

III. RECOMMENDATIONS OF THE SELECT COMMITTEE ON ASSASSINATIONS

In 1968, the Commission on the Causes and Prevention of Violence—the Eisenhower Commission—conducted an extensive study which dealt, in part, with assassination. Reports prepared for the Commission concluded that the level of assassination in America was high,⁽¹⁾ particularly in relation to other Western democracies and populous countries.⁽²⁾ Indeed, nine U.S. Presidents, one in four, have been the targets of assassins (table 1), and four died as a result.⁽³⁾ In addition, between 1835 and 1968, 81 other public officials or candidates, Federal, State, and local, were assaulted, some fatally.⁽⁴⁾

The Eisenhower Commission did not offer a definition of assassination, although its basic elements were specified in papers prepared for the Commission. Assassination was seen as a murder whose target was a prominent political figure; there was a political motive for the murder; or the murder would have a political impact.⁽⁵⁾ The existence of any one of the three elements, it was pointed out, would qualify a murder as an assassination.

The Eisenhower Commission also identified five broad categories of assassination. It noted that not all of them had historical precedents in the United States.⁽⁶⁾ The categories were based on objectives:

- (1) assassination as a means by which one political elite replaces another without effecting systemic or ideological change;
- (2) assassination whose purpose is to destroy the legitimacy of the ruling elite and to effect systemic or ideological change;
- (3) assassination ordered by the ruling elite to counteract political challenge;
- (4) assassination for propaganda purposes—to promote an ideology; and
- (5) assassination to satisfy the pathological needs of abnormal individuals acting under an ideological guise.

The Eisenhower Commission found the typical assassination in the United States to be the act of a deranged, self-appointed savior.⁽⁷⁾ In contrast to worldwide patterns, assassination by an organized political group was thought to be rare in this country. Only in the years immediately following the Civil War was assassination undertaken by organized groups to alter government through terror. Further, while the Commission identified as many as 11 public officials who had been targeted for assassination by organized criminal elements, it characterized the victims as low-level officeholders who had either threatened the criminal elements or had been involved with them.⁽⁸⁾ The classic form of assassination, therefore, did not generally apply to the United States.

TABLE 1.—ASSASSINATION ATTEMPTS AGAINST PRESIDENTS AND PRESIDENTIAL CANDIDATES

Year	Victim	Assailant and professed or alleged reason	Method of attack and result	Location	Activity of victim at time of attack
1835	Andrew Jackson	Richard Lawrence; declared insane, said Jackson was preventing him from obtaining large sums of money.	Pistol, misfired	Washington, D.C.	Attending funeral service in Capitol rotunda.
1865	Abraham Lincoln	John W. Booth; loyalty to the Confederacy, revenge for defeat, slavery issue.	Pistol, killed	do	Attending theatrical performance in Ford Theatre.
1881	James Garfield	Charles Guiteau; disgruntled office-seeker, supporter of opposite faction of Republican Party.	do	do	Passing through train station to go on vacation.
1901	William McKinley	Leon F. Czolgosz; anarchist ideology.	do	Buffalo, N.Y.	Standing in reception line at Pan-American Exposition.
1912	Theodore Roosevelt (candidate).	John Schrank; declared insane, had vision that McKinley wanted him to avenge his death.	Pistol, wounded	Milwaukee, Wis.	Leaving hotel to deliver a campaign speech.
1933	Franklin D. Roosevelt (President-elect).	Giuseppe Zangara; hated rulers and capitalists.	Pistol, bullets missed the President.	Miami, Fla.	Leaving after delivering speech in Bay-side Park.
1950	Harry S. Truman	Oscar Collazo and Griselio Torresola; Puerto Rican independence.	Automatic weapon, prevented from shooting at President.	Washington, D.C.	Inside Blair House as assassins attempted to break in.
1963	John F. Kennedy	Lee H. Oswald; motive unknown	Rifle, killed	Dallas, Tex.	Taking part in motorcade through Dallas streets.
1968	Robert F. Kennedy (candidate).	Sirhan Sirhan; opposition to U.S. Mideast policy.	Pistol, killed	Los Angeles, Calif.	Leaving primary campaign headquarters through hotel kitchen after delivering speech.

Source: Task Force Report, Assassination and Political Violence (National Commission on the Causes and Prevention of Violence, October 1969).

The legitimacy of achieving change by extralegal actions has long been a subject of debate among philosophers and political and legal scholars.⁽⁹⁾ Historically, illegitimate authorities have been overthrown by forces acting outside the legal process, with the rationale being natural law, customs, or belief in the primacy of spiritual scriptures. In ancient Greece, for example, it was considered acceptable to murder usurpers. Likewise, medieval Christian thought acceptable assassination of usurpers, but not of oppressive tyrants, although that distinction eventually disappeared. During the Reformation and Counterreformation, the Jesuit theologian Mariana and the Scottish Calvinist Buchanan held assassination of a tyrant to be acceptable under certain circumstances. In recent history, the experience of Nazi Germany—and of this country, as well—in which certain groups have suffered indignities and inequities has served to raise the question once again. But, generally, arguments for justified assassination have applied only to cases of totalitarian rule, illegitimate leadership, or the unjust suppression of certain groups within a society, although many foremost thinkers accept no justification whatsoever for assassination.

The Eisenhower Commission, nevertheless, asked the question: Had assassination become a part of political life in the United States? It noted that violence seemed interwoven with American history—the

fight for independence, the Indian wars, slavery and the secession of the South, agrarian reform, the emergence of organized labor, the civil rights movement and conflicts based on religious and ethnic, even political, grounds. (10) The Commission also cited factors present at times of assassinations in other countries, (11) finding them to be increasingly evident in the United States: The publication of extremist rhetoric and vilification of political leaders and Government institutions, rapid socioeconomic change, widespread belief that legitimate demands of Government are not being met, urban guerrilla warfare, social group confrontations, a belief in the efficacy of violence, all leading to a general atmosphere of violence.

