

THE ASSASSINATION MATERIALS DISCLOSURE ACT OF 1992

HEARING
BEFORE THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SECOND CONGRESS
SECOND SESSION
ON
S. J. RES. 282

TO PROVIDE FOR THE EXPEDITIOUS DISCLOSURE OF RECORDS
RELEVANT TO THE ASSASSINATION OF PRESIDENT JOHN F. KENNEDY

MAY 12, 1992

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denied, you say postponed. I am curious as to how long the postponement will be. Will it be until the national security or privacy are no longer threatened? Do we want to require a mandatory review every two years?

Going along, some of the language is fairly broad. We had the exchange here a few moments ago about an intelligence agent. Then there is another section that gives us an exception—"an intelligence method which is currently utilized, or reasonably expected to be utilized."

The one that troubles me most, although I know there is a reason for it, but I just am concerned about the doors it may open, is ". . . an invasion of privacy of a living person, whether that person is identified in the material or not." I am concerned about that being used as a ground for requesting postponement of disclosure.

So I think, consistent with all that you have said here, I hope that you will give us the benefit of your second look at that Section 6 of this proposed Act.

Chairman GLENN. Thank you.

Senator Cohen?

Senator COHEN. No further questions.

Chairman GLENN. Good. Thank you very much. We may have additional questions. It has been a long session this morning here, and we have additional questions from other members or questions after we review. We would appreciate an early reply so it could be included in the record. Thank you very much. We appreciate.

Mr. STOKES. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much.

Chairman GLENN. The next panel is the Honorable Robert Gates, Director of the Central Intelligence Agency, and the Honorable William Sessions, Director of the FBI. Gentlemen, you have been very patient here this morning. I know we had told you you would be on by about 10:00 here. We are about an hour late on that, or a little over. We appreciate your forbearance this morning. We look forward to your testimony this morning.

Mr. Gates, if you would lead off, we would appreciate it very much.

TESTIMONY OF THE HON. ROBERT M. GATES, DIRECTOR, CENTRAL INTELLIGENCE AGENCY

Mr. GATES. Thank you, Mr. Chairman. Mr. Chairman, I am here today at your request to provide my views on S. J. Res. 282, the Assassination Materials Disclosure Act of 1992, and to describe the nature of the documents held by the Central Intelligence Agency that relate to the assassination of John F. Kennedy.

Senator SASSER. Mr. Chairman, I wonder if the Director could pull the mike just a little bit closer? Thank you.

Mr. GATES. I very much appreciate the opportunity to speak on this important matter.

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution, that efforts should be made to declassify and make available to the public as quickly as possible Government documents relating to the assassination of

President Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of President Kennedy.

Even before the introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible, consistent with the protection of intelligence sources and methods.

This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older and national intelligence estimates on the former Soviet Union that are 10 years old or older.

In addition to the systematic review of 30-year-old documents, I have directed the history staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

Because of high interest in the JFK papers, I am not waiting for legislation or other agencies to start declassifying documents belonging to CIA. The Historical Review Group, at my direction, already has begun its review of the documents related to the assassination of President Kennedy, and I am happy to report that the first group of these records, including all CIA documents on Lee Harvey Oswald prior to the assassination, has been declassified with quite minimal deletions and is being transferred to the National Archives for release to the public.

This is, I acknowledge, a small fraction of what we hold, but it is an earnest of my commitment immediately to begin review for declassification of this material. Indeed, as I speak, the reviewers are going through a substantial number of documents and I anticipate that many of these will be released shortly.

As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many as possible. In fact, I recently approved a new CIA declassification guideline for our historical review program which specifically directs a presumption in favor of declassification. I believe we can be very forward-leaning in making these documents available to the public, and I have instructed the Historical Review Group to take this attitude to heart. In this spirit, the Agency today will make publicly available these new guidelines for historical review and declassification.

To understand the magnitude of the effort involved in reviewing these documents for declassification, it is important to place them in some context. The CIA's collection of documents related to the assassination of President Kennedy consists of approximately 250,000 to 300,000 pages of material. This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations, and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination.

Unfortunately, and for reasons that I do not know, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized, all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.

These records include documents that CIA had in its files before the assassination, a large number of records that CIA received later as routine disseminations from other agencies, as well as the reports, correspondence, and other papers that CIA prepared in the course of the assassination investigations. I should emphasize that these records were assembled into the present collection as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations.

Prior to President Kennedy's assassination, CIA held only a small file on Lee Harvey Oswald that consisted of 34 documents amounting to 124 pages, some of which originated with the FBI, the State Department, the Navy, and newspaper clippings. Only 11 of these documents originated within CIA. I have brought along a copy of Oswald's file as it existed before the assassination so that you can see firsthand how slender it was at the time. As I have already noted, we have declassified the CIA documents in this file with quite minimal deletions and we are providing them to the National Archives.

The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities after his return in 1962. By contrast, it was only after the assassination that CIA accumulated the rest of the material on Oswald, some 33,000 pages, most of which CIA received from other agencies after November 22, 1963.

The Committee has asked about documents in our possession generated by other agencies. In fact, much of the material held by CIA originated with other agencies or departments. For example, in the 17 boxes of Oswald records, approximately 40 percent of the documents originated with the FBI and about 20 percent originated from the State Department or elsewhere.

Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 73 reels of microfilm. The microfilms, in part, overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27 percent originated with a variety of other U.S. Government agencies, private organizations, and foreign and American press.

Although our documents do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require considerable effort to review, and as I said earlier, at my direction, this review for declassification is now underway.

A preliminary survey of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff

of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

The CIA cannot release a number of documents unilaterally because of the limits in the Privacy Act which protect the names of American citizens against unauthorized disclosure, the sequestration of many documents by the House Select Committee on Assassinations, and the fact that many of the documents belong to agencies other than CIA.

However, we have already taken steps to lift the sequestration, to coordinate with other agencies, and to begin the process of declassification. If necessary, in the absence of legislation, I will ask the House of Representatives for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents.

While I expect a large amount of the material can be declassified under our program, I assume that there will be information that cannot be released to the public for a variety of reasons, including privacy concerns or the exposure of intelligence sources and methods. Let me take a moment to give an example of this type of material.

During the investigation by the House Select Committee on Assassinations, I understand that security and personnel files were requested on a number of CIA employees. These files contain fitness reports, or performance evaluations, medical evaluations, and credit checks on individual CIA officers. Although irrelevant to the question of who killed President Kennedy, these and other personal documents ultimately ended up in the sequestered collection of documents. I do not believe that the benefit to the public of disclosure of this information outweighs the clear privacy interest of the individuals in keeping the information confidential.

Similar privacy concerns exist with documents containing derogatory information on particular individuals where the information is based on gossip and rumor. Our files also contain the names of individuals who provided us intelligence information on a promise of confidentiality. We would not disclose their names in breach of such a promise. Where we cannot disclose such information to the public, the Agency will make redactions and summarize the information in order to ensure that the maximum amount of information is released, while still protecting the identity of an agent or the privacy of an individual.

If legislation is not passed by the Congress and signed by the President regarding the JFK papers, to enhance public confidence and to provide reassurance that CIA has not held back information relevant to the assassination, I would appoint a panel of distinguished Americans from outside of Government, perhaps including distinguished former jurists, to examine whatever documents we have redacted or kept classified. They would then issue an unclassified public report on their findings.

The effort required to declassify the documents relating to the assassination of President Kennedy will be daunting. However, it is an important program and I am committed to making it work. Even in a time of diminishing resources within the intelligence community, I have allocated 15 full-time positions to expand the

history staff and to form the Historical Review Group that will review the JFK documents and other documents of historical interest.

I believe these actions attest to the seriousness of our intent to getting these papers declassified and released, and to open what remains classified to outside non-governmental review. It is against this background that in response to the Committee's request, I cite our few technical reservations about the mechanism established by the joint resolution to achieve this same result. I intend to address only intelligence community concerns. I will defer to the Department of Justice on any additional problems posed by the joint resolution.

First, vesting in an outside body the determination as to whether CIA materials related to the assassination can be released to the public is inconsistent with my own statutory responsibility for the protection of intelligence sources and methods.

Second, I am concerned that the joint resolution contains no provision requiring security clearances or secure document handling by the assassination materials review board or its staff.

Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the executive director of the assassination materials review board without any review by the President or other Executive Branch agencies.

Fourth, the joint resolution provision for a 30-day period for agencies or departments to appeal decisions by the executive director to release information may not provide sufficient time for meaningful review of what could prove to be a large volume of material at one time.

Fifth, and finally, Section 6 of the joint resolution, which outlines the grounds for postponement of public release of a document, makes no provision for postponing release of documents that may contain Executive privilege or deliberative process, attorney-client, or attorney work product information. While such privileges could be waived in the public interest and, in fact, are not likely to arise with respect to factual information directly related to the JFK assassination, they would be unavailable under the joint resolution in the rare case they might be needed.

