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UNITED STATES OF AMERICA  
ASSASSINATION RECORDS REVIEW BOARD

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*Assassination Records Review Board  
National Archives  
7th & Pennsylvania Avenues, N.W.  
Washington, D.C.*

*Tuesday, March 7, 1995*

*The above-entitled proceedings commenced, pursuant to notice, at  
1:00 p.m., John R. Tunheim, Chairman,  
presiding.*

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PRESENT FOR ASSASSINATION RECORDS REVIEW BOARD:

JOHN R. TUNHEIM, *Chairman*

HENRY F. GRAFF, *Member*

KERMIT L. HALL, *Member*

WILLIAM L. JOYCE, *Member*

ANNA K. NELSON, *Member*

DAVID G. MARWELL, *Executive Director*

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

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JOHN JUDGE

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JOSEPH BACKES

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P R O C E E D I N G S

[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

1 board. Chris Barger, who's an analyst, Jean Barbou, the senior analyst, Laura  
2 Denk, an analyst, Phil Golrick, senior analyst, Eric Schencoff, who is an analyst,  
3 Michelle Saquin, who is an analyst, Kevin Tiernen, also an analyst, Eileen Sullivan  
4 from our administrative staff in the back, and also Valerie Sales, administrative  
5 staff, and Joan Zimmerman, the senior analyst.

6 We have introduced additional staff at prior meetings of the board.

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

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

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

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

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

8 Steve.

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

13 However, there have been some records issues that have come up that  
14 I would like to make the board aware of.

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

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

4                   But we are making researchers aware of the opening of records as  
5 they come available. These include several CDs, commission documents, which  
6 researchers have been interested in over the years. As these things become  
7 available, we are making interested researchers aware of those openings and making  
8 those documents available.

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

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

16                   A third issue I want to make the board aware of is that we have been  
17 receiving, for some time now, CIA documents which were originally postponed by  
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1 the CIA for coordination with other agencies. And when the CIA transferred their  
2 records in August of 1993, and the collection -- when the collection first opened,  
3 those documents were indicated in the files by record identification forms with a  
4 stamp on them which said, "pending coordination."

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

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

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

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

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1                   We are working on the -- continuing to work on that process. I  
2 indicated in December that we had a server in the building. But now we are in the  
3 process of obtaining a separate server to, basically, serve the research room.

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

7                   So we're still working on that and plan to have that available as soon  
8 as possible.

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

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

16                   The first portion of the 201 file, the first 22 boxes of it, after we had  
17 reboxed it, had been open prior to the establishment of the collection under the Act

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1 and as such, the majority of those documents did not require record identification  
2 forms, and therefore, will not be in the computer system.

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

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

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

13           Let me say, however, that there are a few data entry problems in the  
14 data that we noticed. We have met with CIA personnel to highlight those problems  
15 and they are working on making sure that those problems won't occur in the next  
16 transfer of diskettes.

17           However, my people at the archives, the computer people we're

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1 working with tell me that we can fix those errors once we know what information  
2 we need to correct without any difficulty and without any danger to the master  
3 system.

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

7           We have also begun the process of transferring to our motion picture,  
8 sound and video branch non-textual items within the collection. The first transfer  
9 occurred from the Lee Harvey Oswald Headquarters files. Many -- I'd say most of  
10 these non-textual items seem to be in the records of the FBI and what they call  
11 their bulky exhibits.

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

16           Now, that branch is in the process of beginning the preservation work  
17 on those items. They will make a preservation copy of the tape recording, of the

1 sound recording so that the original will be preserved. Then, they will go through  
2 the process of making reference copies of those tape recordings so that they can be  
3 used by -- either in the research room, or so reproductions can be made for  
4 distribution to the public.

5 Now, this is not a new process, really. This branch, the motion  
6 picture, sound and video branch, has had custody of the sound recordings and films  
7 of the Warren Commission for many years and have been responsible for making the  
8 -- for reference service on those records for many years. So this is, simply, a  
9 continuation of our standard practice.

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

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

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

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

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

11                      Now, the CIA has reviewed these documents and has provided us with  
12          recommendations on postponement of the information contained in those files.

13                      However, with the -- as in the past, with the review of the other  
14          HSCA records that are in the collection, the ultimate authority for the disclosure of  
15          these records falls with that National Archives working as an agent of the House of  
16          Representatives.

