

# Assassination Records Review Board

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## MEMORANDUM

December 8, 1994

**T**            **The Board**  
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**:**            **The Staff**  
  
**F**            **Definitions of "Assassination Records" and "Additional**  
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### **Background and Statutory Framework**

Under the President John F. Kennedy Assassination Records Collection Act of 1992 (the "Act"), the Review Board is empowered to define the key terms in the Act. The Act itself gives some initial guidance as to the scope of the term "assassination records." In its "Definitions" section, the Act provides that "'assassination record' means a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by or otherwise came into the possession of" the Warren Commission, the Rockefeller Commission, the Church Committee, the Pike Committee, the House Assassinations Committee, the Library of Congress, the National Archives and Records Administration, any Presidential library, any executive agency, any independent agency, any other office of the Federal Government, and any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President Kennedy, but does not include the autopsy records donated

by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records. See 44 U.S.C. section 2107, Sec. 3(2).

The Act further defines record to include "a book, paper, map, photograph, sound or video recording, machine readable material, computerized, digitized or electronic information, regardless of the medium on which is it stored, or other documentary material, regardless of its physical form or characteristics." Id. at Sec. 3 (11). This language tracks the definition of "records" found in the Federal Records Act. The Federal Records Act describes "records" as "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States . . . and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them." 44 U.S.C. sections 2901(1), 3301.

The Act's legislative history contains useful insights into the Congressional intent as to the scope of "assassination records." The 1992 Senate Report states that "[t]he definition of 'assassination records' is a threshold consideration for the successful implementation of the Act. Its scope will be the barometer of public confidence in the release of assassination records." S.Rep 102-328 at 21. In constructing the Act the Senate sought to achieve "the most comprehensive disclosure of records related to the assassination of President Kennedy." Id. at 18. Explaining the Act's "rules of construction," the Senate Report notes that a broad definition of assassination record is necessary to ensure "review under the new standards of the Act and not the more restrictive standards" of previous laws and executive orders. Id. at 32.

The Act's purpose, according to the Senate Report, is that "all government records related to the assassination of President Kennedy should be preserved for historical and governmental purposes; that all such records should carry a presumption of immediate disclosure; and that all such records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination." Id. at 20. The House Report on the Act's companion bill (which was the first version introduced but which was later replaced by the Senate version) concurs that the collection is intended to be inclusive and that Congress expects the Board to apply a "broad and encompassing" definition of assassination records that "includes records created, obtained, or generated by each of the governmental reviews of the assassination as well as records of agencies supporting those reviews." H.Rep. 102-625, Part 1 at 19.

Given that the Act's underlying purpose is to respond to the erosion of public confidence in government, the Board should collect and release not just documents related to the assassination itself but documents recording the government's response to it and its efforts over the years to investigate it. Thus, for example, the scope of

relevant documents should be arguably much wider than simply "the murder" of the president (as the State Department narrowly defined "assassination record" in a tasking memo sent on August 5, 1993). See also 1994 Conf. Report (H.Rep 103-587) at 2-3. ("Prompt disclosure of all records relating to the assassination is the best way to fulfill the American people's right to know what happened to their president. . . .There is continuing and compelling public interest in releasing all materials concerning the assassination at the earliest possible date, and . . only in the rarest cases is there any legitimate need for continued secrecy or classification of those materials.")

The legislative history also provides guidance on the Board's broader power, as enunciated in the Act, to "direct a Government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this Act." 44 U.S.C. section 2107 Sec. 7(j)((C)(ii). The Senate Report emphasizes that this power " is extremely important to the proper implementation and effectiveness of the Act because it provides the Review Board with the authority to seek the fullest disclosure possible by going beyond the information and records agencies initially chose to make available to the public and to the Review Board." S.Rep 102-328 at 31. It also instructs that "[i]n exercising [this] authority the Review Board should act on a reasonable basis in requesting additional information or records. . . [and] consider whether the records are reasonably related to the history surrounding the assassination of President Kennedy." Id. at 31. The Senate Report also notes that "executive branch agencies are fearful that this power will be abused and result in too great a burden to search for potential records and information." Id.

