

5. Op Cit. Wecht & Smith, p. 119.
6. Ibid, p. 111.
7. Op Cit., Lifton, p. 80.
8. Ibid, p. 284.
9. Willis 5 Photo.
10. Groden & Livingstone, High Treason (New York, Berkley Books, 1989) p. 17.
11. Op Cit., Wecht & Smith, p. 108.
12. Ibid, p. 118.
13. Op Cit., Groden & Livingstone, p. 225.

## MARCH MADNESS AT THE ARRB

by  
Joseph Backes

"At what point do you think the research community broadly considered, will be satisfied with the bringing together of documents?" —Dr. Henry Graff at the March 7th Hearing of the ARRB.

Well, if you want something done right you have to do it yourself. I have fallen into the trap of thinking that someone else in the research community, you know, like the guys who write, publish, and edit the newsletters would inform me of what was going on with the Assassination Records Review Board (ARRB). Since this was not happening I got off my butt and decided to find out for myself. And for those of you who want to know what is going on, and/or how you can become involved in the process, keep reading because I am going to tell you.

By the way, what is going on with the JFK newsletters? CTKA's Probe took months to get to volume 2, C.O.P.A.'s Open Secrets had 5 months between issue #1 and #2. Issue 2 is listed with a January '95 cover date. It was mailed to me in March. The Fourth Decade has had little if anything on the ARRB, and Dateline Dallas, which only comes out quarterly I believe, seems to have died without even telling me it was sick. The last issue I got from them was dated September, which as of this writing is over 5 months ago. Shame on all of

you. None of you are serving the research community as you should. Probe is doing the best job of informing the research community about the ARRB. However, newsletters that come out monthly at best do not serve us well when the Board meets twice, publicly, in one month.

I did not know in advance of the C.O.P.A. conference that the Review Board would speak to us at the conference. I thought that was great and very historic. Now, we did not get the whole Review Board but we did get the Chairman, John Tunheim and the Executive Director, David Marwell. I like these guys. Yet, at the same time I do not trust my federal government, especially with regards to the Kennedy assassination. So the question for me and perhaps for many of you is, what do I do? Do I trust these people? Do I invest time, money and effort? Should I consider them friend or foe?

I believe we must work with these people. There is a great opportunity here. However, I am gravely disappointed in the way the Board has worked out so far. Mr. Edward Lopez Soto, an investigator for the HSCA, told us at the Second Annual Midwest Symposium on Assassination Politics held in Chicago, April 1-4, 1993 about the harmful effects of time and money constraints, "If there are time constraints we lose." And the same thing is happening again. Far too much time has been wasted in just the basics of getting started. This is not entirely the Board's fault. An election year and a change in presidential administrations prevented a timely appointment.

However, there are criticisms to be made. As far as I know, the Board has not reviewed any of the documents that are withheld, nor have they reviewed any of the documents that have been heavily redacted. They have only very recently acquired permanent offices in Washington and have only very recently hired a permanent staff of any kind. The 5 members of the Board are only working on the Board part-time. At the March 7th hearing in Washington they introduced several, about six, staff members who will work as "analysts." If they have no knowledge of the case how are they going to analyze these documents? Also, and this is my greatest criticism, they are allowing the various intelligence agencies to determine what in their holdings is an assassination record and then determine from that what to declassify and turn over to the National Archives. How will the Board know if the agencies are really complying with the Act? How will they know if they are being tricked? Why are they being so passive?

Then CIA director Gates pulled a fast one at the May 12, 1992 Hearing before the Committee on Governmental Affairs,

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United States Senate on S.J. Resolution 282. On p. 51 of that volume Gates testified, "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, [a new group, created by Gates, in the Agency's Center for the Study of Intelligence] at my direction, already has begun its review of the documents relating 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." He continues on p. 52, "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.

