

January 6, 1996 ARRB Presentation

at the Annual Meeting of the American Historical Association in Atlanta, Georgia

JUDGE TUNHEIM: Good afternoon, everyone. It's 2:30 and time to begin. I want to welcome you all to this session this afternoon, a session dealing with the work of the Assassination Records Review Board. As all of you know, and as you'll hear from our Board Members this afternoon, there are few subjects that have captured the interest of the American people or captivated the imagination of the American public more than the assassination of President John F. Kennedy 32 years ago in Dallas. The subject that seemingly will not go away—lingering questions on everyone's mind about what really happened in Dallas 32 years ago. And the Assassination Records Review Board was created to try to help to do something about that problem.

Let me give you a little bit of a background today. And I'm going to be the person giving this background, and each of the Board Members are going to speak. I want to first introduce all of the Board Members to you. To my immediate left is Dr. Anna Nelson, who is Adjunct Professor at the American University. And to Ms. Nelson's left is Dr. William Joyce, the Associate University Librarian for Rare Books and Special Collections at Princeton University. And then at the far left of the table is Dr. Kermit L. Hall, who is the Dean of the College of Humanities and a Professor of History at Ohio State University. My name is John Tunheim. I'm the Chair of the Board and recently confirmed as a United States District Court Judge for the State of Minnesota. We have one Board Member who couldn't be with us today, Dr. Henry Graff, who is Professor Emeritus of History

at Columbia University. We are the five Members of the Board nominated by President Clinton to oversee this effort, confirmed by the United States Senate.

After each of the Board Members has an opportunity to speak, we'll engage in some bit of discussion among the Board Members here; and then at that point, we'll ask you to throw questions at us and we'll do our best to provide answers to you. I appreciate the fact that you're all here this afternoon.

The Assassination Records Review Board is a unique and unprecedented new federal agency in Washington. It's chartered for a three-year effort and scheduled to sunset no later than October 1, 1997. What's unique about the Review Board is its power and responsibility to oversee the collection of a certain group of records and to decide what gets made public now and what gets postponed until a future date for release. The subject, of course, are all records held by the federal government related to the assassination of President Kennedy. The law was passed in the fall of 1992 and signed into law by President Bush. The sentiment for some kind of an effort to release the records had been growing for years in the Congress. And I think the final straw was probably the Oliver Stone movie that introduced a new generation of Americans to the Kennedy assassination. Congress decided that records had been hidden for long enough, it was time to release them. Congress, however, doesn't have the ultimate say on the President's control of executive branch records. So what was created was this unique five-person board—all of us are part time, we don't live in Washington—to work on the records project. Dr. Nelson lives in Washington to teach at American University. But we are all part time. Four of us are not employed by the federal

government. I was recently employed by the federal government, but in a role far different than the review of the records. We were appointed by President Clinton after the President considered nominations from a number of professional organizations including the American Bar Association, the Organization of American Historians, the American Historical Association, and the Society of American Archivists. President Clinton took nominations from these groups and made the appointments accordingly.

We got off to a bit of a slow start in part because of delays in the appointment and confirmation/nomination process. But we were sworn in in April of 1994. We then faced the task of starting a federal agency, starting an agency without any advance appropriations. Through the courtesies of the White House, we got some initial money to get started, to hire a staff, an Executive Director. One of our staff members is with us today: Tom Samoluk, who's in the front row down here, the Associate Director for Communications. Tom has distributed a number of packets on the work of the Review Board; and, if you were not able to get one and you'd like one, please talk to him and he'll see that you get one.

The work of the first year of the Review Board was largely setup, getting started, hiring staff.

The difficulties of organizing a new federal agency are rather significant, especially when you are on a part-time basis. But we've got a wonderful staff put together now, about 25 staffers who had to go through a lengthy security clearance process. Last June, June of 1995, we began, really, the substantive review of records. When we're talking about records, we're talking about a universe of an enormous amount of records. Many are at The Central Intelligence Agency, and classified. The

FBI has a significant number of records. And many other federal agencies have smaller caches of records relating to the Kennedy assassination. There are records at at least three of the presidential libraries that are subject to the Board's control; and there are many other records that are related to the Kennedy assassination, many in control of state and local governments. And we are doing our best to get our hands on at least copies of those records so that in the end we will have as complete a collection as possibly can be put together at the National Archives at College Park, of records related to the Kennedy assassination.

Part of our responsibility is to find these records and to secure them so that they are freely available to you, to researchers, to authors, to historians, to the American public, for them to see for themselves what's in the records and make up their own minds as to what happened in Dallas 32 years ago. I must emphasize—we're not reinvestigating the assassination itself. To the extent that this is an investigation, this is an investigation into the records. Where are the records? Where can they be found? How can they be collected? And by records I mean paper records—obviously the vast amount of the collection are paper records—but also photographic evidence, films, photos that are relevant to the assassination, artifacts. We've put together a very broad definition of what is an assassination record that was published in the *Federal Register* that guides the federal agencies who are busy collecting records pursuant to our request.

The Board, as I mentioned, started in June to do its substantive review of the records. The process is this: agencies collect the records by using the definition that the Board has provided. There is a lot of interaction between the agencies and our staff as agencies struggle to determine what

is really meant by the term "assassination records." And then the records are presented to the Review Board for its review. A lot of records had been available in part to the American public through earlier releases, but now most are releases that are associated with the Act that created the Review Board and forced a special focus on these records to make them available to the public. Additional records are now being released in response to the early decisions of the Board in terms of certain areas of whether materials should be opened, certain subjects. The Board reviews the records, makes its decision, the decision is communicated back to the agency. The agency does have an appeal right, but that appeal right is to President Clinton, and then it's his duty to overrule us if he believes we are going too far in the release of records. It is not a process for going through the courts, unlike the FOIA process which many of you are probably familiar with. The Records Collection Act was really designed to replace the FOIA. The standards are quite favorable for public release and they're standards that the Board has been vigorous in its application.

There are some records, or some information on records, that the Board has postponed for release at a future time. We have specified the date of release in those instances. We're acting pursuant to a statute. Some of those examples might be names of intelligence agents who are still living, for example, and who feel that their safety might be jeopardized by release of their name; their name is not central to the assassination story; the Board has been willing to postpone for a limited period of time the release of that name. There are other categories involving personal privacy, intelligence sources and methods, methods of protecting the president, those are issues we have to

look at. But overall, there is a broad presumption in favor of public release of these records and that seems to be the way the process is working, and working well.

This is the first time in the history of this country that an independent review board has had an opportunity to decide whether federal agencies should be forced to release records. Courts have that opportunity from time to time, but must do so within the relatively narrow standards of the FOIA. The Review Board operates under an entirely separate statute and one that heavily favors public release.

The documents that we've released thus far, we've focused, early on, both on CIA records and on FBI records. I like to liken the process to looking at a huge jigsaw puzzle that has a lot of pieces missing. The Kennedy assassination story has a lot of pieces missing. Through our work, we're starting to fill in some of those pieces of that puzzle. I doubt whether every piece is ever going to be filled in because 32 years have passed since this event and too much has happened. Too many people with firsthand knowledge are no longer living. But we are getting the story to the point that, when we're done, hopefully, the American public will know that no longer are records being hidden from them relative to this event, within federal agencies in Washington, and there'll be as complete a collection as we can possibly put together that's freely available for the American public to see.

I think I'm going to stop my discussion. This is really a setup, and I guess that's the role of the lawyer among the group here, to set up the process and let my colleagues (historians and archivists) give you more of the overall flavor of what we are doing philosophically and why this is

important to historians and to the American public. I'd like to get Dr. Nelson to proceed on that. Thank you.

DR. NELSON: We agreed that we would keep this informal by sitting so that everyone would be free to feel the atmosphere was informal and we could have a dialogue when we finished because none of us have very much to say. We want to primarily answer questions. I was, by the way, on the list of the American Historical Association sent to the President, sent originally to President Bush. Because we're nonpartisan, it was simply a list of people. One of the stipulations was that we had not done any work on the Kennedy assassination because the idea was we would be totally objective in our work.