These are the technical problems that I believe can be solved and that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy. But, again, whatever the future course of this legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate fully with any mechanism established by the Congress and the President to declassify all of this material.

Mr. Chairman, let me close with a comment on why I am personally committed to getting these documents out. Like all Americans old enough to remember that terrible day in 1963, and as several members of the Committee have alluded to, I also remember where I was and what I was doing.

I was a college student at William and Mary, and I can remember how the word spread like wild fire between classes of that horrible event. I made my way to Washington that weekend and stood at the intersection of Constitution and Pennsylvania Avenues, where I waited for hours to watch the President's funeral cortege. I will never forget it.

I entered public service less than three years later, heeding President Kennedy's inaugural call, a call I think many in my generation heard. He said then, "Now, the trumpet summons us again, not as a call to bear arms, though arms we need, not as a call to battle, though in battle we are, but as a call to bear the burden of a long twilight struggle, year in and year out, rejoicing in hope, patient in tribulation, a struggle against the common enemies of man—tyranny, poverty, disease, and war itself."

Mr. Chairman, the only thing more horrifying to me than the assassination itself is the insidious, perverse notion that elements of the American Government, that my own Agency, had some part in it. I am determined personally to make public or to expose to disinterested eyes every relevant scrap of paper in CIA's possession, in the hope of helping to dispel this corrosive suspicion. With or without legislation, I intend to proceed. I believe I owe that to his memory.

Thank you.

[The prepared statement of Mr. Gates follows:]

PREPARED STATEMENT OF MR. GATES

Mr. Chairman, I am here today at your request to provide my views on S. J. Res. 282, "The Assassination Materials Disclosure Act of 1992," and to describe the nature of documents held by the CIA that relate to the assassination of John F. Kennedy. I very much appreciate the opportunity to speak on this important matter.

Let me begin by stating that I am in complete agreement with the purpose underlying the joint resolution—that efforts should be made to declassify and make available to the public as quickly as possible Government documents relating to the assassination of John F. Kennedy. We hope that opening up and giving journalists, historians and, most importantly, the public access to governmental files will help to resolve questions that still linger over 28 years after the assassination. Further, I believe that maximum disclosure will discredit the theory that CIA had anything to do with the murder of John F. Kennedy.

Even before introduction of this joint resolution, I recognized the need for greater public access to CIA documents of historical importance. Two months ago, I announced the establishment of a new unit within CIA that will be responsible for declassifying as many historical documents as possible consistent with the protection of intelligence sources and methods. This new unit, the Historical Review Group, in the Agency's Center for the Study of Intelligence, will review for declassification documents 30 years old or older, and national intelligence estimates on the former Soviet Union that are 10 years old or older. In addition to the systematic review of 30-year-old documents, I have directed the History Staff in the Center for the Study of Intelligence to assemble CIA records focusing on particular events of historical importance, including the assassination of President Kennedy. The Historical Review Group will then examine the documents for the purpose of declassifying the records.

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begin review for declassification immediately of this material. And, indeed, as I speak, the reviewers are going through a substantial number of documents, and I anticipate that many of these will be released shortly.

As we carry out our program to declassify Kennedy assassination documents, our goal will be to release as many as possible. In fact, I recently approved a new CIA declassification guideline for our Historical Review Program which specifically directs a presumption in favor of declassification. I believe we can be very forward leaning in making these documents available to the public, and I have instructed the Historical Review Group to take this attitude to heart.

To understand the magnitude of the effort involved in reviewing these documents for declassification, it is important to place them in some context. The CIA's collection of documents related to the assassination of President Kennedy consists of approximately 250,000-300,000 pages of material. This includes 64 boxes of copies and originals of information provided to the Warren Commission and the House Select Committee on Assassinations and 17 boxes of material on Lee Harvey Oswald accumulated after President Kennedy's assassination. Unfortunately, and for reasons that I do not know, what we are dealing with is a mass of material that is not indexed, is uncatalogued, and is highly disorganized—all of which makes the review process more difficult. The material contains everything from the most sensitive intelligence sources to the most mundane news clippings.

These records include documents that CIA had in its files before the assassination, a large number of records that CIA received later as routine disseminations from other agencies, as well as the reports, correspondence, and other papers that CIA prepared in the course of the assassination investigations. I should emphasize that these records were assembled into the present collection as a result of specific inquiries received from the Warren Commission or the House Select Committee on Assassinations. I have prepared a chart that illustrates this point.

As you can see, prior to President Kennedy's assassination, CIA held only a small file on Lee Harvey Oswald that consisted of 33 documents (approximately 110 pages), some of which originated with the FBI, State Department, the Navy, and newspaper clippings. Only 11 documents originated with the CIA. I have brought along a copy of Oswald's file as it existed before the assassination so that you can see first-hand how slender it was at the time. As I have already noted, we have declassified the CIA documents in this file with quite minimal deletions, and we are providing them to the National Archives. The records in this file dealt with Oswald's defection to the Soviet Union in 1959 and his activities after his return in 1961. By contrast, it was only after the assassination that CIA accumulated the rest of the material on Oswald—some 33,000 pages—most of which CIA received from other agencies after November 22, 1963.

You have asked about documents in our possession generated by other agencies. In fact, much of the material held by CIA originated with other agencies or departments. For example, in the 17 boxes of Oswald records, approximately 40 percent of the documents originated with the FBI, and about 20 percent originated from the State Department or elsewhere. Our staff is still going through the material compiled at the request of the Warren Commission and the House Select Committee on Assassinations, which includes 63 boxes of paper records and one box that contains 72 reels of microfilm. The microfilms, in part, overlap material in other parts of the collection. We estimate that within the 63 boxes of paper records, approximately 27 percent of the documents originated with a variety of other U.S. Government agencies, private organizations, and foreign and American press.

Although our holdings do include many documents from other agencies, we nonetheless have a substantial collection of CIA documents that will require considerable effort to review, and as I said earlier, at my direction, this review for declassification is now underway. A preliminary survey of these files has provided us some indications of what they contain. Although the records cover a wide variety of topics, they principally focus on CIA activities concerning Cuba and Castro, Oswald's defection to the Soviet Union, and Oswald's subsequent activities in Mexico City and New Orleans. They also include a large number of name traces requested by the staff of the House Select Committee on Assassinations, as well as material relating to the Garrison investigation and Cuban exile activities.

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sary, I will ask the House for a resolution permitting CIA to release the results of the declassification effort on the sequestered documents.

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Third, I am concerned that the joint resolution does not provide the Agency with the opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the joint resolution, documents originated by these entities can be released directly by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies.

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These are the technical problems that I believe can be solved and that will, in fact, expedite the release of documents bearing on the assassination of President Kennedy.

But, again, whatever the future course of this legislation, CIA is proceeding even now to review for declassification the relevant documents under its control. Further, we will cooperate fully with any mechanism established by the Congress and the President to declassify all of this material.

Chairman GLENN. Thank you, Mr. Gates.
Mr. Sessions.

**TESTIMONY OF THE HON. WILLIAM S. SESSIONS, DIRECTOR,
FEDERAL BUREAU OF INVESTIGATION; ACCOMPANIED BY
DAVID G. LEITCH, DEPUTY ASSISTANT ATTORNEY GENERAL,
U.S. DEPARTMENT OF JUSTICE**

Mr. SESSIONS. Good morning, Mr. Chairman, members of the Committee. I have a complete statement which I will file, and there are some diagrams which I will also make available for the record, and a photograph of the files themselves.

Chairman GLENN. Without objection, your entire statement will be included in the record.

Mr. SESSIONS. Thank you, Mr. Chairman. I am pleased to appear before you to testify about FBI investigative records relating to the assassination of President John F. Kennedy. I applaud this process and your efforts. It is fundamental that Government exist to meet the needs of its citizens. An examination of these issues is directly related to satisfying the intense interest and concern of our citizens about the circumstances surrounding that tragic event some 29 years ago.

From the outset, I would like to state emphatically that I favor maximum disclosure, consistent with the law and the legitimate need to protect certain small but highly sensitive categories of information. I can assure you that the FBI will work cooperatively through the Department of Justice with both the Senate and the House to develop a comprehensive approach to these important issues.

As you know, the Government has conducted a number of reviews of the assassination. The Warren Commission, the House Assassinations Committee, and the Church Committee all conducted reviews that I believe can be best categorized as exhaustive. It is my understanding that the FBI provided massive amounts of information to those entities to help ensure that they accomplished their missions. Once again, we desire to be as helpful as we are able.

Immediately following the shooting of President Kennedy, the FBI began a massive investigation. An intense effort was made. Related investigations were conducted and much information was exchanged, as Director Gates has noted, between the various agencies. As is the case with all major investigations, thousands of pages of documents were created to record the results of these efforts and to facilitate the investigations.

