

UNITED STATES OF AMERICA
ASSASSINATION RECORDS REVIEW BOARD

PUBLIC HEARING

National Archives
7th Street and Pennsylvania Avenue
Fifth Floor Auditorium
Washington, D.C.

Tuesday, October 11, 1994

The above-entitled proceedings commenced, pursuant to notice, at 10:00 a.m., John R. Tunheim, chairman, presiding.

PRESENT FOR ASSASSINATION RECORDS REVIEW BOARD:

JOHN R. TUNHEIM, Chairman
HENRY F. GRAFF, Member
KERMIT L. HALL, Member
WILLIAM L. JOYCE, Member
ANNA K. NELSON, Member
DAVID G. MARWELL, Executive Director

WITNESSES:

PAGE PUTNAM MILLER
JAMES H. LESAR
MARK S. ZAID
CHARLES J. SANDERS
JOHN NEWMAN
DANIEL ACORN
PETER DALE SCOTT
JOHN JUDGE
WILLIAM KELLY
HARRISON LIVINGSTONE
MAX HOLLAND
MARTIN BARKLEY
DARYL WEATHERLY

PROCEEDINGS

[10:00 a.m.]

CHAIRMAN TUNHEIM: Good morning. Welcome to the first public hearing held by the Assassination Records Review Board.

Let me briefly introduce the members of the Board. I am Jack Tunheim, the Chair of the Board. To my left and your right at the end of the table Dr. Henry Graff, and next to Dr. Graff is Dr. Kermit Hall. To my right and your left, my immediate right, Dr. Anna Nelson, and at the end of the row to my right Dr. William Joyce. With us today are our two staff members, David Marwell, who is the Executive Director of the Board. David is in the back of the room and will be around in the audience today if anyone needs assistance, and Tracy Shycoff, who is our administrative officer, is here today as well.

Before we start, I want to thank the National Archives and the staff of the National Archives for their assistance in providing a room and accommodations for us today for this important public hearing for us, and I certainly want to recognize Steve Tilley who is the Director of the JFK Access Collection in the National Archives, and thank him once again for his fine assistance to us, and Susan Cooper from the staff of the National Archives who has been assisting us today with arrangements.

The Assassination Records Review Board is a new independent Federal agency that was established for the purpose of providing to the American people a complete public record of the assassination of President John Kennedy and its aftermath, a record that is to be securely preserved in the National Archives, fully accessible to the American public.

Central to the mission of the Review Board is the term "Assassination Records." It is a threshold consideration for the focus of the Board's work over the next two to three years. The Review Board is

responsible for acquiring assassination records that are not currently in the National Archives, and the Review Board is responsible for reviewing decisions of government offices to postpone release of assassination records. Again, the term "Assassination Record" is a threshold for our work and our consideration.

The President John F. Kennedy Assassination Records Collection Act of 1992 provides for us a brief definition of the term "assassination records," and Congress did not more specifically define the term "assassination records" because it believed that such specificity was premature to this process.

It left to the Review Board the challenge of further defining the term and going beyond the records of the official investigations, the Warren and Rockefeller Commissions, and the Church and House Select Assassination Committees.

Today the Review Board begins the process of further defining the term "assassination records." We hope to gather valuable public input today into this important definition. It is our plan to issue guidance that will assist in the articulation of the scope or universe of assassination records as we move forward, and to develop this working definition in an open and independent manner consulting with members of the public who are interested and affected government agencies.

Now, we have established just a few groundrules for our testimony today. We have twelve individuals who had asked to testify in advance, and we have several more who have asked to make a brief statement today.

In order to adhere to time limits, to make sure that everyone has an opportunity to provide input to us, we would ask that those who are testifying limit their testimony to roughly ten minutes or so, leaving a few minutes for the Board to ask questions, if they would like, of each of our witnesses.

We have indicated a willingness to permit additional individuals to provide testimony if time remains. Hopefully we will not go beyond the hour of 1:00 today so this hearing does not last too long, and I think that it would be important to try to adhere to the time limits to make it through to the 1:00 time period. We will take a brief break in roughly one hour.

We have a goal of issuing interpretive regulations on the subject of what is an assassination record, hopefully beyond the end of -- by the end of 1994.

So without further ado, I would like to move on to the question of the day, and that is, what is an assassination record.

The first witness we have scheduled today is Page Putnam Miller from the National Coordinating Committee for the Promotion of History in Washington.

We have a table up here, Page. Good morning, and welcome.

DR. MILLER: Thank you.

On behalf of the 50 historical and archival organizations that compose the National Coordinating Committee for the Promotion of History, I thank you for this opportunity to be with you today.

I have four issues that I would like to address. The first is the significance of this legislation for the historical profession, and we are very pleased, both with your work and with the documents that have already been opened, we see this as a beginning. I would like to just mention a couple of the specific kinds of records that have been opened thus far, and I hope that there will be more of this kind of record to be opened.

The first are 60 boxes of communication between CIA and the Station Chiefs in Mexico and in Miami. As you probably know, under Executive Order 12356, which basically governs our declassification policy, these kinds of records have not been transferred or opened at the National

Archives, and as of legislation that was passed in 1983, these kinds of operational records from the CIA are not available under FOIA request. So historians have really not had a chance to look at this kind of record.

I was at a meeting recently where a researcher who had carefully gone through all the records in the 60 boxes told me that this was one of the richest treasure troves of records that he had seen in a very long time. So for the historical profession, we are certainly interested in the very specific substance records that lead us to a better understanding of the assassination itself, but we are also very interested in the broader context of how the government was operating, and you are able to glean from these kinds of records how the CIA was operating and the kinds of activities and messages that were going back and forth.

Secondly, another specific that I would mention also relates to the CIA, but it is records that were recently opened regarding the relationship between the CIA and the anti-Castro and the Cuba activities. Phillip Brenner, an international relations professor at American University said, after looking at these, we had the outlines that the CIA was doing this by 1975, but what you have now are the meat and potatoes of the plan showing the details of how they put it into effect.

I just mentioned these specifics at the beginning to let you know that we appreciate a broad approach to records and the kinds of records that are now coming out are very important to the historical profession.

Secondly, a point I would like to make is the important precedent that this legislation establishes for involving in varying substantive ways outside specialists, such as yourselves, in an oversight role on declassification.

Again, Executive Order 12356, which defines our declassification policy has no provision for outside oversight, and we feel that we have, under the Cold War years, developed in the Federal government a kind of culture of secrecy and a bureaucracy that has not allowed many important

records that are no longer sensitive to be opened. There are literally trillions of classified records that are historical, over 30 years old, that are still classified. So we see you and your outside Review Board as important for reviewing these records.

We want you to also review the 2 percent of the Warren Commission records that are still being closed. We are also interested in the Robert Kennedy telephone logs for the period before and after the assassination. They are very specific records that are certainly sensitive and we, as historians, recognize that there are sensitive records here, that not all of them will be opened, but we certainly hope that there will be a minimum that will be kept closed.

I remember as I am sure you do, at your confirmation hearing, that the point was made that there would be a presumption of openness, and we are glad that there is an outside review body to consider this.

Third, the historical profession seeks the broadest definition possible in determining what is an assassination record. We hope that the Board will actively pursue records even though agencies may not have labelled those records as assassination-related records, and you may even need, and we hope you will, to pursue records that are not in agency files now.

For example, I was talking to one researcher recently, and he told me that he had inquired about the existence of some Labor Department records that Robert Kennedy had been concerned about the way in which the Mafia may have had some relationship in the assassination, and he had asked some folks at the Labor Department to work on this investigation. That while there is evidence that this happened at the Labor Department, there are no longer any records existing that have been in the agency or have been transferred to the National Archives, and yet there are individuals that worked on this project that have some records in their private possession to indicate this activity. So I think some of the records

that we are interested in will not be labelled by agencies and will not be in the National Archives, or in agency records.

A fourth point, and one related to that, is the importance of providing forums for researchers to have an ongoing input into the work of the Review Board. When I was talking to some people about making this presentation today and asking them what did they see as the work of this Board, and they said, well, this Board is going to need to fine-tune that skill called "follow your nose" skill, and I think there will be an investigative, active pursuing aspect to this work that we are calling upon you to undertake. We do not expect what we would consider as an assassination record to all be just delivered to you by agencies. So we wish you well and urge you to undertake this investigative work.

In closing, I will again say it is the view of the historical profession that our current declassification policy is very much broken, and we see this Board as an opportunity to provide really a model of how declassification policy could proceed.

Thank you very much.

[Applause.]

CHAIRMAN TUNHEIM: Thank you, Ms. Miller.

Members of the Board, are there questions?

Dr. Graff?

DR. GRAFF: I have a question for Ms. Miller.

In looking for the records that are not labelled assassination records in the agencies, shall we follow merely our hunches, and I speak to you as a fellow historian? Should we go by published theories that contravene some of the establishment theories? What do you suggest we do to find those records? Should we come to you?

DR. MILLER: Well, I suggest this kind of forum, and I am very grateful that you are having this, and I think you indicated in your opening

remarks that this was the first, but I think that you will find in testimony and comments from these kinds of open forums the kinds of leads that will be very useful to you. I think that as you begin this sort of tactic of follow your nose is when you start asking one question and then you find out more. I think that you will find many avenues fairly easily.

DR. GRAFF: Thank you.

CHAIRMAN TUNHEIM: Questions for Dr. Miller?

I have one brief question, Dr. Miller. Do you believe it is necessary for us to, in defining assassination record, to define particular record groups in order to be specific enough to provide the kind of guidance that would be necessary for agencies?

DR. MILLER: Well, there is always that problem that if you define the specific records then anything that is not in that group will not be searched. I think that you are going to have to depend on some broad categories. You may suggest specific record groups, but I think that indicating types of records and maybe giving some examples of assassination-related. We believe very much that the Cold War, for instance, was the context for the assassination, and so much of what the Federal government was doing before and after regarding its foreign policy relates to this.

So I think -- I am concerned that a very specific statement may be seen as an opportunity to cut off some records. So I think you are going to have to go a fine line between giving suggestions, indicating the broad scope, and specific ways, but yet leaving it open.

CHAIRMAN TUNHEIM: Thank you.

Anything further from the members?

[No response.]

CHAIRMAN TUNHEIM: Thank you, Dr. Miller. We appreciate the involvement of the historical community in our effort. Thank you.

Our next witness this morning is James H. Lesar from Washington, D.C. We switch here from the historical community to the lawyer community.

MR. LESAR: Well, I have some historical training, too. I nearly got a Master's Thesis but was drafted before completing the thesis, and then later after I got out of the Army went into law.

Good morning, Mr. Chairman, and members of the Board. Thank you very much for inviting me to appear at this hearing.

You have asked me to address the issue of how the term "Kennedy Assassination Records" should be defined. This is a very significant question because it goes to the heart of this Board's capacity to restore the confidence of the American people that they have a right to know their own history, and that they will be provided with all of the government records which may shed light on that history as it pertains to the assassination of President Kennedy.

We hear frequently that trust in the American people and their institutions is at an all-time low. I believe that this precipitous decline in trust began with the Kennedy assassination and is not likely to be reversed at any time soon unless, at long last, the controversies engendered by the assassination are dealt with directly with full disclosure of all relevant facts.

At this point in history, justifications for the continued withholding of such facts pale in comparison with the need to end the corrosive decline in trust spawned in large part by the secrecy, deceit, obfuscation, rumor and innuendo which have accompanied the government's handling of the Kennedy assassination over the past three decades.

I wish this morning to call attention to some specific matters that you must deal with by law because the law requires you to give priority to records which were involved in Freedom of Information Act cases that were pending at the time the act was passed.

Two agencies are particularly involved here, the FBI and the CIA. There were two lawsuits brought, one against each agency, and for all of the records that had been made available to the House Select Committee on Assassinations. In the case of the FBI, some 350,000 pages were made available by it to the House Select Committee, in the case of the CIA, about 300,000.

The problem that has arisen, and it has arisen in court as well as now coming before this body is that these agencies have adopted a restrictive interpretation of "Kennedy Assassination Record," and one that I think is simply unacceptable. The FBI is apparently withholding records related to organized crime matters on the grounds that they are not Kennedy assassination records.

I think that the mere fact that the House Select Committee on Assassinations requested such records in pursuit of its investigation of the Kennedy assassination should be given very heavy weight, perhaps presumptive weight, as an indication that they are Kennedy assassination records. The House Select Committee investigation dealt very heavily, almost predominantly, with the issue of whether or not organized crime figures were involved in the assassination.

The Chief Counsel of that Committee, after the probe had concluded in a book he published, went so far as to proclaim that the Mob did it. Under those circumstances, it would be very unfortunate if all of those records at not to be made available as Kennedy assassination records.

The CIA initially did not take that position with respect to its records, but my understanding at present is that they are now raising that issue. Again, I think that it is simply unacceptable. All of the records that those agencies made available to the House Select Committee must, per se, be defined as Kennedy assassination records.

Among other reasons, one of the functions of the release of the JFK

assassination evidence is to enable citizens to evaluate the performance of official bodies, including the House Select Committee, and we will be unable to fully evaluate its performance without access to the records that it had access to.

There is one other matter that is not in my prepared statement that I wish to call attention to this morning. The JFK Act excluded from its definition the Kennedy X-rays and autopsy photographs. That is, in my view, a stunning irony because it means that the most probative evidence on the question of whether or not there was a conspiracy has, by definition, been excluded from the scope of the act.

This fits a pattern over the past three decades in which executive committees and commissions and congressional committees and judicial decisions have precluded access to those materials by members of the American public. I feel very strongly that this must end, that those records must be accessible.

This Board has the power pursuant to Section E(3)(f) of the JFK Act to request additional legislation by Congress, and I would suggest and request that the Board ask that the JFK Act be amended to include those materials within the scope of the act.

Thank you very much.

[Applause.]

CHAIRMAN TUNHEIM: Thank you, Mr. Lesar.