This was a blatant lie, a lie on two counts. First, it is not true that this 124 page file is everything the CIA had on Lee Harvey Oswald prior to the assassination as anyone even remotely aware of the unresolved issues of the assassination of President Kennedy can easily attest to. Second, what was released by Gates in an attempt to win favorable media coverage for the CIA was material that was already released. Both points are addressed and proven by Jim Lesar and Harold Weisberg in the very same volume that records Gates' testimony. A Director of CIA lied to Congress and to this day nothing has been done about it.

Similarly, I was afraid someone was trying to pull another fast one but with far more harmful effects. I witnessed the first public hearing of the Board in Washington the day after the C.O.P.A. conference. I spoke at the second public hearing of the Board in Dallas the day before the A.S.K. '94 conference. I waited for a copy of the transcript of the November 18th hearing for a long time, thinking they would send me one since I had spoken before them. It did not come. I then wrote to the Board asking for transcripts of all meetings and hearings. I proceeded to read them and I was alarmed by the statements made by Ms. Mirian Nisbet, Special Counsel to the National Archives at the December 14th public hearing.

I urge everyone to ask the Review Board for transcripts. Surprisingly, I got mine for free. I hope they eventually get together with the GPO and publish these transcripts with the materials sent in. I likewise urge people to visit their Federal Depository Libraries often and browse through the Federal Register. The Federal Register is where the Board posts notices about what they are doing and when the next meeting will be.

The best bet is to look up the Federal Register on the Internet. This will save you time as the information is immediately available; otherwise, you have to wait for it to be published in the FR and mailed to your Federal Depository Library. If you do not have access to the Internet, you may not have the time to make travel plans and/or research what you may need to give the Board your opinion about something. You may be able to gain access to the Internet through some libraries in your areas. Call the public libraries, college libraries and federal depository libraries in your area.

Now you will need to get a copy of the Dec. 14th transcript to understand what I am going to talk about. Ms. Nesbit wanted to define all the material evidence in the case as "artifacts" and not records and therefore outside the JFK Records Collection that the Act and the ARRB were creating. I was so mad about this I wrote a letter to the Board in Washington and to all five members of the Board individually. I received their addresses from the latest issue of CTKA's PROBE (Vol. 2 #1). This letter with its enclosures totals 25 pages.

I found a copy of the law that LBJ signed in 1965 that gave the government custody of all the material evidence that the Warren Commission used. This law was created to stop a gun dealer from buying the alleged murder rifle from Marina Oswald for \$10,000 dollars. There is a reference to this story in Mark Lane's Rush To Judgment on p. 128 (Hardcover 1966 Ed.) This law is Public Law 89-318. This law, "declared that the national interest requires that the United States acquire...certain items...which were considered by the President's Commission on the Assassination of President Kennedy and requires that those items be preserved by the United States."

Section 5 is crucial, "All items acquired by the United States pursuant to Section 2 of this Act shall be deemed to be personal property and records of the United States for the purposes of laws relating to the custody, administration and protection of personal property and records of the United States."

This law defines everything Ms. Nesbit wanted to define as "artifacts" to be records.

Ms. Nesbit wanted to define certain items as "artifacts" and not records under the guise of preserving these items. She thought it easy to make a copy of a record but hard to do so for an artifact. This was pure nonsense. No one wants a copy of an "artifact." We do not want copies of the alleged murder weapon, CE 399 or anything else. We want access to these

"artifacts."

The Board was not exactly buying this argument, especially Mr. Kermit Hall. Mr. Hall stated, "I guess I have not got to the point where I can see where your argument ends in a conclusive enough fashion to persuade me that, for example, the rifle that is alleged to have been the instrument by which the President died should not be in a collection of materials dealing with the assassination of the President." Mr. Hall proved himself to be a very valuable member of this Board right here in my opinion. The Board was not buying Nesbit's argument. But they did not know exactly why. One reason is they did not know about Public Law 89-318. The Board had the power to include artifacts in its definition of an "assassination record" and sure enough it shows up in the guidance they published in the Federal Register February 8th, 1995 sec. 1400.4 Types of Materials included in scope of assassination record and additional records and information. (f) Artifacts.