17                      Of course, the other thing is that we cannot make these available yet

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1 because these items still are not in the database. It is the responsibility of the  
2 National Archives to enter these items into the database.

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

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

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

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

15 CHAIRMAN TUNHEIM: Questions from the board?

16 Go ahead, Dr. Joyce.

17 DR. JOYCE: Steve, you referred to the transfer to the audio-visual, I

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1 think. I can't remember what you -- sound and motion --

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

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

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

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

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

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

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1 MR. TILLEY: Oh, yes. Yes.

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

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

4 CHAIRMAN TUNHEIM: Further questions?

5 [No response.]

6 CHAIRMAN TUNHEIM: I guess not.

7 Thank you very much, Mr. Tilley, for providing us with an update  
8 today.

9 MR. TILLEY: You're welcome.

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

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

15 So we're not in a position yet of finalizing the guidance because we  
16 still have some time left in the comment period, but we wanted to have an  
17 opportunity to hear from a select number of individuals who have kindly submitted

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1           *comments to us already.*

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

6                         *Ms. Walter.*

7                         *MS. WALTER: Thank you, Mr. Chairman and members of the board*  
8           *and our executive director.*

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

13                         *In that vein, proposed interpretive regulations were published in the*  
14          *Federal Register on February 8th, 1995. The citation is 60 Federal Register 7506*  
15          *for notice and public comment.*

16                         *The comment period, as you noted, ends on this Friday, March 10th,*  
17          *by the close of business. And in the proposed regulations, there are instructions for*

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1 filing public comment, either by fax, by personal delivery or by mail.

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

5 Courtesy copies of these proposed interpretive regulations were  
6 provided to the applicable agencies who are likely to have assassination records or  
7 have identified records in the past. Courtesy copies were also provided to the  
8 oversight committees on Capitol Hill.

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

14 The proposed interpretive regulations address several issues, including  
15 the scope of the terms "assassination record" and "additional records and  
16 information," and also address certain other implementation issues, including the  
17 proposed publication of a catalog of assassination records.

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

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

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

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

17                   Some of the comments were very substantive. Others were more

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1 stylistic. We appreciate both sets of comments, and we'll consider all of them  
2 carefully.

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

7 One request for clarification concerns the breadth of the definition  
8 and, in particular, asks that the board clarify that additional records and  
9 information will be requested on a reasonable basis for the purposes of identifying  
10 and reviewing additional records, and also asks that the board clarify that requests  
11 such as that will be made in writing.

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

17 Just very briefly -- these are all, again, in the public record -- there

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1 is a concern that the language in Section 1400.1 that says, that describes records  
2 that may have led to the assassination, the concern is that that language is a  
3 causation viewpoint and that a historical understanding of the event doesn't  
4 necessarily flow from things that just led up to the event.

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

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

10           Going back to the "may have led to" language, another suggestion to  
11 replace that language has been "all material that could reasonably be expected to  
12 shed light on the circumstances surrounding the assassination of President Kennedy."

13           Another caution is that we should not be limited to documents that  
14 were used or seen by previous investigations, with the point being made that the  
15 purpose of this board is to find documents that may not have been available to  
16 other investigations.

17           Another comment stated a concern about the need to ensure that

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1 foreign government documents are included and documents from private entities,  
2 like private government subcontractors or private individuals who may have created  
3 or obtained records from sources other than those identified in the interpretive  
4 regulations.

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

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

10 Another commenter objected to the inclusion of second generation  
11 prints where photographs, motion pictures or machine-readable materials are  
12 concerned.

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

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

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1                   Just one or two others that I think the board may want to think  
2 carefully about are comments discussing concerns that agencies be required to  
3 produce records showing previous transfer, destruction or theft of records that  
4 might have been included in the scope of our definition.

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

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

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

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

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

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

4                   [No response.]

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

6                   MS. WALTER: Thank you.

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

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

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

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

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Mr. Baugh.

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

CHAIRMAN TUNHEIM: You're welcome.

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

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

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

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

CHAIRMAN TUNHEIM: Any questions for Mr. Baugh?

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  
4 the 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 the  
8 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 with you.

11 CHAIRMAN TUNHEIM: Welcome.

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

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

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1 have regarding those comments.

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

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

6 In discussing the FBI's comments on the proposed regulation, I want  
7 to emphasize the Bureau's desire to work with the board to identify any FBI records  
8 that are assassination-related but may not have previously been identified as such,  
9 as well as records that may be useful to the board for evaluative and interpretive  
10 purposes.