Any questions by Board member?

DR. HALL: Yes, I have a question.

CHAIRMAN TUNHEIM: Dr. Hall.

DR. HALL: Mr. Lesar, thank you very much. You were kind enough to provide a kind of categorical definition for us and a whole set of categories into which we might be able to fit certain kinds of records, certain kinds of materials. I take your comment at the beginning of this

that it is a definition that needs to be worked through and developed, and such.

MR. LESAR: Yes. I think I styled it as a tentative definition, it is a working definition to start the discussion rolling.

DR. HALL: As I tell my students, it is a definition on the run. There are two parts to this though that I would like to seek your help and advice on. One of these goes to all records pertaining to any person or organization who publicly voiced criticism of the Warren Commission in published writings or during radio or television appearances. Could you enlighten us to what your thinking is in that regard?

MR. LESAR: One aspect of this whole controversy is the reaction of the government agencies to citizens who were critical of government reports. We know, for example, from those disclosures that have been made under the Freedom of Information Act and in connection with the congressional investigations that the CIA, at one point, issued a memo suggesting that their assets be called in to counter the criticisms of the critics.

That is, I think, very relevant. There are other writers, and one in particular that I know of, who feels that the CIA interfered with his attempts to publish works critical of the Warren Commission report.

I think it is vital to throw open this area so that we can assess fully what was going on with respect to this unusual, extremely unusual, I think unprecedented, situation that we have had here for decades in which the majority, even the preponderant majority of American citizens have believed that there was a conspiracy and that there were coverups, and yet the news media have been very supportive of the official view, and have attacked the critics with great vigor. What is going on here? We need to find out the answer to that question.

DR. HALL: But underneath what you are asking is, was there an

effort to muzzle within government those who would have otherwise spoken out?

MR. LESAR: Yes, or those who did speak out.

DR. HALL: The other is Section T, and you ask, all records relating to the CIA's mail interception program, Code Name HT Lingual, what is your thinking there?

MR. LESAR: Well, the congressional committees have gone into the HT Lingual Program, and we know something about it. Some of the critics who are in the audience, some of the researchers who are in the audience here, and some who will be addressing you, can probably elaborate better than I, particularly Paul Hoch, I think, exactly why that is important. But at the time that Oswald was in the Soviet Union, the CIA had a mail intercept, a vast mail intercept program, and some of Oswald's letters were intercepted, and questions arise as to whether or not there was -- just exactly what was going on here.

DR. HALL: Thank you very much.

CHAIRMAN TUNHEIM: Dr. Graff?

DR. GRAFF: Mr. Lesar, again, I repeat what Kermit was just saying, we thank you.

You know that the bias of this Board is in favor of full disclosure, so we are not talking adversarial terms at all, and I would like to stress that in all comments that we make. We are all on the same side. I would ask you though, since you have set forth this broad brush request for documents, prima facie, this is an investigation of the whole United States Government, and I wonder if you put any limits on the request for organizational charts for each agency involved in the planning or implementation of policies, operations and activities in regard to Cuba, Viet Nam, the Soviet Union, and organized crimes for the years 1954 to 1974. It just seems enormous. Do you have a limit?

MR. LESAR: Well, it is a request confined to organizational charts, which are not a vast body of documents. Each agency has an organizational chart, and it would be very helpful to researchers to know who was responsible for what decisions at what point in time. In fact, most of them are probably publicly available already, but I think that it would be very helpful to have them in a compendium so that you don't have to go to each agency to figure out who was in charge when.

DR. GRAFF: So you would put no limits on what we might be looking for in the way of an assassination record?

MR. LESAR: Well, I think that the limits are whether or not it plausibly relates to a controversy regarding the Kennedy assassination, whether or not it is plausible that it will shed light on some aspect of the question, and I think that is really driven by the interest of the individual researchers. If a researcher is interested in something, that is prima facie evidence that it is relevant to the controversy.

DR. GRAFF: Thank you.

CHAIRMAN TUNHEIM: I have one question, Mr. Lesar. There has been some question raised as to whether Congress, in its definition of assassination records, intended to include nondocumentary material, artifacts are the way some would refer to it, evidence related to the Warren Commission investigation. Could you give us your views on that subject, about whether nondocumentary material should be included in the term "assassination records"?

MR. LESAR: I would think that they should, and I am not quite sure as to the reference to nondocumentary materials. If you are referring to physical objects like the limousine windshield, for example, it is obviously of vital importance and relevance to the question and should be included, yes.

CHAIRMAN TUNHEIM: Anything further?

MR. JOYCE: Yes.

CHAIRMAN TUNHEIM: Dr. Joyce.

MR. JOYCE: I have a question concerning the definition and it relates to Mr. Graff's comments about the breadth of it. Given the presumption to disclosure that we all understand to be a congressional mandate, and at the same time given the reality of congressional allocations of a budget nature and time constraints, I am wondering, as you formulated your definition, if you had any approach to the definition that would create some sense of internal priority or how we might look at this in terms of the feasibility of surveying some of these broad areas of documentation that you have outlined here? Do you have any further comment on that?

MR. LESAR: I don't have -- I haven't really thought about that. I would say that there is one suggestion that I might throw out, and I haven't really thought about it carefully enough to say whether it is a good idea or not, but in connection with this issue of the priority which the Board must give to records which are JFK assassination records that were pending at the time as FOIA litigation matters at the time the act was enacted, the courts have held that there is no direct right under the JFK Act -- they have held so far, it is still in litigation. They have held so far that there is no direct right of persons to demand access under the JFK Act and go to court and enforce that right in court. If the legislation were amended to do that, that might take some of the burden off this body and put it where there are more resources. But other than throwing out that, I have nothing that occurs to me at the moment.

DR. HALL: That is an important matter, isn't it, the setting of priorities which is of some consequence here?

MR. LESAR: Well, the priorities have been set to the extent of the matters that were pending as of the date of this act.

DR. HALL: But the expectation would be that we would get beyond those.

MR. LESAR: Right. You have to go far beyond that, without question. I think that probably you will get a sense, I think, from the various critics who are going to appear before you, the various researchers, as to what they consider to be vital and important. Again, I think that is what you have to respond to, the people who can make the best case for directing attention to particular areas.

CHAIRMAN TUNHEIM: Thank you, Mr. Lesar. We appreciate your testimony today and all of your assistance.

MR. LESAR: Thank you very much.

CHAIRMAN TUNHEIM: Before we go on to our next witness, I want to just point out to everyone who is here today that the Board intends to hold the record from this hearing open for an additional 30 days so that if anyone wishes to supply additional material that will be part of our hearing record, we will accept that for 30 additional days to make sure that we have a complete record.

Our next scheduled witness this morning is Mark S. Zaid from Washington, D.C.

Mr. Zaid will be joined by the following witness, Mr. Charles J. Sanders of New York, and they will testify together.

Good morning, gentlemen.

MR. ZAID: Thank you, Mr. Chairman, members of the Review Board. We appreciate the opportunity to make comments on what the definition of assassination records might be.

A brief introduction, Charles and I are both attorneys, I being here in Washington, D.C., and Mr. Sanders in New York City, and we are the co-authors of the only Law Review article, in fact the first, on the Kennedy assassination in almost 30 years. The article dealt exclusively with the

legislation that you are operating under, analyzing its provisions, and offering specific suggestions as to witnesses who might possess or could lead to the discovery of assassination records as well as specific documents that the Board might want to consider giving priority to its release. I am happy to say that some of the documents we listed have already been released under the provisions of the act.

According to the Senate report, the definition of assassination record is: "A threshold consideration for the successful implementation of the act. Its scope will be the barometer of public confidence in the release of assassination records."

The term or definition of the term "assassination records" is likely to be the most important administrative decision that the Board will make.

The goal of full disclosure has been highlighted throughout the legislative findings of ARCA, as we term your legislation, and one of the primary purposes of the act, as stated within, is to enable the public to become fully informed about the history surrounding the assassination. I would highlight that they term it, the history surrounding the assassination, not just the assassination itself.

The term assassination record is given a starting definition in the legislation, they term it, means a record that is related to the assassination of President John F. Kennedy that was created or made available for use by, obtained by or otherwise came into the possession of, and then it lists various organizations and government entities under Section 3.

The breadth of the records that will be covered by that definition will turn on how that Review Board defines two key phrases, "related to the assassination" and "created or made available for use by, obtained by, or otherwise came into the possession of," and those government agencies.

I will address the first part of that with "related to the assassination" and Mr. Sanders will address the second part.

The congressional intent we see as extremely appropriate and a great deal within the legislative history has addressed or guidance as far as how you might be able to or might determine to use this definition.

I will quote from the Senate report: "The term assassination record was not more specifically defined by the Committee" -- meaning the Senate Committee -- "because to do so before more is known about the universe of records would have been premature and would have further injected the government between the records and the American public."

That being clear that Congress intended that the Board adopt an expansive definition, obviously we then must decide how broad that interpretation would be. The Senate report provides some guidance in indicating that relatedness does not depend upon whether a particular record was part of a prior government investigation. In a sense, they indicated it is intended to emphasize that the research and disclosure of records under the act must go beyond those records.

It later presents a reasonability standard as the standard in which to guide the Board in making its request for additional records, indicating should act on a reasonable basis, or that it expected that in conducting such requests for additional information and records the Review Board consider whether records are reasonably related to this history surrounding the assassination.

The adoption of a reasonability standard, we would submit, is most likely the prudent course, but obviously runs into some problem that an objective application of what is relevant is a subjective term. What is relevant to one person is clearly not relevant to another, or vice versa.

We would suggest that the Board refrain from attempting to define a very static definition for reasonably related or relevant, at least until it has the opportunity to gauge the scope of records that might be affected by any decisions and that you, therefore, expand or constrict your

definition as you become more knowledgeable.

In fact, as we realize that, we would inform you that nearly a century ago a very esteemed legal commentator observed that the law furnishes no test of relevance and relies, instead, upon logic and general experience. In law, this has been utilized throughout, that approach. Under the Federal Rules of Evidence dealing with criminal matters in which they allowed elastic specifications for gauging relevance, evidence is relevant if it has any tendency to make the existence of any consequential fact more or less probable. Added to that, in civil matters, the Federal Rules of Civil Procedure permit discovery even though such documents may be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Therefore, it seems appropriate that the Board proceed under those expansive definitions for records related to the assassination, utilizing a liberal standard of reasonability which could be expanded or contracted as the Board gains experience.

We would suggest that in the early and middle stages of the Board's life, the Board be predisposed toward the presumption that a record suggested for inclusion in the collection is an assassination record unless the evidence submitted in support of that premise is so unreasonable as to be frivolous. As the Board progresses towards the expiration of its term of life, additional factors such as time and expense would begin to weigh on its determinations. At that point, a balancing test should be employed to prioritize searches, taking into consideration the relative cost and time and effort that would be required to locate particular documents, balanced with the contribution to the public understanding of the case that those documents are likely to make.

Although we recognize that the Board is not empowered to conduct an investigation, nor is it even required or suggested to submit its

findings on what it believes to have happened in the assassination. We would note that the official view of Congress as of 1979 and still remains to this day under the House of Representatives Select Committee on Assassinations, was that they concluded on the basis of evidence available to it, President Kennedy was "probably assassination as a result of a conspiracy."

Thus, the test for relevance to the assassination as applied by the Board should not be, as it has been in some past investigations or review bodies, a question of whether a particular record is reasonably related to the activities of the alleged sole assassin, Lee Harvey Oswald.

In our article, we went to great lengths to provide a comprehensive but, by no means, conclusive or exhaustive list of groups and individuals whose activities prior to, during and after the assassination reasonably should have subjected them to some form of scrutiny. Those are all listed in our testimony and in our article, I won't relate to them now.

Although these persons or groups may have no factual connection to the assassination, the available evidence indicates that at least a reasonable person could suspect their activities might have been related in some way to the assassination or at least to the history of the assassination.

Therefore, we would urge that the definition of assassination record be broad enough to, at the very least, include all of these individuals and groups, as well as to other subjects brought to the attention of the Board by the research community, the relevance of which is supported by nonfrivolous evidence.

With that, I will turn to my co-author, Mr. Sanders, to conclude our portion of the testimony.

CHAIRMAN TUNHEIM: Mr. Sanders, go ahead.

MR. SANDERS: I would also like to thank the Board for the

opportunity to speak, and it is always nice to have a good reason to leave New York.

I am going to be brief and talk about two points that have already been mentioned, and one that has not. The first one that has already been alluded to is, what do we do about the question of relevance in terms of documents and records that already exist in the records of agencies or groups that have done investigations, government groups that have done investigations into the assassination, and I would certainly argue that there should be an irrebuttable presumption of relevance in regard to those records.

I would go further and say that in terms of records that were requested, for example, by the HSCA, or by the Warren Commission, or by any other investigative body which were not eventually turned over to them and do not appear in their records, I would also say that there should be an irrebuttable presumption of relevancy in that regard. I think it is not a huge leap to concluded that that is part of what Congress intended, those records should be made available to the public.

The second point I would like to amplify on was the question of those records which are not yet called assassination records which are held by private persons. I believe Ms. Miller alluded to members of the Labor Department who may or may not have conducted a study on behalf of Robert Kennedy, that, I believe, would include Senator Daniel Moynihan from my State.

The Board, I believe, under 7J(c)(3) has the right to subpoena records and private persons or individuals in the course of attempting to find records in the files. I do not think, and perhaps somebody wants to debate this point with me, but I do not think that the Board was given the authority to subpoena records from private individuals and take them for inclusion in the collection without falling under the rubric of having been in

the course of looking for other records. There may be a Fifth Amendment due process problem there, and I am not going to get into that in great detail.

But the Board does have the right to grant immunity, and certainly the Board does have the obligation, I think, to remind private citizens that they should cooperate in making the record as full as possible, and that their copyright protection and other protections of a financial nature can be extended to them if they so desire through the deeds of gift sections that I can cite you to rather than taking the time of doing that now.