I think that it has been interesting to me as one of the historians, that to realize that the history of the assassination has largely been left in the hands of journalists. The memory of the assassination is still in the minds of many Americans, most Americans, and the journalists have pretty much written the history of the assassination because historians have been concentrating on the life, the times, the presidency of John F. Kennedy, but not so much his death, not so much the assassination. And so, there has not been a great deal of history written or a great deal of interest in it. I think one reason, of course, is that more documentation is now coming out on the life and the presidency of John F. Kennedy, that we're beginning this inevitable revision that always occurs about a president. Somebody ought to tell a president one of these days that the release of documents always enhances their reputation, not ruins it. But most historians, it seems to me, have been

reluctant to delve into the details of the assassination. I think some of this can be traced to the fact that there are so many conspiracy theories that have surrounded the event. Those people using historical methodology often do not look kindly on such theories. And I think that there's also a sense that while we've had investigation after investigation—the Warren Commission, the Rockefeller Commission, the Church Committee, the House Select Committee on Assassinations—none of these groups actually produced a great deal more in the way of documents. And, of course, that's stymied historians. Investigative groups were interested in who killed John F. Kennedy, and not necessarily in releasing the papers surrounding it. So I think this probably explains the quite frankly glazed looks of my fellow historians when I tell them what I'm doing instead of doing what I'm supposed to do, like write scholarly articles. It's a very time-consuming thing, and very worthwhile. I think that everyone in this audience and in the profession ought to be sure that they don't confuse the previous scripts with ours. As Jack said, we *really* are opening records; we are not investigating the death of the president, for which most of us are relieved. For those of us who have been involved with declassified documents it's very gratifying to see how many of the blacked-out pages are now open in the Archives. We have covered a word or two here and there. In the most part our statute, as Jack noted, is much more broadly written. There is, for example, no phrase, "national security policy" or "national security interest." They are different phrases. But it's not the FOIA Act. And part of our rules are that when we remove a word or remove a phrase, we must substitute something to let people know what's under the removal.

Secondly, we are actually discovering new sources. Some of these are being opened to us as we go around the country and hold hearings. We've held hearing in Dallas and New Orleans. We have opened a lot of the Garrison case records in New Orleans. We were given records when we went down there. So we're adding to the collection records that are not in federal archives which will be, I think, very useful. To make these accessible in one place, with one database, which is something that Bill Joyce is going to talk about, is going to be particularly useful. We hope we do get a lot. We sent out a call for films, anybody who might have films or pictures. We don't know if there is anything out there.

Now all of this is, obviously, is good public policy—that is to say, our effort to establish credibility to search for any roots of conspiracy. I think the question in the minds of historians is: does this matter to historians; how will it serve history? And I think that that is a question for which I, for one, think there are some good answers. First of all, I can assure that we will learn a great deal more about the intelligence of domestic security agencies in the early 1960s. That is, we'll learn more about the period; we'll learn more about the era; more about the ambiance of the world that Kennedy operated in, and others.

Our statute gave us the power to overcome some of the traditional generic claims for secrecy that the agencies have had over the years. We have chosen to be selective about sources and methods, informants, and such, but we have not gone on records as simply removing those things because they were so-called. We've been weighing very carefully the provisions of ... the question for us is whether the public knowledge to release these records overcomes what other interests there

might be. So we have released more than almost any other group. What is gratifying to me, since I have often argued for access, is that all of us come from so many different areas of work. Even the four historians come from different areas of work, of what we do, we have had virtually no disagreements in our votes to release. Indeed, the only disagreements we've ever had have been occasionally when one of us would decide that more needed to be released. But we have never disagreed. I think this tells us that sensible people with knowledge and the time devoted to it can in fact be responsible public citizens. So I think the historians will be able to use this information in many different ways—to instruct us a great deal about the time period as well as one event in it. You never know, of course—and I might say that we are setting precedents, as Jack pointed out. We stopped, one of our staff members stopped us as we were making our first set of decisions and said, “You realize that this is the first time this have ever happened.” Just citizens out there. And this is not going back to the agencies. They can't say no, “You can't do this.” They've got to take it to the president. One hesitates, or one takes things to the president. Suddenly we realized that in fact we were setting a very interesting precedent. And it may be that the precedent of releasing some of these things will illustrate that in fact the world has not come to an end and we still can carry on our foreign policy.

I think my second thought is a very speculative one. And that is, you never know where documents will lead, of course. And it may be that we will find, once we've finished our work and the researchers and historians get into the files, we will find that the division between Kennedy the man, his times, the president, and the assassinated hero is in fact not a division, it's a false one, that it

was all part and parcel of an interesting story. The documents could in fact illuminate aspects of his leadership, aspects of the events that came earlier. This is pure speculation on my part, we haven't progressed that far, but I think that it's quite likely. And I think, for example, we know that Kennedy was warned before he went to Dallas not to go to Dallas. We don't know very much about that. We might very well in the next year come across some documents that would in fact bear upon that. That would be a very interesting part of the story. Certainly the fact that the Warren Commission was mistrusted has separated out of the events of the assassination from the life of the man. And I just wonder if ultimately you won't see more ties than historians have realized.

So there will be a range of documents by the time we've finished, and there will be some good finding aids, and there will be the passage of 34 years. The myth is slowly receding, the myths that have grown up around the Kennedy period. In fact it was interesting to me to see that this year the journalists didn't feel necessary to commemorate the day the president was shot with very long articles in the paper. It was noticed in the past. So it may be time for the historians. Historians work from records; we supplement it with interviews and sources, and we hope that we'll supply the records.

Among the various fictional works on the assassination is a book by Don DeLillo called *Libra*. DeLillo, to his credit, says it's fiction. A lot of people write fiction and don't say so. But DeLillo says at the very beginning this is a fictional account based upon the events of the time, and it's highly diverting. But he has an investigator in there who took refuge in his record keeping strategies. This is a quote from DeLillo: "The notes are becoming an end to themselves and it's premature to

make a serious effort to turn these notes into coherent history because the data keeps coming in. New lives into the records all the time. The past is changing as the investigator writes." Well we're looking for closure on the data. I don't think we'll find total closure. I think, probably, documents will continue to come at us; they always have in history. But I do think it's time to turn the notes into coherent history. And to do that, our task is to gather as many of the notes as possible.

JUDGE TUNHEIM: Thank you Dr. Nelson. Dr. Hall.

DR. HALL: Thank you very much. This whole enterprise puts me in mind of something that the English wit Oscar Wilde once said. When asked to comment on what he thought of Niagara Falls, Oscar Wilde said it would be a lot more impressive if it flowed the other direction. What we have had, I think, for the past 30 years is a flow of historical explanation which has largely run in the vein of setting the assassination as a conspiratorial act. It may well be that that is the case in the end. But it is, I think, sobering to reflect what the consequences of our present explanations are.

Because of the position that I presently have on the Board, I've had the good fortune to be able to speak to a number of high school students, classes literally around the country. And I always begin those presentations by asking the students: what happened? What do they think happened? And they actually almost always present me with a somewhat quizzical look as if: don't you get it? I mean, surely you must know, of all. And when I press them for an explanation, they said, "Well, the CIA and Lyndon Johnson killed the president." And then I ask the class, "Well, is student X correct about this?" And I have yet, and now having done I'm sure 30 or 40 of these talks in the past 18 months, yet to find a class where 90 or more per cent of the students don't absolutely agree. And

I then ask them what's the basis upon which they hold to this understanding of the assassination.

And their explanation is really quite simple: "I saw it at the movies."

Now there are some differences in the public opinion surveys that have been done about the impact of the movie, *JFK*, and about the character of and public acceptance of the *Warren Commission Report*. But I do think that it is at least fair to say that the public mind, when it comes to the assassination, rests upon a series of images largely generated on the basis of inadequate evidence. There are literally millions of documents that have not been either partially or wholly revealed to researchers of all stripes. I would think it a fair statement to say that, without having access to those materials, the chance of getting close to understanding the assassination, whether it was a conspiracy or whether it was something else, will not take place.

