

1 UNITED STATES OF AMERICA
2 ASSASSINATION RECORDS REVIEW BOARD

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4 Assassination Records Review Board
5 National Archives
6 7th & Pennsylvania Avenues, N.W.
7 Washington, D.C.
8

9 Tuesday, March 7, 1995
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11 The above-entitled proceedings commenced, pursuant to notice,
12 at 1:00 p.m., John R. Tunheim, Chairman,
13 presiding.
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PRESENT FOR ASSASSINATION RECORDS REVIEW BOARD:

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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

CHERYL WALTER, General Counsel

PRESENT FOR THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

STEVE TILLEY

ALSO PRESENT:

BILL BAUGH

TERRY O'CONNOR

MARK ZAID

JAMES LESAR

JOHN JUDGE

JOSEPH BACKIS

P R O C E E D I N G S

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[1:00 p.m.]

CHAIRMAN TUNHEIM: I call to order this meeting of the Assassination Records Review Board and welcome everyone here today.

Our primary focus today is to receive updates on the collection at the National Archives, and our second purpose is to receive additional public comment on the board's proposed guidance on interpreting and implementing the President John F. Kennedy Records Collection Act of 1992; the guidance for the definition of the term "assassination record," which is an aspect to our work that's critical for identifying the records that will come within the scope of the board's review.

I want to welcome everyone here today. Thank you for coming.

We're going to begin immediately. We have a somewhat tight schedule today and a number of people that have asked to testify on the guidance.

Before going any further, I'd like to introduce to everyone the new staff of the Records Review Board who are here with us today. As I state your name, if you would, stand so that people can recognize you.

These are staff that we have not introduced at prior meetings of the board. Chris Barger, who's an analyst, Jean Barbou, the senior analyst, Laura Dink, an analyst, Phil Golrick, senior analyst, Eric Schencoff, who is an analyst, Michelle Saquin, who is an analyst, Kevin Tiernen, also an analyst, Eileen Sullivan from our administrative staff in the back, and also Valerie Sales, administrative staff, and Joan Zimmerman, the senior analyst.

We have introduced additional staff at prior meetings of the

1 board. We welcome the staff on board as well. As many of you know, we
2 are now moved into our new office space at 600 E Street, N.W. The
3 construction process is nearly done, so that we now have a suite of offices
4 to operate out of, and that's a great relief for the board.

5 The board does plan to attend the series of meetings at the
6 JFK Library in Boston later in March along with our next public meeting
7 in Boston, and the dates will be Thursday, March 23rd, for meetings at the
8 library. And Friday, March 24th will be our public meeting in Boston at
9 the state house. I believe that they will begin at 10:00 a.m., is that
10 correct? Yes, 10:00 a.m. So that will be the next meeting of the
11 Assassination Records Review Board.

12 I'd like to ask you if any of the members of the board have
13 any introductory comments today that they would like to make.

14 MR. GRAFF: I am as eager, I think as other members of the board
15 to hear the comments of the people who are here to talk.

16 CHAIRMAN TUNHEIM: We've asked the liaison from the National
17 Archives, Steve Tilley, who works with the JFK records collection to give
18 us an update at this point on changes and additions to the collection since
19 we last met and were able to meet publicly to discuss the collection.

20 Steve.

21 MR. TILLEY: Thank you, Mr. Chairman. It's always an honor
22 to appear before the board and to give an update on the status of the JFK
23 collection. There have been no major openings of records since the last
24 public meeting in December of 1994.

25 However, there have been some records issues that have come

up that I would like to make the board aware of.

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2 Over the last few months, both FBI and CIA personnel have been
3 reviewing withheld Warren Commission documents and marking for release
4 copies of the documents that have been reviewed and released in their own
5 files.

6 We have not begun inter-filing these documents yet within the
7 open records of the collection, primarily because we're trying to come up
8 with a mechanism to document that review properly.

9 But we are making researchers aware of the opening of records
10 as they come available. These include several CDs, commission documents,
11 which researchers have been interested in over the years. As these things
12 become available, we are making interested researchers aware of those
13 openings and making those documents available.

14 At the last meeting in December, I discussed the review of the
15 Rockefeller Commission records at the Ford Library by the CIA.
16 Unfortunately, I must report that we have not yet received the copies of
17 the documents which were opened by the CIA representatives at that time.

18 The staff of the library, like myself, is hampered by a lack
19 of staff, and while they are moving on that process, they still do not have
20 the documents copied, but they will be coming in the future.

21 A third issue I want to make the board aware of is that we have
22 been receiving, for some time now, CIA documents which were originally
23 postponed by the CIA for coordination with other agencies. And when the
24 CIA transferred their records in August of 1993, and the collection -- when
25 the collection first opened, those documents were indicated in the files

1 by record identification forms with a stamp on them which said, "pending
2 coordination."

3 Many of those documents have now been through the coordination
4 process and have come to me. Once again, we have not inter-filed them yet
5 primarily because, as I just mentioned a minute ago, that we are trying
6 to come up with a mechanism by which we can identify those documents as
7 having come back from coordination.

8 Otherwise, researchers will face the prospect of having to,
9 basically, plow through over 200 boxes of records again to find those
10 individual items.

11 So we are working on that and hope to have something on that
12 very shortly so that we can make those very easily obtainable by the
13 researchers.

14 Secondly, on a second point, in December, I talked about the
15 new software that we were using to search the database. And at that time,
16 I indicated we hoped to have that available for the researchers in our
17 research room. Once again, that is not yet a fact.

18 We are working on the -- continuing to work on that process.

19 I indicated in December that we had a server in the building. But now
20 we are in the process of obtaining a separate server to, basically, serve
21 the research room.

22 We are very much concerned about there being a complete firewall
23 between our public systems and our internal systems so there cannot be a
24 problem with unwarranted access to our computer systems.

25 So we're still working on that and plan to have that available

as soon as possible.

1
2 However, I can further say that since the December meeting the
3 system that we're using makes the searching process very, very easy, and
4 there are -- once again, searches are done within seconds. And it's been
5 a very, very usable system.

6 We have received the first diskettes from the Central
7 Intelligence Agency. These diskettes are for the portion of the Lee Harvey
8 Oswald 201 personality file that was opened with the collection on the 23rd
9 of August in 1993.

10 The first portion of the 201 file, the first 22 boxes of it,
11 after we had reboxed it, had been open prior to the establishment of the
12 collection under the Act and as such, the majority of those documents did
13 not require record identification forms, and therefore, will not be in the
14 computer system.

15 Of course, now, we have established a -- we have set up a folder
16 title listing in order to make those records searchable by the research
17 community, but these are the first diskettes of CIA records. We have entered
18 them in our master system and are working on getting the processing done.

19 We have to, of course, then run the diskettes through our program
20 which restricts any information which needs to be restricted for use in
21 the reference system. And also, we have to compile our indexes so we have
22 our subject listing up to date.

23 So that's what we're working on now and should very shortly
24 have that material into the reference system.

25 Let me say, however, that there are a few data entry problems

1 in the data that we noticed. We have met with CIA personnel to highlight
2 those problems and they are working on making sure that those problems won't
3 occur in the next transfer of diskettes.

4 However, my people at the archives, the computer people we're
5 working with tell me that we can fix those errors once we know what information
6 we need to correct without any difficulty and without any danger to the
7 master system.

8 So because of the great deal of interest in these records, we
9 are going ahead and putting them into the reference system so that we can
10 begin to search the CIA materials.

11 We have also begun the process of transferring to our motion
12 picture, sound and video branch non-textual items within the collection.

13 The first transfer occurred from the Lee Harvey Oswald Headquarters files.

14 Many -- I'd say most of these non-textual items seem to be in the records
15 of the FBI and what they call their bulky exhibits.

16 The first transfer took place about two weeks ago. These
17 non-textual items consisted solely of sound recordings, and the files have
18 been marked with a withdrawal notice indicating that the tape recording
19 has been transferred to our motion picture, sound and video branch.

20 Now, that branch is in the process of beginning the preservation
21 work on those items. They will make a preservation copy of the tape
22 recording, of the sound recording so that the original will be preserved.

23 Then, they will go through the process of making reference copies of those
24 tape recordings so that they can be used by -- either in the research room,
25 or so reproductions can be made for distribution to the public.

1 Now, this is not a new process, really. This branch, the motion
2 picture, sound and video branch, has had custody of the sound recordings
3 and films of the Warren Commission for many years and have been responsible
4 for making the -- for reference service on those records for many years.

5 So this is, simply, a continuation of our standard practice.

6 Of course, for those of you familiar with the new building,
7 we have a brand new research room out there for these non-textual items
8 and they have state-of-the-art equipment in order to make that material
9 available. And this is, simply, a continuation of our policy.

10 Now, I said in my opening statement that we had no transfers
11 of records, no openings of records, but there are a couple of records issues
12 I would like to make the board aware of.

13 First of all, the FBI has informed me that they plan to transfer,
14 very shortly, some records to us in a continuation of their review of their
15 files. But Mr. Terry O'Connor of the FBI is here today, and I understand
16 he is to make a substantive statement about those issues. So I will let
17 him address that issue.

18 Secondly, I want to make the board aware that the CIA has
19 transferred to us the notes taken by the members of the House Select Committee
20 on Assassination on the records of the CIA as they reviewed those records
21 during the time the board, the committee was in existence.

22 Now, this is a voluminous amount of material.
23 I understand it's approximately 32 boxes of records and a great deal of
24 this material is hand-written.

25 Now, the CIA has reviewed these documents and has provided us

1 with recommendations on postponement of the information contained in those
2 files.

3 However, with the -- as in the past, with the review of the
4 other HSCA records that are in the collection, the ultimate authority for
5 the disclosure of these records falls with that National Archives working
6 as an agent of the House of Representatives.

7 Of course, the other thing is that we cannot make these available
8 yet because these items still are not in the database. It is the
9 responsibility of the National Archives to enter these items into the
10 database.

11 Also, at the same time, the staff of our Center for Legislative
12 Archives will have to review the documents to see if, perhaps, there is
13 other information those documents which may be of interest to other agencies
14 or privacy information or -- so we have to, in effect, implement the rest
15 of the statute before these things can be made available.

16 Now, as I said, it's voluminous amount of information and it's
17 going to take some time in order to do the data entry. So what we -- I
18 don't want to venture a guess as to how long it's going to take to get this
19 process.

20 But the staff of our Center for Legislative Archives is beginning
21 this process shortly and will be working on this in the weeks and months
22 ahead.

23 That's the developments within the collection at this time,
24 and I'm ready for any questions from the board.

25 CHAIRMAN TUNHEIM: Questions from the board?

Go ahead, Dr. Joyce.