The point is why did the National Archives try to undo something that was signed into law in 1965? Answer, because they thought they could get away with it. No one on the Board knew of the 1965 Public Law 89-318. Does the Board's powers excuse ignorance?

What was the real reason they tried this? It has to do with another power the Board has and that is the Board has the power to demand in writing an explanation for what happened to records that are now missing or destroyed. The National Archives really, really does not want to have to do this. You see, if they could have gotten the Board to define a host of items as "artifacts" instead of records then they will be let off the hook of having to explain in writing to an official, independent, Federal agency what happened to the missing evidence.

Imagine if the brain, the Kodachromes of the internal chest wounds, the microscopic tissue slides, the paraffin blocks, as well as numerous autopsy photographs and X-rays are defined as "artifacts". They are all missing. The Review Board asks, "Well, what happened? Where are they?", the Archives can now say, "Hey, not a record. We don't have to explain anything."

I not only pointed out the missing medical evidence but I also passed along a list of missing material I got from Ross Ralston at A.S.K. '94. Ross wrote a letter to the Archives asking for a list of missing items. Amazingly, the Archives wrote back on their official stationary and came up with a "List of Documents that the National Archives has been unable to

locate in the Records of the Warren Commission". The list is seven (7) pages long! This letter was written in 1988.

Now the question arises that if Ms. Nesbit got away with this where would these artifacts be held? Answer, The Smithsonian. A Mr. Michael Mc Reynolds, an employee of the National Archives stated, "An agreement was made with the Smithsonian to review the list of artifacts we developed. There was an exchange of some of them..." I really could not believe what I was reading in this transcript. Mr. Mc Reynolds further stated, "A decision was made to try to rid the shelves of the National Archives of a lot of artifacts, we might say junk." I could not take the chance that they were not talking about JFK material.

After I wrote my 25 page letter I received a notice of a hearing to be held in Washington on March 7th. I drove down to Washington, D.C. from Albany, New York, an 8 hour drive, to personally speak out about the issues I raised in my letter. I was allowed to speak at the very end. They wanted me to speak only about the language they were using in their guidance and, since they were including "artifacts," the implication was that there was no real need for me to speak at all.

Well, I did anyway and I am glad I did if only to show that someone is paying close attention and when there is something that looks suspicious someone is there to do something about it and ring the alarm bell.

By the way, for all the big shots in the research community, could I please be informed about interesting items before they happen? I would have liked to have given Senator DiConcini a piece of my mind but it was all over with before I heard about it. I am sorry I don't have a Phd., or a law degree, or a medical degree, or a thousand dollars to be a founding member, but I am trying my best.

Now there was some real interesting testimony at the March 7th hearing. This was an extremely important hearing. The guidance as published in the Federal Register on February 8th, 1995 is very important. This will establish what an "assassination record" is. You have to be a part of this process. You have to communicate with the Board. You have to know what people are fighting to include and exclude as an assassination record and why. This is a battle that cannot be over emphasized. Very few people wrote to the Board, fewer still showed up for the hearing. You must write to the Board. Get the Federal Register for Feb. 8th, get the transcript for the March 7th hearing, get copies of all of the correspondence received. The comment period for adding your two cents worth expired March 7th. However, there are letters and faxes in the public

comment file that are dated after March 7th. Also, there should be a 30 day period to introduce further commentary after a Board hearing. So you should have until April 7th at least. The only real members of the research community who spoke at the hearing were Jim Lesar, John Judge and myself.

Yes, Mark Zaid was there, speaking far too long, about as long as Mr. O'Connor. Surprisingly, he did offer a few good ideas. Zaid wanted the word "persons" to be included in sec. 1400.1 so that personal records such as 201 files would be included in the hunt for "assassination records." Zaid also wanted the medical records of Governor Connally from November 22, 1963 to his death to be included.