Many different kinds of information were recorded in the FBI files. The results of thousands of interviews of witnesses, other individuals with possible helpful knowledge, and contacts with confidential informants were memorialized. Communications between the FBI headquarters and our field offices, and vice versa, were included, as were communications between the FBI and other agencies. Forensic reports were recorded. In all, FBI files relating to the

assassination contained over 499,000 pages of documents, with a few more pages added every time the FBI follows up on a new allegation or a new issue arises.

After Congress amended the Freedom of Information Act in 1974, the FBI began receiving requests for information relating to the assassination. By 1978, four years later, over 200,000 pages of material had been processed and made available to the public through the FBI's public reading room. Many authors, journalists, historians, and others have visited and revisited these materials, which remain available today as a valuable source of historic information.

I would like to briefly describe to the Committee a breakdown of FBI records relating in some way to the assassination. The FBI has four core files that relate directly to the investigation of the assassination. Our cooperation with the Warren Commission and the investigation of Lee Harvey Oswald and Jack Ruby—those are the four core files. There are approximately 499,000 pages in these files, 263,000 of which are duplicate pages that were cross-filed, third agency records, and some FBI records that have not been processed pursuant to the Freedom of Information Act.

Approximately 223,000 pages, or 94 percent of the records we have processed, have already been released to the public. In addition, the FBI has several other much smaller files as a result of other directly related investigations, such as the investigation of Marina Oswald, and these files comprise approximately 22,000 pages, 13,000 of which are duplicate, third agency, or unprocessed pages. Fifty-eight percent of these pages processed pursuant to the Freedom of Information Act have been released to the public.

Of the pages available in the FBI reading room on the main floor at FBI headquarters, approximately 189,000 pages, or 94 percent, are available in their entirety. The remaining 12,000 pages in the reading room reflect some degree of redaction. The information that has not been disclosed or that has been redacted to some degree falls within the exemptions that are enumerated in the Freedom of Information Act and the protections of the Privacy Act.

This includes information that, one, is classified on the basis of national security; two, would disclose the identities of individuals who specifically requested confidentiality; three, would disclose the identities of confidential informants or sources; four, is highly personal information about individuals; or, five, originated with other Government agencies and those agencies specifically requested that the information not be released based upon exemptions applicable to those particular agencies.

While I strongly favor maximum disclosure under the law, there are certain types of information that are particularly critical to successful law enforcement investigations and national security; for example, information that is properly and appropriately classified, information that would identify confidential sources, and information that would disclose sensitive investigative techniques or the types of information the disclosure of which could negatively impact upon our ability to fulfill our mission. Information in FBI files that has not been disclosed publicly falls largely within these descriptions of information.

In any case, I believe it is extremely healthy for the country to have these issues aired and to be resolved. The public interest dic-

tates a final review of this horrific event. Maximum disclosure, consistent with the law and the legitimate need to protect very limited amounts of sensitive information, best serves that purpose. I have spoken to my colleague, CIA Director Bob Gates, who sits beside me, and others within both the Executive and the Legislative Branches. I have heard no one express an opinion to the contrary. I know that represents the position of the Department of Justice.

I applaud the task you are undertaking, and I can assure you that the FBI has been and will be working vigorously to do our part in this matter.

Thank you very much.

[The prepared statement of Mr. Sessions follows:]

PREPARED STATEMENT OF MR. SESSIONS

Mr. Chairman, members of the Committee, I am pleased to appear before you today to testify on S. J. Res. 282, the "Assassination Materials Disclosure Act of 1992."

The tragic event of November 22, 1963, when our President, John F. Kennedy, was shot and killed, shocked the Nation and left indelible impressions on all of us. Many of us, more than 28 years later, can still remember vividly where we were when we heard the terrible news, and how we reacted to it.

The Government has conducted a number of official reviews of the assassination. The President's Commission on the Assassination of President John F. Kennedy (popularly known as the Warren Commission), the Select Committee on Assassinations of the U.S. House of Representatives (the House Assassinations Committee), and the Select Committee to Study Governmental Operations with respect to intelligence activities of the U.S. Senate (the Church Committee), all conducted investigations. Many authors, historians, and others have conducted research; books and articles have been written; and television and media reports and discussions have addressed the murder of the President. Nonetheless, the public interest in the President's death has continued over the years, and has recently been heightened. Today it appears that many Americans have doubts that the assassination has been fully explained.

I agree with the propositions stated in the resolution that "(1) the legitimacy of any government in a free society depends on the consent of the people," and that "(2) the ability of a government in a free society to obtain the consent of the people is undermined to the degree that people do not trust their government." I applaud your efforts to address the perceived distrust or doubts of some of our citizens. I am acutely aware of the need for citizen confidence in our Government. Indeed, the Federal Bureau of Investigation (FBI) depends on the assistance and cooperation of our citizens in its daily activities, and their trust and confidence is essential to the ability of the FBI to carry out its responsibilities. Thus, I wholly endorse the purpose of this bill to release as much information pertinent to the assassination as we responsibly can. Let me briefly describe our efforts to date.

It is important for you and the public to know that a great volume of material from FBI files has already been released to the public through the Freedom of Information Act (FOIA). President Kennedy assassination materials were requested under the FOIA in 1975, and by 1978, over 200,000 pages of material had been processed and released. They have been in the FOIA reading room on the first floor of the FBI Headquarters Building, available to members of the public, since then. Many authors, journalists, historians, and others have visited and reviewed these materials.

In addition, consistent with the great public interest in the assassination, these files were processed with a liberal approach to maximizing disclosure. This is evidenced by an analysis of the released documents in the reading room. A recent hand count revealed 201,000 pages in the reading room. Of the 201,000 pages, 189,000, or 94 percent, were released in their entirety. The remaining 12,000 pages, or six percent of the pages in the reading room, were partially redacted. Analysts reviewed the redacted pages and estimated the proportion of each page redacted. An average of 20 percent of the information was withheld from those pages. Therefore, 80 percent of the information on redacted pages was made available.

The total number of pages of core JFK assassination materials amount to 499,000. Of this, 236,000 pages have been processed under the FOIA. Pages withheld in their entirety amount to 12,000, or five percent, pages released in their entirety totalled 213,000, or 90 percent. Pages partially redacted and released consist of 11,000 pages, or five percent. An average of 22 percent of each redacted page was withheld. Therefore, 78 percent of the redacted pages were unredacted. A number of important interests have lead to the withholding of information; these include:

(1) Classified information from FBI National Security Investigations, from foreign governments and other Federal agencies;

(2) Law enforcement techniques and confidential sources;

(3) Personal information about individuals, to protect their privacy; and

(4) Other Government Agency information which the originating agencies specifically requested not be released pursuant to Freedom of Information Act exemptions.

Given the continuing—indeed heightened—interest in these matters, and the passage of additional time, I certainly desire to help allay perceptions of those who believe that not enough has yet been disclosed, by releasing as much additional information as is possible, consistent with protection of valid governmental interests and privacy concerns. In that regard, I fully support in principle the notion that it is time to reexamine what remains undisclosed to determine whether the governmental interests in protecting these documents remains. These governmental interests, may include protection of classified information, confidential law enforcement sources, and law enforcement techniques and procedures, each of which allows the FBI to carry out its responsibilities effectively, for the benefit of the entire Nation and all its citizens.

The resolution recognizes these interests in varying degrees. There are some areas of the resolution as introduced, however, which raise significant potential difficulties.

The definition of "assassination materials" ("a record that relates in any manner or degree to the assassination of President John F. Kennedy . . .") cover what we refer to as core JFK assassination materials. There is however, a large volume of FBI records, estimated to reach over 265,000 pages, which relate to other subject matters, and which were requested by and made available to the House Assassination Committee. FBI records concerning organized crime and other criminal investigations, as well as national security investigations were among the materials made available to the Committee. Most of these materials were created separately from the assassination investigation, and many implicate significant national interests and privacy concerns. We would favor an alternative definition of "assassination materials" which would serve both to protect legitimate interests in withholding these materials and to effectuate the purposes of the legislation to the fullest extent possible.

Another concern is the grounds for postponement of disclosure. They could be clarified, for example, with regard to classified information, the protection of law enforcement confidential sources, and law enforcement techniques and procedures. We stand ready to assist the Congress in modifying these grounds to permit appropriate postponement of disclosure.

I note also that the Department of Justice has determined that the resolution raises significant constitutional issues. These issues, which were described in the department's letter of April 4, 1992 and which concern the structured mechanisms for disclosure, do not pose insurmountable obstacles to achieving the ultimate objectives of the legislation. The attorney general has asked me to communicate to you that the department stands ready to work with you to craft changes to the resolution that address those constitutional concerns without sacrificing any interest in disclosure. If the constitutional difficulties can be addressed, I would be willing to work with Committee staff in crafting suitable amendments to the bill, if you desire.