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2 DR. JOYCE: Steve, you referred to the transfer to the
3 audio-visual, I think. I can't remember what you -- sound and motion --

4 MR. TILLEY: Motion picture, sound and video branch.

5 DR. JOYCE: Is there some guidance in the database and the
6 collection? So how does a researcher follow the trail to catch up with
7 the documentation?

8 MR. TILLEY: Well, in the past, basically, it's just been
9 contact with my office. When a researcher contacts us, we let them know
10 that the actual film or the actual videotape is in the custody of that branch
11 and we will refer them to that branch.

12 If the person is in the -- actually comes to the building, the
13 researcher comes to the building, then we simply refer them up to that branch.

14 Now, that branch has finding aids. They make a listing of all
15 items in their possession. They do an item-by-item listing of all of their
16 records. So they have listings of each non-textual item they have and they
17 have, basically, a JFK collection of their own that they can then send
18 researchers to search the finding aids to see what they want to see.

19 DR. JOYCE: I gather that it's recorded in your database.

20 MR. TILLEY: Oh, yes. Yes.

21 MR. MARWELL: There's a RIF for these documents as well.

22 MR. TILLEY: Oh, yes. Yes. All of these FBI documents have
23 RIFs.

24 CHAIRMAN TUNHEIM: Further questions?

25 [No response.]

CHAIRMAN TUNHEIM: I guess not.

1 Thank you very much, Mr. Tilley, for providing us with an update
2 today.

3 MR. TILLEY: You're welcome.

4 CHAIRMAN TUNHEIM: Next we're going to move into the comment
5 period on the guidance on the definition of an assassination record.
6

7 I might add that our comment period is still open. It will
8 close at the end of business, the close of business on Friday, March 10th,
9 so at the end of this week.

10 So we're not in a position yet of finalizing the guidance because
11 we still have some time left in the comment period, but we wanted to have
12 an opportunity to hear from a select number of individuals who have kindly
13 submitted comments to us already.

14 We have -- first, I would like to ask our general counsel, the
15 board's general counsel, Cheryl Walter to give us a report on the comments
16 that have been received thus far. And then we've got a number of people
17 that have asked to testify and we'll move right into the testimony.

18 Ms. Walter.

19 MS. WALTER: Thank you, Mr. Chairman and members of the board
20 and our executive director.

21 The legislative history to the John F. Kennedy Assassination
22 Records Collection Act of 1992, the citation to which is 44 U.S.C. 2107,
23 states the board is charged with interpreting the scope of the definitions
24 established in the Act and with implementing the Act's provisions.

25 In that vein, proposed interpretive regulations were published

1 in the Federal Register on February 8th, 1995. The citation is 60 Federal
2 Register 7506 for notice and public comment.

3 The comment period, as you noted, ends on this Friday, March
4 10th, by the close of business. And in the proposed regulations, there
5 are instructions for filing public comment, either by fax, by personal
6 delivery or by mail.

7 I would like to make a part of the hearing record a copy of
8 the regulations. They have been provided to the reporter and copies are
9 also available outside of the hearing room.

10 Courtesy copies of these proposed interpretive regulations were
11 provided to the applicable agencies who are likely to have assassination
12 records or have identified records in the past. Courtesy copies were also
13 provided to the oversight committees on Capitol Hill.

14 A notice was also sent out to the review board's mailing list
15 of people interested in this topic and requested submissions of public
16 comments. Copies of the proposed interpretive regulations are available
17 in the board's reading room, and copies of all public comments that have
18 been or will be submitted to the board will also be available in the public
19 reading room at the board's offices.

20 The proposed interpretive regulations address several issues,
21 including the scope of the terms "assassination record" and "additional
22 records and information," and also address certain other implementation
23 issues, including the proposed publication of a catalog of assassination
24 records.

25 This board has worked through these issues already and heard

1 testimony at several public meetings or hearings on these matters, all of
2 which are on the public record and transcripts are also available at the
3 board's offices.

4 We have to date, as of just this morning even, received
5 approximately two score of written comments from federal agencies,
6 researchers and scholars and from private citizens. As I noted, copies
7 of all of these comments are publicly available. I just did want to mention
8 that we really appreciate the time and the effort and the care that have
9 gone into the comments that have been submitted to us from both agencies
10 and from the general public, and we really appreciate that input.

11 Each of you, as board members, have been provided with a copy
12 of all of the comments, but I would like to summarize briefly for the record
13 just some of the general points that have been made.

14 As you mentioned, Mr. Chairman, there are individuals here who
15 will comment in more detail. So perhaps the board, if they have any
16 particular questions, would like to save those for the particular
17 individuals.

18 Some of the comments were very substantive. Others were more
19 stylistic. We appreciate both sets of comments, and we'll consider all
20 of them carefully.

21 First of all, in terms of the concerns that the comments have
22 addressed, one concern has been -- several of the comments have requested
23 clarification, have not so much said something is good or bad but have
24 requested clarification of particular issues.

25 One request for clarification concerns the breadth of the

1 definition and, in particular, asks that the board clarify that additional
2 records and information will be requested on a reasonable basis for the
3 purposes of identifying and reviewing additional records, and also asks
4 that the board clarify that requests such as that will be made in writing.

5 Other comments have focused on a belief that perhaps the
6 definition is too narrow. In particular, these comments seem to grow out
7 of past experience with agencies interpreting under the Freedom of
8 Information Act requests for these records in a fairly restrictive manner,
9 and there are concerns that the proposed interpretive regulations may adopt
10 unintendedly restrictive views.

11 Just very briefly -- these are all, again, in the public record
12 -- there is a concern that the language in Section 1400.1 that says, that
13 describes records that may have led to the assassination, the concern is
14 that that language is a causation viewpoint and that a historical
15 understanding of the event doesn't necessarily flow from things that just
16 led up to the event.

17 There is a concern that "the may have led to" language may perhaps
18 should be replaced by language similar to "reasonably relates to the
19 surrounding history of the assassination."

20 There is also a concern that, in a somewhat different vein,
21 the regulations include the records of agencies or entities that may not
22 exist now.

23 Going back to the "may have led to" language, another suggestion
24 to replace that language has been "all material that could reasonably be
25 expected to shed light on the circumstances surrounding the assassination

of President Kennedy."

1
2 Another caution is that we should not be limited to documents
3 that were used or seen by previous investigations, with the point being
4 made that the purpose of this board is to find documents that may not have
5 been available to other investigations.

6 Another comment stated a concern about the need to ensure that
7 foreign government documents are included and documents from private
8 entities, like private government subcontractors or private individuals
9 who may have created or obtained records from sources other than those
10 identified in the interpretive regulations.

11 Moving onto another topic that the interpretive regulations
12 cover, that is the section addressing originals and copies.

13 There is some concern whether individuals may be able to keep
14 originals that they have and just provide the board with copies. There
15 have been requests for clarification on that score.

16 Another commenter objected to the inclusion of second generation
17 prints where photographs, motion pictures or machine-readable materials
18 are concerned.

19 Another concern in this area is that where documents might be
20 illegible, that there be certified transcriptions of the material in the
21 documents to the extent that it may be discerned.

22 There are many other comments that I'm not covering right now,
23 but those are some of the major issues that have been addressed.

24 Just one or two others that I think the board may want to think
25 carefully about are comments discussing concerns that agencies be required

1 to produce records showing previous transfer, destruction or theft of records
2 that might have been included in the scope of our definition.

3 A related concern to that is that agencies be required to report
4 and protect every type of record that might now fall into the scope of the
5 term "assassination record," regardless of the agency that might have
6 originated the document or record, I should say, to avoid any potential
7 loss or destruction of the record.

8 In a somewhat different tack, just finally one commenter does
9 urge the board to seek out and interview any persons who may now be quite
10 elderly or ill, who may have some information about the assassination.

11 Finally, in terms of the catalog of assassination records, one
12 commenter asked that we clarify that an up-to-date copy will be maintained,
13 preserved and available for review as part of the JFK collection.

14 Again, finally, that's a short summary of some very substantive
15 and lengthy comments that we will be taking into consideration.

16 CHAIRMAN TUNHEIM: Thank you very much, Ms. Walter.

17 Any questions for Ms. Walter, particularly about the process
18 that we're following?

19 [No response.]

20 CHAIRMAN TUNHEIM: Okay. Thank you very much for --

21 MS. WALTER: Thank you.

22 CHAIRMAN TUNHEIM: -- overseeing this process for us. We've
23 got a group of individuals that we'd like to have testify now. I just want
24 to stress to the people who are providing testimony to us today to summarize
25 your comments and keep them somewhat brief.

1 We hope to have not more than ten minutes per person. We'd
2 like to have an opportunity to ask some questions if the members of the
3 board would like, and again, we've got some tight time limits this afternoon.

4 So we do appreciate this help a great deal as we try to clarify
5 a very central issue to the mission of the Assassination Records Review
6 Board.

7 First of all, we'd like to hear from Bill Baugh from the Federal
8 Bureau of Investigation.

9 Mr. Baugh.

10 MR. BAUGH: Thank you, Mr. Chairman and members of the board.

11 CHAIRMAN TUNHEIM: You're welcome.

12 MR. BAUGH: I just wanted to appear before you at the public
13 hearing to restate what we have told you before organizationally, that we
14 are interested in furnishing the maximum amount of records that we can to
15 you as quickly as we can. It's in our organizational interest. It's in
16 the interest of the country and it's compliant to the Act.

17 As I believe I mentioned to you when we last met, I have 74
18 employees from the Federal Bureau of Investigation dedicated to responding
19 to this Act and we have just added a number of part-time employees.

20 Also, as we go through the process, I am interested in your
21 suggestions to make the retrieval of our information by researchers, academia
22 and others who will use it in the future more useful.

23 Those are my only comments today, sir. So any questions?

24 CHAIRMAN TUNHEIM: Any questions for Mr. Baugh?

25 DR. NELSON: Does the FBI have any comments on the definition?

1 MR. BAUGH: Inspector O'Connor --

2 DR. NELSON: I see. Okay.

3 CHAIRMAN TUNHEIM: Thank you, Mr. Baugh. We do appreciate the
4 cooperation and the good working relationship we've developed with the FBI.

5 MR. BAUGH: Thank you, Mr. Chairman.

6 CHAIRMAN TUNHEIM: With that in mind, we'd like to hear from
7 Terry O'Connor from the Bureau to follow up with specific comments about
8 the proposed definition.

9 MR. O'CONNOR: Thank you, Mr. Chairman, other members of the
10 board and Mr. Marwell. It's always good to have an opportunity to talk
11 with you.