Since publication of the Eisenhower Commission's report in 1968, its concern has been underscored by a rash of assassinations or attempted assassinations: Governor George Wallace of Alabama in 1972, President Ford, twice, in 1975, California Congressman Leo Ryan and San Francisco Mayor George Moscone in 1978. These acts of assassination, this committee noted, had a disturbing effect on society that goes beyond their immediate impact, which is the deplorable destruction of human life. These results flow not just from the act of assassination itself, but also from the responses it provokes from citizens and from government. The committee found that assassination is more than a deadly assault:

It is an attack on the foundations of democracy—majority rule, due process of law, consensual decisionmaking, individual rights and liberties;

It undermines the political system by deterring qualified people from seeking public office or exercising leadership;

It produces fear among the citizenry, a "siege mentality," and often leads to the creation of vigilante groups, civil disorder and other counterterrorist activities;

It results in a feeling that the President and other national leaders should be isolated for their protection;

It leads to demands that Government cut short conventional legal processes in bringing assassins to justice and for stronger measures to deal with violence, i.e., increased surveillance, security checks at public facilities, capital punishment and so on;

It exerts pressure on law enforcement agencies that can lead to abuse of authority.

The committee also discovered that assassinations in the United States have seldom achieved the end of causing or preventing change. In fact, in many instances the opposite effect has occurred. Change that an act of assassination was designed to prevent has been hastened, and responsible citizens have been bound closer together in working to achieve objectives for the good of society. (12) The two-party system has been remarkably stable, and the process for the transfer of the Presidency has been effective.

Assassination in the United States has, however, caused serious, destructive upheavals, such as the riots that followed the murder of Dr. Martin Luther King, Jr. Further, the committee recognized that an act of assassination may, in times of strife, result in fundamental change, and a recurrent pattern of such acts might, in time, undermine the social and political systems of the country.

The act of assassination and its threat demand response by both the citizenry and Government. Historically, this response has ranged from the imposition of totalitarian rule to capitulation to the demands of dissidents. In the United States, there has generally been a balanced response. Recognizing that grievances that lead to violence are often legitimate, Government has attempted to eliminate inequitable conditions, but it has also prosecuted those who have circumvented legal processes to achieve change. In addition, the Government has sought legislative and administrative means to prevent recurring violence and to provide more protection for those who are threatened by it.

The committee was acutely aware of the problem of insuring that civil liberties are preserved, while affording adequate protection to the institutions of democratic society and to public figures.¹ It recognized the difficulty in finding a balance between liberty and order. In carrying out its mandate requiring it to address the question of legal and administrative responses to assassination, the committee was mindful of the need to weigh the costs that could accrue to individual privacy, group protest, legitimate dissent, political competition and social change against the benefits of stronger protective measures.

While the committee addressed itself to legal and administrative measures primarily, it was fully cognizant that they can account only partially for the solution to the problem of violence and assassination. It is equally important that society deal with the fundamental problems that underlie violence and that it always adhere to legal responses. As the Eisenhower Commission aptly observed:

[I]f measures of control were this society's only response to violence, they would in the long run exacerbate the problem. The pyramiding of control measures could turn us into a repressive society, where peace is kept primarily through official coercion rather than through willing obedience to law. That kind of society, where law is more feared than respected, where individual expression and movement are curtailed, is violent, too—and it nurtures within itself the seeds of its own violent destruction. (13)

The recommendations that follow are addressed to legislative and administrative issues as well as the conduct of congressional investigations. They are presented in a logical order that does not reflect relative priorities:

I. LEGISLATIVE RECOMMENDATIONS ON ISSUES INVOLVING THE PROHIBITION, PREVENTION AND PROSECUTION OF ASSASSINATIONS AND FEDERALLY COGNIZABLE HOMICIDES

(a) *Prohibition and prevention*

1. *The Judiciary Committee should process for early consideration by the House legislation that would make the assassination of a Chief of State of any country, or his political equivalent, a Federal offense,*

¹ At the request of Chairman Stokes, the American Civil Liberties Union submitted for the committee's record a comprehensive analysis of the committee's recommendations. See, Legislative and Administrative Reform, Select Committee on Assassinations, U.S. House of Representatives, 95th Cong., 2d sess., (Washington, D.C.: U.S. Government Printing Office, 1978), vol. I, p. 148 et seq.

if the offender is an American citizen or acts on behalf of an American citizen, or if the offender can be located in the United States.

Evidence received by the committee indicated that the CIA, in conjunction with criminal elements in the United States, plotted the death of foreign leaders.(14) These plots gave rise to widespread speculation that the death of President Kennedy may have been an act taken in retaliation. It was conceded by those involved in the plots that they were without moral justification.(15) Federal law today gives uneven protection to foreign leaders. While assassination is contrary to executive order,(16) it is criminal only under limited circumstances.(17) Proposed legislation would make it criminal.(18) Testimony before the committee supported that legislation.(19) The committee has no hesitancy in recommending that legislation be enacted embodying a prohibition against the assassination of a foreign leader by those subject to Federal criminal jurisdiction.

2. The Judiciary Committee should process, for early consideration by the House, comprehensive legislation that would codify, revise and reform the Federal law of homicide, paying special attention to assassinations. The Judiciary Committee should give appropriate attention to the related offenses of conspiracy, attempt, assault, and kidnapping in the context of assassinations. Such legislation should be processed independently of the general proposals for the codification, revision or reform of the Federal criminal law. The Judiciary Committee should address the following issues in considering the legislation:

(a) Distinguishing between those persons who should receive the protection of Federal law because of the official positions they occupy and those persons who should receive protection of Federal law only in the performance of their official duties;

(b) Extending the protection of Federal law to persons who occupy high judicial and executive positions, including Justices of the Supreme Court and Cabinet officers;

(c) The applicability of these laws to private individuals in the exercise of constitutional rights;

(d) The penalty to be provided for homicide and the related offenses, including the applicability and the constitutionality of the death penalty;

(e) The basic for the exercise of Federal jurisdiction, including domestic and extraterritorial reach;

(f) The preemption of State jurisdiction without the necessity of any action on the part of the Attorney General where the President is assassinated;

(g) The circumstances under which Federal jurisdiction should preempt State jurisdiction in other cases;

(h) The power of Federal investigative agencies to require autopsies to be performed;

(i) The ability of Federal investigative agencies to secure the assistance of other Federal or State agencies, including the military, other laws notwithstanding;

(j) The authority to offer rewards to apprehend the perpetrators of the crime;

(k) A requirement of forfeiture of the instrumentalities of the crime;

(l) *The condemnation of personal or other effects of historical interest;*

(m) *The advisability of providing, consistent with the first amendment, legal trust devices to hold for the benefit of victims, their families, or the General Treasury, the profits realized from books, movie rights, or public appearances by the perpetrator of the crime; and*

(n) *The applicability of threat and physical zone of protection legislation to persons under the physical protection of Federal investigative or law enforcement agencies.*

