

DRAFT

NARA/ARRB PROPOSAL TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE FOR THE PROCESSING OF ADDITIONAL RECORDS UNDER THE JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992

(JFK ACT, P.L. 102-526)

Purpose

Our intention is to offer a practical plan of assistance to the Senate Select Committee on Intelligence (SSCI) as it seeks to comply with its responsibilities under the JFK Act. Our proposal is based on the model under which NARA successfully processed the records of the House Select Committee on Assassinations (HSCA) for the House Oversight Committee (formerly the Committee on House Administration). Our goal is to ensure, first, that the SSCI is brought into full compliance with the statute and, second, that the ARRB has sufficient time to process the Committee's assassination records prior to our sunset date of September 30, 1997.

Introduction

The John F. Kennedy Assassination Records Collection Act (JFK Act), enacted on October 26, 1992, carries a "presumption of immediate disclosure" and calls for the "expeditious public transmission" of assassination records to the National Archives. The Act's definitions (Section 3) specifically refer to the Senate Select Committee on Intelligence (SSCI) with regard to the records of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee"), as well as in regard to "other assassination records."

The Act (Section 5) required that all government offices holding assassination records would "review, identify and organize each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist" not later than 300 days after enactment (approximately September of 1993).

On December 17, 1992, staff from NARA's Center for Legislative Archives met with SSCI staffers David Halperin and Don Mitchell regarding SSCI compliance with the JFK Act. According to a contemporaneous NARA memo, Halperin and Mitchell estimated that there were "only five or so record center cartons" of assassination records among the Church Committee files, and that they would "be able to segregate this material easily."

Beginning in October of 1993 and continuing through early September of 1994, the SSCI forwarded 40 boxes of processed assassination records to the National Archives under the JFK Act. An enormous amount of work clearly went into: 1) identifying these records, 2) creating a unique Record Identification Form (RIF) for each record and, 3) working with originating agencies on the referral and agency review of these records.

Nonetheless, it soon became clear to researchers and to NARA that significant numbers of assassination records remained unprocessed in Church Committee files. To cite the most glaring omissions: numerous records cited in the footnotes to Book V of the Church Committee Report -- "The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies" -- were not present in the material forwarded to NARA by SSCI in 1993 and 1994. Moreover, these omitted documents may represent only the tip of the iceberg (since it is safe to assume that the universe of relevant source documents for Book V extends well beyond those actually cited).

NARA's Steve Tilley wrote the SSCI in April of 1995, alerting the Committee to the issue of unprocessed records and offering his office's assistance in locating additional assassination records. Mr. Tilley also informed the Committee that he was advising the Review Board of his concerns.

As Mr. Tilley had gone almost a year without any definitive reply from the Committee, ARRB/NARA requested a meeting with SSCI staff in March of this year for the purpose of reviewing the status of the Committee's compliance with the JFK Act. Various commitments were made at that meeting regarding the turning over of disks and the locating by the Committee of additional assassination records identified by Steve Tilley. After a series of subsequent follow-up contacts, the Committee transferred disks and one additional box (Box 41) of previously-identified textual records to ARRB/NARA at the end of May. None of the additional assassination records identified by Steve Tilley have been forwarded (or, to the best of our knowledge, located); nor was a subsequently requested (May 29th) ARRB/NARA site-visit to survey Church Committee files arranged. Moreover, since the meeting in March of this year, the ARRB has identified and forwarded to the Committee additional potential assassination records (fax by Joe Freeman to Jim Wolf, May 29th) not currently part of the Church Committee collection at NARA II.

The Problem Briefly Stated

Given the frenetic nature of life on Capitol Hill, it seems likely that urgent and time-sensitive policy

issues unrelated to the JFK Act will continue to subvert the Committee's intention to comply fully with the statute. Given the limited staff resources available to the Committee and the many issues with which it must deal, the amount of work done with JFK-related material in 1993/94 is impressive.

But, despite the best intentions and a great deal of past effort, recent experience suggests that there is no reasonable prospect of the Committee undertaking *and completing* the work which remains. Moreover, it is reasonable to ask why the Committee's limited resources need to be diverted from its primary tasks in order to complete what is essentially an archival and declassification exercise that could best be done by others. In retrospect, it is clear that the initial estimate of the scope of the task -- as articulated by staffers Halperin and Mitchell in December of 1992 -- was inordinately conservative, leading to an overly optimistic assessment regarding the Committee's ability to complete the task unassisted. The decision which flowed from this assessment effectively set the Committee up for failure on a project which it might have been advisable to have delegated from the first.