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

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

18

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

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

9 The other aim of the suggested language is to have incorporated in  
10 the subsection specific mention of language contained in the report of the Senate  
11 Committee on Governmental Affairs that accompanied the Act regarding the need  
12 for the board to "Act on a reasonable basis in requesting additional information or  
13 records," and to be, "guided by the principle of the need to protect sources, methods  
14 and confidential matters," in making such requests.

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

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

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

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

12                   Turning to Section 1400.5, the FBI is asking that the language be  
13 changed to take into account incidental -- what we will refer to as incidental  
14 references to persons who figured into the assassination investigation that appear in  
15 FBI documents clearly unrelated to the assassination.

16                   These "see" references in Bureau parlance have been located through  
17 checks of our indices and appear in documents which can be lengthy that add

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1 nothing to the historical record of the assassination.

2           It has been the Bureau's practice to disclose the portion of the  
3 document relating to the assassination investigation figure, regardless of how  
4 innocuous the information might be, as well as enough of the rest of the document  
5 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 reasonableness  
8 of this practice in its regulation.

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

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

17           The final suggested amendment that is in subsection D of Section

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1 1400.7 involves only a change that will more clearly describe the type of record  
2 being discussed therein; that is, one relating to a particular person rather than one,  
3 "identified with respect to a particular person."

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

6 Changing the subject, with respect to document transfers: The board  
7 is aware that the FBI has already sent over 590,000 pages of assassination-related  
8 records to NARA and I know Steve Tilley is well aware of that, too.

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

13 There are approximately 260,000 pages of HSCA documents, about  
14 40,000 pages of which consist of index cards and other materials and  
15 administrative folders.

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

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

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

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

12 However, the Bureau has asked the board staff to establish its  
13 preference for the order in which the files are processed, and this coordination is  
14 currently underway along with our efforts in regard to the HSCA records. As you  
15 know, we are also going over the material that was postponed in files previously  
16 transferred to see what additional information can now be disclosed on further  
17 examination.

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

4                   Additionally, I want to reaffirm the FBI's commitment, one that  
5 begins with Director Freeh, goes through Assistant Director Baugh, and other  
6 assistant directors responsible for our operations divisions in particular to do  
7 everything possible to further the purpose of the Act.

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

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

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

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

2 But the question I would pose to you is: Does the definition that we  
3 have presented to you, in your judgment, require that the FBI go back and in any  
4 way reconsider the scope of the search that it made under the original provision of  
5 the statute without a definition provided by this board?

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

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

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

17 DR. HALL: I guess the character of my

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1 question -- and to some it may appear to be the fox kind of asking the hens, "What  
2 else is left?"

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

7 MR. O'CONNOR: Well, I guess, first of all, we didn't have any  
8 problem with the definition, and the definition is all about doing what the Act is all  
9 about as far as we're concerned, which is identifying records that are going to  
10 complete the historical record. If we've got more that we haven't previously  
11 identified as such, you know, we probably would need some guidance from the  
12 board in that regard as to where we might look and what kinds of documents, the  
13 kinds of documents in which you might be interested. Does that --

14 DR. HALL: Yes. I think what you're saying is you don't need to hire  
15 90 more people to go out and start all over again.

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

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1 would probably need to be pointed in directions, and we're ready and willing to be  
2 pointed.

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

5 MR. O'CONNOR: I guess so.

6 [Laughter.]

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

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

13 MR. GRAFF: Thank you.

14 CHAIRMAN TUNHEIM: Dr. Joyce.

15 DR. JOYCE: You said that you had transferred some 590,000 pages  
16 to the archives. I'd like to ask you a few things about that transfer and related  
17 matters.

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1                   First, of the pages that you have reviewed, how many have you  
2 withheld from transfer?

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

5                   DR. JOYCE: Could you --

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

8                   DR. JOYCE: That's fine.

9                   MR. O'CONNOR: But my recollection is there are approximately  
10 14,000 pages that contain postponements that range from one word or item on a  
11 page, an item being a symbol number, to more extensive postponements, and there  
12 are -- and I'd like to double check this, but my recollection is there are 700 or 800  
13 pages that were withheld in their entirety because we postponed their contents.

