

DRAFT -- 1/26/95

Chairman John R. Tunheim called the meeting of the Assassination Records Review Board ("Review Board") to order at approximately 10:10 am on January 25, 1995, in Conference Room 409 of the National Archives, Main Building. In addition to Chairman Tunheim, each of the members of the Review Board -- Dr. Henry F. Graff, Dr. Kermit L. Hall, Dr. William L. Joyce, and Dr. Anna K. Nelson -- were in attendance. Also in attendance were Executive Director David Marwell, General Counsel Sheryl Walter, staff members Jeremy Gunn, Tom Samoluk, Tracy Shycoff, and Philip Golrick, and Steven Tilley of the National Archives Records Administration (NARA).

I. RECORDS OF BOARD MEETINGS

Chairman Tunheim inquired of Ms. Walter what steps were being

taken in order to conduct the meeting in compliance with the Government in the Sunshine Act. She responded that Mr. Golrick was taking detailed notes on the meeting, from which minutes would be prepared and made available to the public. Chairman Tunheim asked whether the Government in the Sunshine Act required the Review Board to audiotape the proceedings, and Ms. Walter responded that the statute did not so require.

Dr. Hall stated that, in his view, it would be appropriate to have future meetings of the Review Board audiotaped, in order to document the Review Board's decisionmaking as fully as possible. In response to an inquiry from Chairman Tunheim, Mr. Marwell estimated that audiotape equipment suitable for such purpose would cost approximately \$700.00. In response to inquiries from Review Board members, Ms. Walter stated that the Review Board would not be required to transcribe such audiotapes; that such audiotapes would be subject to the Freedom of Information Act

("FOIA"); but that, depending on the contents of particular tapes, they might fall within one or more FOIA exemptions.

Dr. Hall moved that the Review Board adopt the standard practice of audiotaping its future meetings, while also having a staff member take detailed notes of its proceedings and prepare minutes from such notes. Dr. Joyce seconded the motion, which was unanimously passed by the Review Board.

II. AGENDA

Chairman Tunheim asked Mr. Maxwell to list the items on the agenda of the Review Board. Mr. Maxwell identified:

1) Further discussion of the "Draft Guidance on the Definition," dated January 20, 1995, and circulated to the individual Review Board members on or about that date ("the Draft Guidance");

2) An update on certain legal developments;

3) An update regarding the handling of a certain portion of House Select Committee on Assassinations (HSCA) records now in the custody of NARA;

4) A preliminary report from Review Board staff on the structure and documentation of the review process;

5) Discussion of certain records, created by the Warren Commission,

as to which NARA has recommended postponement under the personal-privacy provision (Section 6(3)) of the President John F. Kennedy Assassination Records Collection Act of 1992 ("the Act");

6) Scheduling Review Board activities, including a proposed "experts' conference"; and

7) An informal meeting with FBI Director Louis Freeh.

Before the Review Board discussed the first item on the agenda, Mr. Tilley asked whether it was appropriate for him to be present during the Review Board's deliberations regarding the Draft Guidance. Dr. Hall objected to Mr. Tilley's attendance during this portion of the meeting, because NARA arguably has an interest in how the Review Board defines

"assassination record," and it was desirable to avoid even the appearance that NARA was improperly influencing the Review Board in this regard.

Mr. Tilley left the meeting.

III. DRAFT GUIDANCE

Chairman Tunheim noted that he had spoken by telephone to each member of the Review Board about the Draft Guidance, and expressed the hope that the Review Board now could adopt a proposed guidance for publication in the Federal Register in order to solicit comment by interested members of the public. Dr. Graff moved that the Review Board adopt the Draft Guidance for that purpose. Dr. Hall seconded the motion.

Dr. Joyce suggested, for the sake of clarity, several stylistic and

organizational changes to the Draft Guidance. Specifically, he suggested that subheadings be added as follows: "Introduction" as a subheading at the top of the first page; "Definition" as a subheading for numbered paragraph 1; "Location of Assassination Records" as a subheading for numbered paragraph 4; and "Types of Records" as a subheading for numbered paragraph 5. Dr. Joyce also suggested that the material in numbered paragraph 7 be moved to numbered paragraph 3, and that the "Introduction" section initially refer to the terms defined in the subsequent numbered paragraphs.