12 CHAIRMAN TUNHEIM: Welcome.

13 MR. O'CONNOR: I'm going to try to keep this to ten minutes.
14 I'm going try not to filibuster here, so that you have an opportunity to
15 ask any questions you may have.

16 But I'm representing the FBI this afternoon to briefly discuss
17 a comment submitted by the Bureau regarding the board's proposed regulation
18 providing guidance on interpreting the Act and to answer any questions you
19 may have regarding those comments.

20 I will also update the board regarding the status of the FBI's
21 effort to transfer its JFK documents to the National Archives and Records
22 Administration.

23 We appreciate the opportunity that you're giving us to share
24 this information with you.

25 In discussing the FBI's comments on the proposed regulation,

1 I want to emphasize the Bureau's desire to work with the board to identify
2 any FBI records that are assassination-related but may not have previously
3 been identified as such, as well as records that may be useful to the board
4 for evaluative and interpretive purposes.

5 By doing so, the FBI hopes to further enhance the public's
6 understanding of events surrounding President Kennedy's assassination as
7 intended by the Act.

8 The focus of my remarks regarding the comments will be on the
9 reasons underlying the amendments suggested in FBI general counsel Howard
10 Shapiro's letter to Mr. Marwell of March 3rd, 1995, rather than on the
11 specific language changes offered for your consideration.

12 I assume that you have that language in front of you and I
13 understand that it is available for public review.

14 The FBI's suggested amendments to subsection A of Action 1400.2
15 of the regulation have two purposes. The first is to have that subsection
16 state more explicitly what we understand to be the purpose of that provision;
17 that is, to enable the board to identify all records, whether they involve
18 classified information, sources or other subject matters that may be assessed
19 nation-related and/or could be useful in interpreting and evaluating other
20 materials.

21 The other aim of the suggested language is to have incorporated
22 in the subsection specific mention of language contained in the report of
23 the Senate Committee on Governmental Affairs that accompanied the Act
24 regarding the need for the board to "Act on a reasonable basis in requesting
25 additional information or records," and to be, "guided by the principle

1 of the need to protect sources, methods and confidential matters," in making
2 such requests.

3 The FBI believes that the board surely intends to do both.
4 But written expression of that intention in the regulation would seem to
5 be very reasonable and appropriate.

6 Part of subsection A deals with access to source-related
7 records. In this regard, I want to reiterate the FBI's concern that the
8 board may seek access to source files, and much greater concern that it
9 may seek disclosure of information from these files to include the actual
10 identities of sources identified by symbol number or code name in
11 assassination records. Excuse me.

12 The FBI is certainly open to discussion of such a request as
13 we have been, I believe, on everything that has been at issue.

14 But as the board is aware, the Bureau considers these files,
15 which contain information completely unrelated to the assassination
16 investigation that would clearly identify sources by circumstance if not
17 by name to involve the most sensitive of the issues relating to disclosures
18 under the Act.

19 Turning to Section 1400.5, the FBI is asking that the language
20 be changed to take into account incidental -- what we will refer to as
21 incidental references to persons who figured into the assassination
22 investigation that appear in FBI documents clearly unrelated to the
23 assassination.

24 These "see" references in Bureau parlance have been located
25 through checks of our indices and appear in documents which can be lengthy

1 that add nothing to the historical record of the assassination.

2 It has been the Bureau's practice to disclose the portion of
3 the document relating to the assassination investigation figure, regardless
4 of how innocuous the information might be, as well as enough of the rest
5 of the document to show the context in which the reference appears.

6 The remainder of the document is withheld as not
7 assassination-related. The FBI hopes the board will acknowledge the
8 reasonableness of this practice in its regulation.

9 If the board does so, the FBI clearly understands that the board
10 will want to examine portions of documents containing incidental references
11 to ensure that all pertinent information has been disclosed, or postponed
12 if appropriate, in transfers to NARA.

13 I might say at this point that we have -- as we have said all
14 along, whatever documents the board wants to look at for whatever reason
15 to determine what might be in them, we are ready, willing and able to make
16 those available to the board or to the board's staff for their examination,
17 for your examination.

18 The final suggested amendment that is in subsection D of Section
19 1400.7 involves only a change that will more clearly describe the type of
20 record being discussed therein; that is, one relating to a particular person
21 rather than one, "identified with respect to a particular person."

22 The purpose of that subsection seems apparent to us and the
23 FBI trusts that we're not quibbling with words in suggesting the
24 clarification.

25 Changing the subject, with respect to document transfers: The

1 board is aware that the FBI has already sent over 590,000 pages of
2 assassination-related records to NARA and I know Steve Tilley is well aware
3 of that, too.

4 Again, recognizing that with the board, we may yet discover
5 records not heretofore identified as assassination-related, virtually all
6 of the documents presently awaiting transfer are in files that were reviewed
7 by the House Select Committee on Assassinations.

8 There are approximately 260,000 pages of HSCA documents, about
9 40,000 pages of which consist of index cards and other materials and
10 administrative folders.

11 The Bureau had hoped to have begun transferring those records
12 already and actually, we had hoped to have a goodly number of them over
13 at archives. But we have experienced processing difficulties, which I can
14 assure you are being addressed, that have delayed these transfers.

15 The Bureau intends to transfer over 4,600 pages of Sam Giancana
16 files and over 5,500 pages of Gus Alex files within the next week.

17 We also hope, as we have discussed with the board, to be sending
18 over to NARA some documents that are from the Oswald file that had been
19 classified at the time we transferred the Oswald file that we believe should
20 be of some historical interest now that they've been declassified.

21 The FBI had established the order in which it would process
22 HSCA files based on what appeared to be the relative interest that might
23 exist in the individual subjects of these files.

24 However, the Bureau has asked the board staff to establish its
25 preference for the order in which the files are processed, and this

1 coordination is currently underway along with our efforts in regard to the
2 HSCA records. As you know, we are also going over the material that was
3 postponed in files previously transferred to see what additional information
4 can now be disclosed on further examination.

5 In closing, again, I appreciate the opportunity to have been
6 permitted to appear on behalf of the Bureau to discuss the FBI's comments
7 on the proposed regulation and the status of our document transfers.

8 Additionally, I want to reaffirm the FBI's commitment, one that
9 begins with Director Free, goes through Assistant Director Baugh, and other
10 assistant directors responsible for our operations divisions in particular
11 to do everything possible to further the purpose of the Act.

12 Finally, I would be remiss if I didn't do so: I want to express
13 the FBI's appreciation to Steve Tilley and others at NARA for the very
14 positive and cooperative relationship we've had to date, and to the board
15 and David Marwell and other members of the staff for the very constructive
16 dialogue we've had regarding various matters.

17 We look forward to continuing that same kind of interaction,
18 and I welcome any questions you might have.

19 CHAIRMAN TUNHEIM: Questions for Mr. O'Connor?

20 DR. HALL: Yes. Inspector O'Connor, the three issues that
21 you've raised are significant issues, the sources and methods and what's
22 included and what's excluded, and it's very helpful.

23 But the question I would pose to you is: Does the definition
24 that we have presented to you, in your judgment, require that the FBI go
25 back and in any way reconsider the scope of the search that it made under

1 the original provision of the statute without a definition provided by this
2 board?

3 MR. O'CONNOR: We may have to do that. But I would -- my initial
4 reaction is that's something that we would want to have further discussions
5 with you and the staff about to see what kinds of documents you might consider
6 as assassination-related that we might have.

7 We have, as you know, had -- by virtue of the way that we maintain
8 our records, we've had a collection that has pretty much been identified
9 as constituting the assassination-related records we have. But again, we're
10 not ruling it out, and I hope that it was clear in my comments. I'm sure
11 it was.

12 But I hear what you're saying. You know, there may be some
13 others and we would, you know, look forward to the opportunity to talk with
14 you and the staff members about where we might look for those.

15 DR. HALL: I guess the character of my
16 question -- and to some it may appear to be the fox kind of asking the hens,
17 "What else is left?"

18 But the character of my question is really meant to get your
19 sense as to the breadth of the definition -- and the three items you raise
20 are of significance -- but they don't strike me as of significance relative
21 to the total universe of records that you have.

22 MR. O'CONNOR: Well, I guess, first of all, we didn't have any
23 problem with the definition, and the definition is all about doing what
24 the Act is all about as far as we're concerned, which is identifying records
25 that are going to complete the historical record. If we've got more that

1 we haven't previously identified as such, you know, we probably would need
2 some guidance from the board in that regard as to where we might look and
3 what kinds of documents, the kinds of documents in which you might be
4 interested. Does that --

5 DR. HALL: Yes. I think what you're saying is you don't need
6 to hire 90 more people to go out and start all over again.

7 MR. O'CONNOR: No. First of all, we think we've got the records
8 pretty much corralled, again, leaving open the possibility there are others.

9 So we would probably need to be pointed in directions, and we're ready
10 and willing to be pointed.

11 MR. GRAFF: Thank you. In other words, Inspector, you're
12 prepared to engage in a little pick-up service.

13 MR. O'CONNOR: I guess so.

14 [Laughter.]

15 MR. O'CONNOR: I think so. I think I know what you're -- yes.
16 Whatever is going to further the effort, because the FBI is as interested
17 as anyone in getting the information that's going to complete this record
18 for people to see.

19 Again, our sensitivity rests mostly with source identities as
20 you know, but we're willing to talk about those. And at the same time,
21 most importantly,
22 we want to help this whole process.

23 MR. GRAFF: Thank you.

24 CHAIRMAN TUNHEIM: Dr. Joyce.

25 DR. JOYCE: You said that you had transferred some 590,000 pages

1 to the archives. I'd like to ask you a few things about that transfer and
2 related matters.

3 First, of the pages that you have reviewed, how many have you
4 withheld from transfer?

5 MR. O'CONNOR: I have to apologize. I do not have those figures
6 with me.

7 DR. JOYCE: Could you --

8 MR. O'CONNOR: I don't -- my recollection is that there are
9 approximately 14,000 -- and I don't really want to be held to this.

10 DR. JOYCE: That's fine.

11 MR. O'CONNOR: But my recollection is there are approximately
12 14,000 pages that contain postponements that range from one word or item
13 on a page, an item being a symbol number, to more extensive postponements,
14 and there are -- and I'd like to double check this, but my recollection
15 is there are 700 or 800 pages that were withheld in their entirety because
16 we postponed their contents.