It is impossible to definitively estimate the cost, in terms of money and personnel, to comply with the legislation. Estimation is all the more speculative at this time because one cannot adequately predict what tasks would be levied on the FBI until one has at least seen the legislation in its final form, if enacted. I am, therefore, reluctant to provide estimates, but do so at the Committee's request to help to the extent possible in your deliberations.

Let me outline two possible scenarios: (1) enactment of the legislation as introduced, and (2) enactment of the resolution with an amendment to include some form of agency self-certification release procedure.

First, under the resolution as introduced, the Bureau would be required to identify, gather, and transmit all core JFK assassination materials to the review board. No initial analysis of these materials would be needed, but certainly an inventory

for full accountability would be essential. The estimated cost is an estimated \$47,000 or more.

There are estimated to be over 265,000 additional pages of materials on other subject matters which were made available to the House Assassinations Committee. These would have to be read for content by analysts to determine if they relate to the President's assassination or not. The legislation requires that where the agency is certain or uncertain that materials constitute "assassination materials," they must be provided to the review board. By implication, those materials which the agency is certain do not relate to the assassination would not be sent. The analysts' work would cost at least \$100,00, and that may be very optimistic. It could be doubled. In addition, there would be supervisory, coordinating, and liaison activities. This could cost \$19,000 or more.

In addition, materials proposed for release by the executive director and the review board would have to be reviewed. Analysts' time to do such a review would be greater than on the initial review and, therefore, more costly. Additional costs for supervisory, coordinating, and liaison activities would be incurred. While we have estimated some cost elements, there are so many variables that we cannot estimate total costs.

Perhaps past experience can help. Director Webster testified in 1978 that the FBI had spent over \$800,000 in producing documents for the House Assassinations Committee. Assuming that half that cost can be attributed to JFK assassination materials, the cost then would be \$400,000. There are more steps involved in the process, under S. J. Res. 282, due to possible appeals; and it is fair to estimate the cost could be doubled. \$800,000 in 1978 dollars would be \$1,720,000 in 1992 dollars.

In the second scenario, the agency self-certification release procedures would begin with review by analysts that could cost \$300,000 or more. There also could be increased costs for supervisory, coordinating, and liaison activities. Despite these costs, we believe that the agency self-certification process will be more efficient in reviewing the records and it may contribute to broader access. Agency analysts would be well-equipped to evaluate the current needs to postpone disclosure or permit additional access whenever possible. The costs of the review board's activities under this arrangement could be somewhat reduced.

There are other indirect costs that will result. We are in a tight budget environment, and resources are finite. We shift resources to meet pressing needs, as circumstances dictate. For example, I recently shifted 300 agents from foreign counterintelligence work to address the growing violent crime problem in our nation.

If the legislation passes, some of the analysts required may be drawn from the Freedom of Information and Privacy Acts (FOIPA) section. The FOIPA program costs in excess of \$16,000,000 per year, and personnel there are struggling with a backlog of nearly 10,000 requests. To the extent analysts and supervisors are drawn from that work, FOIPA requests will go unaddressed, resulting in at least some dissatisfied requesters and a concomitant increase in FOIPA administrative appeals and lawsuits. In addition, other clerical, analytical, and supervisory personnel, as well as some supervisory agents, would have to be drawn into the effort to comply with this legislation, leaving work they might otherwise have done unaddressed, or to be addressed later.

Finally, I note that the legislation provides authority for detailing executive branch employees to the review board without reimbursement.

If, on the other hand, the definition of "assassination materials" is fashioned to reduce the possible need to analyze materials unrelated to the assassination, costs would decrease.

Our agency's projected cost for compliance with the proposed resolution ranges from \$1,720,000 to \$2,020,000. I commend you on your efforts, and I would be pleased to answer any of your questions.

Chairman GLENN. Thank you very much.

Mr. Gates, the information that you indicated was being sent to the Archives today—now, will that be releasable? Is that released when it is sent to the Archives or will it still be under a classification?

Mr. GATES. No. It will be declassified, Mr. Chairman.

Chairman GLENN. Okay. Will it be available over there or at CIA, or what will the availability to the public—how soon will that be available to the press and to the public?

Mr. GATES. I think it will be through the Archives, and I would assume almost immediately, within a day or two.

Chairman GLENN. Fine. Are either of you aware of an effort underway by the White House to issue an executive order to release Executive Branch records on the assassination? Mr. Sessions?

Mr. SESSIONS. I am not, Mr. Chairman. It may be that the Department of Justice, whose representative, Mr. Leitch, is here this morning, would have knowledge of that. I have no such knowledge.

Chairman GLENN. Is Mr. Leitch here?

Mr. SESSIONS. Mr. Leitch is a Deputy Assistant Attorney from the Office of Legal Counsel and he is here and he may know of such a matter.

Chairman GLENN. Is there an executive order underway or being contemplated, do you know, Mr. Leitch?

Mr. LEITCH. Mr. Chairman, in an effort to achieve the shared goals of full possible disclosure here, we have considered all the various options that might work that result. An executive order is certainly one of the options that has been discussed.

Chairman GLENN. Is that being actively put together now?

Mr. LEITCH. There is an effort underway to see if that would work, yes.

Chairman GLENN. When would that be put out? Do you know?

Mr. LEITCH. I don't have that information.

Chairman GLENN. Okay. Mr. Sessions, you are not aware of details of that?

Mr. SESSIONS. No, sir, I am not.

Chairman GLENN. Mr. Gates?

Mr. GATES. No, sir. I heard, in preparation for the Committee, that that might be a possibility, but I don't know anything beyond that.

Chairman GLENN. Okay. Mr. Leitch, do you know how it would compare with what the legislation is that is before us this morning?

Mr. LEITCH. I don't know specifically. I do think that various options have been discussed that would set up a review process internal to the Executive Branch for those materials that are held by the Executive Branch. But since it is still in the drafting and consideration stage, it remains to be determined.

Chairman GLENN. Mr. Sessions, the Department of Justice wants the Congress to add the law enforcement exemption contained in the Freedom of Information Act to the bill. It was added in 1986. In discussions with your staff, the Committee was told that this exemption has not only narrowed the flow of Kennedy assassination information since 1986, but that if it had been in place prior to 1986 that instead of 90 percent of pages of documents being unredacted, only about 25 percent would have been unredacted. In other words, 75 percent of the material would be blacked-out.

What is the rationale, then, for adding the exemption to a process which is designed to open, not close, the records?

Mr. SESSIONS. Mr. Chairman, the law enforcement exemption and the reasons for that are, of course, extremely broad. My belief is that persons, for instance, who would know of or learn of particular techniques that were utilized in law enforcement—if that happens, it would be detrimental to law enforcement generally.

But I would stand on the general proposition that has been expressed so openly here this morning that we in the FBI should be prepared with particularity to defend a particular piece of information and the necessity of it not being divulged. The day that I was notified that there might be this review because of the "JFK" film, I indicated then that the FBI stood ready to comply with the law as it was enunciated by the Congress and the President of the United States. We stand ready still to do that and to defend those parts that we believe should be withheld.

Chairman GLENN. The bill contains very specific exemptions which cover sources and methods of intelligence gathering or FBI work. It covers confidential sources and witnesses, privacy standards which extend to living persons, and more. But you don't feel that these are adequate protections, is that correct?

Mr. SESSIONS. I believe that those are the bases for the adequate protections and that we ought to look at each of them very carefully, and if the suggestion is for disclosure and the FBI does not agree with it, then it would have the burden placed upon it exactly as I think the resolution expects; that is, we should put forth the reason and take the burden of going forward with declaring that reason and the importance of it in order to protect the information.

Chairman GLENN. Mr. Gates, do you have any similar concerns with regard to the CIA, or do you think there are adequate protections in this legislation?

Mr. GATES. I think the protection of sources and methods, both as described in the bill and by Senator Boren and as I have described them, are probably adequate.

Chairman GLENN. The legislation appears to lump together human and technological sources and methods of intelligence-gathering. On the type of information that could be released, is there any differentiation there or are there other considerations there, or could those be lumped together?

Mr. GATES. I know of no reason, without further reflection and consultation, Mr. Chairman, why they could not be lumped together. Overall, sources and methods are usually considered together.

Chairman GLENN. The legislation also proposes that the review board's executive director will identify the agency records relevant to the assassination. Now, that is a matter of qualitative judgment there, or specific judgment—"relevant to the assassination." Some observers, including some of our witnesses today, may suggest that letting the agencies make the first cut will simplify and expedite the process, but others will think that this will defeat public confidence in the independence and accountability of the whole process. What is your view on this? Mr. Gates, is that a problem?

Mr. GATES. Mr. Chairman, my view is that the CIA is prepared to accept a definition of material bearing on the assassination as that which might be reasonably connected to it, and I think, as I indicated in my prepared statement, we are prepared to consider within the framework of assassination materials virtually all of the materials identified in the course of both the Warren Commission investigation and the House Select Committee on Assassinations investigation.

