have an escort with a "top secret" clearance.

Rep. Harold Sawyer (R-Mich.), a former committee member, says he can't understand the need for all the secrecy. And he can't recall the committee's ever having approved the arrangement, or even being consulted about it.

"I don't remember ever seeing anything, including stuff that needed security clearance, that really amounted to a tinker's darn as to whether it should be released or not," Sawyer said. "The only things I can think of are from a sensibility point of view, such as the autopsy photos. But I never saw anything that you could sell to anybody for a dollar if you wanted to, in executive session or outside of it."

Sawyer is virtually certain that the committee never voted on what to do with the records. Stokes and Blakey evidently made the arrangements around March 1979 in consultation with Stanley Brand, general counsel for the clerk of the House.

Two other members of the old committee, Reps. Floyd Fithian (D-Ind.) and Robert W. Edgar (D-Pa.), agreed that the idea of sifting through all the records and making public as many as possible got lost in the last-minute uproar over the acoustical findings, which concluded that two gunmen had been firing at Kennedy when he was killed. But the two Democrats, like Sawyer, said they felt sure that no coverup was involved.

"I think it would be a gross distortion to say the committee was trying to conceal anything," Fithian declared.

The extent of the extraordinary secrecy is just now coming to light, as the result of inquiries by assassination critics seeking to pursue their

Rebuttal

The secrecy, in any case, was not accidental. According to Brand, the general counsel for the House clerk, the arrangements were explicitly tailored to comport with court cases and rulings that, in effect, show how to prevent records compiled in a congressional investigation from being made public under the Freedom of Information Act.

The leading case at the time suggested that at least some such records, especially those generated by an executive branch agency and sent back to that agency, might be subject to FOIA unless Congress made clear that it wanted the documents kept secret.

Brand recalls suggesting to Stokes and Blakey that "if they were concerned about having their records get out under the Freedom of Information Act, they'd better put something out saying they didn't want that stuff out. So the chairman wrote a letter to the CIA and the attorney general. That's been respected so far as I know."

Actually, according to researcher Mark Allen, a few items have dribbled out. For instance, some Defense Department agencies "have sent me their letters to Blakey, but they won't send me Blakey's letters to them .... The only people who have said 'you aren't getting anything' are the FBI and the CIA, and I guess, the Justice Department in general .... The people who have the most to disclose are the ones taking the toughest line."

The Army denied Weisberg records that he says he began seeking in broad-gauged requests years before the House committee was established. Col. William B. Guild, director of Army counterintelligence, informed Weisberg last month that it has "no record of your original request." Meanwhile, Guild said, the Army will continue to treat the approximately 100 dossiers on various individuals that the House committee used and then returned to the Army "as investigative files of a congressional committee."

James H. Lesar, a lawyer who has represented both Weisberg and Allen, thinks a lawsuit to unplug many of the executive branch records returned to the agencies would be successful, but he acknowledges that it is clearly up to the House to release or suppress the House committee's own records.

The rule dictating 50 years' secrecy for House records transferred to the Archives was laid down in 1953 and, Brand says, was actually "a reform" at the time. "There had been no real rule at all up to that point," he said. The 50-year rule has been observed "by custom and tradition" ever since. As a result, it automatically applies to the 848 boxes of documents that Clerk of the House Edmund L. Henshaw sent to the Archives on April 2, 1979.

According to an unsigned "protocol" governing access to the documents, the boxes may include State Department and other unreturned agency records, but Henshaw ordered the archivists to release nothing but "previously published" documents.

Because the committee no longer exists, Brand said, it would take a vote of the full House to make any more papers from the boxes public. Without such approval, the clerk's office feels "duty bound" not to allow any new disclosures. Not long ago, a former CIA officer was refused a copy of his own testimony. He had testified in executive session.

Others have been seeking more central documents, but again to no avail. David Belin, a Warren Commission lawyer who later served as executive director of the Rockefeller Commission on CIA Activities, said he has been trying to get a copy of the "original draft report" the committee prepared in late 1978, before the acoustical results came in. Belin said he once got a glimpse of this report and "it said there was no conspiracy [in Kennedy's death], no anything."

"I think it would be a gross distortion to say the committee was trying to conceal anything.... I just think we ran out of money," said Rep. Floyd Fithian (D-Ind.), a member of the committee.

"This defeats every purpose the House Assassinations Commmittee was designed to accomplish," Belin said of the suppression of the records. "I think it's just plain wrong."

Blakey, the author of a book contending that "the mob" killed Kennedy, insisted that the committee had been more than forthcoming, holding public hearings with witnesses such as reputed Mafia chieftain Santos Trafficante and former CIA director Richard Helms and publishing 27 supplementary volumes of testimony and reports on the committee's work.

"In my judgment we did more than any congressional committee has ever done ... and more than the Warren Commission," he declared.

As for the records that were shipped back to the FBI, the CIA and other agencies, Blakey said:

"Our records, insofar as we created them in agency files, are ours. If you don't like that, sue."