## **Issues**

### **1. Original v. Copies**

The proposed definition requires that original records be made available to the extent possible whenever there is a question of authenticity or of particular evidentiary value in an original (such as a photographic negative) — but gives the Board the discretion to accept a copy in other cases. To aid in the determination of when a copy would be acceptable, the staff recommends a balancing test that weighs the document's importance to the Kennedy Collection against its importance to the collection where it would otherwise be located. When copies are permitted in lieu of originals, the Board may require that the copy be certified.

### **2. Artifacts**

The staff recommends that artifacts be included in the definition of an assassination record, but recognizes that issues of access, preservation, and security unique to artifacts need to be addressed.

### **3. Relevance**

Anyone who has given any thought to the problem of devising a definition of an "assassination record" is confronted sooner or later with the question of relevance. The staff attempted to devise a test for the Board to employ in making this determination, but found no satisfying formula. Although we may be left in the end with the Potter Stewart (and Henry Graff) standard of knowing relevance "when we see it," we believe it may be helpful to articulate a standard that will be indicative of the Board's general approach to the question of relevance and avoid at the same time the perception of "arbitrary and capricious" decision making prohibited under the Administrative Procedures Act. With this in mind, we suggest posing the question in the following way in determining whether or not a record is reasonably relevant:

*Is it more likely than not to add to the American public's knowledge of the assassination?*

This proposed threshold question should clearly be distinguished from asking simply if a record could *possibly* add to the public's knowledge of the assassination.

#### **4. Notice and Other Requirements for Publication of Definitions**

Under the Administrative Procedures Act, no time is specified for the period that must be allowed for public comment when the Board's proposed definition of "assassination record" is published in the Federal Register. Generally, most agencies provide a 30-day comment period, although the Board could decide that a longer time frame for comments is more suitable. Given the desire to start the Board's substantive review work as soon as possible, allowing 30 days for public input on the Board's proposed definition seems appropriate.

#### **Definitions**

The definition of "assassination records" is important not only for the Board and its operation, but also for the various agencies that hold relevant records as well as the National Archives. For this reason, the staff has considered a series of definitions that will meet the congressional mandate, address the concerns of the public, and be practical and manageable.

Our proposal takes advantage of the distinction that the Act makes between "assassination records" and "additional records and information."<sup>1</sup> "Assassination records" are subject to the access and administrative provisions of the Act. "Additional records and information" are records that the Board determines will be necessary or useful in carrying out its tasks. In both cases, we propose a broad definition accompanied by an itemized catalog of specific records or record groups. We see great advantage in this system.

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<sup>1</sup> A government office shall: "make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this Act." § 5(c)(2)(H) (emphasis added).

It permits a review of *potentially* relevant records without requiring that they be designated as "assassination records" (and therefore subject to the provisions of the Act) before their relevance can be established, and it provides a process for applying the definition in specific cases.

### **Proposed Definitions:**

1. The term "record" in "assassination record" (Sec. 3(2), et seq.) and "additional records" includes:
  - (a) papers, maps, and other documentary material;
  - (b) photographs;
  - (c) motion pictures;
  - (d) sound and video recordings;
  - (e) machine readable information in any form; and
  - (f) artifacts.
2. Originals and Copies
  - (a) In the case of papers, maps, and other documentary material, the Board may determine that a copy of the original is sufficient;
  - (b) In the case of photographs, the term "record" is defined as the negative if available, otherwise, the best available print;
  - (c) In the case of motion pictures, the term "record" is defined as the "camera original" if available, otherwise, the best available copy;
  - (d) In the case of sound and video recordings, the term "record" is defined as the original recording, if available, otherwise, the best available copy;
  - (e) In the case of machine-readable information, the Board may determine that a copy of the original is sufficient;
  - (f) In the case of artifacts, the term "record" is defined as the object itself.

In cases where a copy is authorized, the Board may, at its discretion, require a certified copy. In cases where an original, as defined above, is required, the Board may, at its discretion accept the best available copy.