Now the task that's before us raises a whole series of what I think are very challenging conceptual issues for any of us who practice the profession of history. And those challenging issues really turn, I think, on our intellectual understanding of what materials, either written or otherwise, can be interpreted to mean; but, as important, how they can be properly contextualized and framed so that they can be rendered at least as close to the truth as possible. Let me underscore for you that I think some of the most difficult issues before this Board are issues that appear on first impression to be quite simple. What is an assassination record? Well, obviously it's a record that deals with the assassination. But if you take the view that Lee Harvey Oswald was not the assassin, then it means the world of what are potentially assassination records is a good deal broader than the 201 file held by The Central Intelligence Agency.

What we face is a general problem of trying to make sense of an event whose explanation eludes us by turning to evidence that has been kept from us. And that task is not a simple one because in the end we have to strike, according to the statute, some balance. We have to strike a balance between fidelity to the historical record—the statute doesn’t express it that way; that’s Dr. Hall’s rendition—and the need to protect national security, personal privacy, and a host of other concerns involving sources and methods of intelligence gathering. What is an informant? And if you find an informant, what do you owe to that informant? If I, for example, take Dick Kirkendall and I go to him and I say, “Dick, really what I’d like you to do in the 1960s is I’d like you to be involved, just shadow what’s going on in the Organization of American Historians. And if you could, provide us maybe on a regular basis, a little understanding of what some of the left-wing folks in your organization are doing, it would be very helpful to us.” And Dick Kirkendall says to us, “Well, I understand the need to protect America and defend it, I understand the threat posed by the colossus near the Ukraine, and the only thing I ask from you is that you’ll forever keep the confidence of the words that I tell you.” Now, 32 years later, what do we owe to Dick Kirkendall? Do we owe him absolute fidelity to the privilege of confidentiality, or do we owe to the historical record that he may be able to embellish as a result of what he provided to an intelligence agency by way of information, matters that may, in fact, elucidate the record? Well, what does it mean to elucidate the record? Anyone who has ever done this stuff, you know where I’m going. What does it mean to elucidate the record? Well, what you end up finding out is that Dick Kirkendall, when we came to ask him, “Dick, you know anything about the assassination, or any of those folks in the OAH you

think involved in any way?" And Dick says, "No, I don't think so. We haven't heard a thing, not a thing in our group about it." Well, that would appear on its face to be negative information and, therefore, not valuable. But it may well be valuable information if you have a theory of the assassination that in some way implicates the Organization of American Historians. I'm overdrawing the case, but for a point. But in the end, makes clear that they ought to have been people who did know. So, the whole question of what we owe on the basis of moral responsibility as a part of a government action designed to secure the national interest at a time 32 years later when the national interest is challenged but the fact that we don't have a complete understanding of an event which then shapes the way we understand ourselves as we live in democratic polity. That strikes me as a very interesting issue.

Equally interesting is the question of what does it mean that it's 32 years later? Is it the case that we know of some source or method of operation in the intelligence community that was conducted then and is conducted now? Would it come as a major surprise as is already out in the documents that there are actually agencies of the federal government that used wiretapping? Now 32 years later, is it the case that that same method should no longer be revealed? Is it the case that the passage of time does make a difference with regard to not only the interest we owe to individuals but to the security that we provide to ourselves by ensuring that those who operate in a hostile and dangerous world can in fact do so with the greatest sense that those against whom they operate will not be able to undermine them? I think in the end these questions from a kind of intellectual,

scholarly, historical point of view are really at the center of what we're doing. What appears so simple is in operational terms very difficult to implement.

I think it's worth noting as well in this regard—and I believe Anna is correct in this matter—that among the most important lessons that these documents will teach us are lessons about the way in which the so-called “second government of America” operated during the period of the cold war. Now much of this material is already available. Bear in mind that a lot of Lee Harvey Oswald's 201 file is already in the public record. But what isn't in the public record are the bits and pieces that fill in and give meaning to, expand on, and enhance the understanding of those materials. To that end I suspect we'll learn something about the Kennedy assassination. We may learn something about what I think is the most interesting issue—not whether Lee Harvey Oswald did it; but, if he did, what motives and connections underlie the way he did it. But in the end it's going to tell us how we conducted our public business at a time in which the assassination of a president would have made such a profound difference in the way in which we came to terms with the world.

Now I do not see myself assembling a jigsaw puzzle. Indeed, I see myself really as being entrusted with the box that contains all the pieces to the jigsaw puzzle. And what I want to make sure of when I'm finished is that I had a long enough stick to be able to shove into that box to make sure that every piece got onto the floor of the scholar, so that the scholar could in turn at least have the sense that the record with which he or she was working was as nearly complete as it could be. Were it true that there was truth in history, we could all be free by the actions that we, the five of us, are taking. Alas, such is not the case. What we will find is that there are always contrary

explanations. What we can do for one another, it seems to me, is really to balance the field—the competitive field—so that those who would propose whatever theory it may be at least have to stand the test of the evidence that will now be available. If that turns out to be the case then, it would seem to me that we'll all end up like Oscar Wilde and that our particular Niagara Falls—the Kennedy assassination—will end up looking a lot more interesting because the evidence may just get us in the position of having, seeing it flow the opposite direction. Now having said that, I'm going to leave. And this is not a personal protest or a statement. Unfortunately, I have a personal emergency with which to deal and I simply have to get to the airport. I thank you all for coming. I wish I could stay and listen to the questions because one of the things that I have learned most certainly from this is that the greatest part of wisdom is not in our hands, but it's in the hands of the people who are out there who pose the tough questions for us that make us, in the end, do our job.

JUDGE TUNHEIM: Thank you Dr. Hall. Dr. William Joyce.

DR. JOYCE: Thank you, Jack. Since our confirmation in early 1994, service on the Assassination Records Review Board has been for all of us one extended civics lesson. Starting with the housekeeping details that were necessary to create us in the first place, dealing with the General Services Administration, finding a place for offices, dealing with the Office of Management and Budget to create a budget in the first place, to create the mechanisms to hire staff to enable us to acquire supplies—this has been one very fascinating and intricate enterprise. And then, of course, coping with the agencies that formulate or constitute our primary constituency: the FBI and the CIA,

as Jack and Anna have mentioned, the Secret Service, and to a lesser extent, the State Department, the military, the presidential libraries, and a host of others.

There are a variety of what I might describe as archival implications. They have a kind of operational dimension; and I'd like to review them for you now, starting with the creation of the John F. Kennedy Assassination Records Collection in the first place. The Assassination Records Collection is designed to assemble, of course, as many relevant documents as possible to assist in resolving the continuing controversy surrounding the assassination of President Kennedy. In order to do that, we had to first define what we meant by an assassination record, as Kermit Hall indicated. In defining that record, the challenge that he also alluded to became for us a very vexing problem—how to define the act, the event, in such a way as to provide precision so that the agencies would be able to identify the world of records that would be relevant and, at the same time, to keep it sufficiently broad so that agencies would be able to produce documentation that might address some of the theories that have surrounded the assassination. And, as several of us have already mentioned, the movie "*JFK*" abounds in such theories which, from a definitional point of view, is a very grave problem for us. Having said that, and having undertaken now, first with the congressional mandate in the form of the Act, and now with the work of our Board further developing the Collection, I have to point out that the very existence of this Collection violates the first archival principle, that of provenance.

Provenance is not always easy to explain. Now let me just say very simply that it is an attempt to group records according to how they were created so that the office that creates the records

provides the context, the focus, the organizing principle of where the records are to be found. So having created now the John F. Kennedy Assassination Records Collection, all the agencies identify their records and ship them to the National Archives, thereby taking them out of the context in which they were created in the first place. This is a problem, not only for the archivists but for researchers, because where you might expect to find the records, some of them are not going to be where they might be or should be. So that we have to approach this then somewhat differently. And one of the solutions has been in the way in which we have organized our work and, specifically, the database in which all of these many thousands of records are now entered—I'm talking now about the classified records. Because of the nature of the declassification process, we have to accommodate each and every redaction, or restricted piece of information, in a given record. The database, therefore, is organized not only by document, but by redaction. That enables us to either open a record, redaction by redaction, or, if we have to close it according to some bit of information, we can accommodate that in the database as well. The good news is that that specific database enables us to provide, or will enable the Archives to provide, a better finding aid because the information will be very specifically recorded so that, when you search the Kennedy Collection, you'll be able to tell with some precision what's in it. And this, we hope, will in some way make up for the loss of context when you remove the records from their context in the agency records.