But I think that that is an important consideration, that the Board can contact many individuals. In our Law Review article, we tried to make an extensive list, although certainly not exhaustive, and we certainly invite you to refer to that, and we will discuss anything you would like in that regard.

The final point I want to make is something that I think is extremely important and relevant, and that is Section 10 of the legislation which refers to the records of foreign governments. I think that the particular mention of Russia and the sense of Congress that the Secretary of State should contact the government of Russia for records is a very important request and should be done as soon as possible, but there are other nations who also may have very important contributions to make to the record of the assassination.

The French government, because of the activities of OAS and some of the things that they may have been doing at that point may be relevant and may be something that you want to take a look at, and that would include, of course, the governments of Algeria and Morocco as well. I would also suggest, because of Lee Harvey Oswald being stationed in Japan, that perhaps the Japanese government may have certain records that

might be of interest, certainly the Cuban government which had been contacted by HSCA would be important.

I do not think that it would be an outlandish suggestion that the governments of the U.K. and Israel be contacted for a number of specific reasons, which I don't have time to go into, but the fact that these two governments were so closely aligned with the policies of the United States and had their intelligence services watching carefully the world situation, it is very possible that in their records they have undisturbed documentation of their observations of what may have gone on in 1963.

So with that, on behalf of Mark and myself, we believe that the Board has an enormous opportunity here to restore some of the faith in government that seems to have been lacking over the entire Kennedy assassination issue, and I am very, very heartened by Mr. Graff's comment that this is not an adversarial hearing and that we are all in this together. I believe that, and I think that we can accomplish the job together.

[Applause.]

CHAIRMAN TUNHEIM: Thank you both, Mr. Zaid and Mr. Sanders.

Questions for our witnesses?

Go ahead, Dr. Hall.

DR. HALL: Mr. Zaid, I want to thank you for being so very helpful and, Mr. Sanders, as well, very, very thoughtful and clearly articulated and such.

What is the standard to be applied? Your analysis of these issues falls along clearly legal lines, you appeal to James Bradley Thayer and to the Federal Rules of Evidence. I want to pose to you the question of whether the appropriate standard to be applied in defining an assassination record is a legal standard or whether it is a professional historical standard?

MR. ZAID: Well, in many ways sometimes those types of standards are compatible with one another. The two that we gave as guidance under, obviously criminal matters and civil matters, are meant to allow the parties to obtain a broad range of documents as possible in order to prove their causes.

Obviously an historical standard would most likely perhaps be of a broader nature. In that sense, I would not necessarily delineate that one standard should be utilized above the other, but rather a combination of the two. Our suggestion, of course, was along the lines of reasonability which, in some way, I think, I will echo Mr. Lesar, my background of that of a historian as well in university, in which you could utilize both of the definitions.

As we said, because the definition in and of itself is going to be an impossible term to put together, we would not suggest that a static definition is put on paper and that is applied to each instance. You will need to utilize that definition, as you said, on the run, so to speak, and apply it to different situations. In that, you will be approached by members from the community whose standards will vary, and obviously need to give some sort of an objective opinion.

Given that you have a set life, our approach is to remain as open as possible in the beginning, weighing the costs and benefits that would be allowed with tracking down individual witnesses, or approaching governments. It is no surprise, I think, that you will note, especially from an historical background, that in the past where government entities have had a set life, it is the nature of the Federal agencies to attempt to wait out those agencies, that set life.

It has nothing to do in this nature with the assassination, it frequently happens in Washington, if the agency could somewhat delay or overburden the authority as far as amount of documents, they will do so.

In that sense, you will need to prioritize material. That is what we attempted to do in some way in the Law Review article to at least give you a starting scope of individuals and documents to go for. But I would really use a combination of the two.

DR. HALL: I am appreciative of your wish to balance the two. I would observe that the last 30 years suggest an inherent tension between what it is that historians view as an appropriate matter for an assassination record and what agencies of the Federal government have deemed to be an appropriate record.

In considering the overall question of what is an assassination record, I do think that the Board, composed as it is of a mixture of lawyers and historians, has some responsibility to puzzle through the issue of what is a assassination record in the context of what is required for the pursuit of truth under a historical as opposed to legal standard.

MR. ZAID: The legislative history, in fact, the makeup of the Board when Congress was going to determine, that was on its mind, of course. It was mandated that at least one historian and one attorney sit on the Board for that very purpose. It also acknowledged that, of course, a lot of initial decisions may, in fact, be of a legal nature in coming to their definitions, but they wish the balance from the historical community.

DR. HALL: One final question, Mr. Chairman, if I may?

CHAIRMAN TUNHEIM: Go right ahead.

DR. HALL: Not to carry on here at great length, but there is a question of some fascination to me, and that is, the definition that we develop, is it a case that we are making law or is it a case that we are providing a definition that has to work within the standard of the act? There is a difference.

MR. SANDERS: I think that Congress made clear that in promulgating rules that there was going to be a certain amount of latitude.

Going back to Mark's statement, the recognition that a strict legal standard applied to kind of an amorphous of records was not going to be work without a blend of common sense, the law being an ass.

DR. HALL: Is it fair to say that this is an area that has not benefitted heavily from common sense, though?

MR. SANDERS: I think we can come to unanimous agreement.

MR. ZAID: But I think that as far as a definition having precedent, in some ways the Board will be establishing precedent for future boards of this nature. Clearly the definition you give to assassination records will be contained in the context of only the JFK assassination to begin with, but as you will be aware of, if you are not already, there are obviously movements for disclosure of other political assassinations or policies that may well in fact benefit from your analysis of how to conduct your activities.

DR. HALL: Thank you.

CHAIRMAN TUNHEIM: Dr. Nelson?

DR. NELSON: I think what we have heard this morning, starting with our very first witness, is a difference in opinion in how we define this and how we start on the search. One is the search for a broad range, which you have partly come down on the side of, and the other, I think, unless I misread Mr. Lesar, was more research driven, that is what people are looking for is what we should be looking for in terms of an assassination record.

Those are two different things, those are two different ways to go about our work. It troubles me a little bit in terms of a priority. That is, we would go about our work a little differently if -- and this somewhat pursues Kermit Hall's position -- we seek the broad historical background, or if we go in a manner which is research driven.

You have some ideas about that? They are nonlegal ideas, but

they are important, it seems to me, to how we start and how we continue.

MR. SANDERS: To me one of the most important factors is that this not become a free-for-all and that the perception to the public becomes, well, you know, these assassination so-called "researchers" are in there attempting to pry open every box in the government's files. The relevance standard is no good. This was an experiment that was doomed to failure because these people can't narrow their focus enough.

I think that the standard that Mark and I had suggested, some nonfrivolous relevance, is something that needs to be developed in a practical way. If someone wants access, wants the Board request access to a particular document or set of documents that seem to perhaps be on the borderline that they come forward and explain why and provide some nonfrivolous evidence so that the hearing process is utilized, and I think the Senate report mentions that, that the Board should use the hearing process to develop a better working definition of what becomes reasonably relevant.

I think we just need to be careful that we don't go too far and, by doing that, have the government agencies whose cooperation we need say, you guys are on a fishing expedition that is broader than anything --

MR. ZAID: I think there is absolutely actually a real fear that by taking too broad of an approach initially, at least to the point where the balance will not satisfy those in the government, the reality, unfortunately, is you place your funding in jeopardy through Congress, and I think that is something to be mindful of, knowing how difficult it was for you to get your funding in the first place when you hadn't even begun work, when it comes down to it, if you start snooping around without due cause, some Senator or Congressman will most definitely be alerted because they happen to work closely with an individual department, and make note.

I think with somewhat of our legal standard that we are attempting to apply, it is in combination with that of the research

community in providing evidence. The legislative history clearly stresses that the Board is to make use of the public and the scholars, and especially those in the research community, to give you the ideas of where to first begin your searches.

I would point out that that, in fact, was one of the main deficiencies of the prior investigations, particularly the House Select Committee, in that the individuals that were involved did not necessarily know the case that they were trying to make, and it took a long time to relearn or to learn the background, the 15 years at the time of the background of the case to begin further investigation.

I think Congress had that specifically in mind, especially since some of those that were involved in the drafting of the legislation were, in fact, on the House Select Committee in explaining to the Board that they are to make the fullest use of the research community, and then using that information apply the definition or standard that they can come up with to facilitate their search.

DR. NELSON: Well, I asked that question because we have been told over and over again that we should have the broadest definition. It seems to me, I quite agree with you in the sense that a line has to be drawn. The question was, what line? So I wanted a little bit more explanation.

CHAIRMAN TUNHEIM: I have a question for Mr. Sanders related to your views on the issue of whether private records are included within the scope. Would you consider records developed by an individual during a period of public service taken with that individual when they left public service currently in possession to be assassination records within the definition of the act, or would those be private records not subject to the act?

MR. SANDERS: The threshold question, I think, there you have

ask is, were the records taken with proper authority or were they simply removed from someone's office being the property of the United States Government and the people.

CHAIRMAN TUNHEIM: I think that gets into a relatively murky area, especially if you are looking back 30 years but, be that as it may, I would like to hear your answer.

DR. HALL: It also strikes at this question of the relationship of the relationship of what an historical inquire might be after and what the legal standard would be that might get in the way of doing of that.

MR. SANDERS: I think the statement that a record can be subpoenaed if it can reasonably lead to the discovery of assassination records which are defined as records already held by that list of government agencies. In the scenario that you suggested, I think that it is certainly within the realm of possibility that by subpoenaing those records there would be a likelihood of discovering records that exist in the Archives, or wherever. So that there are subtleties that can be used to get around the question of whether or not they are private or public records.

DR. HALL: There is a severable issue here, isn't there? I mean the severable issue is what our Board can inquire about and subpoena versus what our Board can provide for release. So would it be your construction of the existing law that if we had the view that material in private hands might be related to some additional disclosure out of the public records that we can look at those materials?

MR. SANDERS: Yes.

MR. JOYCE: But that if there is not a connection that we cannot?

MR. SANDERS: Well, of course, the Board would always have the latitude.

DR. HALL: It surely would be in the power of the Board to raise

question about the relevance after having examined the evidence?

MR. SANDERS: Yes, I believe so.

MR. ZAID: You will run into this issue. There is no doubt about it. For example, records of the ATF, which at the time was the Bureau of Alcohol, Tobacco and Firearms, I believe in the early '60s many have deemed those records relevant. They were conducting investigations that were related to some of the events, but their files are completely missing, and I am not speaking to the assassination, completely missing for the early years of the '60s, having spoken to the librarians and historians of the agency at Treasury and at Secret Service and at ATF, they did not compile their records at the time, and the historians in the agencies have been routinely going to individual agents that were on duty at the time, or family members of those agents, if they are deceased, because the practice was, if agents were working on a particular case they had fondness for, they would bring home copies of their reports and keep it themselves while the agency itself did not maintain its files. So that issue will undoubtedly come up.

The issue as to whether or not you have the authority to subpoena those records, I think, is clear, yes, you do. Then your determination as to its relevancy to allow you to find records within the government. If they are government that were taken, most likely you could then disclose them. If there was notes or such, there might be a murky area. But the question comes in, can you then inject them into the collection because, as Charles mentioned, you could run a foul of the constitutional taking and have to reimburse the individual.

DR. HALL: It is kind of like catch-and-release, isn't it? In other words, if you get the right species and it fits and it reveals something else, once we have subpoenaed it, even if it is a private material and it sheds some light on our ability to disclose some public materials, would it not be

within our purview then, under the statute, to release that particular document, to put it into the public realm?

MR. ZAID: It might be. It would be an issue, I think, the Board's counsel will want to look into to alleviate or hopefully steer away from any legal action. I mean there is a serious question as to private materials that were held within the government, and there are materials, photographs, films, that are private but are held within the government, and the act supersedes all other statutes, except for one, the autopsy, deed of gift, and income tax records under the IRS, but all copyright restrictions and provisions to that nature might actually have been superseded by the legislation, and the taking of this property has occurred. That is an issue that you might want to look into. That is a separate issue.

The legislation does give or suggest to the Board that you begin negotiations with private individuals to either open up their deed of gift, as with Elmer Gertz, who was Jack Ruby's lawyer and had materials within one of the Presidential libraries who had restrictions on his materials, and when Congress contacted him he opened up and took away the restrictions, or I suppose even draft new deeds of gift with private individuals who might want to donate their materials to the National Archives to be in a comprehensive collection.

The Zapruder film remains a protected copyright, and other materials can be treated the same way.

CHAIRMAN TUNHEIM: Thank you, gentlemen. We appreciate your testimony this morning. It was very helpful.

Our next witness this morning is Dr. John Newman from the organization called the Coalition on Political Assassinations in Washington, D.C. After Dr. Newman I believe we will take a very short break.

MR. NEWMAN: Good morning, Chairman Tunheim and members of the Board. Thank you very much for having me here.

In my COPA hat, I was asked by Director Marwell to assemble and provide that separately, we have accumulated quite a stack of requests for specific records groups from across the United States. My comments this morning really come as a private historian who writes about that period, who teaches about that period.

I am a member of the AHA, and in that regard, if I could just tack on a couple of quick comments to my colleague, Dr. Page Putnam Miller, the cables, for example, to Miami and to the Mexican City CI Station is a subject near and dear to my heart. I have been working this issue with Steve Tilley and the National Archives. We are missing large blocks of those messages, in both instances. The critical period, I would say, beginning somewhere around just before Oswald's trip to Mexico City up through and just after the assassination, and I have spoken with the agency about this and they asked me to wait for the latest release. I looked at that. We do have some more materials there, but ultimately we are still going to have to see the entire blocks to satisfy at least this individual historian, but I believe, as she identified, a very important set of records that clearly we should include in assassination records.