17 But again, I'd like to go back to something I mentioned before.

18 We're going back through these documents that contain postponements to
19 see what more information we can release and as Phil Baugh mentioned, we
20 have hired, under contract, some former agents to help us go through and
21 to expose more of this information by, among other things, questioning the
22 reason for having to postpone some of this information, whether it be
23 source-related or whether it
24 was postponed because of classification reasons.

25 DR. JOYCE: Do any of the -- let me rephrase that.

1 I infer that among the 590,000 pages that have been transferred,
2 there are redactions, is that correct?

3 MR. O'CONNOR: These postponements, yes.

4 DR. JOYCE: No. No. In the material that's been transferred
5 to the assassination records collection --

6 MR. O'CONNOR: Yes.

7 DR. JOYCE: -- are there redactions?

8 MR. O'CONNOR: The postponed information is redacted.

9 DR. JOYCE: In the pages that are transferred.

10 MR. O'CONNOR: Yes. What we do, if we have -- obviously, if
11 there is no postponement on the page, it's the original document, the original
12 page that's gone.

13 If there was any postponement on a page, we've held onto for
14 our staff's review, the original page. And there's been a copy of the page
15 sent out there with the redactions shown.

16 DR. JOYCE: And what is --

17 MR. O'CONNOR: Most of the redactions, by the way are informant
18 or source-related, and often they are merely just one, a symbol number or
19 a name on a page.

20 I don't want to give the people the impression that that's a
21 -- I don't know how frequently that happens -- but many times, that's all
22 that's involved with respect to a postponement on a page.

23 DR. JOYCE: Okay. Now, if you would just bear with me for two
24 other --

25 MR. O'CONNOR: Sure.

1 DR. JOYCE: -- related questions. What proportion of those
2 590,000 pages would you say had redactions in them?

3 MR. O'CONNOR: Well, I'd have to do some quick math, you know,
4 just adding those two numbers that I gave you, the 14,000 and the 800 --
5 or 15,000, well, roughly 15,000 pages with postponements. There is a
6 percentage of 590,000.

7 DR. JOYCE: Well, do you mean that the 15,000 pages are in --
8 I'm a little confused here. The 15,000 pages are among the 590,000 --

9 MR. O'CONNOR: Yes.

10 DR. JOYCE: -- that you've transferred?

11 MR. O'CONNOR: Yes.

12 DR. JOYCE: Okay.

13 MR. O'CONNOR: And by the way, I might also mention that we
14 have some material in those files. We're talking now about the JFK
15 assassination investigation file, the Lee Harvey Oswald file, the Ruby file,
16 the related subject file, Warren Commission and Pike and Church.

17 There were some documents in some of those files that we like
18 -- there were some materials relating to FOIPA, Freedom of Information
19 Privacy Act requests, that we considered as being not assassination-related.

20 That's another thing we're reviewing because we may well have
21 to either disclose, particularly after reviewing the regulation -- it's
22 probably something we need to talk about because we may have to either
23 disclose or postpone information that we previously considered not
24 assassination record material that's in a file like Oswald or JFK that's
25 an assassination record.

1 Am I answering -- I hope I'm answering your question. Included
2 in that 590,000 pages, for all practical purposes, are pages that have
3 postponements or redactions on them.

4 DR. JOYCE: All right.

5 MR. O'CONNOR: Now, there are some other postponements that
6 we've taken that are basically related to referrals, other government,
7 foreign governments or other government agencies, or the postponements are
8 based on the fact that the documents contain IRS records, and there's some
9 -- I couldn't quantify the number right now. I regret that I don't have
10 those numbers because we do have them.

11 DR. JOYCE: Well, what I was trying to get at in the first
12 question is: How many documents remain at the FBI and were not transferred
13 to the National Archives?

14 MR. O'CONNOR: Of the court files and the other files that we
15 --

16 DR. JOYCE: That you've reviewed to date.

17 MR. O'CONNOR: If I'm -- there are probably roughly -- well,
18 at least 15,000 pages that have postponements, original pages that have
19 postponed material on them and the staff is going through those right now.

20 DR. JOYCE: Okay. Being mindful what Dr. Baugh asked about
21 the adequacy of the definition in the regulations and the fact that you've
22 already reviewed 590,000 pages of material, as you look at the situation
23 now, how much additional review, in terms of numbers of pages, do you estimate
24 you might have?

25 MR. O'CONNOR: Well, we've got to get through the HSCA material,

1 which, again, consists of about 260,000 pages, and any other documents that
2 you might ask us to -- you might ask to review as possibly
3 assassination-related; so at least 260,000, roughly 260,000 pages.

4 DR. JOYCE: Thank you.

5 MR. O'CONNOR: Sure.

6 CHAIRMAN TUNHEIM: Dr. Nelson.

7 DR. NELSON: If I understand -- I guess I want a clarification
8 to make sure we understand. Basically, most of your review has been of
9 the House Committee records and everything that was gleaned for previous
10 examination or investigations -- in other words, that's what most of your
11 review work has been.

12 MR. O'CONNOR: Yes.

13 DR. NELSON: You really haven't -- did you feel you've swept
14 the place enough so that you didn't have to go back and do a more thorough
15 search? Did you do some searching?

16 MR. O'CONNOR: Well, the other searching that would have been
17 done would have been of our indices. But first of all -- again, these
18 documents have been the ones that were --

19 DR. NELSON: Yes.

20 MR. O'CONNOR: -- pretty much accepted as being the
21 assassination-related records. Secondly, they gave us a pretty -- our plate
22 was pretty full, I guess, with the documents we had in terms of the work
23 we had to do.

24 I think, thirdly, again, I get back to the fact that we really
25 need some guidance as to where other documents that we have that would be

of interest might rest.

1
2 What we have are the documents that related to all of the
3 investigation, our investigations that were conducted related to the
4 assassination.

5 DR. NELSON: So that was basically the definition you had to
6 start with.

7 MR. O'CONNOR: Yes, plus everything that the Warren Commission,
8 the HSCA, Pike and Church asked for and, presumably, they had -- obviously,
9 they knew what they were looking for in terms of assassination-related,
10 not to rule out the possibility of others because, you know, the Act
11 recognizes --

12 DR. NELSON: It's different.

13 MR. O'CONNOR: -- there may be others and is asking you to see
14 if there may be.

15 But that, certainly, was a, in our view, good place to start
16 because it took -- especially with HSCA, it took into account various
17 conspiracy theories, many of which the Bureau had looked at in its original
18 investigation with the -- presumably others that the HSCA was exploring
19 back in the late 1970s.

20 CHAIRMAN TUNHEIM: Mr. O'Connor, I've got a question that
21 relates back to the proposed definition. You probably have not had an
22 opportunity to review the comments that the board has received.

23 But you heard Ms. Walter's description of some of the issues
24 that had been raised. 1400.1, the interpretation of "assassination record,"
25 (a), under that has the phrase, "Interpret activities and events that may

1 have led to the assassination of President Kennedy."

2 Some discussion in the materials that have been submitted about
3 that particular phrase, has the Bureau focused on that phrase at all? And
4 do you have an opinion on whether that might be, either too broad or too
5 narrow, with respect to the scope of the search for documents?

6 MR. O'CONNOR: My reaction on behalf of the Bureau right now
7 is that it seems to be -- is that we don't have any problem with it. I
8 guess the question is: What falls into the category of "may have led to"?

9 That would be --

10 CHAIRMAN TUNHEIM: Some of it --

11 MR. O'CONNOR: -- definition is one thing. Its application,
12 you know, may be quite another thing.

13 CHAIRMAN TUNHEIM: There have been several alternative tests
14 proposed, such as, for example, a reasonably related test of some sort,
15 relevancy test as opposed to the "may have led" test, and I'm just curious
16 as to whether you've had discussion about that and have an opinion to offer
17 us.

18 MR. O'CONNOR: Well, the only thought I would
19 have -- and it really gets back to what we've said in connection with
20 subsection A of section 1400.2 and that is if there is a request, you know,
21 for any of our documents that "may shed light on events that may have led
22 to the assassination" --

23 CHAIRMAN TUNHEIM: Yes.

24 MR. O'CONNOR: -- we would hope that the basis, that the
25 reasonable basis for seeking that document would be provided --

CHAIRMAN TUNHEIM: Yes.

1
2 MR. O'CONNOR: -- because it would -- again, it gets back to
3 what I was saying before. You know, in trying to identify documents relating
4 to events, that seems to be a pretty -- what you've got in here doesn't
5 bother us.

6 We'd just as soon that if you are going to come and ask for
7 a document that you're going to say, "This is why we would like to see it."
8 I'm sure you're going to do the same thing --

9 CHAIRMAN TUNHEIM: Yes.

10 MR. O'CONNOR: -- because you're going to want to focus on things
11 that are relevant.

12 CHAIRMAN TUNHEIM: Well, that makes sense, and I assume that
13 much of the records of the Bureau fall within a later clause in that provision
14 which is investigations of or inquiries into the assassination.

15 MR. O'CONNOR: That was our -- we focused on that because that
16 is, you know, where it all began, not to be redundant. There may be things
17 that people would consider to be related to events leading up to --

18 CHAIRMAN TUNHEIM: Yes.

19 MR. O'CONNOR: At the same time, our -- what we have really
20 relates -- that's assassination-related, it relates to the investigation

--

21 CHAIRMAN TUNHEIM: Yes. Good. Anyone else --

22 MR. O'CONNOR: -- or is an investigation-related file, because

23 --

24 CHAIRMAN TUNHEIM: Sure.
25

1 MR. O'CONNOR: -- as you know, material in the files predates
2 the assassination, like those on Lee Harvey Oswald.

3 CHAIRMAN TUNHEIM: Certainly. Well, I just --

4 DR. HALL: Well, just to follow up a little bit if I may, Mr.
5 Chairman.

6 CHAIRMAN TUNHEIM: Go right ahead, Dr. Hall.

7 DR. HALL: Would you help me with what the words "reasonable
8 basis" mean?

9 MR. O'CONNOR: I think that essentially we're asking for, again,
10 what you would be giving us, the reasonable basis is that you are seeking
11 a record because it does have some relevance, and "This is the possible
12 relevance it has," to whatever issue it is that you're examining.

13 DR. HALL: Well, just for the sake of discussion, if we concluded
14 our request was reasonable, and you concluded it was unreasonable, which
15 interpretation would prevail, under the statute?

16 MR. O'CONNOR: Under the statute?

17 DR. HALL: Yes.

18 MR. O'CONNOR: I'm not anticipating that we're going to have
19 that kind of a disagreement necessarily, but if it came to that I'd rather
20 have our office's general counsel answer that question --

21 DR. HALL: Sure.

22 MR. O'CONNOR: -- rather than myself.

23 DR. HALL: I can appreciate that response.

24 MR. O'CONNOR: But again, I want to emphasize the fact that
25 we want to continue to do what we're doing. We intend to do what we're

doing, which is to cooperate in every way.