14                   But again, I'd like to go back to something I mentioned before. We're  
15 going back through these documents that contain postponements to see what more  
16 information we can release and as Phil Baugh mentioned, we have hired, under  
17 contract, some former agents to help us go through and to expose more of this

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1 information by, among other things, questioning the reason for having to postpone  
2 some of this information, whether it be source-related or whether it  
3 was postponed because of classification reasons.

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

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

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

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

10 MR. O'CONNOR: Yes.

11 DR. JOYCE: -- are there redactions?

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

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

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

17 If there was any postponement on a page, we've held onto for our

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1 staff's review, the original page. And there's been a copy of the page sent out there  
2 with the redactions shown.

3 DR. JOYCE: And what is --

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

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

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

12 MR. O'CONNOR: Sure.

13 DR. JOYCE: -- related questions. What proportion of those  
14 590,000 pages would you say had redactions in them?

15 MR. O'CONNOR: Well, I'd have to do some quick math, you know,  
16 just adding those two numbers that I gave you, the 14,000 and the 800 -- or  
17 15,000, well, roughly 15,000 pages with postponements. There is a percentage of

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1 590,000.

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

4 MR. O'CONNOR: Yes.

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

6 MR. O'CONNOR: Yes.

7 DR. JOYCE: Okay.

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

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

15 That's another thing we're reviewing because we may well have to  
16 either disclose, particularly after reviewing the regulation -- it's probably something  
17 we need to talk about because we may have to either disclose or postpone

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1 information that we previously considered not assassination record material that's  
2 in a file like Oswald or JFK that's an assassination record.

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

6 DR. JOYCE: All right.

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

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

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

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

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

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

8                   MR. O'CONNOR:  Well, we've got to get through the HSCA material,  
9                   which, again, consists of about 260,000 pages, and any other documents that you  
10                  might ask us to -- you might ask to review as possibly assassination-related; so at  
11                  least 260,000, roughly 260,000 pages.

12                  DR. JOYCE:  Thank you.

13                  MR. O'CONNOR:  Sure.

14                  CHAIRMAN TUNHEIM:  Dr. Nelson.

15                  DR. NELSON:  If I understand -- I guess I want a clarification to  
16                  make sure we understand.  Basically, most of your review has been of the House  
17                  Committee records and everything that was gleaned for previous examination or

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1 investigations -- in other words, that's what most of your review work has been.

2 MR. O'CONNOR: Yes.

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

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

9 DR. NELSON: Yes.

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

13 I think, thirdly, again, I get back to the fact that we really need some  
14 guidance as to where other documents that we have that would be of interest might  
15 rest.

16 What we have are the documents that related to all of the  
17 investigation, our investigations that were conducted related to the assassination.

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1 DR. NELSON: So that was basically the definition you had to start  
2 with.

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

7 DR. NELSON: It's different.

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

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

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

17 But you heard Ms. Walter's description of some of the issues that had

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1 been raised. 1400.1, the interpretation of "assassination record," (a), under that  
2 has the phrase, "Interpret activities and events that may have led to the  
3 assassination of President Kennedy."

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

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

11           CHAIRMAN TUNHEIM: Some of it --

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

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

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

6                   CHAIRMAN TUNHEIM: Yes.

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

9                   CHAIRMAN TUNHEIM: Yes.

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

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

16                  CHAIRMAN TUNHEIM: Yes.

17                  MR. O'CONNOR: -- because you're going to want to focus on things

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1 that are relevant.

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

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

8 CHAIRMAN TUNHEIM: Yes.

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

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

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

13 CHAIRMAN TUNHEIM: Sure.

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

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

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

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CHAIRMAN TUNHEIM: Go right ahead, Dr. Hall.

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

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

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

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MR. O'CONNOR: Under the statute?

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DR. HALL: Yes.

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

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16

DR. HALL: Sure.

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

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1 DR. HALL: I can appreciate that response.

2 MR. O'CONNOR: But again, I want to emphasize the fact that we  
3 want to continue to do what we're doing. We intend to do what we're doing,  
4 which is to cooperate in every way.

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

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

11 That's all.

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

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

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

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

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

6                   [Laughter.]

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

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

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

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

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

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

15                  Thank you, Mr. O'Connor.

16                  I want to again express the appreciation of the board to the Bureau  
17                  for the high priority that has been given to review of assassination records. Just

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1 the number of staff assigned is very impressive. We also appreciate the assurances  
2 that the director gave us of full cooperation and assistance. So pass that along to  
3 him if you would.