Federal law prohibiting homicide has grown in response to particular events or circumstances. (20) The process has been piecemeal. On November 22, 1963, there was no general Federal statute that prohibited the assassination of the President. (21) One recommendation of the Warren Commission was that such a statute be enacted. (22) Public Law 89-141, signed on August 28, 1965, enacted 18 U.S.C. 1751, prohibited the killing, kidnapping, conspiracy, assaults or attempt to kill or kidnap the President or Vice President. Similarly, when Senator Robert F. Kennedy was killed in June 1968, there was no general Federal statute that prohibited the assassination of Members of Congress. Public Law 91-644, signed on January 2, 1971, enacted 18 U.S.C. 351, which extended the protection of the Federal criminal law to Members of Congress, paralleling that extended to the President and the Vice President. Next, after an attack on the Israeli Olympic team in Munich, Germany in 1972, Public Law 92-539 was enacted. It extended the protection of Federal criminal law to foreign guests in the United States.

While the committee heard no testimony on issues surrounding the general codification, revision and reform of the Federal criminal code, its study of Federal law of homicide led it to the conclusion that comprehensive legislation in this area is needed. The piecemeal approach should be abandoned. In this connection, the committee identified a number of policy questions which should be resolved in the course of processing the legislation:

(a) Traditionally, the general Federal murder statute applicable to Federal officials has been limited to homicide of designated officials killed "while engaged in the performance of . . . official duties or on account of the performance of . . . official duties. . . ." (23) When 18 U.S.C. 1751 (President and Vice President) and 18 U.S.C. 351 (Members of Congress) were enacted, no similar limitation was placed on their coverage. This reflected the recommendations of the Warren Commission (24) and the Senate Judiciary Committee. (25) While all categories at their outer edges seem arbitrary (even though the policy behind the classification may readily be conceded to be valid), it can be argued that a line ought to be drawn between those who, because of the nature of their office, ought to receive the protection of Federal criminal law without limitation, that is, the President, Vice President, Members of Congress, Supreme Court Justices, Cabinet officers, et cetera, and those who ought to receive such protection only when the threat of homicide is related to their work. Since the committee did not take testimony on where the line should be drawn, it only recommends some category be specifically set forth.

(b) Current Federal law does not extend to high judicial positions or to Cabinet officers the protection of the Federal criminal law, (26) although it is proposed in legislation that has been recently introduced in the Congress. (27) It would seem logical that such protection be so extended.

(c) The assassination of Dr. Martin Luther King, Jr., was not a Federal offense, since he was not a public official whose assassination was covered by Federal law. The basis for an FBI investigation was the theory that Dr. King's right to travel had been abridged under 18 U.S.C. 242, (28) it was described in testimony to the committee as "a pretty tenuous basis for asserting jurisdiction." (29) This illustrates the difficult public policy issues associated with extending protection of Federal criminal law beyond "officials" to "public figures." (30) While a general Federal homicide statute raises the specter of a Federal police agency to enforce it, FBI Director William Webster testified:

[A]ll of us have, today, intense sensitivity to people who are injured or killed in the exercise of civil rights or in the assertion of civil rights or in encouraging others to assert legitimate civil rights. It is a special kind of area where we think the Federal Government has such an interest in seeing that constitutional rights are protected * * *. (31)

The committee recognized that there could be homicides that go unpunished, at least to the degree that the Federal Government might wish, because of differing local policies and investigative capabilities. This is the price of a Federal system, since appropriately drafted and specific language is required for a Federal homicide statute to cover private individuals. That coverage cannot be comprehensive and the statute still constitutional. The committee recommends, therefore, that careful attention be given to the reach of Federal criminal laws when new legislation is enacted.

(d) The penalty structure of Federal criminal statutes is not uniform or appropriate. Each statute tends to carry with it its own penalty provision, which may or may not be consistent with similar statutes. The need for a rational, just and equitable penalty structure is manifest.

Discussion of the penalty structure of homicide statutes necessarily raises the delicate issue of capital punishment. (32) The testimony of law enforcement officials before the committee supported it. (33) The committee noted, too, that testimony before it recognized that provisions of current law are most likely constitutionally infirm. (34) The committee, however, conducted no independent study of capital punishment. As a committee, therefore, it had no special expertise with which to judge the merits of the arguments that had been made over the years.

(e) Testimony before the committee addressed the jurisdictional reach of Federal homicide statutes. (35) Traditionally, Federal statutes do not reach overseas, although the question is one of congressional intent and power under international law. In light of evidence before the committee, as noted, of efforts by a U.S. Government agency to assassinate foreign leaders, it would be appropriate to give careful attention to the extraterritorial reach of any comprehensive legislation.

(f)(g) Federal and State criminal laws generally operate side by side, and a Federal criminal statute does not automatically preempt State jurisdiction. But since there was confusion in Dallas following President Kennedy's assassination over who should exercise certain responsibilities (in the absence of a Federal statute), the Warren Commission was led to suggest Federal legislation.(36) Further, Congress placed specific language in 18 U.S.C. 1751(h), the Presidential-Vice Presidential statute, suspending State action until Federal action is terminated, if "Federal investigative or prosecutive jurisdiction is asserted * * *." Similar language appears in 18 U.S.C. 351, the Member of Congress statute. Testimony before the committee raised a number of problems with the language in these statutes. It is not clear, for example, how and by whom Federal action is to be asserted—by a statement of the Attorney General(37) or by actions(38) of the Federal investigative agencies, such as the Secret Service in a Presidential assassination.(39) Questions were also raised about whether Federal action should be optional,(40) and about situations where State law ought to control if the target of the assassin is the President. Because of these questions, the committee recommends careful attention to Federal and State issues in drafting comprehensive new legislation.

(h) Considerable controversy surrounded the autopsy of President Kennedy. Questions arose over the removal of the body from Dallas, over the nature of the autopsy and the manner in which it was performed.

No doubt exists that the President should receive in life the finest medical attention available. Similarly, in death, particularly by unnatural means, the President should receive the best attention by forensic pathologists. Arrangements must also be made to perform forensic autopsies in federally cognizable deaths.

Curiously, no Federal statute explicitly designated who is to perform such autopsies, although authority to perform them in the case of the President's death may be implied from 18 U.S.C. 1751(h). The committee recommends that any question not answered by existing law(41) be cleared up in any new legislation.