Another problem that we are creating—I think it's fair to say, inadvertently to be sure, but nonetheless a real one—is that of preservation. Records created in the 1960s, whether they're flimsy carbon copies, thermofaxes, or even on regular government-issue paper are, in a word, fragile. And

we create a very elaborate process of handling these records. These records require records information sheets. That information sheet is very often stapled on top of another sheet that might enclose a copy of the redacted portion of the record that's in the collection. So in terms of adding, we're adding paper to the file, we have to refer back, there's a lot of folding going on, and some of these documents are beginning to show wear and tear and damage. So in the course of creating the process to release the very records, some of them are being harmed by the process, physically.

Maybe I should say a word or two at this point about how the staff is organized to give you a better sense of the process of how these records are being handled. Our staff of around 30 is organized primarily into teams. There is a team dealing with the records created in the CIA, there's a team dealing with records created by the FBI, there is a team that is created to deal with military records, and one with State Department records. And then there are minor agencies that get folded into these teams as necessary. In addition, we have on the staff a general counsel who also doubles as Director of Research, our Associate Director of Communications who is here with us today, an Executive Director, and an array of support staff, clerical staff who facilitate this work.

Having struggled to define assassination records, the Board is now setting policy to deal with the declassification process, striving to meet the congressional mandate on the one side and struggling to deal with agency concerns on the other. Those agency concerns are dealt with in the context of the congressional criteria that are set with some precision to facilitate our consideration. These include protecting sources and methods of intelligence gathering, protecting identities of agents and informants where revealing that identity would both breach confidentiality and at the same time pose

a risk of harm to that person. We need to protect anything that would interfere with the conduct of foreign relations. And we need to protect anything that would constitute an unwarranted invasion of privacy. So we are engaged in a very delicate balancing act here, trying to provide as much openness, observing the injunction to provide substitute language and a release date when that material and information can become available. The staff prepares these documents and recommendations and then we come to a decision concerning them.

The implications for access are very large. First, it should be pointed out that the Assassination Records Review Board is part of a much broader effort concerning the role, the nature and extent, of government classified information and how to roll that back. There is a new presidential executive order on declassification. There is the Moynihan Commission on Secrecy in Government. All of these things are part of a very broad effort to begin to improve the situation with regard to secrecy in government documents. As Anna noted, this is the first time in American history that a duly constituted group of private citizens has ordered the declassification of federal records. We are tilling virgin tract here. This is unprecedented. Because of that, the progress has been very slow to now, but we are optimistic. And we believe that our actions are having an effect on the very agencies with which we are dealing, primarily the FBI and the CIA, that our recommendations have often gone far beyond what they had assumed what would be reasonable. However, they have not been appealing all of our decisions to the White House. As Anna also pointed out, they think twice before they want to go down and present something to the President of the United States concerning a matter of an event 32 years ago; and that has had a very salutary effect,

I think, on our work. We have, for our part, upheld comparatively few redactions. Overall, one has the sense of a process that is very gradually expanding the flow of federal documents that are now fully opened or with few restrictions. And if we haven't made Niagara Falls flow uphill, we have begun to widen the flow in the direction which we all expect. As we refine policy for staff and our decisions are communicated to the federal agencies, we hope that these dual factors will not only continue to increase the flow of fully released documents but also create an important precedent of fuller access to government records. This development, combined with the new executive order on declassification and other actions, should improve discernibly the situation concerning access to recent federal records. So that in addition to creating a far fuller record concerning the assassination of President Kennedy, the precedent of providing more fully accessible recent federal records will constitute another part of our contribution to the records and the evidence that is available for study.

JUDGE TUNHEIM: Thank you, Dr. Joyce. I want to give you a few examples just to show you what we are working on and a survey of some of the agencies we're working with.

This is an FBI document [Attachment 1]. It's hard to see in the back, but you can certainly see it afterwards. This was what was available at the National Archives two weeks ago to a researcher who would come in and ask for this particular class of documents. It's somewhat tantalizing because it's stationery of the foreign service of the United States. It comes from the American Embassy in Paris, dated September 27, 1960, a memo to the Director of the FBI from the legate in Paris, and the subject is "LEE HARVEY OSWALD - INTERNAL SECURITY." And then it says, "Re Paris letter 7/27/60," and the rest is blacked out. As of a week ago, this is what that

record looks like at the National Archives [Attachment 2]. It turns out that the substance of the record is interesting but not highly critical. It deals with the FBI checking into a report that Oswald, who by then was in the Soviet Union as a defector, had enrolled at a college in Switzerland. And the Swiss Federal Police are checking that out for the FBI, and they provide information about this in this memorandum. And the only name that's blacked out, or the only area blacked out, is the name of the Swiss Federal Police officer who did the research for the FBI. That gives you a good example of the type of work that the Board is doing. Most of these records are available in some context, witness this record right here. But we are gradually opening a lot more of what's there.

Let me just do a little survey of the agencies that we're working with right now because I think that's helpful to understand the scope. We are certainly working with NARA very closely—the National Archives and Records Administration—and the biggest issues there for us don't include working with them on the Collection because that's been very easy for us to do thus far, the biggest issues there involve the presidential libraries, in particular the Kennedy Library in Boston and a host of materials that are there awaiting our review. The staffs of the libraries have been very cooperative, particularly the LBJ Library, which has been wonderful to work with.

The Department of Justice has files. We've started working with them to gain access to their files. The Federal Bureau of Investigation, obviously, has a large group of records. Right now, a rather conservative estimate is that there'll be 18 to 20 thousand FBI records which contain postponements as they come over to us, which means 18 to 20 thousand documents that have redactions in them that the Board will have to review and make a determination on. It's difficult to

fully understand the scope of the FBI records. They have about 300,000 records left to review that they have not reviewed internally yet. And we do work day-to-day with FBI personnel. We did have our first appellate battle with the FBI at the White House. They appealed some of our very early decisions and, fortunately, we were able to prevail on virtually all issues.

The Immigration and Naturalization Service has about 5 cubic feet of records that we are now tracking and working with them on; we haven't seen them yet. The Drug Enforcement Administration: we can't tell you what the number of files at the DEA are right now, but we suspect there are quite a few. And we've started working with them. Main Treasury has files that we are working with. The U S Customs Service is just beginning their effort after quite a great deal of prodding from the Review Board staff. We don't know the scope of the records at the Customs Service yet. United States Secret Service, of course, has records. They've been somewhat difficult for us to deal with thus far. I think they are finally understanding the scope of their responsibilities under the Act, but that's been a more difficult task for us.

The Department of Defense, which includes a wide range of agencies under DOD—we have just started our effort there. We just have assembled a military records team to start working with them. I can't tell you a number yet, but we think that the number is rather significant.

The Central Intelligence Agency, which likely will be the largest repository of records that we will deal with, especially since virtually all of their records are security classified and have not been, up until two years ago, reviewed for possible release. In terms of numbers at The CIA, that's a little bit difficult to tell, but it will number well into the hundreds of thousands of records. Whether it

approaches a million or not is hard for us to tell at this stage. But there's a lot there, basically in two main files: the Oswald 201 file which Dr. Hall mentioned. The 201 file is a file that they maintain on an individual. And then the Kennedy assassination file, which is also very large.

The Department of State—we are working with them. They have identified records that are subject to the Act. We've started our effort to pry loose from foreign governments records regarding the Kennedy assassination. Cables have gone out through our ambassadors to Moscow, to Minsk, and the Federal Republic of Germany. They have records that we're trying to get our hands on. We have cables drawn up for five or six other foreign governments and we hope to attain their cooperation in making this collection as large as it possibly can be.

The records of the House Select Committee on Assassinations: there is a huge amount of records here, most of which have been held by the FBI. Over 50,000 records, representing some 600,000 pages of documents, they are stored in almost 800 archive boxes. This is an enormous task for us, but certainly very relevant and interesting material because it demonstrates the focus of the HSCA investigation, including a very substantial investigation into whether there are organized crime connections with the assassination. And the Congress has been quite helpful in giving us access to move on those files.