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

7 CHAIRMAN TUNHEIM: Thank you.

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

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

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

17 In the definition -- and perhaps it's not really a definition. It's a  
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1 scope of record since the definition is provided by the statute, and what you're  
2 putting forth is how best that definition might be interpreted along the way.

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

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

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

15 To me, "may have led to" would be something that goes along those  
16 spokes, the center being the assassination, so that each spoke is a "may have led to  
17 the assassination"; whereas, a "reasonably relate to" encompasses everything within

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1 the wheel, and documents that may fall in between those spokes.

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

4 In 1400.2, one of the things we suggested was an inclusion of a new  
5 paragraph that would, more or less, go alongside of public and private records in  
6 that -- sort of a catch-all provision, just in case that something comes to your  
7 attention that would have not necessarily fallen within an elaborated interpretation.

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

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

15 Governor Connelly died of -- I believe, partly in due to some chest  
16 problems and lung problems. More current X-rays of his chest area and the areas  
17 that were damaged in the assassination might lead to additional information as to

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1 the extent of the ballistics and wound injuries that occurred, as you know, some  
2 fragments still remained within the Governor.

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

7 In Section 1400.3, again, we suggested a new paragraph that dealt  
8 with private individuals that did not fall within paragraphs A through E, in the  
9 sense that that section does deal with private individuals who may have been in  
10 government service and brought documents home, which we know those individuals  
11 had done so, or even private individuals who had been supplied with documents that  
12 had been originally in the possession and creation by government agencies, entities,  
13 et cetera.

14 We suggest that just to leave it open to your possibility to go after  
15 private records. We had suggested or cautioned, in our testimony back in October,  
16 that you may run afoul of the takings clause in the Fifth Amendment for  
17 compensation, but that it still gives you the opportunity to do so and decide,

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1 because it may well be that once you do track down individuals who have -- private  
2 individuals who have always been private individuals who have created what would  
3 otherwise be assassination records had the government created them, that you can  
4 work out an arrangement for them to provide you copies. You might not ever  
5 have to go through the line of debating whether or not your taking of that  
6 document would be considered a taking, an illegal taking that merits compensation.

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

10           In some cases, copies could be referring to a photocopy, or it could  
11 refer to a transcription of the original document, and a transcription of the original  
12 document might sometimes leave out valuable information that even a photocopy  
13 would have included. Then, again, a photocopy might leave out valuable  
14 information that the original includes because of color coding on the documents.

15           That's something that should be further examined, as well as if there  
16 is an illegible section of the document. Those people that have been utilizing FOIA  
17 for many years can certainly attest that many times the best available copy

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1 provided to us is illegible entirely.

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

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

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

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

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

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1 there is a life-span of the board -- to ensure that the broadest scope is originally  
2 applied. Then, we can further refine it as time goes by.

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

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

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

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

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

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

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

13                   That's still the burden of the agencies to first go and look through  
14 those files, and then for the research community to provide you with additional  
15 information.

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

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CHAIRMAN TUNHEIM: Thank you, Mr. Zaid.

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Questions?

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[No response.]

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CHAIRMAN TUNHEIM: I have one, just one question, and my

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question relates to the takings issue and the copies issue that you raised in your

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testimony, and perhaps it's not an issue that we can best deal with through the

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guidance on the definition of what an assassination record is.

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But I'm concerned that there may well be very relevant information

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in the hands of private individuals which certainly, obtaining the originals raises the

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takings issue; obtaining copies does not, although these individuals may be intending

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to write their experiences and to use their own records which they may have

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gathered through their own government experience or through other sources.

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Do you have any suggestions for us on how best to deal with that

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issue, short of just simply subpoenaing those records at this stage or copies of those

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records? Are there any definitional issues that help us in our potential problem

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with this issue?

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MR. ZAID: On a related context, the HSCA dealt with some of these

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1 issues in the sense that when they had located particular information within private  
2 hands -- and I recall specific incidents of a film, I think it was the Bronson film,  
3 where the individual's lawyer contacted the HSCA and indicated that they would be  
4 willing to provide the film, the original film, or maybe a copy to the HSCA for a fee.  
5 And the HSCA turned them down and never did examine the film.

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

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

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

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

8                   I think in most cases, from what the community is aware of, what  
9 documents might be in private hands, those individuals have always indicated a  
10 willingness to assist and provide those documents.