Also anti-Cuban operations, absolutely, we are on Main Street here. Meat and potatoes, how much meat and potatoes, I am not really sure we have that many yet. I think it is clear we have some. I am really happy to see what I think it is a good genuine release, but I am counting now some 120 compartments, various cryptonyms in anti-Cuban operations, and most of these boxes are pretty empty. We would like to see at least something in each one of them to satisfy ourselves that they are or are not. So we have a lot of work to do still in the anti-Cuban area.

HT Lingual, if I could just make a very quick comment on that question, I think the issue for us is the early timing of putting Oswald under mail cover without a 201 file. It is a very unusual configuration, only 300

people were on the mail cover list at that point in time, so Oswald was obviously very important. This is a problem of the Agency's perception of him as a threat or as a benign person, and clearly something we will want to see, and there are many records still being withheld related to the Lingual problem. You will be the judge of whether or not we, as the American public, have the right to see it. Maybe it is too sensitive, maybe it isn't, but clearly the Lingual Program, because it relates to the Agency's perception of the alleged murder is going to be something you will want to include as assassination-related records.

Finally, policy context, somebody asked about that. I think you have to look at the policy context to a certain extent. I don't have the formula for you, but we can't ignore it. It has been too much a part of the theorizing about the case to not look at, say, Viet Nam or Cuba or arms control. These issues, in some way, shape or form, are going to have to be included and, I am sorry, I don't have a quick working definition for you, but we can't, I would say, ignore it totally.

I think that what we are talking about is going to be distilling some ideas from many people, including your own. I am not going to add my own pat definition. I think there are some very good points in Mr. Lesar's presentation. I would also, since I have already seen it, I endorse my colleague Peter Dale Scott, who will take to you about some postulates that I think would be interesting food for thought in this regard, and I am going to offer one of my own this morning.

As I call it, the principle of the adjacent square, and the way I would like to illustrate that -- and to begin, I am going to talk about several agencies really quick here, the CIA, the FBI, the National Security Agency, and the United States Army. Let me just begin with the CIA, and offer this, whenever a researcher or the Board, or whoever, whenever someone can demonstrate that there has been a deception or a falsified

document or a lie, where it can be shown, demonstrated, in the documents themselves, I think that this is a serious matter, and that automatically it raises suspicion. That, therefore, we ought to have the right to look at every adjacent square on the chessboard.

To illustrate what I am talking about, and I am perfectly prepared to provide the documentation to this Board, the Agency lied about its knowledge of when Lee Harvey Oswald entered the Cuban Consulate. We have documents which show this. We Director Helms' contemporaneous statements to the Warren Commission, and today this is a serious matter because it relates to several cables in October of 1963, apparently about Oswald's visit, that are still classified.

The whole subject of what Oswald does in Mexico City is on Main Street in this case, and that is one example I use. There are two or three more I could talk about, internal CIA memoranda or cables to their own stations that are wrong, that are clearly not true. Now whether they are lies or they are deception operations or counter-intelligence operations is not for me to guess, it is for us to see if this material is releasable. Then I would be willing to venture a guess about what is in those files, but clearly there are some deceptions, there are some things that were not true, for whatever the reason, and in that instance I think we have to be very serious about getting to the bottom of it, at least the Board will have to be, and to make those determinations as to what we can see.

But, on balance, I must say, I like what I see from the CIA, in general terms. It is the most extensive, and I think they have been very honest about categorizing and listing and requesting postponement waiting your decision, although I just say, there are tens of thousands of pages still being withheld by the CIA on some very important issues and I just mentioned one, Mexico City. So it is not over, but I think we shouldn't be overly pessimistic or optimistic at this point. I think we are moving in the

right direction.

I can't say that with respect to the National Security Agency, and I did characterize the release for you at the last meeting as approximately 90 documents, 45 of which were AP and UPI tickers, 45 of which were overhead, we will meet you here and there, and one document on Oswald's notebook or some missing letters that were cut out, and was it or was it not a cryptographic code of some sort, and that was the one NSA document.

I have given you a document this morning in which you will see, at the bottom of it, I have highlighted it in yellow, handle comment. It is sort of half there, but those of who have been in government would recognize the classification there of "handle via comment channels only." I was afraid I couldn't say that, but I have managed to find four documents in the files that have that classification on it, so I feel that I can say the words.

What that is, of course, is NSA derived information and what is interesting about the document at which you are looking is that it was regraded. Not just that it is blacked out, but it was classified upgraded to top secret in 1977. By whom we are not told, but my guess is, from the HVCCO caveat on the bottom, that we are talking about NSA material.

I could have brought you many more, but in the interest of time, I will just tell you that I have seen in the new Church release many boxes of newly released material, and I lost count at around ten or 15 instances where the NSA in 1994 has asked for portions to be deleted.

Now, I ask you, if the NSA has no material, how can they delete material from these pieces of paper. I presume since it is NSA originated information that it also exists in NSA. Therefore, whether or not we get to see it, they must list it. You must see it for us and make that determination. I am not satisfied that the NSA is stepping up to the plate

with as much rigor as other Federal agencies are, and I think this is a serious problem. I will say no more about that.

The FBI is an interesting situation. I have begun working with Dr. Joyce a little bit on this issue and have already submitted to the Board a working schematic of the entire internal FBI serial system, and I am a bit disturbed by one development. Again, I must say, we should thank the FBI for all they have released, we are seeing a lot of information. But what concerns me is that they don't tell you about something which clearly is an assassination record.

Now what seems to be missing to me are entire serials that are not specifically Lee Harvey Oswald as a subject line. So, for example, the Espionage Serial 65, it might be about many names, or the Fair Play For Cuba Committee. In other words, there are files that the FBI maintained on more than one individual which have information on Lee Harvey Oswald.

We want those. How do we know about them? Some were released many years ago under FOIA. I showed those series to Mr. Tilley in the Archives, he didn't recognize them. They are not even listed. They must be listed.

One in particular is very interesting. The FBI had tapped Marguerite Oswald's bank account and was aware of bank transfers from her to Oswald who was in Russia. That generated a lot of material that went into a file that we haven't been told about. Several files, in Dallas a 105 file on Oswald is opened, it is not even listed. But researchers, many in this audience, who are familiar with the very first Fain report on Lee Harvey Oswald will recognize the 105 serial right there. We want the rest of that file, obviously.

At headquarters, open up the 100 serial, Internal Security is what 100 is for; 105 is for counter-intelligence. My point isn't to teach you or lecture you in any way, but just to suggest that there are these serials at

both Bureau headquarters and several of the FBI field offices, New York and Dallas in particular, that have information on Lee Harvey Oswald, significant information on Lee Harvey Oswald that was in their possession, and we want them at least listed so that you can determine its suitability under the law.

Finally, on a positive note, if I could end on a very positive note, the Army I characterized last time, as you recall, as having done almost nothing. Of course, there is a lot of controversy about the Army, and we have heard over the years about what they may or may not have done in Dallas in terms of the 112 INCT and various other issues. I can say that -- and, again, we have this problem of other agencies releasing things.

If the CIA and the FBI are going to be releasing Army agents' names and agent networks and informant numbers because they feel that this Army information is suitable to release under this act, the Army might want to reconsider its position, too, and I know that they are.

I provided them with, what, 30-35 documents that have their material in it, and I think that Dr. Joyce has already been contacted by them. At least we know they are looking, and I hope that we get a broader conception within Army and hopefully DOD on some of these issues.

Now I hope I haven't exceeded my time, and I will answer any questions.

CHAIRMAN TUNHEIM: Thank you, Mr. Newman.

Questions from the Board?

DR. NELSON: I have one.

CHAIRMAN TUNHEIM: Dr. Nelson.

DR. NELSON: I would like to clarify something to you. You mentioned several times that you had mentioned to us, that was at a meeting and not a hearing, and I think we ought to establish that.

MR. NEWMAN: No, it was a meeting.

DR. NELSON: It was at our meeting, and you had raised it in the comments, but I just wanted to be sure that everyone knows this is the first hearing that we have had.

What you seem to be indicating then, to go back to some of the things we were talking about earlier, is that, if you go to find all the pieces, you will, in fact, find the broader picture, and that you do start with the pieces, with research-driven, document here, document there. This partially declassified document isn't going to help much, I suppose, but the point is that we were talking about how we were going to go about it in terms of looking at the broad and looking at the narrow. So that would you agree then that by looking at each individual piece, researchers will ultimately have the broad history that Mr. Zaid commented on?

MR. NEWMAN: I would hope that we can impact on this process by doing bottom-up analysis, and identifying things that we know are there or that are related to things that must be there. I think that we can contribute in an important way to the work of the Board.

DR. NELSON: So this would then help what we were discussing earlier in terms of limiting it and avoiding trivialization, and that sort of thing?

MR. NEWMAN: I think so, as more concrete. But at the same time, I think you are going to have to come top down. I would urge you set standards because we have some examples here already that I am bringing to you this morning, the NSA material and the FBI reports, the CIA releasing Army material, obviously according to different standards. The NSA is not interpreting what it needs to release the same way as other agencies that have NSA material. The same thing can be said for the Army. So there is some need for a conceptual top-down set of standards.

I don't know which one of you will sort of work -- probably Dr. Joyce -- with each agency to find out the unique types of records that we

may be talking about. There may be substantial differences here by agency of what we are talking about. It may have more to do with their function.

For example, if the FBI -- well, we do know that they were maintaining files and contact with Oswald. Therefore, I think we are going to want to see anything about that, anything about Agent Hosty, Agent Fain and, in fact, one of those missing files I told you about in Dallas concerns the activities of Special Agent Fain.

You may find, in the case of the United States Army, we are not talking about those types of records. They are different types of records. That we are talking foreign policy issues, anti-Cuban operations.

So you mean the general set of guidelines to give to the entire government, but you may need specific guidelines to give to specific agencies as well, and that is different, that is top down, as opposed to researchers sort of bringing things to you that are concrete. But the broad concepts, I think, are necessary to have everyone aiming at the same firing stakes from the beginning, and we do have that problem already.

CHAIRMAN TUNHEIM: Anything further?

DR. GRAFF: Yes.

CHAIRMAN TUNHEIM: Dr. Graff.

DR. GRAFF: I would like to ask Professor Newman a question which will shortly trouble the Board, and should trouble everybody in the research community. I think you would grant that not everything can be opened up for a variety of reasons. Some of you can guess at them, some of you will be right on the mark in those guesses. We may not always be able to say why some records are held back. I could conceive of that. This is all theoretical. I have nothing particular in mind.

How many documents do you think we could put on the withheld list and still retain credibility as a Board?

MR. NEWMAN: That is a --

DR. GRAFF: That is a terrible question because you will say, the smoking gun is in the stuff you are holding back, right?

MR. NEWMAN: You are talking about a perception here, and the only thing I could offer you on that, and we have talked -- I know I have talked about it and I have heard many researchers talk about how will you do this? I mean, you have so much time to look at all these documents, but I think the way you begin is going to affect the way we perceive. There is going to be -- no one is going to get everything they want out of this Board or out of this government, but I think it is terribly important to start the right way, as you are, by plugging into the research, being open, being inclusive, that is a very good sign. In defining these terms broadly to begin with, maybe narrowing them later, those types of thing, I think, go a long way in countering the sort of negative perceptions I think you are alluding to.

DR. GRAFF: Thank you.

MR. NEWMAN: Thank you very much.

CHAIRMAN TUNHEIM: Thank you, Professor Newman.

The Board will take a five-minute recess.

[Recess.]

CHAIRMAN TUNHEIM: We will resume the hearing.

The next witness that we would like to hear from this morning is Mr. Daniel Alcorn of Vienna, Virginia.

Good morning, Mr. Alcorn.

MR. ALCORN: I am very pleased to be here and very pleased that you are having this presentation. I am a practicing attorney here in the D.C. area. In fact, we had a discussion about scheduling, and I have a legal case that is awaiting my attention, so I am sorry I was not able to honor the request to let someone go next here, but I do need to get back. I serve on the Board of the Assassination Archive and Research Center, which Jim

Lesar serves as President, and I serve on the Board of the new COPA organization, and I co-chaired the National Conference that was held this weekend, along with John Newman who just spoke to you.

My interesting in addressing you today is to sort of shift from the general to the specific, and to give you some idea of some of the research and investigation which I am familiar with on the case, and I think when you hear about it briefly, you will understand some of the breadth of the definitions that Mr. Lesar presented, and the breadth derives not from a fishing expedition, the breadth derives from the evidence and indications about the case.

I have given you some materials. The first one, I just want to reemphasize what Jim Lesar said about the issue of public confidence in our country. We discussed this at the COPA Conference. The graph is from the new book by Kevin Phillips entitled *Arrogant Capital*, which is his new work on American politics, but he uses this chart to show how we have arrived at the point we are in 1994 in terms of public confidence in the Federal government. What was striking to me was how the confidence level peaked out in the year 1964 on this graph, and it has been a rather startling and serious and troubling deterioration in the polling data from 1964.

I think that defines to us some of the importance of the work that you are doing. All of us who were together this weekend would like to see a future in which that trend line reverses itself and goes back the other way. In fact, we would be happy to do everything we can to bring it back to the levels of the early 1960s, and that is part of our interest in doing this, and we think you have some input you can put into that.

I wanted to address you on the area of Cuban exile activities, CIA operations and Mafia and organized crime. I have spent a lot of my spare time reviewing the release last year, the CIA made a supplemental release

to us of materials that they were going to try to keep postponed indefinitely, and I wanted to see what was in the 10,000 pages that initially they had intended to postpone. Under pressure of publicity, they made a rereview and a lot of that material was released to us after the initial release.

I found that the largest single item of material was related to a raid against Cuba that was conducted in June 1963, which is known as the Bay O'Pawley Affair. It is something that has been publicly known since 1975, but the amount of detail contained in these files was never known about the raid.

It was a raid which was originated by an individual named William Pawley who had been a high official in the Defense Department, the State Department, he had been an ambassador, and was extremely well-connected politically in the country. He had originated, along with a fellow named John Martino, a raid against Cuba, supposedly to obtain two Russian defectors from Cuba who would then state that there were still missiles in Cuba after the Cuban Missile Crisis, and that the U.S. policy in the Cuban Missile Crisis had been ineffective in removing the missiles from Cuba.

