

# The Culture of the ARRB

*A Behind the Scenes Look by a Former Senior Staff Member*

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I expressed interest in a staff position with the fledgling Assassination Records Review Board (ARRB) in October of 1995, and followed by submitting two formal resumes (one in private sector format, and a second, as requested, in the approved government format) in November. After many delays, and 5 telephone interviews between individual members of the Review Board staff in Washington, D.C. and me in Pearl Harbor, Hawaii, where I was working at the time, I was finally offered a position as a Senior Analyst on March 17, 1995—St. Patrick’s Day, appropriately enough. When I reported for work on August 7, 1995, I was placed on the Military Records Team. I was fortunate enough during my three-years-plus at the ARRB to participate in many medical interviews and depositions as well as successful efforts to digitally preserve and enhance the autopsy photographs of President Kennedy. I was also involved in modest and inconclusive efforts to study the authenticity of the autopsy x-rays and photographs, and in sponsorship of a major effort by a consultant (Kodak) to examine issues surrounding the authenticity of the Zapruder film. Due to attrition within the mid-level management structure, I was asked to serve as the Chief Analyst for Military Records for the last year and a half I was at the ARRB. As a result I was privileged to be at the center of efforts to declassify crucial and fascinating Cold War records on U.S. Vietnam and Cuba policy during the Kennedy administration.

Working on the staff of the Assassination Records Review Board was not anything like I had imagined it would be before I went to work there. I had been cautioned repeatedly during the extensive job interview process that the ARRB was not chartered to “solve” or “reinvestigate” the assassination. I was further admonished that the mandate of the JFK Act was simply to identify, locate, and open assassination records (to the maximum extent allowable within the terms and conditions of the JFK Act), and to then transfer them to a new permanent archival collection (The JFK Records Collection) at the National Archives.<sup>1</sup> As I began my work at the ARRB I was reasonably well read in the perplexing and conflicting evidence in the case, and I strongly believed that the evidence demonstrated the two official versions of what had happened could not be true, and that therefore some kind of domestic conspiracy was responsible for the death of President Kennedy. For someone approaching the Kennedy Assassination from my perspective, working at the ARRB proved to be a bizarre experience.

Why ‘bizarre?’ First, because while I had assumed that even though some, or perhaps even a majority, of staff members would not agree with me that there had been a conspiracy, they would at least have been hired on the basis of having some fair amount of knowledge of the case, and would also have an interest in it. I found out I was wrong. Many staff members didn’t give much of a damn about the case one way or another, and were apparently hired because they had little knowledge of the case, and it was therefore assumed they would not bring a strong ‘bias’ with them. Others were apparently hired because they were unemployed—just out of graduate school or law school, or in-between jobs—and could be “low-balled” from the standpoint of salary. To be sure, they all met the required educational requirements for the staff positions for which they were hired, but many were not well versed in the assassination, nor did many of my colleagues initially have much of an interest in the subject matter. Some, to their credit, subsequently developed an interest and be-



President Clinton meets with members of the Review Board as they present their Final Report.

came self-educated ‘experts’ within their areas of responsibility, but they were in a minority.

Second, I found it a bizarre experience because the 5 Board Members, with one probable exception, were unfamiliar with the multiple and serious conflicts in the evidence in the Kennedy assassination. They demonstrated collectively by their lack of reading and lack of study over the 4 years of the ARRB’s existence that they were not interested in ‘catching up,’ or learning anything substantive about the case.<sup>2</sup> Of the maximum of 25 to 28 staff members employed at any one time, generally between one-

third to one-half of the staff population believed the Warren Commission had come up with the right conclusions. At any given time, between one-half to two-thirds of the staff daily demonstrated not only a profound overall ignorance of the Kennedy assassination, but a strong prejudice against any colleagues or independent researchers who questioned the Warren Commission’s conclusions.

Furthermore, they embodied through their behavior an appalling lack of curiosity, and minds closed to new ideas.

Of course, there were curious people on the staff, and there were staff members who felt as I did. Namely, there were some staff members who felt that there were so many conflicts in the evidence in the Kennedy murder that there was something terribly wrong with the conclusions of both the Warren Commission, and the House Select Committee on Assassinations.<sup>3</sup> But this group was in a distinct minority.