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

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

17                   CHAIRMAN TUNHEIM: Excuse me, Mr. Zaid. Can we hold off for

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1 one second while we change the tape?

2 [Pause.]

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

4 MR. ZAID: The other issue you might want to have Ms. Walter or  
5 other staff counsels examine is the effect on private items that are in the possession  
6 of government agencies already and whether or not there's already been a taking.  
7 There you have some of the films, the Zapruder film among them already being in  
8 the possession, I believe, of the Archives; and whether or not, there has, in effect,  
9 been a technical taking.

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

14 But I think it's an issue that you'll be able to get around and then  
15 weigh at the end, if someone is uncooperative, whether or not the item you're  
16 searching for justifies the possibility of paying out just compensation.

17 CHAIRMAN TUNHEIM: Thank you. Anything further?

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Dr. Nelson?

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

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

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

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

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

You're then put in a quandary in that you need to rely on the research community or those members that are on your staff that have subject matter knowledge to say that these particular records, not necessarily the specific records but groups or names of individuals who have, in some way, wandered into,

1 in other senses, this assassination collection, may be located elsewhere within filing  
2 systems.

3 DR. NELSON: Do you think we should use our staff to help trace  
4 these matters and not just rely on the judgment of the researchers? I mean, that  
5 was a very iffy thing that you were just asking us to do.

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

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

16 But it's sort of in a circular motion because, in order for you, as a  
17 board and staff, to ensure that the agencies cooperate, you need to know what it is

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1 you're going to make them cooperate with or for or look for. So you do need to, in  
2 a sense, rely on either the community to provide you information or your own staff  
3 to undertake research.

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

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

8 CHAIRMAN TUNHEIM: Sure. Dr. Hall.

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

11 "May have led to" would seem to create a condition precedent, while  
12 "reasonably related to" would signify relation in a more generic sense. Could you  
13 expound on that, elaborate on what you see on page 2 there in the next to the last

14 --

15 MR. ZAID: Yes.

16 DR. HALL: -- full paragraph?

17 MR. ZAID: That was the purpose of my wagon wheel example, so to

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1 speak. I've been trying to think of how I could best explain that. I think, perhaps,  
2 let's use the subject of Watergate.

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

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

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

17 But if you apply it to another event, it's entirely relevant and, indeed,

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1 might have been classified if it had been in a document relating to another event.

2 That's why we said, in a sense, condition precedent.

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

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

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

13           But at least you have the ability, should it come up, for you to take a  
14 step backwards and say, "Well, we've changed our mind. We're going to --  
15 additional information has come to our attention. We're going to adopt a broader  
16 definition, and our interpretive regulations allow us to do that," rather than go  
17 through an interpretation through the way you would see it now and then come

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1 across additional information and say, "I wish we had made the definition a little bit  
2 broader and had given us that room for movement, but now we're being held to  
3 this, which is our own language, to this interpretation."

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

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

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

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

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

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

8 I found it interesting in the exchange with yourself and Mr. O'Connor  
9 to see what might happen -- and this doesn't necessarily relate only to the FBI --  
10 but what might happen should the board's interpretation of "may have led to,"  
11 adopting your own language, and the agency's definition of "may have led to" differ.

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

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

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

5                   That question is certainly not going to be a novel question. It might  
6 be for assassination records. It's certainly not going to be for interpretive guidelines  
7 of federal agencies.

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

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

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

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

16                  MR. ZAID: Sure.

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

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1           our discretion.

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

8                       DR. HALL:   Surely on grounds of reasonableness.

9                       MR. ZAID:   Of course.

10                      DR. HALL:   Thank you.

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

13                      MR. ZAID:   Thank you.

14                      CHAIRMAN TUNHEIM:   Thank you.

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

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

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

I have submitted a fairly detailed comment addressed primarily to the question of the scope of the term "assassination record," and my feeling that it is not as broad as it should be to make sure that no records which might shed light on the Kennedy assassination and related controversies fall through the cracks.

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

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



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

6           I think, for the sake of clarity, if nothing else, that those terms need  
7 to be included in some way in the definition. Many government agencies,  
8 particularly the FBI and the CIA, investigate persons or organizations. They keep  
9 materials filed by persons or organizations. If you're going to get at the materials  
10 that may help explain those persons, may show their relationships to the  
11 organization or to other organizations or to other persons, then you need to be able  
12 to get at the materials in their files.