In light of the discussion earlier here on the panel, I would note that that includes material on Cuba and Castro and the activities

of Cuban exiles, and so forth. So I think it is a fairly broad definition that would encompass virtually all that has been taken into account in previous investigations.

Chairman GLENN. My time is up on this round.

Senator Roth.

Mr. SESSIONS. May I answer from the FBI's perspective that particular question?

Chairman GLENN. I am very sorry. I meant to have you do that.

Mr. SESSIONS. Thank you, Mr. Chairman. I think the suggestion has merit. To allow an agency to come forward in a review and take those pages which it believes should be made public, and they are made public, and only to hold back those it believes should not be would greatly reduce the burden upon the director of the Commission itself. Therefore, it does have merit and should be explored.

Chairman GLENN. Thank you.

Senator Roth.

Senator ROTH. If this legislation before us is enacted into law—and you did touch upon this in your testimony—could you give me an estimate of what it would require in personnel costs and estimated time to comply with?

Mr. SESSIONS. I might be able to give you some indication, Mr. Roth. My belief is that it is well known that the Freedom of Information and Privacy Acts create a substantial burden upon the FBI. There is about \$16 million relegated to it in our budget and we have some—

Senator ROTH. How much was that? I am sorry.

Mr. SESSIONS. About \$16 million relegated to it in the budget. There are some 188 persons, including 105 analysts, who work directly with that. By the way, that is a reduction in the last 10 years from about 220 that were in that position 10 years ago.

The point is that those people, if taken off for this kind of investigation, immediately detract from our ability to answer the Freedom of Information and Privacy Act requests. Those are part and parcel of our business in making available to the public these very records which we are discussing. So the costs that are related to it have to be measured in that sense, but also in the overall sense.

The investigation in 1978 cost about \$800,000; that is, to go through those records and begin the disclosure process. The estimate that I would make would be that it would, if taken in 1992 dollars, and the \$800,000 were then measured—it would be approximately \$1.7 million. If you added additional costs, there might well be as much as \$250,000 additional that would be required in connection with our review of those records and our dealing with those records directly. I can't give you a firm estimate. It is just going from past experience.

Senator ROTH. What about time? How long do you think it would take you to complete the kind of investigation required under this legislation?

Mr. SESSIONS. There are presently released 223,000 pages, of which 12,000 were withheld. Now, that means that the review of those could, I think, take place in fairly short order; certainly, a matter of a few months, maybe three or four months, it could be done. There are other non-related files. There are also files that are

out in the field, some of which are duplicated by our records here at headquarters. But I think we would be looking at a matter of months, Senator, in order to be able to do that.

Senator ROTH. Mr. Gates?

Mr. GATES. Senator Roth, as I indicated in my prepared statement, I have established a unit of 15 full-time people working on review and declassification of historical documents. I have made these papers their first priority. I don't have any estimate of what the cost would be. We would be prepared to deal with that, and I think that the overall time involved, particularly given the condition in which we find these records, probably would be between six months and a year to complete going through them all.

Senator ROTH. Can you give me some examples of what sort of material would not be disclosed under either FOIA or the resolution procedure? Would more material be released under one standard as opposed to the other?

Mr. GATES. I have established—as I indicated in my prepared remarks, we have prepared new guidelines for historical declassification. We are now proceeding to conform the guidelines for FOIA to those new, more forthcoming standards that begin with a presumption of declassification, particularly for 30-year-old material.

I think that at least at the present time, the standards established under the new historical guidelines at CIA probably would yield more documents. But, as I say, we are in the process of beginning to conform our other document review to that. I don't know how long that will take.

Senator ROTH. Mr. Sessions?

Mr. SESSIONS. Senator, as to a properly classified matter that is classified pursuant to Executive Order 12356, we are talking about national security information, specifically as you ask, because it relates to intelligence sources, intelligence methods, intelligence activities, intelligence information from foreign governments or foreign confidential sources.

Other types that would not be included, we believe, should be material that is highly personal, such as home addresses and personal habits and medical information. And then, of course, most critical, I believe, also is keeping confidential those confidential sources that have asked for confidentiality because it is based upon that promise that the information was secured in the first place.

Senator ROTH. My time is about up, but let me ask you one final question. Assuming that we are going to enact the proposed legislation into law, are there any recommendations you have to simplify the process and get the same results?

Mr. SESSIONS. Well, there was a suggestion made earlier—in fact, I think you may have asked the question yourself—is there any way we can piggyback on the procedures that are listed and followed under FOIPA. Well, the Freedom of Information Act has been a way of life in the Bureau for a long time. It is obvious that hundreds of thousands of pages are made available now, and the processes of reviewing those documents for that release are a very tedious, time consuming effort, very carefully done.

So we are pretty well in shape because of the reviews that we have made to be well along the line to reviewing all the documents, and that process has proven to be very fruitful. I think, therefore,

the suggestion that was made earlier in Senator Boren's testimony that there might be a way to put some burden upon the agencies themselves to make that initial review, make available what they choose to—and what they choose to withhold, then have to justify it and give their rationale for it and the necessity for it before the Commission.

Senator ROTH. Mr. Gates?

Mr. GATES. Senator, I would agree with what Judge Sessions has said. I think that the idea of getting this material out as quickly as possible would be well served by reasonable time limits on the agencies to review and declassify documents, and then for whatever panel or group is set up, if the legislation is passed and signed by the President, then to have to deal only with that material that has either been redacted or held back. So it would significantly reduce the burden on the panel and allow them, I think, to act much more expeditiously. That is a personal opinion.

Senator ROTH. Thank you, gentlemen.

Chairman GLENN. Thank you.

Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman. First, I wonder if we could get a little better idea as to the material which has been reviewed by the FBI. Can you give us an estimate of the total number of pages that you have and how many have been released?

Mr. SESSIONS. Yes, I can do that. There are 499,431 pages, so far as we know, at this count, Senator. Of the pages that have been processed thus far, we—

Senator LEVIN. If you could just stop right there because that is where the confusion is. Can you tell us how many pages have not been processed and then go from there to how many pages have been processed?

Mr. SESSIONS. Yes. There are 263,639 pages that have not been processed. Many times, that is because there has been no request, and some of those are files that, for instance, are out in the field offices. There are 102,000 pages out in the field offices that have not been processed here. I have the breakdown on what that 263,639 is made of and I will be glad to provide that for you.

Senator LEVIN. That is fine. So the majority of the materials have not even been processed, much less released?

Mr. SESSIONS. There are 263,000 pages that have not been processed nor released, and that is principally because there have been no requests for those.

Senator LEVIN. I understand. For whatever reason, though?

Mr. SESSIONS. Yes.

Senator LEVIN. We have the rest of the figures and that is a good answer to my question. I understand the balance. I wanted to get to the—

Mr. SESSIONS. What I have done, Senator, is made available for you the charts that reflect those specific numbers as to both core files and as to the related files.

Senator LEVIN. All right. Now, Director Gates has testified this morning that the historical review program that he has created in the CIA specifically directs a presumption in favor of declassification. Do you agree with that?

Mr. SESSIONS. I have no argument with that, and I have testified this morning that I believe the burden should be upon us in the agencies to justify withholding that which we believe must or should be withheld.

Senator LEVIN. But in terms more precisely of directing that there be a presumption in favor of declassification, do you support there being such a presumption?

Mr. SESSIONS. I think that it is very clear that everybody in a responsible position believes that there should be a presumption that it should be disclosed, but that then the burden falls upon the agency to actually justify the withholding of that information.

Senator LEVIN. Now, do you believe that the Executive Branch should have a veto over materials in the possession of Congress?

Mr. SESSIONS. In some instances, that is, I think, quite appropriate. For instance, if documents were provided in the assassination investigations that fall in that category—the information falls in that category which we believe should be withheld—it would make a nullity out of our withholding it if, in fact, the Congress was able to release it.

So I am willing to bear the burden of going forward with the reasons why it must not be released, and I would think it would be sound not to have the Congress simply release those things which an agency believes must, for a very particular, articulated reason, be withheld.

Senator LEVIN. The answer to the question, then, is that you believe that you constitutionally have the right to veto under a privilege, or that you should be given that right under legislation?

Mr. SESSIONS. Senator, I will defer to the Department of Justice and its legal counsel here or its rationale that it pursues.

Senator LEVIN. All right. Let us proceed, then, because of our time limits. The FBI has apparently indicated that in its continued investigation into the assassination, it has uncovered two witnesses that were there that has previously not been interviewed, apparently. Can you tell us if that is true, and what did your investigation disclose—apparently, two hobos, as they were described?

Mr. SESSIONS. Without disclosing what the nature of the interviews were, that is correct. It is my understanding that there were additional people that were found that were from the police records—I believe from the police records there in Dallas that disclosed those two people. There may have been three, and I think they were interviewed, Senator. I have not reviewed the others, but I believe that is correct.

Senator LEVIN. Can you tell us what the outcome of the interviews was?