The point here is not whether Board Members and staff members were ‘biased’ one way or the other, for surely all of us were.<sup>4</sup> Rather, the point is that whereas a range of approximately 75-90 per cent of the American people polled for the past couple of decades have believed there was a conspiracy of some kind behind the assassination of President Kennedy, this proportionality of belief systems was not represented by the makeup of either the staff of the ARRB, or by the composition of the Board itself. The belief systems represented by the staff and Board Members of the ARRB were decidedly skewed, compared to those of the general public. Jeremy Gunn, Head of Research and Analysis on the Staff, and General Counsel for the bulk of the ARRB’s life-span, told me many times that none of the Board Members believed there was a conspiracy to kill President Kennedy. Gunn repeatedly cautioned me not to discuss any con-

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spiracy theories with the Board Members, no matter how well I thought such a hypothesis was supported by evidence. It was directly implied that this would not only have been politically incorrect, but dangerous, as well—and by this I mean injurious to my professional standing on the staff.

This strong bias by the core of the ARRB structure against the likelihood of a conspiracy, or even against consideration of the possibility of a conspiracy, sprang from two sources, in my opinion. First, the Board Members themselves were nominated by professional societies<sup>5</sup>—the conservative elites of academia that by their very nature always tend to support the status quo, stability, and are part of the ‘establishment.’ [Any study of the history of science, for example, readily reveals that the established leaders of any given generation of the scientific ‘establishment’ rarely entertain radically new ideas with grace, and are extremely resistant to new concepts that challenge the current orthodoxy established as the ‘mainstream’ school of thought. More on this later.]

Second, the person chosen to serve as the founding Executive Director of the staff, who had total control over staff hiring, was surely chosen not only because of his worthy experience as an archivist, administrator, and historian, but also because his belief systems were compatible with those of the Board Members whom he would be serving. For example, whereas I admittedly came to the Kennedy assassination through *Rush to Judgment*, *Six Seconds in Dallas*, and *Best Evidence*, David Marwell, the founding Executive Director, was not bashful about openly stating that he came to the case from Gerald Posner’s *Case Closed*. I view this work as a simplistically written, sometimes inaccurately researched apologia for the Warren Commission’s basic findings (‘old wine’ in a ‘new bottle’). However, to David Marwell’s credit, he ultimately decided to hire me to work on the staff, even though he knew that, contrary to his own beliefs, I was persuaded that a domestic conspiracy was responsible for the assassination of President Kennedy. (David Marwell and Jeremy Gunn both stated on a number of occasions that they felt a wide divergence of views on the staff was healthy.) I was in a distinct minority, however.

At the time I joined the staff in August of 1995, I estimate that there were only three other staff members, out of approximately 28, who were widely read in the evidence of the case. Therefore, only about four people out of twenty-eight on the staff had an open mind to the possibility of conspiracy at the time they began employment. A handful of others—a minority—became widely read in their areas of expertise over time. I came to notice that the more widely read one became in the details of the evidence, the more awareness one developed in how complex the Kennedy assassination truly was, and about how few certainties there truly were in this murder.

None of this means that there was any conspiracy at the ARRB to hide the truth or suppress evidence in the Kennedy assassination. I never saw any evidence that there was. Nor do I believe there was any such conspiracy or cover-up at the ARRB. What it does mean is that anyone on the staff who wanted to pursue any ‘quasi-investigative’ leads, or pursue anything that smacked of ‘reinvestigation,’ was bucking against the current.

To continue the analogy discussed above, major paradigm shifts in belief systems within mainstream elites generally are not originated by the leadership of those elites. Rather, major paradigm shifts are almost always proposed by ‘loners’ viewed as ‘mavericks’ within their own communities, and are initially viewed as ‘heresy’ by the establishment before being accepted by subsequent, new generations as the ‘new orthodoxy.’ The ‘old orthodoxy’ still defended by most of the mainstream historical and establishment media elites in the United States are the Warren Commission’s findings, and its bastard offspring, the HSCA report.<sup>6</sup>

Not only did the JFK Records Act timidly not empower the Review Board to reinvestigate the assassination or reach conclusions, but the consensus among both the Board Members and the majority of the staff was that there was nothing out there to compel a reinvestigation anyway. Anytime a staff member (such as myself) would propose that some investigative, or re-investigative lead be followed-up on, it was an uphill fight from the get-go. Such efforts had to be carefully couched with justifications such as, “we are only trying to clarify the record”. (This was often true, by the way.) These ‘clarification’ efforts had to be pursued incrementally, in a piecemeal fashion, without expending too much at any one time in the way of limited staff resources—resources that were officially to be used only to identify, locate, review, open, and transfer assassination records to the National Archives.