1
2 That is not to say that there may not be some things that trouble
3 us. And we may want to, at least, work through or discuss some of these
4 things as time goes along.

5 DR. HALL: Right. I think, it maybe is appropriate to say that
6 there may be some who aren't quite as enamored with the concept of
7 reasonableness in this context as perhaps others would be.

8 That's all.

9 MR. O'CONNOR: Well, apparently the Congress had some idea of
10 what reasonableness this stands for, but I guess reasonableness, yes, is
11 another thing that would be in the eye of the beholder. So --

12 DR. HALL: It would be an interesting question whether any event
13 unrelated to the assassination could, in fact, be interpreted as being
14 reasonably related, and I think the answer to that is probably no.

15 So that, leading -- "events leading to" may in fact be a more
16 protein concept and, in the end, a more workable concept than "reasonable
17 related." But
18 we can address this some other day.

19 MR. O'CONNOR: I think I've taken up -- not that I'm trying
20 to --

21 DR. HALL: Oh, no. No. Go on, sir.

22 [Laughter.]

23 MR. O'CONNOR: I may have misunderstood. Would you -- I thought
24 you were talking about reasonable basis in the context of our comments,
25 as opposed to the context of this definition of assassination record.

1 DR. HALL: Well, I see the two as a --

2 MR. O'CONNOR: But the two are related.

3 DR. HALL: I think this is intimately connected.

4 MR. O'CONNOR: The two are certainly related.

5 CHAIRMAN TUNHEIM: I don't see any further questions.

6 Thank you, Mr. O'Connor.

7 I want to again express the appreciation of the board to the
8 Bureau for the high priority that has been given to review of assassination
9 records. Just the number of staff assigned is very impressive. We also
10 appreciate the assurances that the director gave us of full cooperation
11 and assistance. So pass that along to him if you would.

12 MR. O'CONNOR: Thank you. And again, we appreciate the kind
13 of dialogue we've had with you all and with the members of the staff. Thank
14 you very much.

15 CHAIRMAN TUNHEIM: Thank you.

16 The next person we'd like to have present testimony is Mr. Zaid.
17 Mark has testified before, before the board and has been very helpful in
18 looking at the issues that the board needs to address.

19 MR. ZAID: Thank you, Mr. Chairman, members of the board, Mr.
20 Marwell. It's always a pleasure to see all of you.

21 You have a copy of the comments that Mr. Sanders and I deposited.
22 Mr. Sanders, unfortunately, was unable to journey to Washington today.
23 I'll just summarize a couple of the comments that we made and allow additional
24 time for more comment.

25 In the definition -- and perhaps it's not really a definition.

1 It's a scope of record since the definition is provided by the statute,
2 and what you're putting forth is how best that definition might be interpreted
3 along the way.

4 One of the points that we mentioned with 1400.1 is to include
5 persons involved with that definition. I'm not going to elaborate more
6 on that because I believe Mr. Lesar covered that more in his testimony in
7 greater detail. I'll leave that to him.

8 But the "reasonably relate" concept was one that we suggested
9 replace the "may have led to," in being that there may be a possibility
10 of relevant documents falling outside of the interpretive scope not
11 necessarily intended, but just as a possibility.

12 I think as an example of how that might occur, I'll provide,
13 sort of, an illustrated example of how I see that "may have led to." And
14 I would suggest picturing a wagon wheel and how the spokes of a wagon wheel
15 go into the center of that wheel.

16 To me, "may have led to" would be something that goes along
17 those spokes, the center being the assassination, so that each spoke is
18 a "may have led to the assassination"; whereas, a "reasonably relate to"
19 encompasses everything within the wheel, and documents that may fall in
20 between those spokes.

21 As a simple illustration, that's how I see it as possibly being
22 best to explain our concept on that.

23 In 1400.2, one of the things we suggested was an inclusion of
24 a new paragraph that would, more or less, go alongside of public and private
25 records in that -- sort of a catch-all provision, just in case that something

1 comes to your attention that would have not necessarily fallen within an
2 elaborated interpretation.

3 Essentially, the language we take was your own language from
4 one of the additional sections, I believe, in the final section.

5 One example we put forth to that and that I would put into the
6 public record for this for possible discussion is Governor Connelly's medical
7 records; but not those medical records that were taken at the time of the
8 assassination which are clearly assassination records, but those records
9 that were utilized in his own personal care in the last few years of his
10 life.

11 Governor Connelly died of -- I believe, partly in due to some
12 chest problems and lung problems. More current X-rays of his chest area
13 and the areas that were damaged in the assassination might lead to additional
14 information as to the extent of the ballistics and wound injuries that
15 occurred, as you know, some fragments still remained within the Governor.

16 Those X-rays might elaborate further on the weight or scope
17 of those particular fragments, but we're not necessarily sure that current
18 medical records from 1992 would necessarily fall within your interpretive
19 regulations. So that's why we suggest a residuary clause.

20 In Section 1400.3, again, we suggested a new paragraph that
21 dealt with private individuals that did not fall within paragraphs A through
22 E, in the sense that that section does deal with private individuals who
23 may have been in government service and brought documents home, which we
24 know those individuals had done so, or even private individuals who had
25 been supplied with documents that had been originally in the possession

and creation by government agencies, entities, et cetera.

1
2 We suggest that just to leave it open to your possibility to
3 go after private records. We had suggested or cautioned, in our testimony
4 back in October, that you may run afoul of the takings clause in the Fifth
5 Amendment for compensation, but that it still gives you the opportunity
6 to do so and decide, because it may well be that once you do track down
7 individuals who have -- private individuals who have always been private
8 individuals who have created what would otherwise be assassination records
9 had the government created them, that you can work out an arrangement for
10 them to provide you copies. You might not ever have to go through the line
11 of debating whether or not your taking of that document would be considered
12 a taking, an illegal taking that merits compensation.

13 One of the other things we suggested but did not necessarily
14 elaborate on was qualifying the definition of "artifact," which has been
15 a matter of contention, as well as the definition of what a "copy" entails.

16 In some cases, copies could be referring to a photocopy, or
17 it could refer to a transcription of the original document, and a
18 transcription of the original document might sometimes leave out valuable
19 information that even a photocopy would have included. Then, again, a
20 photocopy might leave out valuable information that the original includes
21 because of color coding on the documents.

22 That's something that should be further examined, as well as
23 if there is an illegible section of the document. Those people that have
24 been utilizing FOIA for many years can certainly attest that many times
25 the best available copy provided to us is illegible entirely.

1 It may be that the original in the possession of the agency
2 is nearly illegible, but perhaps an effort should be made to try and provide
3 a legible transcription of that copy, certified hopefully, to accompany
4 the document that is illegible.

5 Additionally, and I suppose finally from my suggested written
6 comments, my submitted written comments, with regard to the collection,
7 we had made the suggestion to provide an updated listing of all of those
8 records that are in the collection as a handy index.

9 But also, we still, suggest the possibility of a non-frivolous
10 standard in place of more likely than not. This is Section 1400.8, the
11 final section.

12 We had testified in more detail to this non-frivolous standard,
13 and I'll leave it as such for review of our original testimony.

14 But we realize that, essentially, we're getting down to terms
15 of art, "reasonably related to," "may have led to," "non-frivolous." In
16 the end, it's going to be how you interpret those regulations, although
17 still, as the burden is originally on the agencies, it's their original
18 interpretation that is of concern so as to -- because there is a life-span
19 of the board -- to ensure that the broadest scope is originally applied.

20 Then, we can further refine it as time goes by.

21 With that, I'll make one comment just on what Mr. O'Connor had
22 testified to. In my opinion, there is certainly a responsibility, a strong
23 responsibility of the research community to provide to the board what records
24 they are searching for, and there are certainly efforts to do so, to enable
25 that their legislation would be carried out to its fullest extent.

1 But I certainly would remind the agencies that it is the burden
2 of the agencies to first provide all of those records that are
3 assassination-related regardless of what the definition is; and that, even
4 though they may have originally interpreted and built their collections
5 as being what they considered to be assassination records, it's their
6 responsibility to go back and review the interpretation the board provides
7 to see if anything had escaped their original application.

8 It certainly is possible that, particularly as an easy example,
9 some Mafia files on Sam Giancana Roselli, that records within their main
10 indexed files had never been cross indexed to the JFK records.

11 There are a lot of individuals and organizations that clearly
12 even the agencies could determine are assassination-related, just to go
13 back for an additional check to make sure they hadn't missed anything.

14 In other occasions, there are entities and persons who the
15 research community may believe are relevant, and they'll have to provide
16 that information to you with justification as to why they're relevant and
17 then convey that to the board.

18 Additional events such as Watergate, since many of the
19 individuals involved with Watergate were, in fact, the subjects of
20 investigation by the HSCA and the Rockefeller Commission, their main files
21 may have already been searched.

22 But there might be Watergate files that would have been
23 cross-indexed that were never cross-indexed into the JFK files.

24 That's still the burden of the agencies to first go and look
25 through those files, and then for the research community to provide you

with additional information.

1 That would be the extent of my comments, and I'm open for
2 questions.

3 CHAIRMAN TUNHEIM: Thank you, Mr. Zaid.

4 Questions?

5 [No response.]

6 CHAIRMAN TUNHEIM: I have one, just one question, and my
7 question relates to the takings issue and the copies issue that you raised
8 in your testimony, and perhaps it's not an issue that we can best deal with
9 through the guidance on the definition of what an assassination record is.

10 But I'm concerned that there may well be very relevant
11 information in the hands of private individuals which certainly, obtaining
12 the originals raises the takings issue; obtaining copies does not, although
13 these individuals may be intending to write their experiences and to use
14 their own records which they may have gathered through their own government
15 experience or through other sources.

16 Do you have any suggestions for us on how best to deal with
17 that issue, short of just simply subpoenaing those records at this stage
18 or copies of those records? Are there any definitional issues that help
19 us in our potential problem with this issue?

20 MR. ZAID: On a related context, the HSCA dealt with some of
21 these issues in the sense that when they had located particular information
22 within private hands -- and I recall specific incidents of a film, I think
23 it was the Bronson film, where the individual's lawyer contacted the HSCA
24 and indicated that they would be willing to provide the film, the original
25

1 film, or maybe a copy to the HSCA for a fee. And the HSCA turned them down
2 and never did examine the film.