The real interesting stuff came from the FBI guys. Mr. Terry O'Connor, an Inspector for the FBI, testified that, "The FBI is concerned the Board may seek access to source files and much greater concern that it may seek disclosure of information from these source files to include the actual identities of sources identified by symbol number or code name in assassination records. The Bureau considers these files which contain information completely unrelated to the assassination investigation that would clearly identify sources by circumstances if not by name to involve the most sensitive of the issues relating to disclosure under the Act."

O'Connor also talked about "See" references, "...incidental references to persons who figured into the assassination that appear in FBI documents clearly unrelated to the assassination. These 'See' references in Bureau parlance have been located through checks of our embassies and appear in documents that can be lengthy that add nothing to the historical record of the assassination. It has been the Bureau's practice to disclose the portion of the document relating to the assassination figure regardless of how innocuous the information might be, as well as, enough of the rest of the document to show the context in which the reference appears. The remainder of the document is withheld as not assassination related. The FBI hopes the Board will acknowledge the 'reasonableness' (quotation is mine) of this practice and its regulation."

Well, isn't that interesting as hell. We could find out that none other than Lee Harvey Oswald is one of these people identified only by serial number and was working for the Bureau in some capacity in November of 1963, but of course that would add nothing to the historical record.

I strongly urge people very familiar with this area to write to the Board and present your case. Wouldn't you like to know

who these "reliable sources" are? Wouldn't you like this to be applied to other intelligence agencies?

O'Connor also mentioned that all the documents awaiting transfer to the Archives are files reviewed by the HSCA; there are some 260,000 pages, about 40,000 of which are index files and other material in an administrative folder. O'Connor said the Bureau is experiencing "processing difficulties" which have delayed the transfer but those difficulties were being addressed. He also mentioned that 4,600 pages of Sam Giancana files and 5,500 pages of Gus Alex files would be released. Gus Alex is mentioned in John Davis' Mafia Kingfish on p. 235 as a Chicago mafia executioner and David Scheim's Contract on America on pgs. 465 & 472 as a Giancana lieutenant.

According to Sylvia Meagher's HSCA index, Alex is listed in Volume 5 p. 437, 440; Volume 9 pgs. 25,79, 156, 251, 326, 944, 946. I didn't know who he was and had to look him up so I thought I would pass along some help. And if you do not know who Sam Giancana is, shame on you.

Mr. Tilley gave an update on the collection. There were no new releases of documents since December. However, they did receive the first, apparently of several, diskettes from the CIA on Oswald's 201 file. I want to warn researchers that the first release of material from LHO's 201 file occurred before the creation of the JFK Records Collection at NARA and therefore are not, repeat not, in the database. There are no Record Identification Forms, RIF's, either. The database includes only those records that were closed before the creation of the database. If the records were open, then they're out. There is supposedly some other finding aid for those records.

And now for something really important, there has been a release of material to the Motion Picture and Sound Branch of the National Archives. This material came from the FBI Headquarters Lee Harvey Oswald file. Mr. Tilley described them, perhaps using FBI terminology, as "bulky exhibits." They are solely Sound Recordings! There is a withdrawal notice but it is internal to the Archives. The Motion Picture and Sound Branch has to preserve them, make a copy and give that to researchers. This could be something big. Could the Mexico City audiotapes be in here? You will have to go and look.

There may be a large release of files from the FBI soon.

The notes taken by HSCA staff on CIA records has been transferred to the Archives, 32 boxes, mostly handwritten. The

CIA is naturally recommending postponement. This material is not in the database yet. A gold mine is awaiting for us here.

Jim Lesar was worried that the "may have led to" phrase "smacks of a legal causation test" which would narrow the scope of the definition. Mr. Lesar wanted persons, organizations, programs and operations to be included in the definition.