Dr. Joyce further proposed, as a substantive matter, that the phrase "closest generation to the original available" be substituted for each occurrence of the phrase "best available" in numbered paragraph 6. He observed that the closest generation to the original is most desirable for

research purposes, but is not necessarily the "best" or "clearest" copy. Dr. Nelson agreed.

Dr. Graff and Dr. Hall agreed to incorporate Dr. Joyce's proposed changes into the Draft Guidance for the purpose of the pending motion.

Chairman Tunheim asked Mr. Marwell how a record would be described in a Federal Register notice pursuant to numbered paragraph 9(a)(2) of the Draft Guidance. Mr. Marwell replied that such a notice, depending on the circumstances, could describe a group of records or a single document, and would state the location of the records described.

Dr. Nelson observed that, as a model for such notices, the Review Board could look to the format used by NARA when noticing destruction of records in the Federal Register.

Dr. Nelson suggested adding the phrase ", including presidential libraries" to the end of numbered paragraph 4(c) of the Draft Guidance. She stated that, because presidential libraries are federal "record repositories," as presently described in paragraph 4(c), this addition may be redundant. However, she believed that this addition was desirable in the light of recent court decisions categorizing some papers in the Chief Executive's possession as "government agency" records, but others as "presidential" records. In response to inquiries from Review Board members, Ms. Walter explained that, before the Reagan Administration, all records in the Chief Executive's possession were treated as "presidential papers," and became part of a presidential library collection by virtue of a deed of gift from a former president (or his successor) to the presidential library. Chairman Tunheim agreed with Dr. Nelson's suggestion.

Dr. Hall observed that, although corporations may possess assassination records, they were not expressly mentioned in numbered paragraph 4 of the Draft Guidance. In response to this concern, Ms. Walter suggested that the phrase "persons, including individuals and corporations" be substituted for the word "individuals" in numbered paragraph 4(f).

Dr. Hall asked Mr. Gunn to explain the intent of the current formulation of the definition of "assassination record" in numbered paragraph 1 of the Draft Guidance. Mr. Gunn responded that this paragraph was intended to give a broad, general explanation of what an assassination record was. Chairman Tunheim concurred, and further stated that the language of a prior draft had been regarded as potentially

narrower than the language of the statutory definition (Section 3(2) of the Act). Accordingly, the current draft used broader language.

Dr. Hall stated that this change had the effect of empowering the Review Board to request, and ultimately, in its discretion, to release, sweeping categories of documents. He further explained that, in his view, this was the most important language in the Draft Guidance, and that it potentially could complicate the Review Board's responsibilities. He emphasized that he did not oppose the language of the current draft or propose an alternative formulation, but only wished to call this matter to the attention of the other members of the Review Board.

Chairman Tunheim expressed his view that, although the language in question may delay the Review Board certain aspects of the Review Board's

policy-making, it would not in the final analysis complicate them. Dr. Nelson agreed with this assessment.

Dr. Joyce expressed concern that the phrase "investigations of the assassination" in numbered paragraph 1 of the Draft Guidance may be too limited. He noted that certain records may pertain to an "explanation" of the assassination, but not to a particular "investigation." The members of the Review Board then engaged in a colloquy as to whether numbered paragraph 1, read as a whole, was a sufficiently broad definition of "assassination record," and what additions or changes may be appropriate. Chairman Tunheim suggested that the phrase "or inquiries" be added after the word "investigations" in numbered paragraph 1.

Dr. Graff and Dr. Hall agreed, for the purpose of the pending motion,

to incorporate into the Draft Guidance the changes suggested by Dr. Nelson as to numbered paragraph 4(c), by Ms. Walter as to numbered paragraph 4(f), and by Chairman Tunheim as to numbered paragraph 1.

Ms. Walter called attention to NARA's continued concern that the inclusion of artifacts in the definition of "assassination record" may create a precedent for designating artifacts as "government records" in other contexts. In response to an inquiry from Dr. Hall, Ms. Walter advised the Review Board that it had the authority to include artifacts as "assassination records" for purposes of the Act.