We are also, as I mentioned before, seeking state, local, and in some instances private records to fill out the Collection. There are at least copies of private records. We are not in the business of taking records away from people, but we are in the business of creating a complete collection, and we are doing our best to appeal to the best interest of people to share records with us. Our public

hearing in New Orleans in June was particularly fruitful for us in that we got promises of donation of all the prosecution records that were used in the Garrison prosecution of Clay Shaw. We haven't seen all of those records yet, but we expect them though to be in our offices soon. We also were given records donated to us by the Garrison family, records that Jim Garrison had taken home from the investigation, and also records that were used in the defense of Clay Shaw by his lawyers—so we are developing a rather complete collection of records of the New Orleans story relating to the assassination.

Our early focus has really been on CIA and FBI records, particularly focused on the trip that was allegedly made by Mr. Oswald to Mexico City about six weeks before the assassination. Some have said that that was an imposter; others are convinced that it was Oswald. We've had a focus on CIA and FBI records regarding that trip and many of our early releases relate to the Mexico City trip.

The FBI surveillance of Oswald before the assassination—we tried to focus on that as well, to find out for the record what the FBI knew about this person before he became the prime suspect in the assassination. And the other FBI focus is the immediate sweep of informants the FBI did following the assassination to find out what might have been known by people around the country, either connections with Oswald or knowledge about the assassination.

I'd like to just add in closing out this portion, and I'd like the other Board members to add their thoughts as well—there are broader implications to our work. We tend to start focusing somewhat narrowly on the Kennedy assassination and the records, but I think there are significant broader implications. One that I think Dr. Nelson mentioned is the insight into our government and

the ways it operated in the 1960s during the height of the Cold War. It's really a remarkable window into that period of time; certainly a remarkable window into the intelligence community during that part of our history, an intelligence community that largely has not released records over the years on any aspect of their work. I hope that through our work we can try to help redefine the need for secrecy in government and prove to the federal government that a little disclosure does not hurt and, in fact, government, perhaps, can be conducted much more effectively and openly in the future. We should simply trust the American public with information, with knowledge. Hopefully, through this effort, we can help at least take some steps in this direction. And one of the ideas Congress had in mind in creating the Review Board was to help to try to restore some confidence in the federal government, a confidence that was somewhat shaken by allegations that the government was hiding information, relevant information from the American public. Now you might say that events in the last two months in Washington have shaken any confidence that we may have tried to restore in the federal government, but we certainly are doing our best. And in the end I'm quite confident we'll be able to say that there are no assassination records hidden in the vaults and storage bins of the federal government. We'll get it all, and it will be available to you for your research.

DR. NELSON: I might add that the sheer numbers also take into account great amounts of duplication. If you've ever worked in these records, you know that FBI, for example, kept certain documents in the central office in Washington and then they had all the regional offices. So we do, every time we meet, our staff presents us with a number of duplications. We have to vote on them but, basically, we've voted on them; we've determined the course of the documents already. Also, I

think that one of our problems on the Board is that as historians we know, and as lawyers we know, that—in fact, lawyers in particular, I guess—know that you can't judge information unless you know the source. The sources are, of course, what the agencies don't want people to know. They're either people, or they're what is euphemistically known as "sources and methods," or in some ways they don't want to open it. But we know very well that, without knowing who gave you the information, you don't know whether the information is credible. So we try very, very hard to balance that. I meant to mention that before.

It's a very interesting role, by the way. For those of you who have ever thought historians had to work in the world of public policy to suddenly be the outsider as an insider and to make certain kinds of judgments. For example, as an historian doing research or a lawyer looking for discovery, you kind of toss out what you think is not important; "Well, let's not worry about this one; this is not important." We can't do that. We can't say, "This document's not important." It's there, it's in the file, it may be four lines, but it's important to someone other than yourselves, obviously. So we've kind of had to turn our way of thinking about documentation.

This document, by the way, that Jack held up actually had to do with a European country ... and the interesting thing—and it's a very good example of what we run into over and over again—the blacked out copy was **far** more interesting than what's underneath. And many times we have—somebody going through would look at it from that point of view. And it was just ... could just read all kinds of interesting ideas. And over and over again we've looked at things that under the black marks looked like they were real **key** items that everybody obviously wanted. Then you

take off the black marks, there's not much there. A lot of times they're meaningless crypts because they're hidden in the CIA anyway, or file numbers or, whatever. And we've run across that over and over again. We've looked at a document and said, "gee, [inaudible]." On the other hand, we have filled in interesting stories. And it's been very interesting and very gratifying in that respect. I did want to mention the thing about duplication of the sources, but I'm actually more interested in moving on so we can hear from you people.

DR. JOYCE: Well, in the interest of hearing from you people, I'll defer any comment that I have.

JUDGE TUNHEIM: Go ahead, sir.

AUDIENCE: Two quick questions ...

DR. NELSON: Would you identify yourself?

GEORGE ?: Yes, George [inaudible], U S [inaudible], Bonn, Germany. I think it's one thing when you have a document that's blacked out and you wave it in front of the face of somebody at The CIA and say, "We would like to know the entire document." If you had not had this blacked-out group, is it ... it is my understanding from what you've just described, you have to rely on their search in their vast document collection ...

DR. NELSON: It's a start. We can go look at the ...

GEORGE ?: You can go yourself.

DR. NELSON: Well, our staff can. But right now we're so overwhelmed with what they've found that we haven't done that yet. There's nothing, nothing that says we have to take their word for it.

GEORGE ?: And my second question is: Do you get these reports from people in Russia?

JUDGE TUNHEIM: We've started the process there with the cables that have been presented through the ambassador to Russia, the U. S. Ambassador to Russia, and been presented to the foreign ministry. We're still waiting for an official response. But we're very hopeful that we'll have good cooperation. Researchers have had access to some aspects of those, basically, KGB files. And then we think the United States government should have for its collection copies of that as well. So we're very hopeful of cooperation.

DR. NELSON: Our statute says that we have to go through the State Department.

DR. JOYCE: Can I address the first question? One of the things that we didn't mention is that the statute also confers on the Board some legal powers. And they include power of subpoena and the ability to compel government officials to testify. So that we were given some "teeth," if you will, in order to try to render that record as full as possible in terms of our dealing not only with the agencies but with other, outside groups as well.

JUDGE TUNHEIM: And one other additional aspect of that is our power to require government agencies to account, under oath, for any destruction of records, which we certainly intend to do if we have any evidence of that. Question in the back of the room.

AUDIENCE: I know Dick Kirkendall, and I don't think he was involved in the assassination ... [laughter]

DR. NELSON: Unfortunately, Kermit Hall knows Dick Kirkendall, too.

AUDIENCE: [inaudible] I came in a bit late, but I'm not quite certain how long your group is going to exist. I mean, you talked about how difficult it is, you talked about the yards and yards of information that's out there on the assassination, and the fact that [inaudible] obviously makes for a bigger database, and the fact that you're in sort of a unique group, having been created for the first time, so I guess my question to you is: when do you stop?

JUDGE TUNHEIM: We have 21 months left in our tenure unless the Congress decides to add additional time, which, I think, the Congress is certainly willing to do if there has been some evidence of foot dragging or some delays, or if roadblocks have been thrown up in our path. I think we can do the work during that period of time. We certainly are on a schedule that we believe will allow us to do the work. At some point, you get to the point that the files have all been searched quite carefully and anything more might still be interesting, but you get much more into a fishing expedition at that point. We're trying to make this as efficient an operation as possible, at as minor a cost as possible, and I don't think the Congress intended the effort to go on year after year after year.

AUDIENCE: But you had to set your own priorities.

DR. NELSON: Yes, but you see ...

DR. JOYCE: Yes.

AUDIENCE: Do you think those priorities then are the same as an historian's of that era ... would agree with those priorities?

DR. NELSON: I think so.

DR. JOYCE: I think it's hard to say. Because one of Anna's points at the beginning was how relatively little academic historical interest there has been in the subject. So it's not like there's a rich body of literature to study in order to identify the controversies. We're left to deal with a lot of journalistic productions and theories, the most prominent of which, of course, is Oliver Stone's movie which ... that's not terrifically helpful from the standpoint of trying to study the record to identify where the records may be.

DR. NELSON: But you know we get a lot of letters and a lot of requests, and a lot of the people come to hearings, but no historians with one or two exceptions. So, actually, it would benefit, I suppose, if we knew a little bit more about what other people's interests are...