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

17           The problem is how to get at those materials. And I think that the

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1 definition needs to include some references that, where it is necessary to understand  
2 events and activities or where it is necessary to shed some light on the relationships  
3 and associations and activities of persons or organizations, we need to be able to  
4 have information available, related to those programs and operations.

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

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

10 CHAIRMAN TUNHEIM: Thank you, Mr. Lesar.

11 Questions?

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

14 MR. LESAR: Sure.

15 DR. HALL: -- about these issues. As with Mr. Zaid, I am very  
16 interested in understanding kind of the underlying reasoning that the "may have led  
17 to" as establishing some theory, giving credence to some theory relative to the

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1           *assassination as opposed to any other theory.*

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

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

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

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

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

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

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

8                   DR. HALL: We're getting close, I think, to what, I believe it was  
9 Justice Douglas called *Penumbras*.

10                  MR. LESAR: Yes.

11                  [Laughter.]

12                  DR. HALL: *Penumbras* of emanations. And it's an interesting  
13 problem.

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

17                  [Laughter.]

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

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

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

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

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

16 MR. LESAR: Yes.

17 DR. HALL: And there's nothing in this legislation, with all due  
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1 respect to anyone who has ever written on the subject, that I discern that asks us  
2 again to elaborate on the full course of post-World War II American history and, as  
3 a result, reasonableness is an interesting concept. I guess I would even pose -- just  
4 to conclude, Mr. Chairman, I would pose the same question to you that I posed of  
5 Mr. Zaid, and that really is: At what point do we know that reasonableness has  
6 ended and unreasonableness has begun?

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

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

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

15 DR. HALL: Thank you.

16 MR. LESAR: Yes.

17 CHAIRMAN TUNHEIM: Dr. Nelson?

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1 DR. NELSON: Given the fact that our definition includes all  
2 investigations and the definition that we put in the Federal Register, our definition  
3 so far -- how could we avoid your point that you've added, "persons or  
4 organizations which figure in any official or unofficial investigation of the  
5 assassination"?

6 It seems to me that that covers it simply by covering the  
7 investigations. That is, these investigations included persons and organizations. I  
8 mean --

9 MR. LESAR: Well --

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

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

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

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

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

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

5 CHAIRMAN TUNHEIM: Anything further?

6 MR. GRAFF: I would just like to ask: Mr. Lesar, at what point do  
7 you think the research community -- and you may know the research community  
8 better than, perhaps any  
9 of -- certainly the board collectively, although some members individually of the  
10 board would know.

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

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

16 MR. GRAFF: Would you venture --

17 MR. LESAR: I have no crystal ball.

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

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

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

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

14                   CHAIRMAN TUNHEIM: Thank you, Mr. Lesar.

15                   MR. LESAR: Thank you.

16                   CHAIRMAN TUNHEIM: We appreciate your help.

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

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1

Welcome back, Mr. Judge.

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MR. JUDGE: Thank you.

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

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

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noted in my written comments that I concurred in large part with Jim Lesar's

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concerns, and so I won't go into a great deal concerning that.

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I did have some indications beyond that that I felt were -- since this

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sort of definition or regulation by the agency should track the legislative definitions

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and ideas, some things that I was concerned with were omitted. The two were

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mentioned earlier. One is records of foreign governments didn't seem to be

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specifically identified, and the other was records of -- which is mentioned in one

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section of the Act -- of subcontracting or contracting agencies of the government

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may be covered in your view in the language about entities.

14

But I thought it was worth being specific about that because I think

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it's an interesting and unusual part of the investigation that hasn't gone on before.

16

So those two areas being added in, I think, would possibly be important.

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There are -- and I mentioned this in earlier testimony -- a number

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1 of indices and indexes and lists and databases compiled over time by the research  
2 community that relate to the various people and organizations or operations,  
3 names, that I thought would be more useful in terms of this search than what I had  
4 described as the sort of bureaucratic imagination that an agency might come up  
5 with in terms of who to look at.

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

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

12 I don't know to what extent there's feedback from the indexes that  
13 are being created at the National Archives in terms of future search, whether they  
14 are, in fact, reviewing areas that agencies might not have. I've given you names for  
15 them.