Mr. Pawley used his connections to obtain the assistance of the CIA. So the JM Wave Station in Miami provided logistical assistance for this operation in June 1963. We have a photograph of Mr. Martino, which I have provided you, which was a result of Life Magazine participating in the raid. Life Magazine participated by providing some money and then were allowed to go along on the raid.

The interest that we had in this particular item is that Mr. Martino, in 1975, shortly before he died, told a close associate of his that there had, in fact, been plot against JFK. That it originated from anti-Castro Cuban exiles, that Oswald had been involved in such a plot, but

that he did not know who he was working for, did not know or understand the nature of the activity, and that the murder plot that he described was the one that was in retaliation for what was seen as JFK's softness in relation to activities to dislodge Fidel Castro and replace his government in Cuba.

That report from 1978, actually, by a Dallas reporter had lain uncorroborated for a long period of time. When I saw these records this year, I did some further investigation, found a journalist who was very intimate with Mr. Martino back in 1963. In fact, he had been invited to go on this raid in 1963, and he had kept in touch with Mr. Martino over a period of time, and this journalist confirmed to me that, in fact, before Mr. Martino's death he did describe such a plot to this journalist, but he had withheld the information in order to protect the family, and he had an obligation up until now to do that.

This whole episode -- I won't go any further, it is the subject of a journalistic investigation which is ongoing currently, and I expect a major piece to be published on this very shortly, and I don't want to go further, and have been asked, in fact, not to completely scoop their journalistic endeavor.

But in order to give you an understanding of this, Mr. Martino is particularly well known for the fact that he was a technician in organized crime. He was very close to Santos Trafficante, who was an organized crime leader in Florida, and he was rooming with Johnny Roselli in the summer of 1963, Roselli being the organized crime figure that the CIA went to to organize the CIA-Mafia plots to assassinate Fidel Castro.

So it is this kind of report and this kind of now corroborated information coming to the surface which is so troubling to the research community and defines the broad nature of some of the definitions that we are asking for because we know from the files that have been released in the

past year that the elements of organized crime, Cuban exiles, the CIA, were in operations together in Florida in June of 1963. It is that kind of now corroborated and documented episode that is so troubling to the research community, and asks us to ask you to have a definition which will encompass all of these different areas.

It is very troubling to me that the CIA, for example, would not want to release all of the materials they provided the House Select Committee. The House Select Committee made a pass at this area to look at it in their investigation, and they did request these files of the Cuban exile activities, and if the CIA does not want to provide those to this Board, I think that is a very troubling issue, and I think you need to take them to the mat on that.

Similarly, if the FBI is, as I understand they are, taking a position that organized crime files are not relevant to this issue, I would take great issue with that statement as well because, as we see, we have information deriving from operations in which organized crime figures were working hand-in-glove with Cuban exiles and with the CIA in that period of time, and that is what makes it particularly relevant to what we are undertaking here.

At the end of the presentation of the documents I gave you, I have some concerns about the process of disclosure, and I have provided you some record sheets. I have stapled them. The cover sheet, which is the National Archives' cover sheet, along with an access restriction sheet, which refers to that document, and these are documents on the subject of John Martino, CIA, organized crime, those types of issues. My concern is that the National Archives' cover sheet indicates that the document was reviewed in 1993, just before the record release date, and it was decided to be opened in full, no restrictions, unclassified, but there is an access restricted sheet for two of these documents, and it is dated after the

determination to open in full.

In fact, it is dated August 22, 1993, which is the day before the due date for release of documents which was August 23rd, 1993, and I happen to remember very well because I was paying attention to the release. The release occurred on a Monday, which means that these access restricted sheets were dated on a Sunday, and it was the day before the release of the documents to the National Archives.

Maybe there is some explanation for that, but there is an anomaly in these records indicating that a determination was made to open them in July and early August of '93, but on the day before the release, on a Sunday before the release of the records, the documents were restricted by both CIA and FBI. So I would call your attention to that. That is certainly a specific item that we are wondering what that means, and would be very interested in getting the subject material that underlies that material.

One final item I would call to your attention, on the CIA files, there is a -- and John Newman is very knowledgeable about this, I won't go deeply into it so that I can preserve his book opportunity, but on the CIA file on Oswald there is a tremendous anomaly about the opening of that file.

The CIA informed the Warren Commission, upon request of the Warren Commission, that the file on Oswald was opened on December 9th, 1960, and the letter from Richard Helms, Deputy Director of Plans, at that time stated that the dossier, as he called it, on Oswald opened December 9th, 1960, was being provided to the Warren Commission. He said in the letter, we have taken the liberty of deleting the file indicia from the records because we do not believe that is something that would interest the Warren Commission.

Well, as is clear from this release, it should have interested them, if they would have known, because there are other file numbers that predate

the 201 file opening on records involving Oswald. These go back to 1959 and early 1960. I would call your attention to those records and would ask you, as part of your effort to get an explanation about what these records are, where were they maintained, the circumstances under which they were maintained, if they are files which are not Oswald files but files on other issues in which Oswald material was held, I think you should ask for that surrounding material so that you can understand that that is what happened.

But I do have to tell you that I was rather shocked two weeks ago when I read the CIA transmittal letter to the Warren Commission, having seen the actual documents that lead up to it, because there is no way to characterize it other than misleading to the Warren Commission about the CIA files on Oswald going back as far as October 1959.

So with that, I would conclude my remarks, and I would be happy to take any questions.

CHAIRMAN TUNHEIM: Thank you, Mr. Alcorn.

Any questions from the Board members?

[No response.]

CHAIRMAN TUNHEIM: I see none.

Thank you very much for your testimony.

MR. ALCORN: Thank you.

CHAIRMAN TUNHEIM: Our next witness we would like to hear from is Mr. Peter Dale Scott from Berkeley, California.

Good morning, Mr. Scott.

MR. SCOTT: Good morning, and thank you for arranging for this public hearing and, indeed, for the spirit in which all of you have indicated you are engaging on this really very significant process.

I submitted to you a written statement with, I think, in all, five categories of information. Since then, I have had occasion to think and

talk about this, and I realize even with the very first category which, on the face of it, ought to be the easy category, there are, in fact, problems which I would like to go into today.

My first category, which would seem absolutely uncontroversial, records pertaining to Oswald, to Ruby or to the murders of which they were accused. Then I realized that there has been an enormous amount of game playing from the government even in this area. You heard some of it from Mr. Alcorn preceding me, and I think that you are going to spend a lot of time with the first category just cleaning up the record, getting the complete record on Oswald, the complete record on Ruby, and I foresee certain pitfalls. I also foresee some early and useful results of your work. Because, in a way, where there has been deception, where there has been withholding, where there has been concealment defines for you precisely the points where you should begin to press hard with your own review.

I want to insert something about the policy level because it has come up with preceding speakers. The week between November 22nd and November 29th, when the Warren Commission was created, is a week about which we now know some of the history. Enough has been released of Presidential phone calls, et cetera, to make it abundantly clear as, indeed, Lyndon Johnson said in his own autobiography, and Earl Warren in his, that it was talk of a possible nuclear war with millions of casualties which led to the creation of the Warren Commission. I think it is imperative to have all of the Presidential, the White House and the NSC documentation with respect to that perceived threat in that week.

Presidential phone records were released in the last year. I saw them in January of this year, and it was quite striking to me that in those Presidential phone records, those which seem most obviously pertinent to this issue were still being withheld. They should not be withheld from your Board for your review.

Another area of conspicuous deception and conspicuous withholding is the area of Oswald in Mexico City. I don't want to make it sound more serious ultimately than the question of Oswald in the Soviet Union, but it is much closer to the date of assassination, and it is also a record which, itself, is tinged with the possibility of pre-assassination indications that Oswald presented himself as an assassination. I refer you here to Warren Commission Document 1359, a top secret document, I believe the only top secret document transmitted to the Commission from the FBI, still I believe mostly withheld, but which the history of the last 30 years has established to us, I think, pretty clearly that it is a report about an alleged Oswald assassination offer in the Cuban Consulate in September or October of 1963, pretty clearly withheld because the sensitivity of the source. But now that former FBI Director Clarence Kelly has revealed that source, the Informant Solo, there should be no reason now, I think, to withhold that document.

On the CIA side, Mexi Cable 7012 of November 22nd, the first assassination -- post-assassination cable in the Oswald 201 file still withheld should not be withheld from you.

Now a problem that I foresee here, which may seem almost ridiculous and trivial if it weren't for the fact that this is a problem that is being created by people inside the government in response to earlier requests, is what I would call the non-Oswald problem. That we have records which clearly are talking about someone who was not Oswald but who identified himself as Oswald. That is what I mean by a non-Oswald, not anybody who was not Oswald, but somebody who prior to the assassination identified himself as Oswald. This, I think, should be a top target for you. This is what led me to think that there had to be certain postulates spelled out to clarify the apparently easy category of documents pertaining to Oswald, or that matter Ruby.

I would like to lay out as my first postulate that Oswald records include records of anyone who has identified himself as Oswald or who has been identified as Oswald. That is what I call the non-Oswald problem, and there certainly are documents relevant to it. This leads to a larger category which I suspect will become more meaningful to you as you proceed in your work, that every record pertinent to deceptions and concealments about Oswald and/or Ruby is an assassination record, and that, as a specific application of that, records of the withholding, alteration or concealment of assassination records themselves constitute assassination records.

The cable that was already supplied to you, I draw your attention to the notations in the margin of a classification in 1976 and an upgrading in 1977 to a classification which is, itself, classified by an agency which is also being withheld, that, that is the record of that upgrading, is, itself, a part of the assassination record.

Dr. Newman already referred to this, but this will be extremely important to you, I think, in proceeding into the FBI area, that if any file contains records of Oswald or Ruby, and you should begin with pre-assassination records of Oswald and Ruby, that then the whole of that file is presumptively an assassination record until it has been determined otherwise by your review.

Finally, with respect to any assassination record, deception, alteration or concealment implies that a truth is being concealed, and the records of the concealed truth, whatever the content of that truth, should be deemed to constitute an assassination record.

Now to come back to the non-Oswald problem and non-Oswald records, the documentary records suggest that tapes of someone, not Oswald, who identified himself as Oswald were listened to in Dallas right after the assassination. This documentation is real. It was challenged,

and it was challenged, I believe, on false premises, and I want to give you, when I am finished today, one of the five or six documents that I found in the Archives which I think undercut the grounds under which that documentation was challenged by the House Committee.

I think, putatively, there did exist tapes of someone identifying himself as Oswald who, in fact, was not Oswald. They were listened to in Dallas. The FBI is still talking about the existence of those tapes on November 25th of 1963, which is two days after other documents suggest that they had been destroyed. There is a surplus of CIA documentation about the destruction of these tapes, but they still existed in April of 1964 when they were heard by Mr. Slawson and Mr. Coleman of the Warren Commission staff, as they will tell you.

I think you can see that this is, in fact, not a frivolous or trivial matter. If it was someone who was not Oswald who identified himself as Oswald, that goes to the very heart of the case that we are talking about.

There are other examples of what I would call non-Oswald evidence which should be considered assassination records, the photographic records from the time of Oswald's visit, and then any record which is pertinent to government knowledge of him before the assassination, not only of him but also of his documentation.

Here is another big area of deception because six weeks before the assassination someone in the Cuban Consulate, a woman called Silvia Duran -- I will be coming back to her -- typed on Oswald's visa application that the applicant, quote -- this is in Spanish, of course -- "states that he is a member of the American Communist Party" and "displayed documents in proof of his membership." The House Committee in 1978 heard from all three pertinent witnesses, the two consuls, Mirabal and Azcue and from Duran herself, all three of them were reported to have said that Oswald identified himself as a Communist and supplied documentation in the form

of a Communist Party card

Now Duran's testimony has been altered repeatedly, and even as late as '78, I think partly to protect her because she was living in Mexico, but here is the documentary record as we have it. On November 23rd, she was interviewed. We have reports of a signed statement which she signed at that time. I do not believe that any American government official has officially received that signed statement. It is probably still the property of the government of Mexico. I am going to suggest to you that you should obtain that signed statement of November 23rd.

There was a cable sent about it by the CIA on the same day, Mexi Cable 7046, and it says very succinctly that Duran stated that Oswald stated he, Communist and admirer of Castro. There is a ten-page memo typed up three days later in which that reference has been deleted. There is further alteration -- by the way, it is not a new statement, it is a new statement of the November 23rd statement.

Then there is a version of the November 23rd statement in the Warren Report, and it says that she does not remember whether or not he said that he was a member of the Communist Party, and the Warren Report used that reversal of the original typed statement to suggest that the original typed statement must have been wrong.

I would have said, putatively, the documentary -- and I won't pursue it but there is more -- is consistent that he did say he was a Communist and that he did supply documentation, and you need to know everything about that documentation and the circumstances in which the November 23rd statement was altered, not once but twice.

Now pertinent to the altered version, the Warren Report said on page 309 that the Commission has been advised by the CIA and FBI that secret and reliable sources corroborate the statements of Senora Duran in all material respects, and this means not what she said in October or, I

believe, on November 23rd, but what the FBI was reporting she had said in May of 1964. Those secret and reliable sources were never seen by the Warren Commission, I suspect never seen by the House Committee, they should be seen by you.

There was a personality file for Silvia Duran in the Mexico City Station, a P file, as they call it. The CIA told investigators that they had no record of such a file. They did have such a record. I can supply the number of it to you. You should see that personality file or find out what has happened to it.

Finally, I want to say that I suspect that both the CIA and the FBI knew a great deal more about what was going on in that consulate than the record has suggested. There were, I want to suggest to you, double agents, or what the CIA would call human assets inside perhaps both embassies, certainly the Cuban Embassy, which is pertinent here.