(i) When Public Law 89-141, the Presidential-Vice Presidential statute, was enacted in 1964, language was added to it in 18 U.S.C. 1751 (i) that authorizes the use, in the investigations, of the assistance of the "Army, Navy, and Air Force, and statute, rule, or regulation to the contrary notwithstanding." Similar language appears in 18 U.S.C. 351 (g), the Member of Congress statute. In all likelihood,(42) this language was added to these two statutes to set aside the effect of 18 U.S.C. 1385, which makes it a crime to use the military as a "posse comitatus." Nevertheless, questions were raised before the committee as to what extent this language might apply to recently passed legislation restricting law enforcement access to certain kinds of Federal records.(43) Questions were also asked relating to who(44) had to request the assistance and whether it had to be rendered.(45) The committee recommends that attention be given to resolving these questions in the processing of comprehensive new legislation.

(j) When Public Law 89-141, the Presidential-Vice Presidential statute, was enacted in 1965, language was added to it in 18 U.S.C. 1751 (g) authorizing the offer of a reward, not to exceed \$100,000, to be paid

for information given or services rendered in connection with a violation of the statute. This provision had the effect of raising from \$25,000 the amount authorized for reward in general Federal criminal matters. (46) The policy question remains whether these amounts adequately reflect the full range of federally cognizable homicides, a question to be resolved in new legislation.

(k) (l) Following the assassination of President Kennedy, two issues arose with reference to the personal property of the alleged assassin. (47) Was any of it subject to forfeiture as the instrumentalities of a crime? Could any of it be condemned as of historical interest? This second question also related to the personal property of the President himself, as well as that of others in some way involved.

Forfeiture proceedings were, in fact, initiated with respect to Lee Harvey Oswald's rifle. (48) They were unsuccessful, since under the law at that time the rifle was not used to commit a Federal offense. (49) A special statute, Public Law 89-318, was passed "for the acquisition and preservation by condemnation of evidence relative to the President's assassination." (50) A variety of personal items have been held to have been validly transferred to the National Archives under the statute. (51)

(m) The assassination of a public official or public figure naturally attracts a great deal of public attention that may be converted into revenue through personal appearances, books, movie rights, etc. Testimony before the committee demonstrated that this is what followed the assassination of Dr. King. (52)

The committee, while it made no special study in this area, noted that legislation had been enacted at the State level to curb what may be fairly described as crass commercialization of macabre situations. (53) Such a provision should be considered in the drafting of any new comprehensive legislation at the Federal level.

(n) The committee heard testimony that it would be advisable to extend the protection of Federal threat legislation (54) and Federal zone of protection statutes (55) to individuals occupying offices other than the President. (56) Mindful that there may be significant differences in the scope of protection required for these other officials, the committee recommends that consideration be given to these suggestions.

3. The appropriate committees of the House should process for early consideration by the House charter legislation for the Central Intelligence Agency and Federal Bureau of Investigation. The committees should address the following issues in considering the charter legislation:

(a) the proper foreign and domestic intelligence functions of the intelligence and investigative agencies of the United States,

(b) the relationship between the domestic intelligence functions and the interference with the exercise of individual constitutional rights,

(c) the delineation of proper law enforcement functions and techniques including:

(i) the use of informants and electronic surveillance,

(ii) guidelines to circumscribe the use of informants or electronic surveillance to gather intelligence on, or investigate, groups that may be exercising first amendment freedoms, and

(iii) the proper response of intelligence or investigative agencies where information is developed that an informant has committed a crime.

(d) guidelines to consider the circumstances, if any, when an investigative agency or a component of that agency should be disqualified from taking an active role in an investigation because of an appearance of impropriety growing out of a particular intelligence or investigative action,

(e) definitions of the legislative scope and extent of "sources and methods" and the "informant privilege" as a rationale for the executive branch withholding information in response to congressional or judicial process or other demand for information,

(f) institutionalizing efforts to coordinate the gathering, sharing, and analysis of intelligence information,

(g) insuring those agencies that primarily gather intelligence perform their function so as to serve the needs of other agencies that primarily engage in physical protection, and

(h) implementing mechanisms that would permit interagency tasking of particular functions.

The committee did not conduct a general inquiry into the operations of the intelligence or law enforcement agencies. Nevertheless, its examination of the performance of the agencies with respect to the deaths of President Kennedy and Dr. King afforded it a unique perspective from which to view their operations. In effect, the committee conducted case studies of the FBI and CIA, an experience that led the committee to make a number of recommendations.

The most important single recommendation the committee can make in this regard is that the proposals for charter legislation be processed for early consideration by the House. Law enforcement without law is a contradiction in terms. Those who enforce our law must be able to look with confidence to a basic charter. Otherwise, their power will not be legitimate; they will not know their duties, and they will not know their constraints. All too often the pressure of the moment will dictate their actions. Just as important, there must be limitations on those who exercise power to protect those over whom the power is exercised. Freedom is made possible by power limited by law. There are a variety of reasons for the abuses of power uncovered by the committee, particularly the harassment of Dr. King. One may be clearly identified and must be remedied: It is the lack of basic charter legislation. In a society that prides itself on the rule of law, it is remarkable that so important an area has been left lawless for so long.

(a) Charter legislation must go to the root of the role that intelligence and law enforcement agencies play in a free society. It should clearly delineate the difference between the foreign and domestic roles of the agencies. Society must not permit the morals of war to become the routine policy of domestic agencies. Citizens at home must not be treated as enemies abroad.

(b) Close attention must also be paid to the relation between intelligence functions and first amendment rights. The first amendment seeks to assure those out of power that they can still participate in the shaping of policy. The cry for change must not be misunderstood as a call for violent revolution. Nowhere did the committee find this con-

fusion more clearly demonstrated than in the FBI's efforts to "neutralize" Dr. King in his efforts to secure social and economic justice.

(c) Particular attention, too, must be paid to the proper role in law enforcement of such potentially abusive information-gathering techniques as informants, electronic surveillance, and the infiltration of groups. Abuses or misuses of these techniques characterized the work of the FBI in its investigation of Dr. King. Charter legislation offers a hope of assisting in the effort to control such abuses in the future.

(d) Propriety—and the appearance of propriety—must be the hallmark of the enforcement of law. Power alone is never sufficient to hold the allegiance of a people. Obedience to law is best secured not through a threat of sanctions but through respect for legitimate authority. Appearances, therefore, may sometimes be as important as underlying reality. The processes of justice must not only be just; they must appear to be just.