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

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

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

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

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

17 I'm glad that you're taking the input of the research community

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1 seriously, and I do think that there will be a continuing effort on the part of the  
2 research community to provide you with clues in that direction.

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

6 But on the other hand, the Kennedy assassination does exist within a  
7 historical context, at least for the time that he was in office. That may be relevant  
8 to the assassination itself.

9 CHAIRMAN TUNHEIM: Thank you, Mr. Judge.

10 Are there questions?

11 [No response.]

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

13 MR. JUDGE: Thank you.

14 CHAIRMAN TUNHEIM: Mr. Joseph Backes. I guess he's not here.

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

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

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1                   Mr. Backes, you wrote to us on a number of topics, and I guess what  
2 we'd like to hear from you today on is simply the portion of your comments to us  
3 that focus on the definition. We gathered your comments on other materials, but  
4 that's what we'd like to focus on today.

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

16                   Part of her reasoning is she wants to preserve these items, as do we  
17 all. However, I think that is a false issue. I think that they're trying to prevent

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1 access to them rather than telling us that they're trying to preserve them, and I  
2 was very concerned about that.

3 I found Public Law 89-318, a law signed by President Johnson in  
4 1965, in which I believe everything that she is going to call an artifact has already  
5 been classified as a record. She was telling you that you might be setting a  
6 precedent if you called these things records. Well, I think that was established in  
7 1965. I would ask the board if they agree with that, that yes, those things were  
8 called records in 1965, and you don't have to worry about setting a precedent.

9 Is that true? Would you agree with that?

10 CHAIRMAN TUNHEIM: Well, Mr. Backes, we heard testimony from  
11 the National Archives at our last public meeting. But we did include in our draft,  
12 a definition which we are now considering, the term "artifacts" as one of the types  
13 of materials included in the scope.

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

16 MR. Backes: Okay.

17 CHAIRMAN TUNHEIM: -- despite the testimony of the National

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1 Archives and their concern about the precedential problems --

2 MR. Backes: Yes.

3 CHAIRMAN TUNHEIM: -- associated with that.

4 MR. Backes: I would like, also, to wonder what Ms. Nesbit meant  
5 when she said that items were deassentioned to the Smithsonian.

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

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

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

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

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1 talking about.

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

5 I got that impression anyway. And they will review their material,  
6 hand it over to you, rather than you taking the active position that you will define  
7 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 I'm not  
10 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 of the  
13 things being released -- you'll hear boxes instead of page numbers from, like Mr.  
14 Steve Tilley and such.

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

17 So don't be impressed with boxes being released and numbers being

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1 released. Unfortunately, we don't have, as individuals, the intelligence to know  
2 immediately, but the research community is somewhat large and we have some  
3 talented people in it.

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

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

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

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

18

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

3                   CHAIRMAN TUNHEIM: Well, you raise a good point, Mr. Backes,  
4 about the copies issue, and this is one that the board has spent considerable time  
5 talking about.

6                   Certainly, we would like to have the originals of everything. I mean,  
7 that really is obviously the best evidence of the particular record.

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

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

14                   I guess one way of looking at it is if the copy is readable, is it better to  
15 have a copy that's accessible to everyone or to not have access to the original?

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

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1                   We're running a little short on time today. Do any members of the  
2 board have questions for Mr. Backes?

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

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

8                   I think that, you know, should be -- but we're very aware of many of  
9 the things that you have raised in terms of the problems involved, also that there  
10 are often very many illegible papers given to all researchers, partly because of the  
11 nature of the typewriters, copies, of copying machines. I think we intend to do our  
12 best to be sure that there are good copies. But we do know that.

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

16                   It's not a question of going from illegible to legible, but from the  
17 original intelligence agency itself, a key word or phrase may have been released --

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1 deleted.

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

8 DR. NELSON: They do mark that though.

9 MR. Backes: What?

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

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

13 DR. NELSON: I see.

14 MR. Backes: -- else.

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

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MR. Backes: Thank you for the chance to testify.

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CHAIRMAN TUNHEIM: Is there any further business to come before

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the review board today?

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[No response.]

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

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DR. JOYCE: So moved.

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CHAIRMAN TUNHEIM: Is there a second?

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DR. HALL: Second.

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CHAIRMAN TUNHEIM: I thank you all for joining us today, and we

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hope to be able to finalize our definition at our Boston meeting later this month.

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Thank you.

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The meeting is adjourned.

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

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concluded.]

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