DR. JOYCE: Absolutely.

DR. NELSON: ... and try to reflect as much as we know, but it's hard to know. But you have to realize that once a record—if we make a decision, for example, if we say this person who has been signing all these documents, this person's name is to now go out and the agency agrees, you can talk about a thousand redactions. We've been slow at first because we've had to set a lot of, I hate to call them policy decisions, that sounds very, somehow too many committee meetings or something, but, you know, we set certain decisions then the staff has been able to do a lot more, so we are at the

point where, without being overly optimistic, we're clearly going to now get more out because we've made these decisions and we may have more challenges from the agencies.

AUDIENCE: My name is John [inaudible] with [inaudible] University. I'd just like to say I'm very impressed with this whole panel and the spirit that seems to be exhibited in all of you from the words that you've said [inaudible] and I'm very pleased that you're making the effort. And I think this is of tremendous interest to the American public. Now, all of my students are wildly excited about this particular subject so I think a lot of people are going to be interested in universal and historical explanation of this. My question is: I'm real curious about the legalities of the procedures under which you operate, and you've spoken a little bit about your powers, and your [inaudible] and working from your side of the process. I'm curious about the other side. My question is this: Have any of the panelists worked with the Freedom of Information requests? Have any of you had any experience with that? Okay, good. Then you're familiar with the exemption criteria that are important under those statutory provisions. My question is: What kind of statutory provisions are you operating under, are these agencies operating under, are these same kinds of exemption criteria possibly going to be employed by the various agencies of the government? Because I know that you've made some references to methods, sources of information, and these kinds of things. And also, the gentleman on the end, Dr. Hall, made reference to that very scary but very important word, "national security." And I've had some experience with these freedom of information requests and I know that this does come up. And national defense, foreign policy

considerations [inaudible]. The question is this: Do you feel that these [inaudible] are going to be there [inaudible]?

DR. NELSON: No, I don't. I'll turn it over to Jack in just a minute because I think he has the statute with him. But our statute does **not** contain the exemptions of the FOIA statute. It **does** contain exemptions. But, for example, that general national security clause that is in the FOIA statute is not in ours. It does say that we must protect ... Well, I'll let the expert—turn that over to Jack—but they are different. Now I will say this: it took some of the agencies a little while to realize how different they were. That's been a little difficult. But they have finally come to the realization that they had to go back and read **our** statute; and, once having read it, then ... But you know there's always a matter of judgment, weighing the things we have to weigh, and what you put under the exemptions will always be a matter of judgment. We were, in our congressional hearing, it was emphasized to us that we were for openness. A deliberate question was asked by the subcommittee chair to get on the record that we were all committed to openness and that we would, ourselves, not write about the event when it was over.

JUDGE TUNHEIM: I think there are very significant differences with the FOIA. The FOIA is specifically superseded by the JFK Records Collection Act if it's an assassination record. And we possess, really, the basic power to determine whether a record is an assassination record. The biggest difference is that it's the Review Board making the determination about whether a particular redaction or particular information should be released or postponed. The standards that we apply are set forth in the statute, but the standards start with a broad presumption in favor of

openness. And that's the first step into the statute, is that presumption in favor of openness. Beyond that, it really gets to be an issue of balancing if there's a close call. You balance the public interest on one side in the information versus on the other side the degree of harm that may come from release of that information. So that's the basic balancing test that we apply. And the categories that postponed information can fall within include identifying sources and methods of intelligence gathering, identification of intelligence agents who currently require protection, identification ... [**"currently"** require protection interjected by Nelson] ... identification of a method of protecting the president that's not generally known, of personal privacy—there's a personal privacy provision in there—but all of this needs to be balanced against the public interest in the information. And the Board has made the interpretation that there's a high level of public interest in anything related to the assassination. The public interest requires a very broad interpretation from the Board as it goes through these records. And it's a very, very different approach than FOIA; and I think, hopefully, we can prove that it's an approach that works well for records.

AUDIENCE: You've talked about records that still must remain closed and you've used the word a couple of times, "postponed." I'd like to know what that means in light of a board that's going out of existence in a couple of years. Will these records then be closed for 200 years, 500 years, or when? If I may?

DR. JOYCE: The Act, among other things, requires us to say if there's any piece of redacted information, we have to, first, provide substitute language and, second, a release date. In all cases—and this will become a great problem for a number of agencies—all assassination records

must be opened in the year 2017. So, irrespective of what we determine, if the record isn't released before that date, if it's an assassination record, the statute requires that it be released in that year.

JUDGE TUNHEIM: With the only exception being a provision that would permit the president at that time to certify that a record still needs to be closed; but it requires presidential action.

DR. JOYCE: And it would have to be appealed by the agencies.

JUDGE TUNHEIM: But the postponement concept means setting a particular date. And in most instances where we're postponing information, we are setting a release date, either five years from now or 10 years from now, or even as short as six months from now if we're waiting for additional information about an individual or something like that. The gentleman over here ...

AUDIENCE: Yes. Well, first of all I'd like to thank Anna Nelson for delineating the difference between fact and fiction when she was talking about Don Delillo and she brought up the fact that a lot of authors try to pawn off fact and it's really fiction. I think you can get into some real historical analysis of this case for that reason. There are too many authors out there doing this sort of thing. The one thing I'd like to ask as far as, and in more of a question format, is has the Assassination Records Review Board run into any problem, not with national security, but with state and local agencies who, when you're running under the concept you're a federal agency, you have the problem with federalism to deal with? Has there been any implication of the lack of cooperation, say with the New Orleans Police Department, the Tampa Police Department, or any private individuals who do not want to submit materials? And do you foresee anything of this in the future?

JUDGE TUNHEIM: That's a very good question. We're doing our best to appeal to the best interests of people to have a complete collection in Washington. There are local records that are part of a local museum exhibit or local archives that they feel strongly about keeping the originals there, we're not fussy about taking copies, and that's okay for our purposes. We'll identify clearly where the original is so people can have access. Thus far, we've had generally good cooperation. We have a bit of a dispute going on with the New Orleans District Attorney, but that really largely involves a dispute that he's having with someone else and we're caught up in it a bit. We think that it will eventually get resolved in favor of the Review Board gaining access to all of the New Orleans material. We've largely been writing letters to other localities searching for additional records and haven't run into any other federalism issues.

AUDIENCE: [inaudible] they no longer have the records on the Tampa Bay chapter of the Fair Play for Cuba Committee. And the New Orleans Police Department had, six months before Oswald [inaudible] sent letters to there, and there was something going on in Tampa and New Orleans with regards to Tampa Fair Play activities. And you're getting into Fidel Castro, you know, and that's what it has to do with. That could be considered a national security matter. I don't know if you've run into [inaudible] problems concerning that.

JUDGE TUNHEIM: We certainly haven't at this point. Right now, the sweep is out there for records and it's looking like people are going to be very cooperative with us.

AUDIENCE: My name's Tracy [inaudible] I'm a [inaudible]. On the presidential appeals, I get the impression they have not been very frequent. How many have been made. And

in those cases where disclosure was upheld, is there any way the public has access to the reasoning of the agencies as to why it should not have been disclosed. For instance, the one you showed a few minutes ago—was that a matter of presidential appeal?

JUDGE TUNHEIM: It was.

AUDIENCE: Well, once it was known it was a question of him going to school over there or not, how did the agency ... what did the agency say to try to justify to withholding that information from the public and is that reasoning accessible where disclosure has been the end result?

JUDGE TUNHEIM: Well, certainly the reasoning is accessible. We've only had 10 decisions appealed, all by the FBI to the White House. Five of them involved this particular issue. Now the issue here, the reason the FBI did not want to release these materials was because it believed that the Swiss government, which had cooperated with us, did not want the information released, and the FBI wanted to protect their relationship with the Swiss Federal Police. That was their rationale and reasoning. They had made a contact with the Swiss Federal Police, who indicated they did not want the material released. So it was appealed. What we did was we went to the Swiss government through the State Department and through the Swiss Ambassador to Washington and got that decision reversed. So the FBI's objection to the release of these materials was eliminated after we made that direct route with the State Department's help. So that's no longer an issue. But that was the rationale on those documents. The others involved particular informants and largely involved our requests for the FBI to provide information to us on whether these people currently required protection, which is how we read our statute. And the FBI's view on that issue was that, if

they were once an informant, they are always an informant, they always are accorded that confidentiality, so they had to protect that principle. Our view of that situation was there needs to be current reason for protecting the identity of that informant; and the White House upheld our viewpoint on what the statute meant. And that issue largely went away as well. The FBI went back and did provide us specific information about those people.