This issue was sharply delineated by the FBI's investigation not only of Dr. King, but of his assassination. Understandably, many people questioned whether an agency that undertook to discredit Dr. King could be relied upon to seek out his murderer.

Existing guidelines promise that such campaigns to discredit will not occur again. (57) Nevertheless, it is possible to foresee that an individual legitimately under investigation would be an assassination target. To what degree should the agency—or the investigators immediately involved in the investigation—be disqualified from conducting the assassination investigation? It is a difficult issue, one that charter legislation ought to address and, hopefully, resolve.

(e) The intelligence and law enforcement agencies' relationship with Congress must also be spelled out. Individual citizens must be protected against those who would harm our society or violate the laws; they must also be protected against those whose job it is to protect our society and enforce the law. Yet, there is little an individual can do by himself. The courts and the Congress, therefore, play an important role in assuring effective performance and protecting civil liberties. Nevertheless, in order to act, the courts and the Congress must have access to information.

One of the most delicate problems that faced the committee in examining the CIA and the FBI had to do with access to restricted information, some of it classified to protect the national security, some that was confidential to protect the identity of informants. The CIA sought to rely on the National Security Act of 1947, section 102(a) to uphold its position; (58) the Department of Justice cited the informant's privilege. (59) While the committee never conceded that either basis was legally valid to withhold information from Congress, the committee was generally able to negotiate with the agencies the necessary access. On one occasion, the committee voted a subpoena for certain materials, but a confrontation was avoided through compromise. Nevertheless, the committee recommends that charter legislation be applied to the security issue so there can be a fixed system for obtaining access and at the same time protecting confidentiality.

(f) (g) (h) Finally, the committee noted that as long as the functions of the various intelligence and law enforcement agencies are separated

between agencies and assigned to sections within agencies, there must be institutionalized efforts made to compensate for that separation.²

(b) *Prosecution*

1. *The Judiciary Committee should consider the impact of the provisions of law dealing with third-party records, bail and speedy trial as it applies to both the investigation and prosecution of federally cognizable homicides.*

Testimony before the committee raised questions about such recent legislation as that dealing with third-party records, (60) bail (61) and speedy trial (62) as it might affect the investigation and prosecution of assassination cases or other federally cognizable homicides. Concern was expressed that such legislation might have unforeseen adverse consequences.

The testimony indicated that recent third-party records legislation had made the acquisition of records in the course of investigation "more difficult than in the past." (63) "[I]nformal access" had been largely ended. (64) The effect extended beyond the records covered in the legislation. Other holders of such records are apparently concerned and they are granting access only with "increasing difficulty" (65) because of a fear of "personal liability." (66) To the degree that some recent legislation recognized the special responsibilities of the Secret Service, it was supported. (67)

As for speedy trial legislation, while testimony before the committee was not explicit in its treatment of special problems that might arise in an assassination prosecution, the legislation was thought to be adequate. (68) Nevertheless, it was termed "hastily drawn," (69) and it was observed that the "public would be outraged" (70) if it interfered with the prosecution of an assassin.

While the committee recognizes that it is not possible to draft legislation with all problems in mind, it is possible to review it periodically in terms of special problems, making modifications when they are in order. Nevertheless, the committee agrees with FBI Director William Webster who advised that special rules can raise troublesome issues, (71) and it would be preferable if special cases could be handled without radically altering the system. Declaring "martial law" is not "acceptable;" (72) Webster stated:

While it is a traumatic experience for anyone to live through the assassination of a President, it ought not to be the predicate for an investigative conduct which in essence is the declaration of martial law. I just simply do not believe that we ought to * * * suspend everything that was put in place to protect the rights of citizens. (73)

² The committee also observed during its examination of the agencies that substantial questions had been raised about the effect of laws such as the Freedom of Information Act and the Privacy Act on the ability of the agencies to obtain necessary information. In addition, the committee noted the substantial costs imposed on the agencies for compliance with the laws.

The committee also recognized the benefits of these laws. They may, for example, deter agencies from keeping files on individuals who are of no legitimate concern to the Government. In addition, the information that these laws have brought to public attention was a significant factor in the creation of this committee.

The committee believed that an assessment of the Freedom of Information and Privacy Acts, to include an analysis of the cost of compliance with them, their effect on the quality and quantity of intelligence information available to the agencies and the benefits achieved by the laws, is warranted.

That such legislation ought to be reviewed, nonetheless, seems appropriate in the opinion of the committee.

2. *The Judiciary Committee should examine recently passed special prosecutor legislation to determine if its provisions should be modified to extend them to Presidential assassinations and the circumstances, if any, under which they should be applicable to other federally cognizable homicides.*

Recognizing the special problems associated with the investigation of possible improprieties by a President, Vice President and certain other officials, special prosecutor legislation was enacted in 1978. (74) Testimony before the committee considered the wisdom of extending the legislation to Presidential assassinations uniformly and to other federally cognizable homicides on a case-by-case basis. The point most often raised in favor of such legislation was the appearance of impropriety in having the Attorney General, the new President's lawyer, conduct the investigation into the former President's death. (75) Generally, however, the witnesses who appeared before the committee—high Government officials, for the most part—tended to prefer the established system that relies on Federal investigative and prosecutive agencies that are in place, in the absence of specific questions about the suitability of the Attorney General or the Department of Justice. (76)

The committee recommends, nevertheless, as part of comprehensive legislation dealing with Federal homicides, that special prosecutor legislation be carefully considered.

II. ADMINISTRATIVE RECOMMENDATIONS TO THE EXECUTIVE

The Department of Justice should reexamine its contingency plans for the handling of assassinations and federally cognizable homicides in light of the record and findings of the committee. Such an examination should consider the following issues:

A. Insuring that its response takes full advantage of inter- and intra-agency task forces and the strike force approach to investigations and prosecutions;

B. Insuring that its response takes full advantage of the advances of science and technology, and determining when it should secure independent panels of scientists to review or perform necessary scientific tasks, or secure qualified independent forensic pathologists to perform a forensic autopsy;

C. Insuring that its fair trial/free press guidelines, consistent with an alleged offender's right to a fair trial, allow that information about the facts and circumstances surrounding an assassination promptly be made public, and promptly be corrected when erroneous information is mistakenly released; and

D. Entering at the current time into negotiations with representatives of the media to secure voluntary agreements providing that photographs, audio tapes, television tapes and related matters, made in and around the site of assassinations, be made available to the Government by consent immediately following an assassination.

