

## SETTLEMENT PROCEDURE AGREEMENT

AGREEMENT made as of April       , 1998 by and between the United States of America and the Assassination Records Review Board (collectively, the "ARRB"), the National Broadcasting Company, Inc. and Nancy Sheridan (collectively, "NBC"), and Dr. David G. Marwell ("Dr. Marwell"), in connection with United States v. Nancy Sheridan and NBC, United States District Court, D.D.C., Case No. 1:97MS00287 (TPJ) (the "Proceeding"):

WHEREAS the above-listed parties to the Proceeding (the "Parties") have agreed to undertake the following procedures in an effort to resolve their competing claims concerning the materials that are the subject of the Proceeding, to wit, 13 folders relating to the 1967 NBC White Paper on the Jim Garrison investigation (the "Materials"):

1. The Parties will jointly engage Dr. Marwell as an independent, neutral evaluator. Dr. Marwell agrees to conduct a confidential in camera review of the Materials and to render an impartial opinion (pursuant to the procedures set forth in paragraph 3) as to whether or not the Materials, or any portion thereof, substantially contribute to an understanding of the assassination of President John F. Kennedy (a "Substantial Contribution"). The parties agree to accept Dr. Marwell's opinion as a substantive matter, subject to the procedures and rights set forth below.

2. Dr. Marwell will review the Materials at the offices of Miller Cassidy Larroca & Lewin at a mutually-convenient time. He will not copy or remove any of the Materials from the premises of the Miller Cassidy firm, but may take such notes as he deems necessary to perform the requested services, subject to the confidentiality restriction set out below in paragraph 4. He may conduct additional research in public archives prior to rendering an opinion concerning the inquiry contemplated by paragraph 1. If he determines that information or documents within the Materials are duplicative of information or documents already in the public archives, such information or documents (insofar as they are contained within the Materials) shall be deemed, by definition, not a Substantial Contribution.

3. Dr. Marwell will render his opinion, and the Parties will proceed thereupon, according to the following procedures:

(a) If Dr. Marwell determines that none of the Materials constitutes a Substantial Contribution, he will issue an opinion stating only that conclusion, in a confidential letter delivered simultaneously to counsel for all Parties, without further explanation or description of the Materials. In that event, the Proceeding will be voluntarily dismissed with prejudice pursuant to Fed.R.Civ.P.41(a)(1)(ii), with each side to bear its own costs, and the ARRB and the United States will discontinue all efforts to compel production of the Materials. The stipulation of dismissal will set forth as the grounds for dismissal that "an independent evaluation of the materials that are the

subject of this proceeding concluded that none of the materials substantially contributes to an understanding of the assassination of President John F. Kennedy.”

(b) If Dr. Marwell determines that any portion of the Materials constitutes a Substantial Contribution, he will issue an opinion stating only that conclusion, in a confidential letter delivered simultaneously to counsel for all Parties, without identifying those Materials as to which he has reached that conclusion and without further explanation or description of the Materials. He will simultaneously deliver a separate confidential letter (the “Separate Letter”) to counsel for NBC, identifying those Materials as to which he has reached that conclusion, with reference to the specific Bates numbers set forth on the index of withheld documents annexed hereto as Exhibit A, and, if appropriate, identifying that portion of the specified document(s) as to which he has reached that conclusion. In the event NBC desires clarification or explanation of Dr. Marwell’s opinion, it may conduct ex parte oral or written communication with Dr. Marwell on a confidential basis for that purpose.

(c) Dr. Marwell may not release the Separate Letter (or otherwise communicate its contents or any other information learned through review of the Materials) to any person or entity other than counsel for NBC, without the express written permission of counsel for NBC. Within one week of receipt of the Separate Letter, NBC will determine whether or not to release the Separate Letter to the ARRB in some form. In the event NBC determines in good faith that it cannot release the Separate Letter to the ARRB in any form without impairing any privilege or confidentiality interest, it may withhold such release entirely, and the Proceeding will then resume. In such event, NBC will provide the ARRB with a privilege log setting forth the basis for objection to production of any of the Materials that NBC determines it will continue to withhold. In the event that NBC releases the Separate Letter to the ARRB in some form, NBC will provide the ARRB with a privilege log setting forth the basis for objection to production of the documents that the Separate Letter identifies as a Substantial Contribution, and NBC may redact any information in the Separate Letter to protect any privilege or confidentiality interest. In such event, the Parties agree to negotiate further in good faith for a period no longer than one month, guided by Dr. Marwell’s opinion as set forth therein and by additional considerations including protection of confidential news sources and individual privacy, in an effort to reach a mutually-acceptable resolution of the Proceeding without further litigation. Such negotiations, as well as any subsequent litigation should those negotiations fail, will be limited to the documents that the Separate Letter identifies as a Substantial Contribution.