The Proposed Solution

We propose that, while maintaining oversight of the process, the SSCI delegate the identification and referral of additional assassination records to ARRB/NARA. There is relevant (and successful) Congressional precedent in the House Oversight Committee's (formerly the Committee on House Administration) delegation of authority to NARA's Center for Legislative Archives in 1992-1993 (correspondence detailing that delegation, from December of 1992, is attached). Not all the ground rules governing that arrangement are appropriate now -- made as they were at a time when the Review Board was not yet appointed -- but they nonetheless provide a general and proven blueprint for the present situation. The four major steps we envision in the delegation process, leading to the successful discharging of the Committee's responsibilities under the JFK Act, are as follows:

1. NARA/ARRB is provided access to the Church Committee records at NARA I for the purpose of identifying additional assassination records. NARA/ARRB

personnel with appropriate clearances will require access to Church Committee records for the purpose of identifying additional assassination records, as well as for locating already-identified but unprocessed documents like the ones brought the SSCI's attention earlier this year. There is no practical alternative to the physical inspection of Church Committee records by properly cleared NARA/ARRB personnel.¹ Given the familiarity of these personnel with the facts and

¹ **David and Jeremy:** we could footnote here the CIA Team's recent experience with the CIA Sequestered collection, insofar as it parallels what we would be doing with the Church Committee records: going through a mountain of records containing classified non-assassination related material and sorting out the wheat from the chaff in terms of identifying genuine assassination records. **Your**

literature on the assassination, and their knowledge of the broad parameters already established by the Review Board and agencies like the CIA and FBI as to what constitutes an assassination record, they will be in a position of saving both the Review Board and the Committee a great deal of time in the assassination record identification process. Once this process is complete, NARA/ARRB staff will come back to the Committee with their identification findings (originating agencies whose equities are at stake will also be appraised).² **The Committee will presumably wish to have one of its own staffers present in the Church Committee vault at Archives I during the assassination record**

identification and location phase. Moreover, to the extent that such a staffer was conversant with existing finding aids to the Church Committee collection (or to the physical disposition of records in the Church Committee vault), their presence would be actively helpful. **While future trips to the vault might prove necessary, it is expected that this phase would take no more than a week, and hopefully less.**

2. Relocation of assassination records identified in Step 1. Ideally, the Committee would allow NARA/ARRB to temporarily transfer records mutually agreed to be assassination records to the ARRB SCIF for the duration of the RIF-creation, referral and review process. This would be consistent both with Section 5 of the JFK Act and the decision of the House Oversight Committee to permit the physical transfer of HSCA records to the ARRB SCIF.³ The physical transfer would be implemented by NARA and conducted in full compliance with established procedures and regulations regarding the transportation of classified records. Should the Committee be unwilling to permit the transfer of designated assassination records to the ARRB's SCIF, the fall back option would be to move a copier into the Church Committee vault and copy all

thoughts?

² The Committee (and originating agencies) will have an opportunity to concur or dissent with this initial NARA/ARRB assessment. Where the Committee or originating agencies disagree with the preliminary designation of records as assassination-related, the statute's mechanisms for resolving such disagreements will be set in motion.

³ The JFK Act requires the eventual transfer of all assassination records to the JFK Collection (at Archives II).

assassination records, the copies to be sent to the ARRB SCIF. The drawbacks to the copying option are self-evident: it is time-and-resource consuming and -- to the extent that the Committee wishes its own employees present any time NARA/ARRB personnel are working in the Church Committee vault at NARA I -- would run counter to the point of the whole exercise (minimizing the drain on Committee resources).⁴

3. Data-input/creation of RIFs for newly identified assassination records. This step would be undertaken by NARA/ARRB, entirely relieving Committee staff of a time-consuming and laborious task. NARA undertook this task for the House Oversight Committee in regard to HSCA records.

4. Referral of records to originating and/or equity-holding agencies. NARA/ARRB would also undertake the involved process of referring newly-identified assassination records to originating agencies like the CIA and FBI, who would then communicate their requested postponements (redactions) directly to the ARRB. NARA/ARRB would either make copies of the records for the agencies, or provide direct access to them in the ARRB SCIF. Any non-agency issues (privacy concerns, for instance) would be referred back to the Committee for its review and input.

Summary

Implementation of the steps outlined above offers the best hope for the successful discharge of the Committee's obligations under the JFK Act within the thirteen and one-half months remaining in the life of the Review Board.

NARA/ARRB anticipate that the Committee may experience an initial surge of reluctance at allowing NARA/ARRB access to the Church Committee vault at NARA I and transferring assassination records to the ARRB SCIF. NARA/ARRB hope, however, that the workability of this proposal -- as well as the lack of practical alternatives -- will commend itself to the Committee. Moreover, the Committee should also be reassured by the track record of the ARRB in the two years since the

⁴ Should the Committee choose, as we hope it would, to allow the transfer of assassination records to the ARRB SCIF, we presume these would include not only newly identified assassination records, but also the originals of the existing, already processed, 41-boxes of Church Committee material (redacted copies of which are presently at NARA II).

ARRB/NARA Proposal to SSCI

August 7, 1996

Page 6

Review Board has been up and running. The Review Board has established solid, mutually-respectful working relationships with the CIA and FBI, in particular. No complaints or security concerns have arisen in regard to the Review Board's review procedures. There have been no leaks of classified information or questions about the physical security of the classified agency records held in its SCIF. While there have been occasional policy differences between the Review Board and originating agencies regarding what should and shouldn't be postponed under the JFK Act, the Board has demonstrated that it is a responsible partner in carrying out the mandates of the statute. We believe that the SSCI can accept this proposal with confidence that its legitimate security concerns will be met, and that the proposal offers the Committee its best available route toward full compliance with the JFK Act.

Freeman e:\wp-docs\080596

File 4.34.4