Testimony before the committee indicated that many of the lessons learned in the months after the tragic events in Dallas in 1963 have

been incorporated into the contingency plans of the various Federal intelligence and law enforcement agencies. Nevertheless, there is much that can be learned for the future in reviewing the record of the past, particularly with the perspective that the passage of time affords. Four lessons stand out: The need to integrate investigative and prosecutive efforts; to take advantage of the advances of science and technology, particularly in such a fashion as its independence will not only exist, but be seen to exist; to insure that accurate information is immediately given out, consistent with any alleged assassin's right to a fair trial; and to obtain, as soon as possible and with as little difficulty as is possible, as much hard evidence as is possible.

(A) One of the most troubling aspects of the investigations of the deaths of President Kennedy and Dr. King was the failure of Federal agencies to share and use information, and to bring to bear on problems the array of talents, expertise and legal tools available. Even from the point of view that it was not reasonable to do everything, all that could have been done was not done. The need for a task force approach was, according to testimony before the committee, a point well taken.(77) There should also be a requirement for the use of the strike force approach, with particular respect to conspiracy issues not settled by forensics and field interviews.(78) For the future, contingency plans should be written with flexibility in mind.(79)

(B) The most significant new knowledge the committee was able to develop about events in Dallas on November 22, 1963, stemmed from the work of the committee's scientific panels. (In the case of the assassination of Dr. King, to the regret of the committee, there was not as much scientific evidence that could be subjected to scientific analysis and thus cast new light on the assassination.) The lesson for the future is, therefore, very clear: The potential benefits of science in an investigation must be better realized. The committee noted that science was used to advantage in 1964 and 1968. Nevertheless, its recommendation is designed to insure that the promise of science and technology not be overlooked in the event of another tragedy.

The committee also found reason to comment on the approach that is contemplated for scientific analysis in the future, particularly in the case of a Presidential assassination. The issue was raised before the committee of the use of nongovernmental experts to achieve not only the greatest degree of expertise, but also the ultimate in propriety.(80) It was noted, for example, that in its major case operations plan the FBI contemplates using forensic pathologists from the Armed Forces Institute of Pathology.(81) While not wishing to call into question the competency or the integrity of doctors associated with the institute, the committee posed this question: In a society in which liberty has traditionally depended on civilian control of the military, should not efficiency(82) be set aside in favor of symbolism?(83) The committee thought it should.

(C) The handling of public information in Dallas in November 1963 was criticized by the Warren Commission(84) for reasons this committee considered valid. Public comments by officials of the Department of Justice at the time of Dr. King's death also seemed to emanate without careful attention to a set of public information principles. The Department of Justice has guidelines for public information policy

in criminal cases,(85) which were being reviewed at the time this committee completed its investigation.(86) But since the impact of such policy pervades all of government, all interested individuals and agencies should participate in the review.(87) It seems important that one objective of this review would be to formulate a procedure for distinguishing between a routine case and one of urgent importance.(88) Beyond that, the committee hopes the Department of Justice's new guidelines will take into account the public information problems that have been exposed by its investigation.

(D) While it is vitally important that the best scientific experts be retained in an assassination investigation, it is equally essential that they be given the best evidentiary materials to examine. This committee demonstrated in its investigation, as did the Warren Commission in the case of the Kennedy assassination, that access to high quality materials is crucial. Thus, the committee sought the best ways to achieve such access. In testimony before the committee, it became clear that the best approach would be to make an immediate effort to negotiate agreements with various news organizations, so that right after an assassination law enforcement agencies can have access to the product of news coverage.(89) These news organizations are understandably concerned with first amendment freedoms. At the same time, law enforcement must have the access. It would be unfortunate if a confrontation occurred over a search warrant or a subpoena. So the time to act is now. Negotiations started at this time would be "very, very useful,"(90) according to testimony before the committee. The process may turn out to be a "long, ongoing dialog which . . . ought to be underway."(91) Because the witness from the Department of Justice who testified in this regard indicated the Department would favor discussions with the news media,(92) the committee is hopeful this recommendation will be acted upon forthwith.

III. GENERAL RECOMMENDATIONS FOR CONGRESSIONAL INVESTIGATIONS

The founders of the American system divided the Government into three branches. The purpose of the separation of the branches was not to enhance efficiency but promote liberty. Each branch was to check the others. Together, they would govern the new Nation under the Constitution, realizing, it was hoped, the promise of its preamble.

The balance of power between the executive and legislative branches has always been fluid, although the trend in modern times has been for the executive branch to be dominant. That trend was sharply reversed in 1974, principally because of Congress power to investigate the allegations of wrongdoing by the President. The exercise of the power to investigate, first in the Senate and then in the House, eventually led to the resignation of the President. Ironically, the power that may have done the most to return the Nation to the values of the Constitution in 1974 was not explicitly recognized in the Constitution when it was drafted in 1787.

The investigative authority of Congress is not expressly written into the Constitution, but the precedent for that power is longstanding, both in theory and practice. The British Parliament and the Assemblies of the American colonies frequently exercised it.(93)

Political scientists and parliamentarians have long argued that inherent in the power to make laws must be the power to investigate before they are enacted and later to see that they are carried out. In "Consideration on Representative Government," John Stuart Mill wrote that the legislature was best fitted, not for administration or lawmaking, but for the review of the public's business:

* * * to watch and control the Government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable.(94)

In more modern times, Woodrow Wilson propounded a similar viewpoint in "Congressional Government": "Quite as important as legislating is vigilant oversight of administration." (95) He felt that a self-governing people discusses and interrogates its administration. For him, Congress power to inform was as important as its power to legislate.(96) Congress was, he thought, the "eyes and voice" of the Nation. Like the British Parliament, Congress was, in the words of William Pitt the Elder, the "Grand Inquest of the Nation." (97)

The power of Congress to investigate has been challenged a number of times, not only by the executive branch, but also by recalcitrant witnesses who were private citizens and others. The grounds for the challenges have been many, ranging from questions about Congress right to review the executive branch or private organizations and citizens, to doubts about various procedures committees have used in conducting investigations. Since the first congressional investigation in 1792 into the humiliating defeat of General St. Clair by a small band of Indians, in which the House asserted its right to call for persons and papers,(98) the basic power of the Congress to investigate has been acknowledged. The Supreme Court has always upheld that power, although recognizing that it was subject to certain limitations.