Ed Lopez, a researcher for the House Committee, has since said in print that the CIA had some double agents planted in the Cuban Embassy. Gaeton Fonzi, who talked to Ed Lopez at some length, wrote in his book that the consensus among employees within the Cuban Consulate was that it wasn't Oswald who had been there. The assets said that they reported that to the Agency, but there were no documents in the CIA file noting that fact.

If Mr. Fonzi is right, then we have a missing report, or perhaps that is frivolous, I could say a nonreport on the non-Oswald, and the Board, I think, should resolve this problem and review the relative facts.

I want to suggest to you that the FBI may have been tracking all of this in a file which I am quite sure has never been seen by the Warren Commission, never been seen by the House Committee, and never certainly seen by me or by the Archives today. I have found a reference to it in a cover sheet which I am going to leave with you. It is Mexico City FBI File

105-2137, which is then struck out and replaced by a different file number with a different name, Lee Harvey Oswald. I hope you will pursue that original file. I predict that it will lead to some third agency which has been protected in here, and we probably have not been talking about the villain agencies in what I have been saying to you, the FBI and the CIA have problems and they need to be resolved, but I think you will go through those problems into some other agency where, whether the documents exist or not, the heart of the problem resides.

Thanks very much. I will answer any questions if you have any.

[Applause.]

CHAIRMAN TUNHEIM: Thank you, Mr. Scott.

Are there any questions, Board members?

[No response.]

CHAIRMAN TUNHEIM: I don't believe so. Thank you very much, Mr. Scott. We appreciate your assistance and testimony today.

Is Carol Hewett here today, a person who had signed up?

[No response.]

CHAIRMAN TUNHEIM: What about Mr. Dick Russell?

[No response.]

CHAIRMAN TUNHEIM: Okay, then our next witness this afternoon will be Mr. John Judge from the Committee for an Open Archives in Washington, D.C.

Good afternoon, Mr. Judge.

MR. JUDGE: Good afternoon. I would just like to thank you for the opportunity to present this testimony this morning. I am Executive Secretary of the Coalition on Political Assassinations, but I am here today wearing two different hats. One as co-founder of one of the member groups of the Coalition, the Committee for an Open Archives, and also a hat as myself as one of the thousands of independent researchers and

investigators into this case who worked almost from the time of the assassination, and have kept this issue alive. It is probably safe to say that without these early and persistent researchers and those who followed them that most of you wouldn't be sitting up here, or I myself.

The Committee for an Open Archives was founded in 1990 by Bill Kelly and myself with the purpose of trying to get full disclosure as the way to move toward a resolution of this case, and we were instrumental in some the early legislation that was introduced prior to the JFK Records Act in terms of opening the files.

We are grassroot public interest and advocacy nonprofit group. We are part of the Center for the Preservation of Modern History, and we seek release of documents not only in the John F. Kennedy case but similarly withheld documents in the Robert Kennedy, Martin Luther King and other cases.

About three years ago, as a member of the Committee, I stood outside this building, actually, with signs asking for the release of these documents. So I am glad after the passage of the act to be inside the building, it is considerably warmer, as has been the reception.

Our position in general is that these documents were created at public expense and that they, as well as the history they represent, belong to the public and not to a governmentally-oriented national security apparatus, and we hope that the Board will follow the legislative prescription for presumption of release in this case.

Much of the discussion in Congress at the time the legislation, the act, came through indicated that the Congress members didn't believe that there was a corpus of documents that would not pass this presumption of release test after 30 years. They indicated that perhaps less than 1 percent of the documents would be in a position not to be released. So we hope that that will be the case, although we understand that there could be

a legitimate reason for withholding a document. We have also seen what appears to be the opposite, the national security became a huge door through which literally truckloads of documents were delivered into obscurity.

The standard that we feel the Board should apply in terms of assassination-related would be that any record that would reasonably assist an interested researcher or citizen in search for a truth about the case, and I suppose the balance point is somewhere between releasing everything and what we considered a too strict standard of materially-related or legally-related standard, *per se*.

We hope also that the Board would expand in its search beyond the bureaucratic imagination of the agencies that have complied so far, and we think that that is a task of the Review Board to sort of get a broader picture of the case and what people would be looking for in these agencies than the agencies might have themselves.

One way to do that, perhaps, since many of the people who might have been testifying before you at an earlier period are gone now, is to check the existing body of literature for mention of buried records. Many of the critics mention these in their various books. We had a submission early on from Raymond Richey, a lawyer, and we could submit that to you, who went exhaustively through the House Select Committee on Assassination investigation records looking just for references to documents that did not appear in the release record, and compiled that. It is a rather lengthy document itself.

So some of this work has been done by the research community over the years in terms of pointing to documents already. At one point some years ago, we released and have been collecting a document called -- it is a form, actually, called, *Where Do You Look When You Haven't Got A Clue*, and we asked the research community to tell us where

they thought the Board should look, and we would be glad to submit in a typewritten form to you the responses that we have gotten, several hundred responses over these last few years to that.

The scope of the Board we are encouraged by because it extends not only to Federal investigations but apparently to local and State investigations and perhaps even court records, arguably, in related cases, or public records held in private hands, or the records of foreign governments.

Someone was mentioning even as late as today to me from the Conference that embassies have borrowed the United States records that they held, and the State Department would or could be of interest.

Also the law seems to extend to contractors and subcontractors of the government, and that presumably would include overt and covert subcontractors, and some of the names in that regard in the research community are firms like Jagger-Chiles Stovall, or Oswald Work, or the Double Check firm which was mentioned, or Collins Radio, or Permindex. I don't know that these are the sorts of things that show up in an index that would be created by the agencies that are searching for these things.

Mary Ferrell, one of the researchers, has done an exhaustive index of names and organizations over the years from the documents of the Warren Commission and the House Select Committee, as an independent investigator. I know that there is a rather extensive tagging index that has been created over at the Archives, how those two would match up or whether an agency looking for assassination-related records would know to look at all the names that people are interested in is a different question. I am not sure how those two would be mixed.

We are concerned that all Federal agencies be approached, even ones that might fall outside the scope of an original review or thought about the assassinations. I gave an example in my written testimony about the U.S. Customs Agency as an example possibly where records would exist

concerning travel of these individuals.

We are dismayed that the original 300 days period for release of all documents to the National Archives by the Federal agencies passed without the existence of a Review Board to oversee it, and we early on asked the Archives for a listing of the agencies that responded to their earliest release in the Federal Register asking them to attend a briefing session telling them how to tag and ID their documents, and we found at least to date that many of the agencies that appeared at that juncture, and that was voluntary and not exhaustive, have still not complied in terms of release of documents, either full or in some cases at all, as far as I know.

So just a task of listing and looking at which agencies partially complied at that point might show us where additional documents exist.

I think the Board should be skeptical of claims that documents were routinely destroyed. I think it was common across agency and otherwise to retain documents in duplicate copies, and should be willing to go after instances where documents apparently have been destroyed or lost or disappeared, or perhaps intentionally mishandled or in some way altered.

This search for a records structure within the government agencies, I think, would be important, and I hope that you are planning to do that to get people going back to that time who are on record creating staffs and knew how records were filed might help in terms of revealing things that might otherwise not be apparent.

Just to give one example, which I did in my written testimony, of how the scope might go beyond what is originally seen, my personal theses, and I am saying personal in the sense that it is neither for the Committee nor for the Coalition as their organizational stance on this conclusion, I don't mean to indicate that I am the only one that happens to have this particular suspicion or, in that sense a lone nut in this regard, but my belief

is that the murder of John F. Kennedy represented a military coup d'etat that was engineered by the Joint Chiefs of Staff. I bring this up not that you should agree or conclude in that direction, but to say that there is a body of, I think, reasonable evidence that points in that way.

So, because of that, I would be interested in records of the Selective Service System, planning records for Southeast Asia combat, projections for the Defense Department, the Defense condition status records, both nationally and regionally. The day of the assassination records of the Strategic Air Command, and other critical command functions and crisis functions of the military and the U.S. Government, perhaps records of the National Reconnaissance Organization or the Pentagon War Room, records that would relate to the Presidential security communications, the black box communications that day, due to things that I found in my own research.

So, as I say, this is perhaps not the first place that someone would look, but I think as you create the record, the collection, that the records themselves are going to point you in different directions, and that the research community can provide a view that is going to be more exhaustive than you might imagine, or maybe unable to deal with within the scope of your tasks. But I brought it up mainly as an example of how records that I think have not been searched or released to any extent.

I think the records of all government agencies in that window, right around the time of the assassination ought to be looked at with some scrutiny, the National Security Agency and other critical agencies, what were they doing in the week before, the week after, and on that day.

I hope the Board will be compelled by any evidence of obstruction of justice or theft or destruction of these documents, or evidence of newly released documents being perhaps not real documents or forged documents in any case. For instance, we have seen one release of a document that

appears to be on carbon ribbon at a time, technologically, at least, as far as we know that the advanced typewriter ribbon didn't exist. It purports to be some FBI document typed on the 23rd of November 1963 that doesn't match the cloth ribbon even, as far as we know, on the selectrics at that time.

In addition, we have experienced a lot of public concern at the Committee about provisions in the law for substitution of documents, and what process that would take if that is going to happen. It is mentioned in the record, but people are concerned for what that would mean.

Also that the notices that Board is required to make in terms of the Federal Register doesn't necessarily make the matter public. It is fairly expensive to take a subscription out, and that we might request the Board to consider giving those same notices to, if not particular organizations, maybe an umbrella organization like the Coalition which could distribute it and make it more public.

I have even just recently gotten requests from people at the Conference. Someone said that a press picture was taken of the limousine windshield at the time it was being moved from one archive to another, and they wondered if that would be available because they thought that it might show some physical evidence of the damage to the windshield. People have talked about the individual confessions that have been made, some court depositions and otherwise to the assassination, and whether the transcripts of those or records relating to those might be made public.

I think that in general it is a kind of daunting task. When I read recently that the history of the Cold War and World War II in the Military Archives at Suitland were comprised of 27 underground buildings, an acre in size each, mentally all I could imagine was the last scene in Indiana Jones where the Arc of the Covenant is being wheeled off in this cart among other carts, and I don't know how you start to search that. In fact, 27 acres of

documents is a little amazing to me.

I think generally in order to overcome cynicism the search should be as reasonably thorough as it could be.

CHAIRMAN TUNHEIM: Thank you, Mr. Judge. We would certainly appreciate receiving copies of the submissions that you have received regarding appropriate record groups for us to look into, and I also appreciate your suggestion about the Federal Register. We are developing a mailing list which is getting larger all the time, and we do intend to send all of our notices to our mailing list contacts as well, so that you would not have to subscribe to the Register.

Are there questions that members of the Board have for Mr. Judge today?

DR. HALL: I do have a question, Mr. Chairman.

CHAIRMAN TUNHEIM: Go ahead.

DR. HALL: Mr. Judge, you and others have this morning and this afternoon advocated that in the end the researchers should set the agenda for what constitutes an assassination record based on the view that whatever a researcher believes in the interest of his or her research in order to deal with a particular set of issues, then provides the grounds upon which to gain access to material.

The question I would pose to you, are there any theories, any requests, given your mention of reasonability, that would be such as not to prompt the materials requested to be viewed as an assassination record and, therefore, outside the bounds of the Commission's mandate?

MR. JUDGE: Well, I would have to say yes, and I am not legally or historically trained to say what those criteria are. I just am saying that I think you need to lean in the direction of erring on the other side of strictness, and whatever appears to be at least a somewhat documented or reasonable presumption based on evidence that someone has ought to have

the chance, you know, for at least a documentary search. But I understand, you know, you can't open documents based on every possible speculation that someone would have. So it is a balancing act.

But I think that the Coalition's existence represents a sort of range of opinion about where those documents might exist, and I wouldn't say that it would necessarily have to be solely research driven. I would think that the documents released themselves may drive you in directions that none of us have yet seen.

DR. HALL: Do you think it is an appropriate function of this Board to assess the relative merits of researchers in making claims before us to documents?

MR. JUDGE: Well, I would say not per se, but I think that your criteria are probably going to have to be what you can reasonably do with limited staff time and ability, but I am just saying, I don't think people should be dismissed out of hand. There ought to be some procedure of establishing a minimal level of credible inquiry or historical interest or legal question, and then proceed from there. As long as it is applied fairly, I think none of us probably, outside of criticism for anything we do, people not happy with inclusion or exclusion, but I think it is a standard that you will find and, also, what the parameters are, because you are not dealing with a quiescent community.

CHAIRMAN TUNHEIM: Any further questions?

[No response.]

CHAIRMAN TUNHEIM: Thank you, Mr. Judge. We appreciate your help.

[Applause.]

CHAIRMAN TUNHEIM: Our next witness is Mr. William Kelly, also a co-founder of the Committee for an Open Archives.

Good afternoon, Mr. Kelly.

MR. KELLY: Hello. Yes, I am also a journalist who came to the National Archives last week to look up one specific file. There are many thousands of pages that have been released, and we appreciate that, and I found many researchers pondering over these files, but the one file that I requested was being withheld for reasons of national security. That concerns Mr. Martino who Dan Alcorn had talked about earlier, and I am from Mr. Martino's hometown of Atlantic City, and I am working on a story concerning his life.

I think that the missions that Mr. Martino was involved in are extremely important and associated with the assassination, and these files are -- it is important that we obtain access to them.

Mr. Martino deposited some commandos in Cuba, and we would like to find out the fate of these commandos who were captured by the Cuban government, and I think some people with the Coalition for Political Assassinations are working -- Wayne Smith, particularly, has already opened up dialogue with the Cuban government in obtaining some information about what happened to these people. He said that the Cuban government has already agreed to furnish us with the information that we request.

I just find it ironic that we might be able to obtain from the Cuban government information concerning Mr. Martino's mission that our own government, at the same time, is still withholding from us.