3 One, it might be helpful to discuss with former staff members
4 and counsel to the HSCA to see if that had come up.

5 I suppose the question would be somewhat of a balance to --
6 if an individual does have records in private hands who indicates he would
7 be, or he or she would be willing to turn them over but is pursuing an avenue
8 that might be a financial gain to them, the first question would come to
9 my mind would be, "What took you so long?" in the sense that, for instance,
10 some of the individuals we indicated in our original law review article
11 as potential witnesses who have attested that they have private documents,
12 have known of these documents for years. They've said that they'd be willing
13 to come forth, with grants of immunity, for whatever reason, and I would
14 question whether or not they would all of a sudden come up with this idea
15 of publication. It's certainly a possibility to come up.

16 I suppose the balance would be somewhere along the lines of,
17 "Can you ensure that you got the records before the end of your tenure,
18 enabling them to begin the process?"

19 That might be an acceptable balance, as long as there was an
20 ensurement of attaining the original or copies of those records within the
21 lifetime to the extent that you have enforceable power through subpoena
22 and the Department of Justice to obtain those records without having a waiting
23 game being undertaken.

24 I think in most cases, from what the community is aware of,
25 what documents might be in private hands, those individuals have always

1 indicated a willingness to assist and provide those documents.

2 Should an attempt now be to revoke their willingness, to me,
3 is suspect of the genuineness of their willingness over the past decade
4 or two, which is why we suggested certain individuals to go after it,
5 primarily in the beginning to find out exactly whether they have items to
6 offer or not.

7 But in most cases, I think you're going to get cooperative
8 efforts. You still run into some of the problems with copyright provisions
9 of materials --

10 CHAIRMAN TUNHEIM: Excuse me, Mr. Zaid. Can we hold off for
11 one second while we change the tape?

12 [Pause.]

13 CHAIRMAN TUNHEIM: Okay. Go ahead. I'm sorry.

14 MR. ZAID: The other issue you might want to have Ms. Walter
15 or other staff counsels examine is the effect on private items that are
16 in the possession of government agencies already and whether or not there's
17 already been a taking. There you have some of the films, the Zapruda film
18 among them already being in the possession, I believe, of the Archives;
19 and whether or not, there has, in effect, been a technical taking.

20 I suppose an additional -- that doesn't apply to those items
21 that were a deed of gift that were exempted from the legislation, or at
22 least had suggested that you work out new arrangements, new contracts with
23 those original deed of gift holders so that there deed of gifts would not
24 be violated.

25 But I think it's an issue that you'll be able to get around

1 and then weigh at the end, if someone is uncooperative, whether or not the
2 item you're searching for justifies the possibility of paying out just
3 compensation.

4 CHAIRMAN TUNHEIM: Thank you. Anything further?

5 Dr. Nelson?

6 DR. NELSON: We have had two examples. Mr. O'Connor said we
7 should have some justification for asking for additional documents.

8 Now you've said that the researchers -- we should pay attention
9 to the researchers, and they should justify to us that it's worth going
10 to look for certain documents.

11 How far do you think that ought to go? What do you think amounts
12 to justification because we are, clearly, going to hear from a lot of
13 researchers, you know, who have been looking for documents for a long time?

14 MR. ZAID: Well, it's the original burden on the agencies to
15 apply the definition even beyond that which they have already collected.

16 They can then come back and say, "Even after further application
17 of that, there are no additional records that we believe are related."

18 You're then put in a quandary in that you need to rely on the
19 research community or those members that are on your staff that have subject
20 matter knowledge to say that these particular records, not necessarily the
21 specific records but groups or names of individuals who have, in some way,
22 wandered into, in other senses, this assassination collection, may be located
23 elsewhere within filing systems.

24 DR. NELSON: Do you think we should use our staff to help trace
25 these matters and not just rely on the judgment of the researchers? I mean,

1 that was a very iffy thing that you were just asking us to do.

2 MR. ZAID: Oh, I wouldn't necessarily say you rely entirely
3 on the research community. I think that there needs to be, you know,
4 certainly, input, and it's the responsibility of the research community
5 after 30 years to, when they have the opportunity of a board such as yourselves
6 and legislation such as this, which was, certainly, an amazing feat and
7 an accomplishment, that they cooperate in every extent, every manner to
8 their fullest extent.

9 But certainly, under law, there is no responsibility of the
10 research community to do so. The responsibility is on the agencies, and
11 the responsibility is on the board, to the extent that they are aware of
12 items, to ensure that the agencies cooperate.

13 But it's sort of in a circular motion because, in order for
14 you, as a board and staff, to ensure that the agencies cooperate, you need
15 to know what it is you're going to make them cooperate with or for or look
16 for. So you do need to, in a sense, rely on either the community to provide
17 you information or your own staff to undertake research.

18 DR. NELSON: Well, we're well aware of that.

19 MR. ZAID: And then that's good. Obviously, I'm sure you're
20 realizing a difficult task amongst itself, and everyone needs to work
21 together on that.

22 CHAIRMAN TUNHEIM: Sure. Dr. Hall.

23 DR. HALL: If I could just follow up on the same kind of line
24 of questioning that Inspector O'Connor was so good to respond to.

25 "May have led to" would seem to create a condition precedent,

while "reasonably related to" would signify relation in a more generic sense.

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Could you expound on that, elaborate on what you see on page 2 there in the next to the last --

MR. ZAID: Yes.

DR. HALL: -- full paragraph?

MR. ZAID: That was the purpose of my wagon wheel example, so to speak. I've been trying to think of how I could best explain that. I think, perhaps, let's use the subject of Watergate.

Watergate clearly, and the records relating or within the Watergate collection, could not have led to the assassination of President Kennedy for the obvious reason that it occurred after the assassination of President Kennedy.

But there are clearly documents within the Watergate investigation that reasonably relate to the assassination of President Kennedy, perhaps not necessarily in explaining events within the assassination, but in explaining or investigating or providing information on an individual who was suspected or was investigated in connection to the assassination.

In that sense, there is information within and we see that throughout. There is a sort of -- I don't know if it's a saying within, I suspect, the document community, research community, FOIA community, that for every five non-classified documents makes up a classified document, in the sense if you look through other documents, you'll pick up information that is totally innocuous within that document to anything relating to the event the document's investigating.

1 But if you apply it to another event, it's entirely relevant
2 and, indeed, might have been classified if it had been in a document relating
3 to another event. That's why we said, in a sense, condition precedent.

4 While we believe the way the board has been operating and the
5 staff has been operating has been entirely conducive to a broad
6 interpretation of the documents, we're still concerned in the sense that
7 the agencies may adopt the more narrow interpretation that these terms of
8 art enable one to do since, obviously, as your exchange with Mr. O'Connor
9 said, "reasonably relate" is sometimes a matter of opinion as to what actually
10 constitutes "reasonably relate" or "may have led to."

11 We would certainly prefer that, in any interpretive regulations,
12 the opening is there for a broader context than for a narrow context.

13 If you wish to take a narrow context in your search for documents
14 after adopting a broader interpretation, that may well be.

15 But at least you have the ability, should it come up, for you
16 to take a step backwards and say, "Well, we've changed our mind. We're
17 going to -- additional information has come to our attention. We're going
18 to adopt a broader definition, and our interpretive regulations allow us
19 to do that," rather than go through an interpretation through the way you
20 would see it now and then come across additional information and say, "I
21 wish we had made the definition a little bit broader and had given us that
22 room for movement, but now we're being held to this, which is our own language,
23 to this interpretation."

24 DR. HALL: Well, I would say that there are other parts of the
25 definition which, I think, tackle some of the issues that you have raised.

1 The other is that I think part of the success of the definition
2 has to turn on its ability to provide sufficiently clear direction to those
3 who are in custody of these records that they have a reasonable expectation
4 of being able to yield up to us that which is necessary for the task that
5 we confront.

6 In that light, reasonableness is the ultimate term of art.
7 And as a result, one would be left, it seems to me, with a different set
8 of arguments. This different set of arguments would be whether or not my
9 version of reasonableness comported with somebody else's version of
10 reasonableness.

11 So I don't see much majesty in the concept of reasonableness
12 in this context. I do see some utility in providing sufficient direction
13 so that we don't end up investigating all of modern American political history
14 as a direct result of having to collect records related to the assassination
15 of the President.

16 MR. ZAID: Well, as Mr. Sanders and I said in our conclusion,
17 as this becomes more of a term of art, it may well be that a definition
18 that is suggested by one outside, from the public, and the definition that
19 you adopt equals out to the same amount of documents in the end.

20 The bottom line will come about by your interpretation of your
21 own regulations and how you seek to enforce those regulations against an
22 agency that you believe might not be cooperating.

23 I found it interesting in the exchange with yourself and Mr.
24 O'Connor to see what might happen -- and this doesn't necessarily relate
25 only to the FBI -- but what might happen should the board's interpretation

1 of "may have led to," adopting your own language, and the agency's definition
2 of "may have led to" differ.

3 DR. HALL: Well, in your judgment, who would have the final
4 decision about what either of these terms meant?

5 MR. ZAID: I would imagine it would probably fall to yourselves
6 as a board, as a distinct and separate federal agency, and that each agency
7 has the ability to condition its own regulations and enforce its regulations
8 against other agencies.

9 Although I would assume there may be a manner by which an agency
10 could seek some sort of -- I don't want to say advisory opinion from one
11 of the federal courts, but however the framework is for when one agency
12 differs in interpretation from another agency.

13 That question is certainly not going to be a novel question.

14 It might be for assassination records. It's certainly not going to be
15 for interpretive guidelines of federal agencies.

16 I'm sure there must be some precedent as to when an agency differs
17 from another agency and who ends up deciding which agency is correct.

18 DR. HALL: But the key power here is the ability to classify
19 an assassination record. That's the key power.

20 MR. ZAID: And that authority belongs entirely to you as a
21 separate and distinct federal agency.

22 DR. HALL: Right. There can be grounds upon which our decisions
23 with regard to postponement can be set aside.

24 MR. ZAID: Sure.

25 DR. HALL: But as to what constitutes a record, that is solely

within our discretion.

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2 MR. ZAID: And I think that might well be the answer. If there
3 is a difference in opinion as to the definition of "assassination record"
4 or the scope of it, I suppose the agency could try and bring it within one
5 of the exceptions and then discuss the matter with the executive branch
6 and request that the executive branch, should the President postpone for
7 how many years -- which I believe the majority was 25 years or so -- that
8 might be what the remedy is.

9 DR. HALL: Surely on grounds of reasonableness.

10 MR. ZAID: Of course.

11 DR. HALL: Thank you.

12 CHAIRMAN TUNHEIM: Thank you, Mr. Zaid. And if you would, pass
13 along our thanks to Mr. Sanders as well for his help.