At first, Congress attention focused on government itself. Subsequently, however, the laws became broader. The first instance in which Congress requested that private citizens appear before it and provide documents was in 1827, when the Committee on Manufacturers was considering tariff legislation.(99) Since that time, in areas where business activities or behavior of private individuals are subject to congressional regulation, Congress power to investigate has always been recognized.

The investigative charter of the committee was narrow—to examine the facts and circumstances surrounding the deaths of President Kennedy and Dr. King, and, if necessary, to recommend appropriate measures for the future. Nevertheless, because of the nature of the lives and the deaths of these two great men, the scope of what was pertinent to the mandate of the committee was wide. In a real sense, it encompassed the history of the United States in a turbulent and violent decade. Consequently, the appropriate limitations on the scope of a congressional investigation were ever in the minds of the committee, particularly as that investigation touched on private groups or individuals, raising, however indirectly, questions of their possible connection to the death of either man. How ironic it would have been had

the committee, a major concern of which was unlawful Government intrusion into the life of Dr. King, been reckless with the lives of others.

Traditionally, two constitutional limits on the power of congressional inquiry have been raised to circumscribe congressional investigations. Assuming that the subject matter is itself one on which legislation may be enacted and the proper procedural steps have been followed, the first and fifth amendments have been the main shields raised to protect individual liberties, having as a consequence the effect of blocking the inquiry.

The committee looked into the conduct of a variety of groups whose activities, however personally objectionable, were protected by the first amendment. In all situations, it was possible to conduct the inquiry without subjecting the groups to unnecessary publicity or to invade their privacy beyond that which was essential to a search for the truth. None of the subjects of the investigation felt it necessary to try to block the investigation by contemptuously resisting the committee's processes or questioning.

The committee also looked into the conduct of a variety of individuals whose activities were such that they could legitimately claim this privilege against self-incrimination. While this area of the committee's work is not the subject of a specific recommendation, a comment about it is appropriate.

In 1970, Congress passed legislation changing the character of the immunity it could grant in compelling a witness' testimony over fifth amendment objections.⁽¹⁰⁰⁾ The use immunity concept, reflected in the provisions of the 1970 act,⁽¹⁰¹⁾ respects comity between State and Federal jurisdictions, limits interference between congressional and executive functions, and does not disrupt administrative remedies of a civil character. For these reasons, the general reluctance that has traditionally accompanied immunity grants by congressional committees is no longer applicable. If the grant is coordinated with the necessary executive officials and the testimony is safeguarded until it is suitable for release, grants of immunity can be made without causing objections. The 1970 act was first used in a more than token fashion in the Watergate hearings in the Senate; it was first used extensively by this committee. Indeed, it constituted a centerpiece in the committee's investigative strategy. The committee found the 1970 act to be a powerful tool in finding the truth. But, while the committee recognized the essential application of the act in future investigations, it cautions that it must be used carefully. The promise of the act in uncovering the truth is only fulfilled by its power to compel reluctant witnesses to speak. A society that ranks individual privacy among its more precious values must recognize that a price is paid for attaining the truth. It may be necessary to pay that price in important matters, such as determining the truth in the deaths of two great leaders. Nevertheless, it ought to be paid only when necessary.

In the course of the investigation, the committee learned a great deal about congressional investigations and came to certain conclusions about them. There are a variety of issues that ought to be addressed by one or more committees of the House to strengthen and increase the fairness of investigations in the future.

A. The appropriate committees of the House should consider amending the rules of the House to provide for a right to appointive counsel in investigative hearings where a witness is unable to provide counsel from private funds.

A witness before a congressional committee has no general right to counsel, but the rules of the House recognize that witnesses may be accompanied by counsel at investigative hearings to advise them of their constitutional rights.(102) Nevertheless, there is no provision for paying for a counsel in the event a witness is unable to afford one. The committee, in its rules,(103) made an effort to find a solution by arranging with the District of Columbia Bar Association to provide counsel on certain occasions. The arrangement worked well, and the committee believes that an amendment to the rules of the House incorporating such an arrangement should be considered by the appropriate committees.

B. The appropriate committees of the House should examine the rules of the House governing the conduct of counsel in legislative and investigative hearings and consider delineating guidelines for professional conduct and ethics, including guidelines to deal with conflicts of interest in the representation of multiple witnesses before a committee.

The rules of the House provide that the chairman of a committee may punish breaches of decorum or professional ethics on the part of counsel by exclusion from the hearing.(104) This committee read this rule to deal with the ethical problems of multiple representation. Not all multiple representation presents a conflict of interest. Some conflicts that exist may be cured by full disclosure to the clients and informed consent. Nevertheless, disclosure and consent cannot cure all conflict. Those that touch on the integrity of the factfinding process may not be waived. Consequently, the committee did not follow a blanket rule; it waited until a conflict was ripe on the record. It held a hearing to establish the conflict. It then appropriately disqualified the offending attorney, if disclosure and waiver did not constitute an adequate cure. The standard employed for disqualification was that of professional societies (105) and the courts. (106) Like the Watergate special prosecutor,(107) the committee must express its concern with the conduct of the bar that represented witnesses in its executive sessions. Too often, the lawyers seemed insensitive to their duty to their clients to represent them as individuals and not part of a group. It was necessary for the committee to disqualify more than one attorney to preserve the integrity of the committee's processes. In addition, the committee experienced tactics on the part of several lawyers who represented individuals before the committee that can only be described as efforts to disrupt or obstruct the work of the committee as it labored to determine the truth. There is a need for clearer guidance to investigative committees to deal with

these problems. The appropriate committee of the House should look into what, if anything, may be done to assure the integrity of Congress factfinding processes.

C. The Judiciary Committee should examine the adequacy of Federal law as it provides for the production of Federal and State prisoners before legislative or investigative committees under a writ of habeas corpus ad testificandum.

On more than one occasion, the committee heard testimony from witnesses who were incarcerated. Usually, a subpoena will guarantee the presence of a witness. Nevertheless, a subpoena is unavailing when the witness is incarcerated. Then, a writ of habeas corpus ad testificandum is usually employed. Such writs may be issued by Federal courts under the current law.(108) During its tenure, the Watergate committee obtained 20 such writs.(109) The language of current law, however, does not explicitly grant Federal courts the right to issue such writs in behalf of congressional committees. It is necessary to read the current statute in light of its extensive history to arrive at its proper meaning.(110) The committee was able to secure the writ it sought, but the process was not without difficulty, since the matter of jurisdiction had to be litigated. It would be helpful if clarifying amendments were added to present law if after careful study they are thought essential.