A good example of ‘limited reinvestigation’ at the ARRB was what I came to call our efforts to ‘expand and clarify’ the medical record of President Kennedy’s assassination. Jeremy Gunn and I had to obtain incremental approval for each step that involved obtaining testimony under oath—the 5 Board Members had to formally approve all depositions by a

majority vote. (Unsworn staff interviews of witnesses, thankfully, did not have to be approved by the Board Members.) In the culture in which we were working, presentation to the Board of any kind of a ‘master plan’ for what looked like a reinvestigation of the medical evidence would not have been acceptable in an environment where the emphasis was on the search for ex-

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isting records.

So, for example, the first step taken by the staff with the Board in the medical evidence area was a modest one—getting permission to depose JFK autopsy pathologists James J. Humes and “J” Thornton Boswell, two of the three pathologists at President Kennedy’s autopsy. Jeremy Gunn approached David Marwell with the proposal and the rationale supporting it.

Once David Marwell was persuaded the project was worthwhile and could be supported within the structure of the Board’s mandate, it was up to him to propose it to the Board Members and solicit a formal vote on whether or not to depose the two former Navy pathologists.

I vividly remember the day of a Board meeting in the autumn of 1995 when Jeremy Gunn came to me, with his eyes lit up with excitement, to tell me that the Board Members had just voted to allow the staff to depose Drs. Humes and Boswell. It really was great news. I remember, however, saying to Jeremy on that day, “That’s great, but I think we should do the Dallas treating physicians first, don’t you, and then the autopsy pathologists?” As a harbinger of weaknesses in our process and methodology, Jeremy gave me what became his stock answer on this question for the next two-and-one-half years: “Let’s wait until later. Maybe we’ll have an opportunity to depose the Dallas doctors after we finish with the autopsy pathologists. We can easily justify deposing the autopsy pathologists now because they created so many official records central to the case that require clarification. I would love to do the Dallas doctors too, but let’s just wait until the appropriate time,” or words very similar to these.

In this case, though, as in later efforts to “expand and clarify” the medical record, the debate wasn’t always “over” just because the Board Members had voted to conduct a deposition. In this instance, as in others in the future involving medical issues, the decision by the Board to take action only stimulated debate and dissension within the staff. On this occasion, the staff member directly responsible to Jeremy Gunn for conducting pre-deposition research, and assembling exhibits, attempted to halt the depositions through personal lobbying of David Marwell. He also dragged his feet on preparations, and exhibited little enthusiasm for the project. Rather than halting the depositions agreed to by the Board,

this activity merely earned the staff member his removal from the project, and resulted in my promotion from “number two” to “number one” research assistant to Jeremy Gunn in the medical evidence area.

This staff member said he opposed the deposition of Humes and Boswell primarily on “constructionist” or “legal” grounds. He said that this activity constituted reinvestigation of the Kennedy assassination, and he opposed it because: (1) reinvestigation of President Kennedy’s murder, he reminded us, was not a mission empowered to the ARRB in the JFK Act; and (2) memories were so unreliable after 34 years, that all we would do, he feared, was unnecessarily “muddy the existing record.” But this same staff member also thought the Warren Commission “got it right,” and was quite vocal about viciously attacking anyone on the staff who disagreed with this belief of his. He was a master at the use of invective and sarcasm, and would often use the nasty rhetorical question that was “unanswerable” to terminate a conversation, rather than debate one point of evidence with another. As it turned out, this split between staff members who opposed “clarification” efforts on “constructionist” or “legal” grounds, and those who were not satisfied with the messy state of the evidence in the case and wanted to “clarify the record” whenever possible by asking witnesses questions under oath, continued throughout the lifespan of the ARRB. And I cannot recall one staff member who opposed ‘clarification of the record’—i.e., admittedly creating a new assassination record by pursuing evidentiary leads and asking a broad range of questions, often under oath—who was not either a Warren Commission supporter, or just plain completely bored by, and disinterested in, the whole subject of the Kennedy assassination.