4. All aspects of Dr. Marwell’s engagement, including but not limited to, his opinion, his review of the Materials, any additional research he conducts, his communications with any of the Parties or their counsel, and any written materials created in the course of such review, research or communications, will be treated as strictly confidential by Dr. Marwell and by all Parties and their representatives. Dr. Marwell agrees that, other than delivering an opinion pursuant to the procedures outlined in paragraph 3, he will not disclose to any person or entity (a) the content of any of the Materials, (b) any opinion rendered pursuant to this agreement, (c) any other information learned or

notes taken during review of the Materials, or (d) the substance of any communication with any Party or its representative. Neither submission of the Materials to Dr. Marwell for his review, nor release of the Separate Letter described above, nor any communication with Dr. Marwell by any Party or representative of any Party, shall constitute a waiver of any Party's attorney-client privilege, attorney work-product privilege, journalist's privilege, or other privilege recognized by law. No Party, nor any representative, agency, employee or member of any Party, will at any time seek to pierce those privileges based on any communication with Dr. Marwell, or otherwise invade or attempt to invade the confidentiality attaching to Dr. Marwell's engagement by any means, formal or informal. Neither this agreement nor any communication related thereto shall be filed with the Court except as may be necessary to enforce its terms. The Parties and Dr. Marwell agree and intend that all of the confidentiality restrictions and non-waiver provisions specified herein will continue in perpetuity and will survive the conclusion or termination of Dr. Marwell's engagement and this litigation.

5. Pending the review, opinion-drafting and negotiations, if any, conducted pursuant to paragraphs 1-4, the Parties will suspend further discovery proceedings and motion practice. The Parties will jointly seek a 30-day adjournment of the April 15, 1998 status conference, and the Parties and Dr. Marwell agree to use best efforts to complete the above procedures before the adjourned date.

If, however, despite such efforts the Parties are unable to accomplish dismissal or reach a settlement by that date, they will jointly seek a brief further adjournment for those purposes. In the event no settlement can be reached by the further adjourned date, the Parties agree to use best efforts to complete all remaining discovery within 30 days of that adjourned date, subject to an application seeking the Court's approval of an extended discovery period.

6. NBC and ARRB will be jointly responsible for compensation of Dr. Marwell on such terms as they and he agree upon, and for reimbursement of any expenses he may incur. It is understood and agreed that Dr. Marwell is undertaking the tasks specified herein as a service to the ARRB and NBC and not for any personal purposes, and that he is providing such services in his private capacity and not pursuant to any official duties associated with his present employment.

7. This agreement is entered into for settlement purposes only and without prejudice to any and all claims and defenses asserted or to be asserted by any of the parties. No statement, opinion, action or inaction by any of the parties or by Dr. Marwell in the course of any of the procedures or negotiations described above may be offered or admitted in evidence or otherwise used by any other party for any litigation purpose. None of the Parties will offer or seek to obtain any further testimony by Dr. Marwell, either by affidavit or live testimony, nor will Dr. Marwell otherwise undertake any further role in this Proceeding, after he has undertaken his review under this agreement.

In the event that Dr. Marwell is served with a subpoena by any person, entity or court seeking testimony, documents or information related to the Materials or to his services under this agreement, he will provide written notice (via facsimile and mail) to counsel for NBC and the ARRB within 24 hours of such service, and, in the event of an objection to the subpoena by any Party, will withhold disclosure of any information subject to the confidentiality provisions herein until such objection is

resolved by agreement or court order or until he is ordered to comply with the subpoena by a court of competent jurisdiction.

AGREED:

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Name:

ASSASSINATION RECORDS REVIEW BOARD

By: \_\_\_\_\_  
Name:

NATIONAL BROADCASTING COMPANY, INC.

By: \_\_\_\_\_  
Daniel M. Kummer, Litigation Counsel

\_\_\_\_\_  
NANCY SHERIDAN

\_\_\_\_\_  
DAVID G. MARWELL