I would like to call your attention to a few obscure files that might not otherwise be called to your attention. These are in the hands of private individuals who might not be willing to make them a part of the record, although I think that if you are charged with obtaining a complete record it would be important for you to obtain these documents.

They are, Mr. Manchester, William Manchester, has extensive files concerning the assassination that he compiled while putting his book

together, *The Death of a President*. Ruth Payne, when she testified before the Warren Commission referred to notes that were never made a part of the record that I think should be included. There are a number of private corporations that are entwined with the assassination that I think the personnel records of these corporations should be examined and made a part of the record. These include Collins Radio, different organizations that Oswald worked with for a period of time, and other private corporations that somehow have been connected with the assassination.

Lastly, I want to share with you an experience that I have had with a file concerning Mr. Jim Braden. He was arrested in Camden in 1948, Camden, New Jersey. When his story about how he was arrested at Dealey Plaza was published in a book called *Legacy of Doubt*, the author, Peter Noyes, attempted to obtain this file from the Camden Police Department. He was unsuccessful, but a few years later I obtained this file, the original Camden Police document.

When the House Select Committee was established, I personally handed this file or a copy of the file to the first chief counsel, Mr. Sprague, Richard Sprague from Philadelphia. After the House Assassination was dissolved and no longer existed and its files were locked away, I received a call from Mr. Blakely, the second chief counsel, who learned that I obtained this file, and he asked me for a copy of it, and I was shocked that he had not seen it since I had already hand-delivered it to his Committee. But he informed me that the files that Mr. Sprague had obtained were not totally passed on to his Committee when he took over the Committee. So I am just suggesting to you that there are files out there in private hands, including Mr. Sprague's files, that should be brought back and made a part of the record.

CHAIRMAN TUNHEIM: Thank you, Mr. Kelly.

Any question from members of the Board?

[No response.]

CHAIRMAN TUNHEIM: Thank you. We appreciate your help and your information today.

Our next scheduled witness is Mr. Harrison Livingstone.

MR. LIVINGSTONE: Thank you for inviting me. Also, I think it is terribly important that these hearings are open, and it is a very good thing that you have done this.

I am a best selling author. I have written four books on the assassination of President Kennedy, two of them were best sellers, the fourth one will be published in the spring. I represent the Association of Assassination Researchers, which is new and just forming.

I think everything that people have discussed here today is quite important in various areas in terms of the records that they want to obtain, but I think you need priorities, and those priorities should start with certain facts in the evidence of the assassination.

In other words, where we are in our criminal investigation today, I do have the help of law enforcement on their own time. We do a great deal of many trips to Dallas, and very intense investigation. The focus of my personal investigation is in the medical evidence and the forgery of the autopsy photographs, the forgery of the X-rays. I am responsible for that, and we have basically broken the case. You need to take some time to study just where that is at because your priorities should include making every available document and piece of physical evidence connected with those forgeries, and the faking of the autopsy in President Kennedy's murder your primary responsibility.

As for your problem with defining just what is documents in this case, does that include the physical evidence, the Bullet 399, for instance, the rifle, the windshield as has been mentioned here. This will lead in a moment to the problems that I am having with the National Archives right

now, an agency that you need to be sure that they are making documents and materials available, and they are not.

With 399, for very many years no one has been able to get access to it. Josiah Thompson described his efforts in Six Seconds in Dallas trying to obtain access with a set of very fine scales to weigh 399 and perform other examinations.

I am trying to get to see this material with trained police, forensic experts, police officers, to see this material, and I have been given a royal runaround, and have even been framed by staffers at the National Archives for saying and doing things that I could not have done because they don't want to show this material.

The reason why this is important to you is that if you look at the photographs of 399 published by the Warren Commission and have engineering drawings made of them, which I have submitted to the National Archives, that bullet is entirely incompatible with the alleged murder weapon, the rifle. The lands and grooves are not of the same count.

With regards to the autopsy photographs and X-rays, you need to examine the whole business of the agreement with the Kennedy family which has put this material out of your reach and out of our reach and where people have to go and get permission from Burke Marshall at Yale.

I understand the reasons at the time in 1963 for protecting the sensibilities of the Kennedy family. I am very aware of that. I worked for Senator Tydings who is very close to the Kennedy family. But at this point, 30 years later, people certainly have gotten over their grief, and we have to make this material available to it.

Your next priority is, you have to see what the forgery of that evidence means, and what the evidence is there for, and then all records connected with Bethesda Naval Hospital, with the development of the

alleged autopsy photographs, with the X-rays, all military personnel records of every single person that might have had any connection with that autopsy or anything else, we need that material. We need to know where General Charles Cabell was on that day. We need to know everything there is that can be found out about Admiral Burkley, about Admiral Galloway, and all the rest.

Very briefly, before I get to two other problems here, if you, yourself, take the time to look at the interviews conducted by the House of Representatives with the autopsy doctors, they insisted that the autopsy photographs do not show the wounds on the body that they had, and the House of Representatives, as I pointed out in my first book, commented on the fact of the persistent disparity between the findings of the autopsy pathologists and what we see in the autopsy pictures. The wounds have moved quite a bit.

No, the body wasn't stolen; no, it wasn't altered; but, yes, all of the physical evidence in this case was faked, and this is the core of the mystery of what happened to John Kennedy.

Now we hear here today and with these organizations a lot of finger-pointing at everybody's favorite scapegoat, which is the CIA, and I am not here to protect the CIA, but the point is that all the attention is being directed away from the military, away from Bethesda Naval Hospital, away from the Office of Naval Intelligence, away from Army Intelligence, Military Intelligence, and this has been a common thing in this case for many years with attention being drawn to the Mafia, to Castro, to Russia -- Krushchev did it, everybody and his brother.

But the bottom line of it is that the medical evidence in this case is a fraud and a lie. If your priority should be, if you have an investigative capacity, to take a look at that and start dealing with it and make damned sure that every possible interview, every possible document that might be

remotely connected with that coverup that began that night at Bethesda Naval Hospital that that material be made available.

The agreement with the Kennedy family is clearly an illegal agreement with regard to the autopsy pictures and X-rays and other materials because this is evidence in a criminal case and it cannot be sequestered and taken out of the public jurisdiction. It seems to me that you do have jurisdiction over that matter.

There was a suit here in Federal court which was dismissed to try to overturn that agreement. I hope that if you want, you will get in touch with me in the future on that matter.

Another issue that I want to briefly talk about is, what is going on at the National Archives, an agency. Presumably you are dealing with "agencies," so far we hear about the CIA and the FBI and so on, but the National Archives is an agency and there is a kind of surveillance going on now that these documents are being made available that is unconscionable. It is way over the line between reasonable need to protect these materials and deliberate harassment of researchers.

[Applause.]

MR. LIVINGSTONE: Thank you. Anna Marie stormed out of here a little while ago, she was driven to the point of hysteria in the National Archives, and staffers are attaching themselves to researchers and will not go away. They engage you in long conversations, and I clocked one of these conversations for five hours, and a researcher flew from California and a staffer devoted himself to distracting that researcher from why he had spent all the money to come here. So he didn't get what he was after. He was engaged in a social discussion, a political discussion, and so on. The staffers are finding out what people are researching. It seems to be floating around and being reported to other people.

Before going any further, I want to say that this does not mean

Steve Tilley because he has been nothing but nice to me and everybody that I know, but we also know of other cases there where the exact opposite is happening, and I have personal knowledge of people actually being framed for things in order to get rid of them. Anna Marie was threatened with the loss of her research privileges, and so on.

So it is a conflict between reasonable surveillance for the protection of the documents in the National Archives, and where does it cross the line into harassment?

Now you need to define, is this physical material, the bullet, the rifle, the windshield, and all that, is this -- I don't know -- I don't think it is specifically defined in the act, so in my view you need to define that as part of "documents," or whatever.

My final quick point is just, the National Archives should be encouraged to make slides of each and every frame of all the other films that might be available, such as the Nix film, the Hughes film, the Bronson film especially, and to do blow-ups of this, and the Secret Service copies of the Zapruder film which is badly damaged, you should inquire as to why it is so badly damaged with the Secret Service. It is broken and ruined in a lot of places. How could this have happened? How could they take such critical evidence in this tragedy and it be ruined? But this visual evidence in this case is the key to the murder of John Kennedy because it is all fake, and I mean the Zapruder film is a fake.

The autopsy photographs are a fake. The autopsy X-rays are a fake. We first determined this in 1979. Last September, Dr. David Mantik proved it with a test in physics. My best friend is a chief radiologist, we have been examining this for many years. We went to college together, and he is going to take that study to the next step. The photographs have been wildly denounced by the autopsy doctors themselves, but those documents are clearly edited. The documents that were released here last fall are clearly edited.

At some other time, I will be glad to discuss that with you. I won't take any more of your time.

CHAIRMAN TUNHEIM: Thank you, Dr. Livingstone.

[Applause.]

MR. LIVINGSTONE: Thank you.

CHAIRMAN TUNHEIM: We appreciate you coming today.

Is Max Holland here?

Good afternoon, Mr. Holland, and welcome.

MR. HOLLAND: Good afternoon.

I am very pleased to have an opportunity to state my views with respect to the question of what constitutes an assassination record. Before I give the outlines of a definition I have tried to develop, I want to state clearly that I subscribe to two premises about records pertaining to the assassination of President Kennedy. The first is that the crime should not be divorced from its overarching historical context, namely the Cold War. The foreign and domestic Federal responses and decisions of any moment during the period 1946 to 1989 was affected by the Cold War mind-set and Cold War dictates, and I believe that the aftermath of the Kennedy assassination was no exception.

My second premise follows directly from the first, a major, though not the only reason why the public is confused and cynical is that the assassination has been divorced from its context for more than 30 years. Highly pertinent records have been segregated, kept secret primarily because of Cold War exigencies. The public, quite naturally, but erroneously cannot square this continued secrecy with government assurances that the essential truth about the assassination has already been told.

The Federal government has made several attempts since the Warren Report's publication to put the lingering controversy of the assassination to rest, none of these efforts have succeeded, however, in large measure because the same overriding geopolitical consideration, the Cold War, has always hampered full disclosure. But now that the Cold War is over, many secrets need not be kept any longer.

That profound fact along with the Review Board's extraordinary powers and mandate present the Board with an extraordinary opportunity and responsibility, how the Board chooses, therefore, to define an assassination record is of the utmost importance.

Many of the elements in the proper definition are manifest, and it is truly your task to develop an all-inclusive definition. At the risk of stating some obvious considerations, I believe any definition of assassination record should include these elements, all documents generated or received by each and every Federal inquiry ever conducted into the events that began on November 22nd, starting with the FBI's initial investigation, then followed by the Warren Commission, the panel set up by Ramsey Clarke, the Rockefeller Commission, the Church Committee, the Pike Committee, and finally the House Assassinations Committee.

All documents in the possession of any Federal entity or office or State or local law enforcement office that pertain to the events that began on November 22nd and were not transferred to the Warren Commission or subsequent inquiries by the originating or recipient Federal, State or local entity. I will be glad to clarify these if they seem a little inexact.

Third, all documents pertaining to covert and clandestine U.S. efforts to depose or subvert Castro's regime from January 1960 to January 1969, including proposed assassination plots.

Four, all documents that depict the response of the U.S. Government, and in particular the measures taken by the national security apparatus, the intelligence community and law enforcement agencies to the news from Dallas on November 22nd.

Five, all pertinent documents about the assassination or its aftermath contained in private personal papers of top Federal officials who played leading roles in the Eisenhower, Kennedy and Johnson Administrations or participated in national security planning with respect to Cuba from 1960 to 1968, or were substantially involved with any one of the Federal inquiries into the events that began on November 22nd.

The final category would be documents generated by foreign governments. In particular, I think the important governments are the former Soviet Union, Cuba and Mexico.

These five broad categories provide a rough definition, and perhaps it would help the Review Board to understand my perspective if I provide some specific example of records that fall under one or more of the categories established.

Under B, for example, records not provided to the Warren Commission, I would include, for example, records possessed by the now defuncted House UnAmerican Activities Committee, and the Senate Internal Security Committee as they pertained to the assassination.

Under C, documents pertaining to subversion of Castro's regime, I would specify records generated by the special group augmented in NSC Committee that approved all covert and clandestine activities directed against Castro's regime.

Under D, documents that pertain to the response of the U.S. Government after the assassination, I would include these kinds of records, all relevant records in the possession of the National Security Agency, including communications intercepts conducted by it, other agencies of the U.S. Government, or allied eavesdropping agencies in the wake of the assassination; also all records generated by the Watch Committee, an interdepartmental group which convened in the State Department immediately following news of the assassination; also all records generated or received in the White House situation room in the aftermath of the assassination; all records generated or received in the National Command Center, the Department of Defense's military nerve center after the assassination; and also something like transcripts of the telephone calls that were made from Air Force One by President Johnson on the return flight to Washington from Dallas.

Under E, which is personal, private papers, and this is a very naughty subject because of the lack of clarity regarding an official's ability to take government documents with him when he or she left public service, I think the Board ought to at least approach and see if they are willing to cooperate without any threat of subpoena to make sure that you get access to the papers of Robert F. Kennedy; Douglas Dillon, who was Secretary of the Treasury; Nicholas Katzenbach, who was Number 2 in the Department of Justice; George Bundy, the National Security Advisor to President

Kennedy; John McCone, the Director of Central Intelligence; Allan Dulles, his predecessor; Richard Helms, the Director of Clandestine Operations; and Arthur Schlesinger, Jr., who was an aide in the White House.

Under F, which would be documents generated by foreign governments, obviously the KGB files or any Soviet files on Oswald are of importance, although I believe some of these were transferred, at least some part were transferred to the State Department right after the assassination, and also any Mexican Police or intelligence files about Oswald's trip to Mexico City, and naturally any files that the Cuban government might want to make available.