Just so that the reader understands, I was the strongest advocate on the staff in favor of using our powers to depose witnesses (and subpoena them if necessary) in an attempt to “clarify the record.” I reasoned as follows: what harm was there in this, since the deposition transcripts and interview reports would simply be deposited (without comment) in the JFK Collection before the ARRB shut down, for the American people to review on their own? I knew that the medical witnesses to the treatment of President Kennedy and Governor Connally, and President Kennedy’s autopsy, were getting up in years, and that two of the Dallas physicians, Drs. Shaw and Jenkins, were already deceased. Why not question all of the surviving medical witnesses, I often asked my colleagues, before it was impossible for anyone to do so? Each American would be free later, on his or her own, I reasoned, to decide which testimony was credible or incredible, accurate or inaccurate, worthy of belief or not worthy of belief. This strategy was consistent with the whole spirit of the JFK Act, which was to place records in the National Archives and to make them available for review by ordinary citizens, and scholars of all stripes, so that each person could determine individually what the evidence meant.

Although many of these medical witnesses had indeed been interviewed or deposed in the past, a case could be made that they were often not asked the appropriate questions, the appropriate follow-up questions, or enough questions. This alone, I felt, justified conducting several depositions from among both the Dallas treating physicians, and the Bethesda autopsy participants. Besides, the ARRB, because of its studiously neutral role in the whole process, was the perfect candidate to conduct the most useful depositions of assassination witnesses. Not only would many witnesses be more likely to agree to be questioned by a neutral government body than by a private researcher, but with all of its legal talent, the ARRB was much more likely to conduct impartial interviews and depositions. A private researcher with a pet theory might either consciously, or inadvertently, ask leading questions and forget (or avoid) asking others.

To me, deciding to maximize, rather than minimize, the number of depositions taken by the ARRB, particularly in the area of the medical

evidence, which was so replete with contradictions and inconsistencies, was therefore a “no-brainer.” In my view, it could do no harm, and would only leave a valuable legacy behind as the ARRB shut down its operations. There was no guarantee that such activity would satisfy “doubting Thomases” like me by allowing us to “solve” the assassination, but that was not the criterion by which the success of such an effort should be judged, I reasoned. The real reason to conduct as many depositions as possible of important witnesses was to get their best recollections, while under oath, on record, before they passed away. It was that simple. Figuring out what it all meant could (and would) come later.

Fortunately, the Board Members sided with my philosophy more often than they did with that of the nay-saying, strict “constructionists” on the staff who didn’t want us to do anything but locate and release pre-existing records. There was great irony in this. The same Review Board that didn’t know the details of the evidence in the assassination very well at all, and that (according to Jeremy Gunn) didn’t believe there was a conspiracy to kill President Kennedy, ended up approving ten individual depositions of personnel who participated in (or simply witnessed) the Bethesda autopsy, and one joint deposition of some of the Dallas treating physicians.

I believe there were flaws in how some of these depositions were conducted by General Counsel Jeremy Gunn—some quite serious—but the point here is that over time, Executive Director David Marwell proposed to the Review Board that the depositions of ten Bethesda autopsy participants be taken, and that each time such a proposal was made, it was approved by the Board Members. The result was that the Board Members approved all 10 proposals put to them to depose Bethesda autopsy witnesses, and thus left a priceless gift to history. (The Board Members also approved depositions of some of the Dallas treating physicians, but only in response to an intense public lobbying campaign by a frustrated JFK research community. This episode will be the subject of a future article.)

On the other hand, not one Board Member attended one medical witness deposition, and to my knowl-

edge not one Board Member read the transcript of any medical deposition during the lifespan of the ARRB. (No, I’m not kidding.) I was told by an administrative staff member that about one month prior to the ARRB’s sunset in September 1998, 3 of the 5 Board Members, however, did suddenly ask for photocopies of all of the medical witness deposition transcripts.