Mr. SESSIONS. It was essentially negative; that is, there was nothing that they could have added to the investigation, nor were they in any way involved.

Senator LEVIN. Now, your testimony this morning is quite different in tone from the Attorney General's letter to the Chairman, and I just tell you I welcome that. But the letter of the Attorney General, number one, says it is going to be vetoed in its current form, this resolution. Number two, there are about nine pages of single-spaced, strenuous objections. The words "strongly object"

appear so often that I stopped counting it, I think, about half a dozen times.

It is a very negative letter from the Attorney General relative to this legislation, and at the end of that letter, in addition to threatening the veto, it said that, "We are developing an alternative draft resolution," whereas your testimony this morning, again, is a much more positive tone; and, again, to emphasize I welcome that tone. I think it is appropriate that the administration respond positively and try to work out what differences there.

In your testimony it says, "The Attorney General has asked me to communicate to you that the Department stands ready to work with you to craft changes to the resolution." Do I then understand that we are not going to be receiving an alternative draft, but rather that the Department is going to instead be attempting to work out differences by amendment?

Mr. SESSIONS. First of all, it is not my responsibility to defend the Attorney General in his very careful laying out of objections that do occur in the process of review. It is a lawyer's responsibility to do that when he believes that, in fact, there are matters that need to be brought to the attention and considered. So I look on it—and I read the letter—as a very careful review of what is proposed.

Senator LEVIN. But my specific question is will this now be done through seeking changes in this draft rather than submitting a totally different draft?

Mr. SESSIONS. It is my understanding that the Department stands ready to cooperate with the Committee and with the Senate and the House, and Mr. Leitch is here as evidence of that, that they intend to pursue trying to work out those objections and the format in which the ultimate resolution would be presented.

Senator LEVIN. I think my time is up and I don't want to cut in on Senator Cohen, but I just want to make a statement, and I haven't had a chance to ask you any questions, Director Gates. I very much welcome your testimony this morning and the feeling and the emotion with which it was delivered. I think it is important. It reflects the feeling of the public, as well, that we not allow any suggestion of cover-up or conspiracy to interfere with what we must know, which is the total truth.

The way you phrased it based on your own personal experience, I think, is very compelling and reflects a determination on the part of all of us to get it all out there, except for very narrow exceptions, obviously, to protect certain compelling interests. But the feeling and the strength of your testimony, I think, is important, and I hope that that carries through to an ability to pass legislation this session which I hope just lays it all out there so that the public can judge, again, subject to very narrow exceptions which the public would, I think, understand.

Chairman GLENN. Senator Cohen.

Senator COHEN. Thank you, Mr. Chairman. I think, Senator Levin, what you are seeing is a kinder, gentler voice of the Justice Department coming forward this morning, as opposed to the letter you received.

Mr. Gates, let me return to the Oswald file. I must tell you that in going back and reading all of the material on Oswald, although not this particular file, I found it rather difficult to comprehend a

situation where you would have a Marine stationed in Japan who has access to U-2 flights, who defects to the Soviet Union, who marries the daughter of a high-ranking KGB officer, who then re-defects to the United States and then takes up residence here and that throughout that time, according to the testimony that I have read in the past, no one from the KGB ever interviewed Mr. Oswald.

We had a situation shortly after he re-defected to the United States and President Kennedy was assassinated. We had the defection of Yuri Nusenko, a very famous case that you are familiar with involving James Engleton. There were great doubts that developed saying, didn't someone ever talk to Lee Harvey Oswald in the Soviet Union.

In this resolution, under Section 10, there is a non-binding sense of the Congress that calls upon the Secretary of State to contact the Russian government to seek the release of all KGB and GRU documentation that is relevant to the Kennedy assassination. Could you tell us whether or not you have had any contact with any of the Soviet officials, whether working through the State Department or through the CIA, and whether there has been any indication on their part that they are willing to reveal their files, and if so, whether those files have any information that would be helpful in this investigation?

Mr. GATES. In response to a request from the U.S. embassy in Moscow, the Russians have reviewed their file holdings on Oswald. They have advised us that they had nothing that would add to our knowledge or to the November 22, 1991 ABC television special on this issue, which they termed "detailed and objective."

Senator COHEN. Would you, in your experience, find it equally hard to believe that when a military person defects to the Soviet Union and marries a Russian woman, a daughter of a KGB official, someone would contact that individual to either brief him, de-brief him, whatever?

Mr. GATES. Just speaking in very broad and generic terms, I would think it unusual not to have had some contact, but I don't know in this case.

Senator COHEN. Director Sessions and Director Gates, you both mentioned there might be a situation where you might want to protect medical records of individuals who are involved because of privacy concerns. Let us suppose you have an agent who has knowledge of some aspect of the Kennedy assassination and that particular individual has a record of mental instability, and it might call into question his or her veracity or reliability.

Would the interest in protecting the medical records outweigh that of someone assessing the reliability of that individual who may have provided information?

Mr. GATES. Part of the danger of having a non-lawyer answer these questions is that I am inclined to answer them. [Laughter.]

My reaction to that on a purely hypothetical basis would be that if the information from the source were indeed germane, then I think that would fall into the category that I described and that I think Senator Boren referred to where we ought to be able to find some way, without revealing the identity of the source, to reflect on our level of confidence in the source.

Senator COHEN. I want to move on quickly because we have Mr. James Lesar, who is going to be testifying shortly and I will not be here for that. He questions the issue of intelligence sources. The bill provides that disclosure can be postponed if the release of that information would reveal an intelligence asset.

Mr. Lesar suggests that, number one, that should apply only if that particular agent is living, and then secondly, even if living, that the burden would be upon the agency to present by clear and convincing evidence that disclosure of the identity of that particular agent would, in fact, present a danger to him or to his family.

Could you, number one, give us some instance in which disclosure of a deceased intelligence agent or asset would be contrary to our national security interests, and then, secondly, address the issue of clear and convincing evidence that an agent who is alive might be jeopardized by disclosure?

Mr. GATES. At the root of effective intelligence work is our ability to deal with people who are willing to provide us with information and to assure them of confidentiality and that their identity will be protected. The Congress has recognized that. The Congress has even recognized the importance of protecting the covert identities of American case officers dealing with such foreign agents.

I believe that we have an obligation to protect the confidentiality of our sources, regardless of the amount of time that has passed, and I believe that if the agent is deceased that we also have to take into account the potential considerations for that agent's family.

There are many countries in the world today in which, despite whatever political changes have taken place, families of those who have defected or who have been proven to be agents or who are revealed to have been agents are persecuted or maltreated, or their life becomes much more difficult, and I think we have an obligation to these people.

I think we are not in a position of saying never, but I think that any decision with respect to revealing the identity of a source or an agent, even 20 or 30 years after the information was reported, is one that has to be taken with enormous care and deliberation, one that must involve knowledge of the particular circumstances involved at the time the information was received and the circumstances of the agent and his family.

In short, so important is the ability to protect the confidentiality of sources that a decision to reveal that identity would have to be the result of the most careful consideration.

Senator COHEN. My time is up. Thank you, Mr. Chairman.

Chairman GLENN. Thank you, Senator Cohen.

Let me associate myself with the remarks of Senator Levin with regard to your remarks, Mr. Gates; in particular, the last part. That was a very forceful and a very fine statement, and I wanted to associate myself with Senator Levin's remarks to you on that.

Mr. Leitch, I don't know whether you came prepared to talk about the letter this morning and all that, but I share Senator Levin's views of the letter. It was an extremely strong letter. It was so strong that I interpreted it one of two ways. Either the administration is really, truly against the release of information and doesn't want to release information and is throwing up all sorts of roadblocks here to prevent it, because the administration has not

basically been forthcoming in the release of information that could be released and should have been released, possibly, years ago.

So it is either that or I would view this as possibly a holding action to delay until this executive order that is being prepared over there has a chance to come out and sort of preempt this legislation. I don't know whether that is a fair assessment or not, but this was a very, very strong letter. It didn't agree with much that has been proposed in this legislation, I must say, and raised all sorts of constitutional grounds, Presidential prerogatives. It is just across the board here and I won't bother—it is a very lengthy letter—unconstitutional under existing Supreme Court precedent, Executive Branch information cannot be so limited, and a whole bunch of things in here, and then winds up saying that the bill as written would probably be vetoed. Is that still the view of the administration?

Mr. LEITCH. Well, Mr. Chairman, we have, as expressed in our letter, some serious reservations about parts of the bill.

Chairman GLENN. That is the understatement of the morning. [Laughter.]

Mr. LEITCH. However, I would note that our letter also expressed our willingness to work with the Congress in fashioning amendments or alternatives, and we stand ready to do that. The Department of Justice is committed to the purpose of the legislation which is stated in Section 2, to secure the expeditious disclosure of records relevant to the assassination as soon as practicable, consistent with the public interest. To the extent our letter conveyed that we were not ready to do that, I think it was a mis-impression.