John Judge expressed a concern that records of foreign governments did not seem to be specifically identified. Mr. Judge also asked that records of subcontracting or contracting agencies be specifically mentioned. John also said, "Events of all government agencies in the time period, the window right around the assassination, I think, might reveal if there was or there was not government involvement at any level in the assassination because there's reported events right at the time that could be viewed suspiciously. So that, in a way, would meet your 'may have led to'".

I wish John was more specific here. I can come up with two easy examples. I cannot go into their importance here but I would do that in a separate letter to the Board.

—Nov 20, 1963: The Honolulu conference convenes. "for the first time since early 1962 MACV reports are accurate on the war situation in the Delta (it was critical); OPLAN 34-63 discussed." JFK and Vietnam—by John M. Newman p. 487

—Nov 21, 1963: NSAM 273 drafted—*ibid*.

The research community must, must, come up with a timetable of events and explain why this event or these events look suspicious. I am confident that the many talented members of the research community can do this.

I am delighted to say that upon reading the written comments the Board received that there are people in the research community to be proud of: Michael J. Radvitsky; Matthew J. McGuire; Mr. Dennis Lee Effle; Douglas P. Horne; Jim Lesar; Mark A. Allen; John Rademacher; Bill Adams; Arend Kistemaker, who wrote in from The Netherlands; Adele E.U. Edisen; Robert Chapman; Dr. David Mantik; John Judge; Peter Dale Scott; W. Anthony Marsh; and Daryll Weatherly.

However, there are those letters and faxes in the public comment file that are alarming.

Cindy C. Smolovik, who works with the Dallas Municipal Archives and Records Center (DMARC), and Robert S. Sloan, City Secretary wrote a letter arguing that the language in sec. 1400.1 (b) (2) is an infringement on state and local rights, "...state and local governments, university libraries and other archives institutions must be allowed to control their own

holdings." They also want to change the definition of "assassination record" in sec. 1400.1 (b) (2) from "an 'assassination record' includes all records called by or segregated by all federal, state, and local government agencies in conjunction with any investigation..." to "...in conjunction with a federal investigation."

I am sick of hearing about "state's rights."

The letter mentions how, "Without federal regulations the City of Dallas has been very responsible in providing public access to JFK records since 1989." Does everyone want to argue that point or just me? I thought the Dallas police files were opened in 1992. And what about the infringement upon the American citizens to know their own history? They were afraid of federal legislation then and they are afraid of it now. The attitude of this letter is basically, Yankee go home. A copy of this letter dated March 15th, faxed March 16th, was sent to Sen. Phil Gramm and Sen. Kay Bailey Hutchinson, two pioneers in fighting for truth and justice.

Mr. Howard M. Shapiro, General Counsel for the FBI had a problem with sec. 1400.1 (a). He wants the "may have led to" language to be struck in favor of "have an articulable causal nexus". Huh?? I think he means articulative.

Mary Ronan, an archivist at NARA, went on for three pages in her argument to exclude "artifacts" from the JFK Collection arguing that they are not records, citing Nichols vs. United States, 325F. Supp. 130, 135 (D. Kan 1971), and Matthews v. United States Postal Service, No. 92-1208, slip op. at 4 n. 3 (W.D. Mo, Apr. 15, 1994) and "the definition of records as found in the Federal Records Act, 44 U.S.C. sec. 3301". A requester filed an FOIA in the Nichols case seeking access to (note that, access, not copies) a number of items of evidence from the Kennedy assassination investigation such as Oswald's rifle, bullets, the shirt President Kennedy was wearing when he was shot and metal fragments removed from his body. According to Ronan, the court concluded that such items did not constitute "records" within the meaning of the FOIA. Therefore, NARA believes "artifacts" are not records. I will check this.

This is a BIG problem and I do not believe it will be easily settled. I am the only one really in this fight. I am the only one who found Public Law 89-318, which predates everything these NARA people have cited. My 25 page letter dated Feb. 14 on this specific topic is the only letter in the public comment file that has an official, internal ARRB memo attached to it.