DR. NELSON: But we should say that we don't know that the President of the United States saw it. It went through the Counsel's office. It's probably more accurate for us to say, "The White House," as Jack just did. But, of course, that's not unusual. [inaudible] and we should be careful of that, to note that, I suppose.

JUDGE TUNHEIM: Other questions, comments? Yes, go ahead, sir.

AUDIENCE: [inaudible] and have you had any access yet to the National Security Agency files? I would think that their sources and methods would be interesting here. [inaudible]

JUDGE TUNHEIM: Well, with respect to the NSA, your suspicion, I think, is an accurate one. We've just started. We've had several preliminary meetings with NSA staff. They've been over to our offices. The Board has met with several of them. The staff has followed up with rather extensive discussions back and forth. And we've, essentially, been helping them identify what are assassination records. But the Board is going to, at a future date, meet with the staff at the NSA. And it's really been an educational part of the process, to let them know that they are indeed subject to this Act like everyone else. And we're hopeful that we will ultimately gain their confidence and ability to work with them to gain records because they are covered just like any other federal agency.

AUDIENCE: [inaudible] in Germany, Kennedy assassination, and it required me to read one book. [inaudible] Gerald Posner? What would you [inaudible] ask you for it? [laughter]

DR. NELSON: Have we steered clear of that! Well, I'll give you a good classroom answer. Well, there are a variety of books.

JUDGE TUNHEIM: My suggestion on that would be to pick several books that represent the spectrum of the research and writing that's been done thus far. I mean, I think for me a good place to start were the volumes of the prior investigations: the shorter version of *The Warren Commission Report*, *The Report of the House Committee on Assassinations*, which I think is actually quite thoroughly done. And then beyond that there is a lot of literature. And I guess I would go through them and choose books that represent different interests and different types of approaches, probably.

DR. NELSON: I have a feeling that the more recent ones have probably gotten more recent documentation just from the very fact that things have, in fact, been coming out and have been out for a little while. But I actually have to agree and this ... I don't know—I'd have to say that my first decision was that I wasn't going to read all of them, I couldn't—and I just got in on the Washington consortium. I didn't bother with the Library of Congress. I got in on the computer on the Washington consortium libraries, and I looked at that array of books, and I thought: well, let's see, full time for four years, I might make it. But then I called some people and did my reading, but there are actually—I think that's a good thing to do is to space it out. I think we need a reader on Kennedy.

AUDIENCE: Some of those things are coming out on CD ...

DR. NELSON: CD Rom.

AUDIENCE: But The Warren Commission and House Select Committee would make it more available than going in to the federal library and carrying 20 books around.

JUDGE TUNHEIM: Go ahead.

AUDIENCE: Could I make a suggestion in response to this gentleman's question?

JUDGE TUNHEIM: Sure.

AUDIENCE: Just briefly ... James DiEugenio, a scholar who worked with Oliver Stone in the making of the movie, apparently, and had a lot of contact with Jim Garrison, and has written a book called *Destiny Betrayed*. And I think the book is rather scholarly because he includes a bibliographic essay at the end in which he mentions many articles or other previous books [inaudible].

DR. NELSON: The Posner book also has a big bibliography. But bibliographies don't mean judgment; they just tell you what's there.

JUDGE TUNHEIM: Let's see. The gentleman over here had his hand up.

AUDIENCE: You answered my ... I was going to ask you how steeped each of you were in the reading. You said you weren't allowed to write on it, but that doesn't mean you can't read ...

DR. NELSON: Well, we agreed not to write on it. That's partly because, obviously, we, until the end we have privileged information. No one should make use of privileged information that way. Anyway, none of us were Kennedy scholars or we wouldn't be on here.

JUDGE TUNHEIM: Any other comments or questions that anyone has for us today? Go ahead, ma'am.

MS. MATTHEWS: I'm Linda Matthews from Emory University Special Collections. You mentioned the collection of the entire John F. Kennedy assassination papers would be set up with National Archives. Has it already been?

DR. JOYCE: Yes.

MS. MATTHEWS: So there is already material there that's open.

DR. JOYCE: Yes. Yes. Yes.

MS. MATTHEWS: So that collection exists.

DR. JOYCE: Yes. Yes. In College Park, Archives II.

MS. MATTHEWS: And how much time are you all spending on this? You said part time. What is part time? It sounds like full time to me.

DR. JOYCE: Historically, over the last, what, year and a half, or not quite that long, we've been meeting every three weeks or so for two days, with the hearing trips ... one to Dallas and another to New Orleans and a third to Boston ... pardon me?

DR. NELSON: That's right, we had three hearings.

DR. JOYCE: So I think that level of involvement may have to expand, frankly.

DR. NELSON: And we ... there's a lot of faxing between ...

DR. JOYCE: We're trying to get to the point where we can develop what we call "consent agendas" so that as our decisions, directives, guidance becomes more specific and helpful to the staff

that we may be able to organize growing amounts of documentation that present the same kinds of problems for which we have already come to some resolution, so it ... But, as we do that, we also would need to have some number of us to give a preliminary look at the information to make sure we corroborate the staff's determinations.

JUDGE TUNHEIM: There's some work everyday. But we try to keep in mind that we are in this for part-time. We have our own jobs and professions. And that was an important concept in the Congress in passing this law. They did not want full-time federal employees in Washington overseeing this effort. They wanted people who were out in their own professions and would come to Washington on a part-time basis to review records. And we're taking that very seriously.

DR. NELSON: In the early legislation ... there are some hearings of the early attempt at legislation for this. And it changed somewhat because there were historians who came to testify, to urge them to put ... to ask for historical and archivist organizations. And, obviously, there are a lot of judicial decisions; and so a provision was for American Bar Association representative. I always say that we made sure Jack was Chair so that the historians wouldn't be blamed. But, as a matter of fact, there's a great deal of sharing of skills and so [some of comment lost while changing tapes]

JUDGE TUNHEIM: The Board as a group working together is really starting to hit our stride with a base of knowledge and understanding about the event in the documents that allows us to move much more quickly through them. The expertise is building to the point where knowledge has a substantial impact on the pace and the product. I think the idea behind it was wise even though many of the procedures were not specified clearly. Go ahead.

AUDIENCE: If I understand you correctly, the agencies are required by law to tell you all of their sources and methods and you will decide their right to [inaudible], including the president.

DR. NELSON: They have to tell us about what's on the documents. They don't have to tell us beyond that. They're a little uncomfortable with what we're seeing on the documents sometimes. And a lot of it, of course, is that the agencies don't want to release what everybody knows anyway. But we all know that, and they don't want to confirm it in [inaudible] cases. They don't want official [inaudible]. But, yes, you're right. [inaudible] We haven't been to NSA yet. That's going to be interesting.

JUDGE TUNHEIM: There is a relatively high level of discomfort among the rank and file in these agencies that are dealing with these records because this is a very, very different process and they're not accustomed to it.

DR. NELSON: That's a masterpiece of understatement.

JUDGE TUNHEIM: I do think that higher up in the agencies there is a better understanding and a better appreciation for the need for these materials to be made public. Our staff is working day-to-day with career employees who are set in one way of doing things with respect to records and mightily afraid of the impact of public release of records, whereas the higher level people at the agencies have recognized that it's important to release these records and can understand that the sky is not going to fall in if some information is shared with the public. That's been an interesting observation, I think, as to the level of opposition. ...

DR. JOYCE: And, if I may say, I think that this is, truly, path-breaking work. And it has been slow because everything we've done has been done for the first time. But the gravity, the significance in terms of having these government agencies come to terms with their own cultures of secrecy has been an absorbing experience for all of us. And the consequences of that are just [inaudible].

DR. NELSON: Well, I think we've benefited from the fact that the Cold War is over, no doubt about that.

DR. JOYCE: That's right.