We are ready to work with the Congress to address our concerns which, though we view them as important, are somewhat technical and we think can be corrected without sacrificing any interest in disclosure.

Chairman GLENN. Well, we are happy to work together on this, but as the bill is written right now, you would recommend a veto, is that correct?

Mr. LEITCH. I believe what the letter says is the Department would consider recommending a veto.

Chairman GLENN. Well, I would have to look at the specific language here, but there isn't any doubt about the veto recommendation, not that the exact wording makes that much difference. "Serious consideration in recommending Presidential disapproval"—okay, you are right.

Now, with that, can you run through very briefly and just summarize for us the parts of the legislation that you disagree with so strongly that you would recommend a veto?

Mr. LEITCH. Our concerns are basically of two types. the first is the appointment mechanism for the review board and its executive director. As I mentioned, I think those are somewhat technical. Senator Boren this morning has suggested some proposed alternatives to that that we would certainly be happy to look at and consider. The concern is that the appointment of the review board, and also the appointment by the review board of the executive director, may be inconsistent with the Appointments Clause of the Constitution, as we understand it, after *Morrison v. Olson* and the

more recent case of *Freitag v. Commissioner*, which was decided by the Supreme Court last year.

Our second concern is one that has also been expressed this morning by Senator Boren, among others, and that is that in attempting to enumerate the standards in Section 6 for postponement of disclosure, we agree with the sense of the resolution that there may be rare instances in which disclosure should be postponed in the public interest.

We do think, as everyone has expressed, that they would be extremely rare. However, it would be, I think, not responsible for us to try and address all the possible situations that might occur in the legislation, and we think there are some areas, as have been mentioned this morning, where the standards in Section 6 might be improved.

Chairman GLENN. OK. We are going to have to move along here. I hope you would respond to any additional questions we may have so we can include them in the record. We may want to respond to the Justice Department letter so we can clarify some of these things that we don't have time to really go into in real detail this morning so we can get together and work this thing out. I think we are trying to all work to the same objective on this thing. The letter left us a little bit in doubt, perhaps, as to whether that was true, but perhaps we can get together on that and get a satisfactory resolution of our differences here so we can move ahead with this.

Thank you very much, gentlemen.

Mr. SESSIONS. Thank you, Mr. Chairman.

Mr. GATES. Thank you.

Chairman GLENN. I am sorry it took so long this morning here. I know we had told you you would be on by about 10 o'clock, and so I hope we didn't delay some of your other appointments too badly this morning. Thank you very much.

Our next panel is Mr. James Lesar, President of the Assassination Archives and Research Center, of Washington; Professor Ernest May, Kennedy School of Government, Harvard; and Professor Athan Theoharis, Department of History, Marquette University, Milwaukee, WI. Gentlemen, if you could take your places at the table, we would appreciate it very much.

Mr. Lesar, if you would lead off, we would appreciate it. It has been a long morning here. We appreciate your patience. I hope you have had patience this morning, anyway. Thank you.

TESTIMONY OF JAMES H. LESAR, PRESIDENT, ASSASSINATION ARCHIVES AND RESEARCH CENTER, WASHINGTON, DC

Mr. LESAR. Thank you. Mr. Chairman and members of the Committee, I am honored to have this opportunity to testify before you on the legislation to require the Government to release its records pertaining to the assassination of President John F. Kennedy.

I appear on behalf of the Assassination Archives and Research Center, the AARC, of which I am president. The AARC is a private, non-profit organization which collects, preserves, and disseminates information and materials on political assassinations. The

AARC is funded by membership dues and donations from the public.

I am an attorney specializing in Freedom of Information Act litigation and have litigated well over 100 such lawsuits. Over the past 20 years, I have represented nearly all of the major authors and researchers who have litigated Freedom of Information Act requests for records pertaining to the assassination of President Kennedy. To date, I have handled over 50 such lawsuits.

I have carefully studied the proposed legislation. I have also read the letter that you received from the Department of Justice. I have heard that the administration may seek to achieve its goals, particularly that of using more restrictive standards for release of Executive Branch records, by issuing an executive order rather than awaiting action by Congress. In my mind, the only thing worse than seeing the Justice Department's wishes granted in legislation would be to see them set forth in a stand-alone executive order which goes unchallenged by Congress.

Legislation is needed to bring each branch of Government which holds records on to the same playing field and to create a process which is accountable, independent, and credible. Incorporating the Justice Department's restrictive standards in an executive order would duplicate the devastating damage to the ideal of full disclosure which occurred when the Reagan administration successfully sabotaged the 1974 amendments to Exemption 1 of the Freedom of Information Act by drastically altering the standards for classifying information in the interest of national security.

The difficulty which researchers have had gaining access to Kennedy assassination materials amply demonstrates the need to alter the standards employed by the FOIA and the current executive order on national security classification. If you support release of the Kennedy assassination records, you cannot favor the Justice Department's recipe of simply mixing one part political will to three parts of existing standards and stir. You must substantially liberalize the existing standards and make it stick.

A few illustrations from my practice will show the inadequacies of the FOIA and the enormous frustration which accrues to those who attempt to use it to obtain information about the Kennedy assassination. These examples reveal a pattern of delay, costly litigation, and untrue representations by the Government. Cases brought in the 1980's also show the massive withholding of information, with little significant information being released.

Case 1: In 1969, Harold Weisberg, a leading Warren Commission critic, made a simple request to the FBI. He wanted to see the results of the spectrographic tests which had been conducted on bullet fragments and items of evidence allegedly struck by bullets during the assassination of President Kennedy.

Denied access by the FBI and the Attorney General, in 1970 he brought suit. A four-year legal battle ensued. First, the district court, relying on the Justice Department's representation that it was not in the national interest to release the results of these scientific tests, denied his request. A court of appeals panel reversed, but the dissenting judge wrote a scathing opinion in which he referred to FOIA requesters as "rummaging writers" and characterized Weisberg as "some party off the street."

Stating that the FOIA forfended against Weisberg's proposed further inquiry into the Kennedy assassination, he concluded his dissent with a Latin phrase, all in capital letters, "REQUIESCAT IN PACE," rest in peace. But the case did not rest in peace. The Justice Department sought a rehearing before the full court which was granted. On rehearing en banc, the full court ruled that the files of the FBI were exempt from the FOIA's disclosure requirements. That case set a precedent so bad that when Congress first amended the FOIA in 1974, it specifically overturned the Weisberg case, requiring that the FBI and other law enforcement agencies demonstrate that allegedly exempt records fall within one of six enumerated harms.

In 1975 when the new amendments took effect, Weisberg again brought suit on his request for the spectrographic analyses, this time adding a request for neutron activation testing on the same evidentiary items. This new phase of the battle lasted eight years and involved three trips to the court of appeals.

Weisberg obtained important records on these scientific tests, including records that the FBI had first said did not exist, then claimed were missing or destroyed. Other records were never located or were meaningless. From the date of the first request, the legal battles lasted 14 years.

Case 2: In 1980, another requester asked the CIA to release all of the records it had made available to the House Select Committee on Assassinations. The CIA refused and the requester brought suit. In court, the CIA stated that there were approximately 300,000 pages of records responsive to the request.

I spent the first three years of this lawsuit litigating four threshold issues raised by the Government. Had my client lost on any one of these four threshold issues, the CIA would not have had to release a single page from its 300,000-page collection.

By 1984, the CIA had begun to release a trickle of documents. Although it told the court that it had assigned seven people to work on the request, it processed the documents at an incredibly slow pace. When it became evident that it would take the CIA several decades to process all the documents, the requester had no choice but to drastically limit the scope of his request. Thus, he entered into a stipulation which restricted his request to some of the subjects discussed in the report of the House Select Committee on Assassinations and its supporting volumes.

Although the CIA's job of reviewing documents was reduced by more than one-half, it took several more years for it to complete processing of the remaining documents. Moreover, the CIA continued to virtually everything. Only a few thousand pages were released and most of them consisted of newspaper clippings, records that had previously been released, or documents that were heavily redacted.

Case 3: In 1976, Dr. Paul Hoch requested two batches of CIA documents which had remained to be processed after the CIA had made its initial release of Kennedy assassination documents. Many of the records responsive to this request related to the 1966-1969 investigation and trial of Clay Shaw by New Orleans District Attorney Jim Garrison, who charged that Shaw, David Ferrie, and others had plotted to kill the President.

The CIA repeatedly told Hoch that his request was being processed and that if he would only be patient, the documents would be released in a few months, in six to eight weeks, in the near future. Indeed, Hoch received such assurances on no less than 11 different occasions over a 6-year period. After having been strung out for six years, Hoch retained counsel and filed suit. After the suit was filed, evidence was developed which indicated that all the CIA had done over the previous six years was to number the documents. It had numbered several documents one month, a few more another month, a couple more the next month. Then in one month it engaged in a veritable orgy of numeration, numbering, as I recall, close to 100 documents.