The review Board must have a broad definition of an "assassination record" so that it can be flexible enough to meet the bureaucratic resistance it will face with every agency and individual of whom it will request records. If the research community does not increase its input into this process of broadening the definition, fighting tooth and nail all arguments to restrict the definition, increase requests for specific documents and where to look for documents, then we are shooting ourselves in the foot, if not somewhere higher.

(Please note: the Assassination Record Review Board address is: 600 E. Street 2nd floor, Washington D.C. 20503. Their phone number is 202-724-0088 and their fax number is 202-724-0457.)

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## LETTERS TO THE EDITOR

**To the editor:** There are several articles in the January issue about which I feel compelled to make brief comments. First, I will not comment on the personal attacks of Dave Perry and R.W. Burgess; your valuable space is much better used in a discussion of ideas rather than personalities.

Next, I'd like to compliment two excellent articles. Chris Sharrett's review of the Trask book is right on the mark and very well written. And Stan Weeber's thorough and well-researched piece on the Landesberg mystery pre-empted a similar story I was working on; he did a much better job than I would have. For the benefit of your readers, I would like to add a bit of interesting information. John Armstrong discovered the Landesberg story in 1993 and shared all his research with me (and several other researchers). I wrote to the actor Landesberg in mid-1993 in care of his listed actor's agency, asking whether he was the same person listed in the newspaper clippings regarding Oswald. I never received an answer of any sort. Then, on April 17, 1994, I received a phone call from a person who identified himself as "Tom Walker, security officer for Steve Landesberg." In a somewhat gruff and threatening manner he warned me to "quit harrassing Mr. Landesberg or appropriate action would be taken." I did not understand how writing a respectful letter to a celebrity asking a simple question could constitute "harrassment." A simple denial was all I expected, since I doubted that Landesberg

would say he was the same person. Researchers wishing to follow up can contact Walker c/o Walker Security, Box 552 Bronx, NY 10475.

Finally, I would like to address several points in Martin Shackelford's premature burial of "the black dog man." His speculation that one of two black persons said to be sitting on a bench behind the concrete wall suddenly stands and becomes the person leaning on the corner of the wall contradicts the evidence of Willis slide five. Martin evidently has not seen an excellent color reproduction from the original, such as the one which Gary Shaw has, which I understand was made for the Garrison trial. I have an extreme enlargement of the "dog man" made from Gary's print; it shows a person wearing a dark hat and coat (HSCA said brown), whose flesh tones are clearly Caucasian, not Negroid. Though Martin relies on an interview of Sitzman by Thompson in Trask, I know of no photo which shows the lurching couple, nor do we have any proof they were in this position at the time of the motorcade. Martin cites an enlargement in Smith's book as convincing him that the figure "definitely looks like a woman." A glance at the cited illustration shows a very poor quality enlargement of a half-tone image which Smith obviously had an artist selectively outline to show its resemblance to a sitting dog; Martin sees this crude figure as a woman. His identification about "pop bottles" is just speculation; other researchers have identified the bottle on the wall in Towner as a "Coke" bottle. There is no credible evidence that there was a broken bottle which held "red pop".

Despite the quote from Sitzman, it is incredible to me that the sound of a breaking glass bottle was "much louder than the shots were." (I heard many gunshots in Dealey Plaza during the JFK filming, and they were deafening!) The references to the "red snow cone" and the "pool of blood" are totally misleading, and appear to have no connection to the alleged "red pop bottle." I have spoken at length with Jean Hill about her "snow cone" sighting. She saw what she at first thought was a puddle of blood on a sidewalk, but then realized it was a thick, gooey red substance, similar to a spilled syrupy snow cone (which would be very rare on a cool November day in Dallas). It was not similar to a spilled soft drink. She saw no snow-cone cup; she saw no bottle (full, empty, or broken). My further remembrance is that the dog-man location is not where she saw the "blood", but I hesitate to say where without checking with her again. Martin's additional reference to "pool of blood" refers to the sometimes confusing testimony