So, is the ARRB glass half-full, or half-empty, in regard to the medical evidence? It certainly depends upon one’s perspective. In the case of the autopsy evidence, I would submit that the glass is two-thirds full, and only one-third empty. In the case of the Parkland Hospital treating physicians, I believe the Board Members (although very reluctantly, and for the wrong reasons) made the correct decision to depose some Dallas treating physicians. However, the task was so badly bungled in execution by so many people, that the glass in that case is almost completely empty...but more on that later. (I will dedicate a future article solely to the subject of the Dallas doctors joint deposition conducted by the ARRB.)

Based upon what I saw as the Military Records Team Leader for a year-and-a-half, and based upon what I heard about the CIA, FBI and Secret Service records reviewed by the ARRB from my staff colleagues for three years, the Board Members’ attitude and performance in regard to their primary task of reviewing and releasing pre-existing assassination records that the originating agencies (or other agencies) wanted to withhold in whole, or in part, was simply outstanding. The Board Members aggressively pursued the opening of all records to the maximum extent allowable under the provisions of the JFK Act, consistently upholding the JFK Act’s “presumption of immediate disclosure” by demanding that agencies wanting to redact (or withhold) text provide ‘clear and convincing

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evidence that the nation would be harmed' before agreeing to any such redactions.<sup>7</sup> And the Board Members were not an easy sell, either. Their standards of proof were quite stringent, and consistently so. There were some staff members who felt the Board was occasionally overzealous in favor of release of what had formerly been national secrets, but they were in a minority.

It would be the ultimate irony if some of the work of the Review Board or its staff ended up being the catalyst that "busted" the old paradigm of the Warren Commission's orthodoxy in the minds of our country's power elites. The bipartisan consensus in Congress that led to passage of the JFK Act in 1992 was without a doubt driven by a certainty within the House and Senate that "the government had nothing to hide," and that "opening up the files" would quash unmerited speculation and paranoia that was having a corrosive effect on faith in our government's institutions.

One primary reason the Board Members were so aggressive in opening records is because they felt the concept of a conspiracy in the death of JFK was nonsense. This idea—that a body of Honorable Men such as the Warren Commission was either dishonest, or simply "got it wrong"—was in fact offensive to them, and they all wanted to help restore faith in American institutions of government by releasing as many records as possible. They felt with great certainty these releases would support the Warren Commission's findings, and reveal many public suspicions about the assassination to be without foundation. Put a bit more kindly, the Board Members understood the corrosive effect of unwarranted Cold War secrecy on public confidence in government, and wanted to do as much as they could to restore some faith in American institutions. They felt they might do this by proving that a government body (such as the ARRB) was willing and able, if properly empowered, to release former secrets to the light of day, and public scrutiny, regardless of what those records revealed about the subject matter at hand.

Whether what Board Member Henry Graff called "the law of unintended consequences" will apply to the legacy of the Review Board remains to be seen. Board Member Kermit Hall opined in September 1998, at the Review Board's "sunset" press conference at the National Archives, that it will be at least 10 years before the legacy of the Review Board can begin to be properly assessed. I agree. It will take some time to reverse the mantra of officialdom, particularly when government officials, mainstream historians, and news organizations who missed the "story of the century" in the first place (due to gullibility and laziness) now have 35 years' worth of bureaucratic and editorial turf to protect.

Perhaps, in one of the great ironies of history, the work done by the conservative-minded, "non-investigative" Assassination Records Review Board has begun to help shift the rudder on the ship of history that interprets and delivers the Kennedy assassination to the American people. In my view, that ship is already "coming about" and slowly beginning to reverse course, but mainstream historians and the 'respectable' media organs still refuse to acknowledge what the public has known for years: the simplistic conclusions presented by the Warren Commission in 1964, and repackaged by the House Select Committee on Assassinations in 1979, are not supported by the total body of evidence in the case—and no matter how unsatisfying it may be to say so, the assassination of President John F. Kennedy remains an unsolved murder.