A few months after Hoch filed his complaint in district court, the CIA produced 808 pages. It also continued to withhold a considerable volume of materials, mostly on national security or because disclosure allegedly would identify intelligence sources and methods.

The district court upheld all of the CIA's exemption claims, save one. This one was an 11-page memorandum which the CIA swore must be withheld in its entirety under Exemption 5's deliberative process privilege. The judge ordered this anonymous, undated memorandum be disclosed. Then things got really interesting. The CIA moved the judge to reconsider his order on this memorandum, asserting that it had claimed, albeit obscurely, that this document was also withheld in its entirety under Exemptions 1 and 3 in order to protect national security and intelligence sources and methods.

But before the court could act on the motion to reconsider, the CIA rushed back to court with a new revelation. The 11-page memo, which dealt with CIA/Mafia plots against Fidel Castro—matters exposed by the Church Committee in 1975—had been released nearly a decade earlier by the CIA itself.

Case 4: In 1969, Harold Weisberg made a request for FBI records on the assassination of Dr. Martin Luther King, Jr. It was ordered, apparently by J. Edgar Hoover himself, that no response be made to this request. In 1975 when the amended FOIA became effective, Weisberg submitted a new request for King assassination records. He specifically included a request for crime scene photographs. After he filed suit, the FBI claimed that it did not have any crime scene photographs. This statement was false. Ultimately, the FBI released more than 150 crime scene photographs to Weisberg.

During the same case, Weisberg discovered evidence in the FBI's own documents that an FBI supervisor named Long had kept a tickler file on the King assassination. A tickler is a file containing extra copies of documents kept at hand so it can be immediately retrieved. The FBI first denied that such a tickler had been kept. Then it claimed it could not locate it. After a long period of resistance, the Justice Department finally located the Long tickler exactly where Weisberg had suggested they look for it. When finally located, most of the file had been gutted. Weisberg's suit on the King assassination documents lasted 15 years. He obtained approximately 60,000 pages. If the same suit were filed today, I believe he would get only about one-fourth of what he obtained in the late 1970's and early 1980's.

These stories that I have related are unusual only because the requesters actually went to court to fight the CIA and FBI. Most requesters cannot afford the time or money to litigate their FOIA requests against these agencies. You might be tempted to conclude from the general absence of litigation that the FOIA is working just fine. The opposite is true. The FOIA has been severely damaged by the 1984 amendments eliminating access to CIA operational files and by the 1986 amendments to Exemption 7 which applies to law enforcement records, as well as by a string of decisions in the Supreme Court and the U.S. Court of Appeals for the District of Columbia which have greatly expanded the amount of material which can be withheld from the public.

Let me add that while it is important to have obtained the public pledges from CIA Director Gates and FBI Director Sessions which you heard today, if you support the release of the records, you must also ensure that you have the support of other agencies, including the Department of Defense, the Treasury Department, the State Department, and such divisions as the Secret Service and the National Security Agency.

I wish to caution that while I think this legislation will result in greatly enriching our fund of knowledge about the Kennedy assassination and the official investigations of it, at least if modified along the lines I suggest in the attachment to this statement, I do not believe that there is likely to be any smoking gun which will solve the case.

Rather, this legislation must be defended on the ground that the American people have a right to the fullest possible disclosure so they can make of it what they will. It will take much time to read, analyze, and understand the information released. Whether it will lead to the resolution of any controversies which beset this subject remains to be seen, but it is a course which cannot be avoided. The American people want to know the details of their history, however painful and puzzling it may be, and that is their right.

The proposed legislation has both strengths and weaknesses. I am attaching to this statement a detailed discussion of the joint resolution which includes a number of recommendations for change. To briefly summarize, the major provisions of the bill include a definition of "assassination materials," the composition of the review board, and standards for the postponement of the release of information. The standards for postponement are critical because they determine the amount of material which may be withheld.

Before discussing the limitations on the term "assassination material" as related to the assassination of John F. Kennedy, I note that this section excludes records on the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr. The House Select Committee on Assassinations conducted an extensive investigation on Dr. King's assassination and concluded that his murder probably was the result of a conspiracy.

Public belief that Dr. King was killed as a result of a conspiracy and that his crime remains unsolved is widespread. The alleged assassin, James Earl Ray, denies that he shot Dr. King. Unless the importance of historical issues is to be determined by whether a

movie has been made about them, there is no justification for excluding the King assassination records from this legislation.

The assassination of Senator Robert F. Kennedy is equally the subject of profound controversy. Recently, a group of distinguished citizens has submitted a lengthy petition to the Los Angeles County grand jury to investigate evidence that the Los Angeles Police Department engaged in willful and corrupt misconduct in its investigation of Senator Kennedy's assassination.

In support of these charges, the group submitted more than 800 pages of exhibits mainly derived from the Los Angeles Police Department's own files which document its charges that the LAPD destroyed crucial items of evidence, ignored material evidentiary leads, cannot account for important missing evidence, engaged in a cover-up of its failures, and failed to conduct a thorough investigation of the crime. The records of Federal agencies and Congressional Committees relevant to Senator Kennedy's assassination should also be included in this legislation.

The term "assassination material" is broadly defined, but it falls short of ensuring that scholars will have all of the documents which they need in order to properly study the subject. It should include policy documents which provide the context of decisions in the Kennedy administration which may shed light on the assassination. It should include, as it presently does, all documents obtained or created by any previous official investigation. It should include materials on those persons who have figured in previous official investigations, State, local, or Federal.

Because no one can predict in advance where new avenues of study may lead or what they may produce, the definition should be flexible enough to provide scholars with those materials reasonably calculated to shed light on the assassination or its investigation. Finally, it should also include information on agency operations and functions which may be relevant to the study of the assassination.

The current provision defining assassination materials contains an exemption for personnel matters or other administrative affairs of a Congressional Committee, the Warren Commission, or any entity within the Executive Branch of Government. I strongly oppose this exclusion.

Warren Commission records on this subject have been publicly available through the National Archives for many years and should not now be made secret. The work of prior Commissions and Committees is a perfectly legitimate subject, but it has been the subject of some secrecy which has impeded the public's right to know.

In particular, the staff of the House Assassinations Committee, with the exception of its general counsel and staff director, G. Robert Blakey, pledged an oath of secrecy about their work. Blakey has published a commercial book about the Committee's work and is quite public and outspoken about it. Because of the secrecy oath, others who are quite knowledgeable about the Committee's work have been silenced. The public has been denied their views and their information. In this regard, I would urge the insertion of an additional provision in this legislation which would rescind any secrecy oaths taken by the staffs of any previous Congressional or Executive Branch Committee or Commission.

This provision could also be used to prohibit the release of information regarding a very troubling incident in which the House Select Committee discovered that its most sensitive files on the Kennedy assassination had been rifled by a CIA liaison officer assigned to assist the Committee.

According to published accounts in the Washington Post, this officer, Regis T. Blahut, surreptitiously entered the safe reserved for physical evidence of President Kennedy's assassination, including autopsy photos, x-rays, and other articles, including the so-called magic bullet that allegedly wounded both Kennedy and Texas Governor John Connally. According to the Post, Blahut was given several polygraphic examinations. He was asked whether he did it, and according to one source he flunked that. He was asked whether anyone had ordered him to do it and he is said to have flunked that question, too. Materials regarding incidents of this kind should be fully available to the public.

A second problem with this legislation is that it proposes to exclude from the review board anyone who has had, quote, "previous involvement with the investigation or inquiry relating to the assassination of President John F. Kennedy." I believe this is too broad and should be limited to the involvement in prior official investigations. Having a panel of Kennedy assassination agnostics might have some idealistic allure, but the public is unlikely to be persuaded that the Government intends to disclose all pertinent materials if the panel does not include experienced and knowledgeable Kennedy researchers.

A third and critically important area that needs refinement is the standards for postponement of disclosure. Particularly significant is the need to narrow the definition of the term "intelligence source" and the term "intelligence method." Virtually all information in an intelligence agency document can be withheld under these terms.

"Intelligence source" must be defined to make it clear that it does not include dead sources, sources who have been the subject of widespread publicity that is tantamount to official acknowledgment, sources who are willing to have their identities disclosed, and sources who cannot reasonably be expected to suffer death or serious bodily harm if their identities are disclosed. Similar restrictions must be put on the term "confidential source."

With respect to "intelligence methods," it must be made clear that this term does not include outmoded methods, methods which are known to the public, or methods which may be commonly deduced. Nor should it include methods that are known to hostile intelligence services.

New legislation is needed. Half-measures will not do. If this legislation does not succeed in substantially clearing the air, if it does not convince the public that nothing of critical importance to our understanding has been withheld but for the very best of reasons, then public cynicism about Government will continue to increase.

I ask that additional comments be included in the record.

Chairman GLENN. They will be included in the record.

[The prepared statement of Mr. Lesar follows:]