DR. NELSON: We've absolutely [inaudible]. But we also are all suffering from the fact that it lasted so long. In most of the [inaudible] we're from that era, people who've been there for years and years who have grown up with and lived through and firmly believe in the secrecy that they are protecting. And so, we have had ... we've been very patient listeners and many hours have been taken in to listen to the agencies so that they will recognize that we have listened—whatever we do, we've listened.

JUDGE TUNHEIM: We'll give you just one example and then we'll go to this question back here. Obviously, a lot of meetings with CIA staff. One particular individual that we've dealt with who has been involved as a staff member for many, many years in the secrecy of records, there's a particular part of most of these cable documents that had always been protected, no matter what the information was under it, it had always been protected. And we asked this fellow the question: why does that information need to be protected? And we had that document up on the screen, and

he turned and he looked at it, and he was silent for about a minute. He looked at it and then he finally turned around and said, "I know there's a reason but I just can't think of it." [laughter]

Question back here.

MR. HIXON: Yeah, I'm Walt Hixon from the University of Akron. Those of us who have worked on foreign policy issues and [inaudible] restrictions, given that kind of story that you tell of the resistance that you encounter, the attitudes you perceive, isn't it likely there will be documents that you just won't know about?

DR. NELSON: Oh, we've asked ourselves that over and over again. Since I have, of course, been in the business and also requested documents, as you know, for many years, I think I'm a little of a Cassandra. But, in fact, The CIA has turned out to be very sloppy record keepers. The whole idea of "need to know" ... and then they didn't have a central file system. And some directors have good records, some directors didn't. And they often don't know what they have in there. Now, having said that, they may know things that they are not putting in the files. But we have on our staff a person who leads the CIA team is someone who worked in The CIA historical office for many, many years, until she departed. If anybody knows where these records are and how to go look for them, she does. And I hope that we can just get past all this stuff that they [inaudible]. That's been the question that we have asked ourselves about all the agencies.

DR. JOYCE: That's a very vexing question. To my mind, the sheer volume of records, the ways in which the kinds of experiences that Anna and Jack have related, I'll relate one, too. The Post Office Department lost the files concerning the mail order purchase of the rifle. And it turned

out they weren't sequestered, they weren't hidden, not intentionally. They were inadvertently stored in a skid of records at Suitland where the Post Office has an enormous backlog of records. My concern is more that than a conscious decision. I wouldn't rule it out, but ... and that's why we were given some powers to deal with that in that regard. But, it's always a possibility. But I think the other is the sheer bulk of records [inaudible].

AUDIENCE: Is your powers to deal with it only those that challenge records that are [inaudible]?

DR. JOYCE: No, no. We can compel them to testify. We have the right to go to examine the records. I don't think there's any ...

DR. NELSON: We actually have taken in two or three boxes of FBI records that our staff determined were assassination records—they were not on the FBI's list. They went back to look a little further back and determined that they were, in fact, assassination records. So wherever this is possible—the FBI did not challenge this; they approved it—so I guess we're hindered only by the time, but not by the statute.

JUDGE TUNHEIM: I think that the answer really lies in good, solid staff work, judicious use of the subpoena power, and required testimony under oath, interviewing people who in the past were in charge of record keeping in these agencies so that we do get the full story. I think that question will be with us throughout our existence and we'll think about it years from now. One additional observation that the other Board members haven't made is that I think the fact that secrecy has been so pervasive within the federal government has resulted in much more extensive record

keeping. The CIA, for example, not having released much of anything through the years really didn't have a need to destroy records when they knew that there was going to be no need for releasing them to the public. That's just a theory of mine, but there is some value to that, the fact that records have been so thoroughly protected through these years. The FOIA has not been particularly successful in the intelligence and law enforcement communities in Washington so that records are largely intact. One of our problems will be the fact that records have been pulled from files in response to prior investigations—the Warren Commission, the House Select Committee—so that there is somewhat of a “hodgepodge” of files within these agencies because they have been taken apart from time to time in the past. That's a bit of a problem. But it's a very good question and one that we have at the top of our list of keeping an eye on as we go through this process.

AUDIENCE: Could you make some comments about your staff, their training, their background, their experience, how you recruited them, full time, part time, and what are they going to do with 21 months?

AUDIENCE: Go look for a job.

JUDGE TUNHEIM: We were hindered somewhat in the process. We were not permitted to hire anyone who was currently on the staff of a federal agency. And, therefore, we didn't have a pool of people that we could get “detailed” to us, people who already had security clearances who could start work real quickly. We had to avoid that as part of the effort to ensure public confidence in what we were doing and the way Congress set things up.

Our Executive Director: we were fortunate to get a person who for the prior four or five years had headed the Berlin Document Center before we turned that repository over to the German government, someone who was experienced in hunting for records in his past career in the Justice Department. He largely supervised the recruitment and hiring the staff. We've done our best to look for people with experience. Obviously, we don't have a huge budget so we can't pay premium salary dollars to lure people to work for us. But we have an enthusiastic staff, a staff that's made up, in part, of people with backgrounds in history, people who are lawyers, and people who are investigators. It is a staff that I think has done a remarkable job thus far and is learning the ropes really well for us.

DR. NELSON: One of our advantages of the security clearance for our staff is this can take forever—it took forever for us. We are certainly unblemished five people. We were investigated up one way and down the other. Either that, or we'd led very dull lives. But one of the things in our favor was that the FBI was very eager to get on with some of our decisions. They wanted to know where they stood and so they were very helpful on the security clearances. They wanted to get us in business so that we could, in fact, begin to terminate for them what ... I think that they may have thought that it was a safer bet, but in any case that was very helpful to us.

DR. JOYCE: Apropos of that, the FBI was so eager and were under such pressure from the top to process their records that at one point they had detailed over 90 people in their review of records, to give you some idea about the scope of the enterprise in the agencies themselves.

JUDGE TUNHEIM: And that's just reviewing JFK assassination records.

DR. JOYCE: That's right, yes.

JUDGE TUNHEIM: Go ahead.

AUDIENCE: Steve [inaudible]. Most of your proceedings are oriented towards public source documents of one sort or another or one level of government or another—I'm curious ... Some of you may be familiar with a statement [inaudible] that's very recent by a physician by the name of Dr. Charles Crenshaw down in Dallas, who has made some interesting statements in 1993. And Crenshaw—I have checked the Warren Commission proceedings and, apparently, he was not asked to give testimony before the Warren Commission although several physicians state that he was there, a physician at Parkland Hospital in 1963 when the president was brought in. Now Crenshaw says, as of 1993 that not only was he there but he was the resident neuro physician at Parkland and that he did, you know, have ... he was a witness to the condition of the president, was in at the time he was brought in, and he has a very different version of how, why, you know, what was the condition of the president, and he was in full view of the president. Now this is a dramatic reversal kind of statement. And I'd like to just mention this because according to historians on the Lincoln assassination, as late as 1901, a long time after the president was assassinated, people were making statements, claiming to have direct information pertaining to the truth or the falsity of the charges, one way or another, on the assassination of President Lincoln. So what I would like to suggest is, we might also need to be concerned with so-called "witnesses at large," you know, maybe. So the question is: is anybody doing any work in the field? Are you concerned with possible individuals

still living who may have knowledge one way or another, information that is not yet recovered from government-source documents.

JUDGE TUNHEIM: We are. Obviously, our first priority is to dig into the federal records that are there. That's what's expected of us. However, it is also expected that we'll search high and low for additional records that might be available. And a good way to search for records is to go out and interview people with relevant information, ask them if they have records themselves that they will turn over to us. One of the enduring areas of controversy related to the Kennedy assassination is the medical evidence; not only the treatment of the President in Parkland Hospital, but also the autopsy back in Washington. And we do have a focus on those issues, to do our best to find records that might clear up some of the enduring controversies about those issues. And we are, as a part of our process, interviewing people who have relevant information.

Any other questions for this afternoon? If not, let me just remind you: if you did not get a packet of material and you would like a packet, please see Mr. Tom Samoluk. Tom, if you stand up a second ... from our staff here. He doesn't have an extra packet, but he'll send it to you shortly and give you his card. We've enjoyed spending the afternoon with you. And, hopefully, you'll continue to be supportive of our work. Thank you.