14 MR. ZAID: Thank you.

15 CHAIRMAN TUNHEIM: Thank you.

16 Next, the review board would like to hear from Mr. James Lesar
17 who has also been the frequent corresponder with us, both by testimony and
18 in writing. He's of very helpful assistance to the board.

19 MR. LESAR: Thank you, Mr. Chairman, members of the board.

20 I'm Jim Lesar, President of the Assassination Archives and
21 Research Center. I very much appreciate the opportunity afforded to me
22 to comment on your proposed regulations.

23 I have submitted a fairly detailed comment addressed primarily
24 to the question of the scope of the term "assassination record," and my
25 feeling that it is not as broad as it should be to make sure that no records

1 which might shed light on the Kennedy assassination and related controversies
2 fall through the cracks.

3 I would just, very briefly, summarize my points. The first
4 thing that concerned me was the question of the "may have led to" language
5 which you have been debating here for the past hour or so. My feeling is
6 that that language, to me, smacks of a legal causation test, and that narrows,
7 very considerably, the scope of the definition, that it may eliminate --
8 first of all, the problem is: In some sense, it suggests that you know
9 an answer that we don't know.

10 I certainly don't know at this point who was behind the
11 assassination of President Kennedy. And therefore, it's difficult to say
12 with any degree of certainty what events or activities may have led to it.

13 The test which I proposed instead was a broader test of whether
14 or not the materials sought may shed light on the assassination, the events
15 related thereto. I felt, also, that the definition is lacking a couple
16 of important components in terms of subject matter. First, it doesn't
17 specify persons or organizations, nor does it specify programs or operations.

18 I think, for the sake of clarity, if nothing else, that those
19 terms need to be included in some way in the definition. Many government
20 agencies, particularly the FBI and the CIA, investigate persons or
21 organizations. They keep materials filed by persons or organizations.
22 If you're going to get at the materials that may help explain those persons,
23 may show their relationships to the organization or to other organizations
24 or to other persons, then you need to be able to get at the materials in
25 their files.

1 Also, much of the controversy over the Kennedy assassination
2 is embroiled in questions about intelligence agencies of the government
3 who, for years, have operated in secrecy, have conducted programs and
4 operations of which we may be totally unaware even today.

5 The problem is how to get at those materials. And I think that
6 the definition needs to include some references that, where it is necessary
7 to understand events and activities or where it is necessary to shed some
8 light on the relationships and associations and activities of persons or
9 organizations, we need to be able to have information available, related
10 to those programs and operations.

11 I'm aware that this sets forth a quite broad definition and
12 it presents some problems, but I thought that if there should be error,
13 it should be on the side of broadly defining the term.

14 That concludes my summary. If you have any questions, I would
15 be happy to try to answer them.

16 CHAIRMAN TUNHEIM: Thank you, Mr. Lesar.

17 Questions?

18 DR. HALL: Would you help me -- and maybe we could talk a little
19 bit about "in a reasonable way" --

20 MR. LESAR: Sure.

21 DR. HALL: -- about these issues. As with Mr. Zaid, I am very
22 interested in understanding kind of the underlying reasoning that the "may
23 have led to" as establishing some theory, giving credence to some theory
24 relative to the assassination as opposed to any other theory.

25 Now, am I correct in interpreting your remarks in that way?

1 MR. LESAR: Well, I think that's one thing that a government
2 agency could say. I've said in my statement that although the government
3 agencies are at variance on such crucial matters as to which bullet hit
4 who when, none of them has ever admitted, to my knowledge, that there was
5 a conspiracy involved in the assassination.

6 Some of them, the FBI notably, have taken the position in the
7 past that Oswald committed it and, therefore, what may relate to the
8 assassination is what relates to Oswald and his activities.

9 Now, even if you expand that and say, "Well, there are multiple
10 theories, and we have to consider that any of them may relate to the
11 assassination," I think you -- "may have led to the assassination," I think
12 you still have a problem in that there are all kinds of records that shed
13 light, for example, on a person, or on an organization that can't conceivably
14 be said to have led to the assassination.

15 In my statement -- which I have revised the statement and added
16 a footnote to it to clarify something that might otherwise be misunderstood.

17 But I give the example of it would be hard for me to argue that
18 the events and activities that transpired in connection with the overthrow
19 of the Arbenz government in Guatemala in 1954 may have led to the Kennedy
20 assassination. I think that's an insuperable obstacle.

21 But that it may shed light on it is an entirely different
22 question, because some of the people whose names have surfaced in connection
23 with inquiries into the Kennedy assassination were involved in that
24 operation.

25 DR. HALL: We're getting close, I think, to what, I believe

it was Justice Douglas called Penumbers.

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MR. LESAR: Yes.

[Laughter.]

DR. HALL: Penumbers of emanations. And it's an interesting problem.

I guess, the question I would put to myself and my colleagues on the board is: If the President had not been killed, would this board exist? And I think the answer to that is no. It's hard to tell sometimes.

[Laughter.]

DR. HALL: Then if that's the case, then it seems to me that the touchstone for understanding where we take the document search has to really be in relationship to that event.

MR. LESAR: I don't disagree with that. I think that you have to have events or organizations that relate to that event, yes, but to say that they have to have had some causal relationship with that event is, I think, the problem that I have with the present definition.

DR. HALL: Right. And I think this is an interesting point because it really does go to the scope and nature of the tasks that are before the board.

I also have some concern about what kind of communication we make to the agencies who have already, under the 1992 Act, made some effort to glean their files.

I also have some concern that, in the end, we put ourselves in the position of requiring such a large enterprise, that the enterprise as a whole fails for the burden put upon it.

1 MR. LESAR: Yes.

2 DR. HALL: And there's nothing in this legislation, with all
3 due respect to anyone who has ever written on the subject, that I discern
4 that asks us again to elaborate on the full course of post-World War II
5 American history and, as a result, reasonableness is an interesting concept.

6 I guess I would even pose -- just to conclude, Mr. Chairman, I would pose
7 the same question to you that I posed of Mr. Zaid, and that really is:
8 At what point do we know that reasonableness has ended and unreasonableness
9 has begun?

10 MR. LESAR: Well, I think as a practical matter, it will be
11 the requester community that will drive the issue.

12 They will present, to you and to the agencies, documents that
13 they are interested in or files that they are interested in or operations
14 that they are interested in, and they will submit to you some statement
15 of reasons why they are interested in them.

16 At that point, it's going to be a matter of your judgment and
17 the agency's judgment as to whether or not that's sufficient to carry the
18 day or not.

19 DR. HALL: Thank you.

20 MR. LESAR: Yes.

21 CHAIRMAN TUNHEIM: Dr. Nelson?

22 DR. NELSON: Given the fact that our definition includes all
23 investigations and the definition that we put in the Federal Register, our
24 definition so far -- how could we avoid your point that you've added, "persons
25 or organizations which figure in any official or unofficial investigation

of the assassination"?

1
2 It seems to me that that covers it simply by covering the
3 investigations. That is, these investigations included persons and
4 organizations. I mean --

5 MR. LESAR: Well --

6 DR. NELSON: -- what do you see that -- how do you see this?

7 MR. LESAR: There are some persons and organizations who have
8 come to light since the official investigations were conducted or who were
9 -- even if they came to light before those investigations, were not
10 investigated. They figure in --

11 DR. NELSON: Well, you happened to have said here, "which figure
12 in any official" --

13 MR. LESAR: Investigation. And I think --

14 DR. NELSON: -- "and unofficial." Unofficial --

15 MR. LESAR: Yes, unofficial. I've added "unofficial." And
16 I've added the "published literature relating thereto." So that broadens
17 it beyond simply what was at stake in the prior official investigations.

18 CHAIRMAN TUNHEIM: Anything further?

19 MR. GRAFF: I would just like to ask: Mr. Lesar, at what point
20 do you think the research community -- and you may know the research community
21 better than, perhaps any
22 of -- certainly the board collectively, although some members individually
23 of the board would know.

24 At what point do you think the research community broadly,
25 considered, will be satisfied with the bringing together of documents?

1 MR. LESAR: It's an imponderable. I can't really answer it.
2 It depends on what this board does, what comes to light as a result of
3 what the board does and how satisfied they are with the end result when
4 matters are finished.

5 MR. GRAFF: Would you venture --

6 MR. LESAR: I have no crystal ball.

7 CHAIRMAN TUNHEIM: Thank you, Mr. Lesar. I think your
8 Guatemala example was very helpful and I think illuminating.

9 I would point out that the inclusion in our draft of the term
10 "may have led," certainly introduces a broadening concept to what otherwise
11 might have been "did lead" or "had led to the assassination."

12 MR. LESAR: It does, although I still think the causal problem
13 is a difficulty. On the Guatemala example, that is the point on which I
14 have clarified in my revised comments, and to make clear that two of the
15 persons that I had mentioned in that connection, there is no evidence at
16 the present time that they were implicated in the overthrow of the Guatemalan
17 government, although they may come close.

18 But it may be no cigar, and I didn't want that misleading
19 impression to be left on the record. So I've clarified it.

20 CHAIRMAN TUNHEIM: Thank you, Mr. Lesar.

21 MR. LESAR: Thank you.

22 CHAIRMAN TUNHEIM: We appreciate your help.

23 We'd like to hear from Mr. John Judge.

24 Welcome back, Mr. Judge.

25 MR. JUDGE: Thank you.

CHAIRMAN TUNHEIM: And we appreciated your help in the past.

MR. JUDGE: Well, I appreciate the opportunity to speak to you.

I noted in my written comments that I concurred in large part with Jim Lesar's concerns, and so I won't go into a great deal concerning that.

I did have some indications beyond that that I felt were -- since this sort of definition or regulation by the agency should track the legislative definitions and ideas, some things that I was concerned with were omitted. The two were mentioned earlier. One is records of foreign governments didn't seem to be specifically identified, and the other was records of -- which is mentioned in one section of the Act -- of subcontracting or contracting agencies of the government may be covered in your view in the language about entities.

But I thought it was worth being specific about that because I think it's an interesting and unusual part of the investigation that hasn't gone on before. So those two areas being added in, I think, would possibly be important.

There are -- and I mentioned this in earlier testimony -- a number of indices and indexes and lists and databases compiled over time by the research community that relate to the various people and organizations or operations, names, that I thought would be more useful in terms of this search than what I had described as the sort of bureaucratic imagination that an agency might come up with in terms of who to look at.

In addition to the ones that Jim Lesar mentioned, there was a later bibliographical compilation by David Rohn and some bibliographies compiled by other authors, which I would be willing to put together and

submit to the board.