D. The appropriate committees of the House should examine and clarify the applicability to congressional subpoenas of recently enacted legislative restrictions on access to records and other documents.

During the course of its investigation, the committee sought access to or subpoenaed numerous documents. In one instance, the committee's subpoena was challenged. Usually, congressional subpoenas can only be resisted through the contempt process. The speech and debate clause of the Constitution precludes court litigation.(111) Nevertheless, it was argued that by virtue of an act of Congress,(112) the speech and debate clause had been waived. Ultimately, the committee thought it inappropriate to subject those involved to the contempt process, and it submitted the issue to the only court that apparently had jurisdiction, the Probate Court of Shelby County, Tenn. The verdict of the court was favorable to the committee. The committee believed that this result—Congress submitting its processes for review to a State court not of record—was an unintended consequence. The committee, therefore, recommends that the appropriate committee of the House undertake a survey of similar restrictive legislation to determine to what degree it was intended to apply to congressional process. Where necessary, clarifying legislation should be enacted to resolve ambiguous language. If such legislation is to be made applicable to congressional process, provisions should be made for a suitable forum in which to hear pertinent cases.

E. The appropriate committees of the House should consider legislation that would authorize the establishment of a legislative counsel to conduct litigation on behalf of committees of the House incident to the investigative or legislative activities and confer jurisdiction on the U.S. District Court for the District of Columbia to hear such lawsuits.

The committee found itself in court on a variety of occasions to secure immunity grants, to enforce its process, and, on occasion, to defend its work or to secure the assistance of the Department of Justice. It was necessary to amend the committee's resolution to authorize these appearances in court, (113) and it was necessary to devote to this litigation resources of the committee that would have been better used if devoted to the investigation. The committee recommends, therefore, that the appropriate committees of the House give careful consideration to the establishment of an office of legal counsel for the House, similar to that established for the Senate. (114) The committee recommends, further, the conferring of appropriate jurisdiction on the District Court of the District of Columbia in such cases.

F. The appropriate committees of the House should consider if rule XI of the House should be amended, so as to restrict the current access by all Members of the House to the classified information in the possession of any committee.

Rule XI(e)(2) of the House provides that committee "records shall be the property of the House and all Members of the House shall have access thereto * * *." Access does not include the right to copy or to use the records, even on the floor of the House; provision for release or access may be regulated by committee rules. (115) The committee adopted special rules governing access to classified documents. (116) Nevertheless, the existence of rule XI posed a sensitive and delicate problem in dealing with governmental agencies from whom the committee sought access or delivery of classified materials. Concern was not expressed with granting access or delivery of material to members of the committee. No problem was raised with disclosure based on a need to know to members of the staff of the committee, each of whom had received an appropriate clearance. Fear was expressed, however, that under rule XI any Member of the House and possibly personal staff members might gain access to the materials. Obviously, the larger the circle of individuals who had access, the greater the danger of intended or inadvertent disclosure. While the committee was able to work around these concerns, it would facilitate cooperation between agencies and committees, given the task of oversight, if the degree of disclosure could be kept within reasonable bounds. Consequently, the committee recommends that appropriate committees of the House carefully study the issue.

IV. RECOMMENDATIONS FOR FURTHER INVESTIGATION

A. The Department of Justice should contract for the examination of a film taken by Charles L. Bronson to determine its significance, if any, to the assassination of President Kennedy.

Toward the end of the committee's investigation, the existence of a film taken by Charles L. Bronson in Dealey Plaza approximately

5 minutes prior to the assassination was brought to the attention of the committee. It was suggested that the movie, an 8-millimeter color film that focused on the area around the sixth floor window of the Texas School Book Depository, showed a figure walking behind the window. The film was forwarded to the committee's photography panel. The panel was unable to discern a figure, and it was unable to say conclusively whether apparent motion behind windows on the fifth and sixth floors was due to film artifacts or real motion.(117) Nevertheless, because the Bronson film was of a quality superior to that of another motion picture film that the panel had subjected to computer processing, the panel recommended that similar work be done on the Bronson film.(118) In light of the recommendations of the panel, the committee recommends to the Department of Justice that it contract for appropriate research to be done to determine what, if any significance, the Bronson film may have to the assassination of the President.

B. The National Institute of Law Enforcement and Criminal Justice of the Department of Justice and the National Science Foundation should make a study of the theory and application of the principles of acoustics to forensic questions, using the materials available in the assassination of President John F. Kennedy as a case study.

It would be difficult to understate the significance of the acoustical analysis done by the committee in its investigation of the death of President Kennedy. As the committee noted, it can be expected that the opportunity and necessity to do similar work will arise in the future. Consequently, it would seem judicious to study the theory and application of the principles of acoustics to forensic issues. The best case study available for such testing is the assassination of President Kennedy, not only for what additional light it might cast on that investigation, but also for the benefit of future investigations. Consequently, the committee recommends that the National Science Foundation and the National Institute of Law Enforcement and Criminal Justice of the Department of Justice undertake appropriate studies and publish the results, so that they may be widely known and used. The committee notes that it would be appropriate for NSF and LEAA to take advantage of the considerable expertise in the private sector and in Federal law enforcement, particularly the FBI, in making the study.

C. The Department of Justice should review the committee's findings and report in the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr., and after completion of the recommended investigation enumerated in sections A and B, analyze whether further official investigation is warranted in either case. The Department of Justice should report its analysis to the Judiciary Committee.

All the obstacles this committee faced in its investigation of the death of President Kennedy and Dr. King stand in the way of any institution that would continue its work. As even more time has passed since this committee was formed, the trail is colder, and it has been trod upon one more time. The difficulties are formidable, and it may be that little more can be profitably done.

In 1964, it was indicated that the file in the assassination of President Kennedy would remain open, and the same is true in the case

of Dr. King's murder. But in light of this committee's investigation, more is required than keeping open files. It would seem only appropriate for the Department of Justice to perform the scientific studies recommended herewith and to analyze the committee's record. Then the Department could assess the wisdom of taking additional steps that might move one or both of these cases toward final resolution.

The choice is not between a full-scale reopening of both investigations and doing nothing, since there are in each case limited areas that lend themselves to further exploration. What the committee found that had not been known before should be applied to a reconsideration by the Justice Department of its original investigations. Whatever the Department decides is the preferable course of action, it should report to the Judiciary Committee, so that its determination may be reviewed by an appropriate congressional body.