## ENDNOTES

1 See ARRB Final Report, Chapter 1F, pages 7-10, for a succinct summation of the key provisions of the JFK Act.

2 The Board Members did receive numerous staff briefings that provided 'context' for key documents that were being examined; but these briefings were always quite short, and narrow in scope. I was never aware of any proposal or program to have the staff brief the Board Members on the essential evidence in the Kennedy assassination. I think this was a great opportunity lost. The staff could have prepared 'prosecutorial' and 'defense' briefs on ballistics evidence,

medical evidence, acoustics evidence, and neutron activation analysis, for example...and the Board Members could have been educated, reasonably quickly (i.e., during the first six months), in the basic evidence of the case. Since 4 of the 5 Board Members had full-time jobs in the outside world, and the Board Members only met an average of 2 or 3 days per month in Washington on Review Board business, this approach may, in retrospect, have been the only way to 'get the Board up to speed.' Hindsight is always '20-20.' Perhaps the biggest impediment to this concept was that it is never safe, or politically correct, to tell the emperor he is not wearing any clothes. I specifically proposed to Jeremy Gunn, on more than one occasion, that the Board Members receive a 'big medical briefing' to acquaint them with the conflicts in the evidence in this area, but the idea was abhorrent to Jeremy. He said they had little patience with the conflicts in the evidence in the JFK murder, and had demonstrated great impatience with him on more than one occasion when he had tried to discuss ambiguity or incongruities in the medical evidence.

3 The Warren Commission concluded that Lee Harvey Oswald, acting alone, killed President Kennedy. The House Select Committee on Assassinations concluded that while Lee Harvey Oswald had indeed killed President Kennedy and had been the sole individual to wound both the President and Governor Connally, that an additional shot (i.e., a fourth shot) had been fired from the 'grassy knoll' in Dealey Plaza, and had missed the occupants of the limousine, and that therefore, there had 'probably' been a conspiracy.

4 I never felt that 'biased' was the dirty word Jeremy Gunn seemed to think it was. He often used to state, in the way of admonishment, that certain staff members, or researchers, were biased, and used the term with such opprobrium that being tagged by Jeremy Gunn as 'biased' was tantamount to having a social disease. [Whenever he would use this label, the clear implication seemed to be that the lowly mortals being criticized *were* biased, but that Jeremy Gunn, of course, was *not*.] In my view, everyone is biased, but it is not a dirty word...it simply means they have an opinion. If an opinion is based upon the relative weight one gives to different evidence, and a person can suspend his opinion (or bias) when engaged in professional activity, then there is nothing wrong with this. In fact, this kind of self-awareness is healthy. What I believe is dangerous is the person who thinks he is above bias, but nevertheless demonstrates that he is biased, on a regular basis, through his statements and behaviors.

5 President Clinton nominated, for the advice and consent of the Senate, the choices of the American Bar Association (John R. Tunheim), the American Historical Association (Anna Kasten Nelson), the Organization of American Historians (Kermit L. Hall), the Society of American Archivists (William L. Joyce), and a fifth nominee recommended by the White House staff, Henry F. Graff. The process whereby four of the above nominees were recommended by their respective professional associations was mandated by Section 7a(4)(A) of the JFK Act; see Appendix C of the ARRB Final Report. The JFK Act required that the Review Board be composed of 5 Board Members, but only named four nominating bodies, so having the White House staff nominate the fifth member seems to have been an equitable and non-preferential way of having achieved balance, and avoiding undue influence, or the perception of undue influence, of any particular group on the Review Board's activities.

6 Notable exceptions have been ABC's 1992 "20/20" television interview of Dr. Charles Crenshaw, and the position on the assassination taken by presidential historian Michael Beschloss in *The Crisis Years*. [There are some chinks in the armor of the establishment.]

7 The only allowable reasons for the withholding of information in assassination records were enumerated by the Congress in Section 6 of the JFK Records Collection Act of 1992, entitled "Grounds for Postponement of Public Disclosure of Records." [See Appendix C of the ARRB's Final Report.] In brief, these reasons were (and remain): (1) threats to the defense, military operations, or foreign relations of the U.S., (2) the release of the name of a living person who had provided confidential information to the government in cases where the release today of that identity would cause a substantial risk of harm to that person, (3) the release of information that would cause an unwarranted invasion of privacy to an individual, where that invasion of privacy is so substantial that it outweighs the public interest in its release, (4) the public disclosure of the assassination record would compromise the existence of an understanding of confidentiality currently requiring protection between a government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest, or (5) the public disclosure of the assassination record would compromise protective procedures currently utilized, and public disclosure would be so harmful that it outweighs the public interest.