1
2 Also, there's a rather extensive database collected over many
3 years by researcher Mary Farrell, with about 10,000 entries in it that might
4 be a useful search standard or place to start.

5 I don't know to what extent there's feedback from the indexes
6 that are being created at the National Archives in terms of future search,
7 whether they are, in fact, reviewing areas that agencies might not have.

8 I've given you names for them.

9 So those were just some ideas I had about how to identify that
10 universe, and I was also concerned that the language seemed to focus solely
11 on the records created by or of interest to the official investigations
12 to date.

13 Separate from the question of whether those were flawed
14 investigations is the question of "What was the scope of those
15 investigations?" and whether they, in fact, meet the historical scope of
16 the assassination itself. So, I suggested that the relevancy of records
17 needs, really, to go beyond these official local or federal investigations.

18 One area that I had mentioned before that I think would meet
19 both the broader standard as well as your "may have led to" standard, which
20 can be interpreted broadly, but also, I think the problem is that it's a
21 double-edged sword.

22 But events of all government agencies in the time period, the
23 window right around the assassination, I think, might reveal if there was
24 or was not government involvement at any level in the assassination because
25 there's reported events right at the time that could be viewed suspiciously.

1 So that, in a way, would meet your "may have led to." But I
2 don't know that an agency would think of it themselves or that all of the
3 agencies would be within your thinking. So I pointed that out.

4 I'm glad that you're taking the input of the research community
5 seriously, and I do think that there will be a continuing effort on the
6 part of the research community to provide you with clues in that direction.

7 But I think it's important to make your standard of search for
8 the sake of the agencies as broad as it can be without encompassing, as
9 Mr. Hall says, the whole of post World War II history.

10 But on the other hand, the Kennedy assassination does exist
11 within a historical context, at least for the time that he was in office.

12 That may be relevant to the assassination itself.

13 CHAIRMAN TUNHEIM: Thank you, Mr. Judge.

14 Are there questions?

15 [No response.]

16 CHAIRMAN TUNHEIM: Thank you. We appreciate your help.

17 MR. JUDGE: Thank you.

18 CHAIRMAN TUNHEIM: Mr. Joseph Backis. I guess he's not here.

19 DR. HALL: No. He's here.

20 CHAIRMAN TUNHEIM: He's here. Oh, there he is. Okay. I'm
21 sorry.

22 Mr. Backis, you wrote to us on a number of topics, and I guess
23 what we'd like to hear from you today on is simply the portion of your comments
24 to us that focus on the definition. We gathered your comments on other
25 materials, but that's what we'd like to focus on today.

1 MR. BACKIS: Oh, okay. Well, for the purposes of people who
2 will be reading this transcript later, I wrote a letter to the board, a
3 letter dated February 14th, concerning my alarm at the statements of Ms.
4 Mirian Nisbet, special counsel to the National Archives, and something that
5 she talked about was she wants to classify certain items relating to the
6 Kennedy assassination case as artifacts. I got the gist that she wants
7 to call these items artifacts so that they will fall outside the scope of
8 the JFK Record Collection Act, which is something I am opposed to. I hope
9 the board is, too, because the National Archives will thus not have to obey
10 a lot of laws and regulations, and these artifacts might fall outside things
11 stored at the National Archives and will no longer be available to researchers
12 to look at and examine.

13 Part of her reasoning is she wants to preserve these items,
14 as do we all. However, I think that is a false issue. I think that they're
15 trying to prevent access to them rather than telling us that they're trying
16 to preserve them, and I was very concerned about that.

17 I found public law 89-318, a law signed by President Johnson
18 in 1965, in which I believe everything that she is going to call an artifact
19 has already been classified as a record. She was telling you that you might
20 be setting a precedent if you called these things records. Well, I think
21 that was established in 1965. I would ask the board if they agree with
22 that, that yes, those things were called records in 1965, and you don't
23 have to worry about setting a precedent.

24 Is that true? Would you agree with that?

25 CHAIRMAN TUNHEIM: Well, Mr. Backis, we heard testimony from

1 the National Archives at our last public meeting. But we did include in
2 our draft, a definition which we are now considering, the term "artifacts"
3 as one of the types of materials included in the scope.

4 So the board has spent a significant amount of time on this
5 particular issue and did decide to include artifacts in our definition --

6 MR. BACKIS: Okay.

7 CHAIRMAN TUNHEIM: -- despite the testimony of the National
8 Archives and their concern about the precedential problems --

9 MR. BACKIS: Yes.

10 CHAIRMAN TUNHEIM: -- associated with that.

11 MR. BACKIS: I would like, also, to wonder what Ms. Nesbit meant
12 when she said that items were deassertioned to the Smithsonian.

13 Since she brought it up here at a public hearing, what I don't
14 know from reading the text is if that included any Kennedy
15 assassination-related items or not. I couldn't tell if it did or if it
16 didn't. And if it did, I'd like to know exactly what's going on with that.

17 I was very concerned that, like, you guys are, basically, on
18 a treasure hunt trying to find items that the research community has been
19 looking for for a long time, and if things are going out of the National
20 Archives, what's the point?

21 I want everything -- well, the National Archives or whoever
22 are going to call them artifacts or whatever, to be intact and at the National
23 Archives and nowhere else.

24 She talked about some law that it was the Smithsonian that came
25 to the National Archives, and I'd like to know what that law is and what

1 she was talking about.

2 I'm somewhat concerned, also, on related issues that the
3 intelligence agencies and other federal agencies, that it's up to them,
4 that they will decide what an assassination record is.

5 I got that impression anyway. And they will review their
6 material, hand it over to you, rather than you taking the active position
7 that you will define what an assassination record is and ask for its release.

8 I was, kind of, happy that you were not impressed with the FBI's
9 number of 590,000 pages being released, and that there is duplication, and
10 I'm not just singling out the FBI.

11 But the actual value of material being
12 released -- John Newman spoke to you earlier at another hearing that many
13 of the things being released -- you'll hear boxes instead of page numbers
14 from, like Mr. Steve Tilley and such.

15 Sometimes, they're not very valuable at all. And one point
16 -- I don't have the specifics. Mr. Newman mentioned that, like, its
17 evidentiary value was nil.

18 So don't be impressed with boxes being released and numbers
19 being released. Unfortunately, we don't have, as individuals, the
20 intelligence to know immediately, but the research community is somewhat
21 large and we have some talented people in it.

22 A question about true and accurate copy idea of -- especially
23 with artifacts, but also with copies of documents: How would the research
24 community know that what is being given to them is a true and accurate copy
25 of documents?

1 I'm sure you are all aware of running into documents that look
2 totally illegible when you get them. There are multiple generational copies
3 and copies from microfilm and microfiche, and when you pay your 10 cents
4 or 25 cents in the mail, it's very hard to decipher what you've got.

5 There are many instances -- and even Director Helm said during
6 the Warren Commission days that substitutes of documents were being
7 introduced into the record.

8 This is a major problem. There are also false documents into
9 the record. Richard Reeves, who wrote a book on President Kennedy, used
10 false documents, in that President Kennedy signed off on the assassination
11 and coup of the Diem brothers in Vietnam which is not the case.

12 Those records were falsified under President Nixon's tenure
13 at the request -- I've forgotten his name now.

14 CHAIRMAN TUNHEIM: Well, you raise a good point, Mr. Backis,
15 about the copies issue, and this is one that the board has spent considerable
16 time talking about.

17 Certainly, we would like to have the originals of everything.

18 I mean, that really is obviously the best evidence of the particular record.

19 Sometimes that -- particularly, in information that may be less
20 valuable but certainly have some relevancy to the event, the cost of obtaining
21 a copy of an original from someone in the private sector may be very high.

22 That's why we've tried to set forth a procedure for certifying
23 copies of those documents so that we can have an efficient system of making
24 sure there are readable copies available to everyone of those records.

25 I guess one way of looking at it is if the copy is readable,

1 is it better to have a copy that's accessible to everyone or to not have
2 access to the original?

3 We certainly are not interested in providing copies that are
4 not legible or not readable. That certainly is a very important part of
5 the standard.

6 We're running a little short on time today. Do any members
7 of the board have questions for Mr. Backis?

8 DR. NELSON: I have a comment, a very quick comment, and that
9 is that the nature of all government records is that there's an awful lot
10 of trivia. So I don't think that there's any intention to -- I mean, we
11 are very well aware of that.

12 We're very well aware. We've seen evidence that, obviously,
13 there's a lot of stuff in there, but that's the nature of research and
14 government documents.

15 I think that, you know, should be -- but we're very aware of
16 many of the things that you have raised in terms of the problems involved,
17 also that there are often very many illegible papers given to all researchers,
18 partly because of the nature of the typewriters, copies, of copying machines.

19 I think we intend to do our best to be sure that there are good copies.
20 But we do know that.

21 MR. BACKIS: Well, I would hope that you would be, and I assumed
22 you would be, but the point I was raising is: Sometimes sentences are deleted
23 from the original documents when you're doing your research.

24 It's not a question of going from illegible to legible, but
25 from the original intelligence agency itself, a key word or phrase may have

1 been released -- deleted.

2 If you had the original to compare it to, you could find out
3 that, "Hey, there's some mischief going on here." That was the point I
4 was trying to raise, that what we may or may not be given as being an original
5 or true and accurate copy of the document, may not actually be the case,
6 especially if the intelligence agencies themselves are providing the legible
7 version of the copy of the document rather than --

8 DR. NELSON: They do mark that though.

9 MR. BACKIS: What?

10 DR. NELSON: They mark that or they have a blank.

11 MR. BACKIS: That was the issue I was raising rather than
12 somebody --

13 DR. NELSON: I see.

14 MR. BACKIS: -- else.

15 CHAIRMAN TUNHEIM: Well, thank you, Mr. Backis. We appreciate
16 your strong support for the board's draft view on the issue of artifacts
17 and appreciate your coming from Albany today to be with us. Thank you.

18 MR. BACKIS: Thank you for the chance to testify.

19 CHAIRMAN TUNHEIM: Is there any further business to come before
20 the review board today?

21 [No response.]

22 CHAIRMAN TUNHEIM: Seeing none, is there a motion to adjourn?

23 DR. JOYCE: So moved.

24 CHAIRMAN TUNHEIM: Is there a second?

25 DR. HALL: Second.

1 CHAIRMAN TUNHEIM: I thank you all for joining us today, and
2 we hope to be able to finalize our definition at our Boston meeting later
3 this month. Thank you.

4 The meeting is adjourned.

5 [Whereupon, at 3:30 p.m., the above-entitled proceedings were
6 concluded.]
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