Finally, I would strongly urge the Review Board, while fashioning its definition of an assassination record, to consult two men who for slightly different reasons are very familiar with the government documents. The first would be David Belin, who was an assistant counsel on the Warren Commission, and later the Executive Director of the Rockefeller Commission and, as such, someone who has had unparalleled access to CIA records. The second man is Dr. Alfred Goldberg who is a historian in the Air Force who was brought on the Warren Commission by the Chief Justice to serve as a historical advisor. He is now the Chief Historian in the Office of the Secretary of Defense in the Pentagon.

That concludes my presentation. I will be glad to answer any questions.

CHAIRMAN TUNHEIM: Thank you, Mr. Holland.

Go ahead, Dr. Graff.

DR. GRAFF: Mr. Holland, is there some reason, or did I miss it, why you would not have a survey of organized crime records? Is that because of your own view of how the assassination was brought about?

MR. HOLLAND: Basically, I wouldn't be against it but I am not necessarily an advocate of it.

DR. GRAFF: So we have heard this morning or this afternoon about the possibility of a coup d'etat by the Joint Chiefs, although you mentioned some Defense Department records, you would not specifically look in that category that was mentioned by a previous witness?

MR. HOLLAND: When I mention top Defense Department records, I think it is because it will lay some suspicions to rest to look at the reactions of various agencies of the U.S. Government immediately after the assassination as to whether this was a coup d'etat or whatever.

I mean, I don't believe it was, but it would be helpful to the historical record for people to realize how the perception of what had happened first manifested itself and then changed in the months following the assassination.

DR. GRAFF: I see. Thank you.

CHAIRMAN TUNHEIM: Go ahead, Dr. Hall.

DR. HALL: Mr. Holland, I am especially taken by your discussion of private personal papers that were taken by public officials, and you indicated it was a complex matter and it surely is.

I am wondering, however, if I can get you to speak a little bit more about the conceptual, the philosophical issues that you see are presented by these materials in

the light of our command for public disclosure?

MR. HOLLAND: Well, there are probably lines that are going to have to be drawn, but certainly I think the papers of Robert Kennedy are very significant, primarily because of his unusual role during the Administration. He was both the President's brother, closest advisor and very involved in foreign policy issues, most notably the covert attempts to subvert Castro's regime.

His papers are at the Kennedy Library. They have never really become part of the assassination record. They have never really been investigated by any of the Federal inquiries. It was just considered that the subject was so painful that Robert Kennedy had no valuable information. I don't think that is correct.

I think, if you look at his activities, it is sort of a Rosetta Stone in terms of the Cold War context of this matter. So I think it is incumbent on the Board to put his papers at a very high priority.

Does that answer your question?

DR. HALL: It certainly answers with regard to Robert Kennedy. I do think that there is a nice issue here involving public access necessary to the functioning of a democracy and the preservation and protection of private property interest which can be seen as necessary to the functioning of a democracy.

MR. HOLLAND: This is a very thorny legal issue and, of course, with Presidents it only been settled very recently after President Nixon resigned, they passed a law specifying exactly how a President's papers are disposed of.

With regard to other officials, in my own researches, I know someone like Averell Harriman thought nothing of taking everything that came across his desk that interested him, and his collection is huge, and it is a lot of classified government documents. Now, at the time, there was nothing against that in a legal sense and he did it. Other officials, when they walked out of the Justice Department, or wherever, they left everything that came across their desk.

So I think once you establish some priority, it would just behoove the Board to voluntarily ask officials who may have acted in this way in an earlier time to cooperate and volunteer documents.

DR. HALL: Certainly the relationship of the legal standard that we talked about earlier to the historical standard is one that strikes me as pushing the Committee or pushing the Board to give perhaps some greater credence, exercising some fuller fidelity to the idea that the historical standard, that is, we need the truth, ought to outweigh whatever the particular legal standard may be.

MR. HOLLAND: I agree.

CHAIRMAN TUNHEIM: And since historians outnumber lawyers on this Board.

Dr. Joyce, you have a question?

MR. JOYCE: Mr. Holland, throughout the hearing today there have been what seem to me to be two threads that are not altogether mutually comfortable, one being an advocating the Board to take a fairly systematic approach to investigating the records in various and many government agencies, the other being a menu of suggested priorities for looking here and there, asking very specific questions of the

records rather than undertaking any kind of systematic survey of them.

I am wondering, given this broad dilemma that we face in terms of not only defining a record but undertaking programs to systematically release as many of them as possible, if you have any comment on the respective merits of these two models that are posed for us, and what guidance you might have for us in that regard?

MR. HOLLAND: Well, you have a Herculean task any way you look at it. I think my bias would be to fully disclose records that were both provided to the previous investigations were denied to those investigations by Federal offices.

However, I do think you should seriously entertain leads that researchers who are looking through the records that have been declassified give you, and you have to start exercising your own judgment at some point because, obviously, it is very conceivable that some of the Federal inquiries did not look into things that they had no idea about, and that is clear about the Warren Commission in the first instance.

So it is going to be a balancing test. Like I say, I think you have to treat the records that are in existence already, which are massive, and then supplement that by suggestions you get from the research community.

DR. NELSON: I have one. I actually wanted to return to the question of private papers. It seems to me there are several categories here. Private papers are not always personal papers is what you are saying and, of course, we know anyone who has been to Presidential libraries knows that half of what is there in personal collections are Federal records. In fact, it is illegal to take out a record unless there is a copy left. So that seems to me it is a fairly clear issue if there is a deed of gift, and if it is in a library, it becomes a Federal record.

The problem rests with those documents that are in libraries but have not been given as a deed of gift. Would you limit, and this I think is where you run into legal problems, would you limit the Board to documents that appear to be -- would you trust the person who had produced the documents to give you what was, in fact, federally-related records? How would you differentiate between it when asking them, for example? This is the thorniest issue of what to do with these records and documents. It is not Joe Smith down the road, it is someone who was very much involved but whose records we know exist but, in fact, are not part of the Federal system yet.

MR. HOLLAND: I guess my answer would be conditional kind of depending on who we are talking about. There are some officials, I think, I would push very hard on, and others I would accept an assurance at face value that they have looked through everything that is still held under the deed of gift out of the archive, and have given us everything that is pertinent.

DR. NELSON: The second thing I would like to raise, because we have heard this all day also and it is very important, is our need for foreign government records, but one of the big problems we have here, one of the problems that everyone has raised, is that there is a sense that not all the documents are given when one asks.

What do we do, how do we know, how complete can the record ever be of foreign governments, especially given the fact that whatever the grave deficiencies of our own system, it is the best around. Other countries may not keep the records, really not

keep them. This poses another terrific problem to us. How do we handle that?

MR. HOLLAND: Well, I mean, I think the law makes some provision for the Secretary of State to ask foreign governments, and I think in the end we are just going to have to rely on their faith because you have no power to subpoena their officials and verify that the documents are genuine or anything else. You are just going to have to make and appeal.

DR. NELSON: I think it is worth putting that on the record because there is only so much we can do outside our own borders.

MR. HOLLAND: Obviously Cuba may feel differently about the importance of divulging everything than a government that doesn't even exist any more.

CHAIRMAN TUNHEIM: Anything further?

[No response.]

CHAIRMAN TUNHEIM: Thank you, Mr. Holland, we appreciate your help.

MR. HOLLAND: Thank you.

[Applause.]

CHAIRMAN TUNHEIM: Mr. Martin Barkley.

Good afternoon, Mr. Barkley.

MR. BARKLEY: Good afternoon. How are you?

My name is Martin Barkley and I am from Dallas, Texas, where I am temporary on the staff at the Sixth Floor Museum in Dealey Plaza, which now possesses national historic landmark status as of one year ago tomorrow.

I understand that the focus of the meeting and the hearing is to arrive at a definition, but for me, an individual researcher, and I would like to state at this time that I am not representing the museum. I have been a researcher on this subject for many years, but before I can help with that definition, I think we have approached it all morning long, this problem with the personal papers, the problem of what is exempt and what is not, and basically I would like to get for my research activities somewhat of a reaction from the Board in terms of the only way I know to approach it is maybe give a hypothetical.

Say that certain records or artifacts, if it extends to artifacts at some point exist within the possession of a quasi-governmental or even a private foundation that these records or artifacts maybe have previously been shielded from public knowledge, would that situation under this situation somehow further the American public's rights to a more across-the-board scrutiny of that organization in general?

In other words, could we, at that point, expect the AARB to push and push hard for much more latitude in the discovery and review process?

CHAIRMAN TUNHEIM: Well, I am not sure we can answer that without knowing more of the facts, Mr. Barkley. We are really starting this process of trying to define the records and provide guidance not only to Federal agencies, but also to State and local agencies, and whatever private hands the records might exist. So I think it is probably premature for us to start delving into hypotheticals, but we certainly are mindful of the fact that there are records in a lot of different sources, and that will be an important issue for us to look at very quickly.

MR. BARKLEY: Maybe by terming it a hypothetical, it does exist out there in

the murky a little too much, but I could give a specific example to just let you see what we may be faced with in certain examples. I could use one that has intrigued me for about 25 years. I think we need to know where the Stemmons Freeway sign that figured so prominently in the Zapruder film is. Early efforts to find this sign has been unfruitful, let's say. Did the City of Dallas, or the County of Dallas, or the State of Texas Highway Department simply lose possession or control of that sign a short time after President Kennedy's murder and then expect us to believe that it just vanished into thin air? Researchers have always desired to find that sign.

CHAIRMAN TUNHEIM: Well, that certainly is an interesting issue. I will point out to you, Mr. Barkley, the Board is intending to conduct a public hearing in Dallas, in part to discuss and have people come in and discuss the issues of where records are that may be in the State of Texas that may be relevant to the mission of the Assassination Records Review Board.

MR. BARKLEY: Thank you.

CHAIRMAN TUNHEIM: Mr. Joyce, go ahead.

MR. JOYCE: I would just add to that, the particular instance that you allude to concerns an artifact, and that is one of the questions in front of this very Board in terms of outlining its responsibility.

MR. BARKLEY: It is a very big issue. I believe Mr. Livingstone brought it up earlier.

CHAIRMAN TUNHEIM: Thank you, Mr. Barkley.

[Applause.]

CHAIRMAN TUNHEIM: Dee Dee Richards?

VOICE: She left.

CHAIRMAN TUNHEIM: Okay. Mr. Daryl Weatherly.

VOICE: Mr. Tunheim, would it be possible for people to be added on after you finish the list that you have before you?

CHAIRMAN TUNHEIM: Talk to Mr. Marwell.

VOICE: He said he didn't know whether there was availability for that.

CHAIRMAN TUNHEIM: We are running a little bit short on time. We certainly would appreciate anyone who doesn't have an opportunity to testify today, we are holding the record open for 30 days and we will take any additional testimony that people wish.

I do think we should wrap up within about ten minutes or so because we have been going for quite some time.

VOICE: How about, as opposed to testifying, hand-delivering something to you as a record?

CHAIRMAN TUNHEIM: Certainly, that would be just fine.

Go ahead, Mr. Weatherly.

MR. WEATHERLY: I must say it is an accident that you called me to talk because I thought the sheet that I signed was merely a sign in sheet to come in here. But I would like to say, I want to emphasize one point made by Mr. Livingstone that what purport to be the autopsy pictures and X-rays of the late President should certainly be considered as records because they have been given enormous importance by a

large number of people who have written or commented on this case.

Now there are versions or additions of these pictures that are in the public domain. They have been published in books, and they have been commented on in wildly different ways. I will just take the example of two people who are defenders of the Warren Report, Dr. Robert Artwohl writing in the Journal of the American Medical Association has commented on these pictures that are available in the public domain that they are, as far as he is concerned, exactly identical to the withheld pictures in the Archives.

In the same issue of the Journal of the American Medical Association, Dr. John Lattimer, who has also seen the pictures in the Archives, comments upon the publicly available pictures, that they are pictures of latex dummies. These are two people that consider themselves outspoken defenders of the Warren Commission writing in the same magazine that defends the Warren Report and saying diametrically opposite things about these artifacts.

Now a point has been brought up by, I think, Mr. Zaid that records, and I would like you to consider these pictures to be records, records that are in the possession of former government people that they took with them when they left government service, you should make an effort to get those records, especially if there are circumstances that indicate these records were not taken properly.

In the case of the autopsy pictures which are out in many additions and many copies in the public domain, they originate from or seem to originate from an individual who once worked for the government, for the House Assassinations Committee. That individual has clearly been in possession of those pictures, or certainly by publishing them in a book suggests that he has been in possession of them, and has, I think, at least expressed his opinion that he was given permission to take these pictures by personnel of the House Assassinations Committee. That might be in dispute. I certainly think it is in dispute whether this person who currently possesses the pictures actually properly took them out of the Archives or out of the possession of the House Committee when he left government service.

So this is certainly the kind of record that I think this Committee should use its powers to go after, including its powers to, say, subpoena former employees of the government to get their government materials that they have now.

Any questions?

CHAIRMAN TUNHEIM: Thank you.

Any questions?

[No response.]

CHAIRMAN TUNHEIM: Thank you very much. We appreciate your help.

[Applause.]

CHAIRMAN TUNHEIM: We have reached the hour of 1:30 and so we are going to call a halt to the formal testimony today of the Assassination Records Review Board's first public hearing. I will remind you all that the public hearing will remain open for 30 days through the 10th of November, and we would, appreciate and, indeed, welcome any additional material being submitted to us. We will include all of it as part of the record of the hearing today.

So if any of you wish to submit additional material, or if you know of others who would like to, we would appreciate receiving that, again, on the issue of how we should be defining an assassination record.

I mentioned earlier that the Board is tentatively planning a public hearing in the State of Texas, in Dallas, for November 18th, again to discuss the issue of record groups and where they might be particularly focusing on State and local archives, and there will be more notice and information about that coming forward soon.

Thank you all for your patience today and for sharing information with us. We very much appreciate your help. Thank you.

[Whereupon, at 1:30 p.m., the hearing was concluded.]