After brief discussion and without a vote, the members of the Review Board reached a consensus that there was no need to further amend the Draft Guidance for the purpose of the pending motion. Dr. Nelson called

for a vote on the pending motion to adopt the Draft Guidance, with the agreed-upon changes, for the purpose of publication in the Federal Register and solicitation of public comment. The Review Board passed the motion by a unanimous vote.

IV. LEGAL DEVELOPMENTS

Ms. Walter briefed the Review Board on the present status of negotiations between the Zapruder family and NARA regarding rights to the use of the Zapruder film, and on the D.C. Circuit's opinion, dated January __, 1995, in ----- v. -----, No. 9_-____ (copy attached as Exhibit 1), which held that the Act did not create a private right of action for researchers seeking release of documents. Ms. Walter distributed copies of this opinion to the members of the Review Board.

At this point, Mr. Tilley returned to the meeting.

V. HSCA RECORDS

Mr. Marwell reported to the Review Board that there were a number of HSCA records, now in the possession of NARA, as to which NARA informally has sought guidance from the Review Board. Mr. Marwell stated that these records principally contain information from state and local law enforcement agencies or from the Federal Aviation Administration. Mr. Marwell explained that staff members had advised NARA that it was NARA's responsibility initially to decide which of these records should be released, postponed or referred to other agencies, and that, if for some reason further guidance from the Review Board were

required, NARA should submit a written request. The members of the Review Board expressed their agreement with this course of action.

VI. CONSIDERATION OF REVIEW PROCESS

Mr. Marwell then distributed to the members of the Review Board preliminary drafts of three forms to be used by the Review Board and its staff at various stages of the review of particular documents. Mr. Marwell explained the staff's preliminary concept of the process of reviewing records that agencies sought (in whole or in part) to have postponed: first-line review and recommendation by a staff analyst; selected review of first-line recommendations by a supervisory staff member; and review and determination by the Review Board.

The members of the Review Board and staff members discussed whether and at what stage agencies should have the opportunity to adduce record-specific arguments in favor of postponement. No vote was taken or decision made; however, the members of the Review Board reached an informal consensus that the staff, in refining its concept of the review process, should attempt to provide for written input from other agencies in the earlier stages of review.

VII. WARREN COMMISSION RECORDS

Mr. Tilley explained that NARA has reviewed Warren Commission records in its possession. NARA has referred approximately 19,000 pages -- including multiple copies of many of the same documents -- to other agencies.

As to four documents (multiple copies of which appear in the records of the Warren Commission), NARA has recommended postponement in part under the personal-privacy provisions (Section 6(3)) of the Act. NARA sought postponement of allegations, contained in these documents, regarding the personal lives of Sylvia Odio and Charles Steele. Mr. Gunn distributed copies of these documents, provided background information on Ms. Odio's and Mr. Steele's connections to assassination-related events, and recommended postponement of the material identified by NARA. After reading the documents, the members of the Review Board discussed the proper application of Section 6(3) generally, and to these documents in particular. The members of the Review Board agreed to table any decision on these documents until its next meeting. No vote was taken.

VIII. SCHEDULING OF "EXPERTS' CONFERENCE"

Mr. Marwell submitted a preliminary proposal for an "experts' conference" to be sponsored by the Review Board. The proposed conference would comprise both informal meetings of staff members (and interested Review Board members) and outside individuals with special expertise in locating and analyzing major categories of assassination records, and public hearings before the Review Board addressing matters of broader policy. The members of the Review Board expressed agreement that such a conference was conceptually sound, and that mid-April would be an appropriate time to schedule it. The Review Board directed the staff to formulate a more concrete proposal, to be presented to the Review Board at its next meeting.

IX. INFORMAL MEETING WITH DIRECTOR FREEH

Chairman Tunheim noted that the members of the Review Board were scheduled to have an informal "get-acquainted" meeting with FBI Director Louis Freeh at 1:30 that afternoon. Chairman Tunheim stated that the session with Director Freeh was expected to last about 30 minutes.

X. ADJOURNMENT

Dr. Graff moved that the meeting be adjourned. Dr. Hall seconded the motion, and the motion was carried by a unanimous vote at approximately 12:20 pm.