3. A record relating to the assassination of President Kennedy ("assassination record") includes all records that describe, interpret, analyze, report on, investigate, or document events leading to the assassination; the assassination itself; and investigations of the assassination. An "assassination record" further includes, without limitation:
  - (a) all records as defined in Sec. 3(2) of the Act;
  - (b) all records created or collected by the Warren Commission;
  - (c) all records created or collected by the House Select Committee on Assassinations except those documents that specifically and exclusively relate to the assassination of the Rev. Martin Luther King;
  - (d) all records created or collected by the Rockefeller Commission that relate to the assassination of President Kennedy;
  - (e) all records created or collected by the Church Committee that relate to the assassination of President Kennedy;
  - (f) all records created or collected by the Pike Committee that relate to the assassination of President Kennedy;
  - (g) all records collected by or segregated by all government agencies in conjunction with any investigation or analysis of the assassination of President Kennedy (including, without limitation: any intra-agency investigation or analysis of the assassination; any inter-agency communication regarding the assassination; any request by the HSCA to collect documents; or any inter- or intra-agency collection or segregation of documents);
  - (h) Other records or groups of records listed in the Catalog of Assassination Records (COAR).
4. The term "additional information and records" includes:
  - (a) Any record that either was or reasonably could be used by an agency to classify or declassify records subject to the JFK Act including, without limitation, all cryptograms, identifications, indices of agents, indices of employees, code names; operational code

names, etc.

- (b) All organizational charts in existence between 1960 and the present that are necessary and sufficient to identify:
  - (1) the agency's internal divisions (including, without limitation, bureaus, divisions, departments, sections, components, etc.) that created, reviewed, filed, or possessed records relating to: the Kennedy Assassination; U.S. relations with Cuba; the Mafia, Cosa Nostra, or Organized Crime; U.S. relations with Vietnam; U.S. relations with the former Soviet Union; U.S. relations with Japan; and U.S. relations with Mexico; and
  - (2) the agency's branch offices in the United States and its foreign offices in the following countries: Cuba, Mexico, Vietnam, Great Britain, Japan, France, Algeria, Soviet Union, and any additional foreign branch office that created, reviewed, or filed records relating to the Kennedy Assassination.
- (c) All records necessary and sufficient to describe the agency's:
  - (1) records retention policies;
  - (2) filing systems or organization.
- (d) Other records or groups of records listed in the Catalog of Additional Records and Information (CARI).

## 5. Catalog of Assassination Records (COAR)

- (a) The Catalog of Assassination Records is the official listing of records determined by the Board to meet the definition of "assassination record."
- (b) All decisions to include records in the COAR will be noticed in the Federal Register within 30 days of the decision.
- (c) The public may petition to have records included in the COAR by applying to the Board in writing.
- (d) In listing records or groups of records in the COAR, the Board must determine that the record or group of records will more likely than

not contribute to the public's knowledge of the assassination

6. Catalog of Additional Records and Information (CARI)
  - (a) The CARI is a listing of specific records or groups of records (1) that may reasonably lead to the discovery of assassination records; or (2) that are potential assassination records whose relevance has not yet been established.
  - (b) The CARI will be organized along agency lines.
  - (c) The Board delegates the authority to add records or groups of records to the Catalog of Additional Records and Information to the Executive Director.
7. "Government agency" or "government office" includes all departments, agencies, offices, divisions, and bureaus of any federal, state, or local agency and includes all inter-agency working groups, committees, and meetings.
8. The terms "and," "or," "any," "all," and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation. Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, code name, or alias. Any record described with respect to an operation or program includes any record pertaining to that program by any other name, code, or cryptonym.

## Catalog of Assassination Records (COAR)

1. all records that refer to or relate to Lee Harvey Oswald;
2. all records that refer to or relate to Jack Ruby;
3. all records that refer to or relate to Marina Oswald (prior to 1965);
4. all records that relate to any threat to assassinate President Kennedy;
5. all records relating to the arrival or departures of any aircraft (including helicopters and fixed wing aircraft) at Andrews Air Force base on November 22, 1963;
6. all records pertaining to procedures, standards, and guidelines of all government agencies having any responsibility for the personal safety of the President of the United States that were in effect during November of 1963;
7. all records of interviews conducted by any federal, state, or local official as part of any inquiry or investigation of the assassination;
8. all records relating to investigations or reports on any private person who has conducted research relating to the Kennedy assassination;
9. with the exception of those records donated by deed of gift to NARA by the Kennedy family and which are now in the possession of NARA, all records pertaining to medical records and autopsies of John Fitzgerald Kennedy, Lee Harvey Oswald, Jefferson Davis Tippett, and Jack Ruby;
10. all records relating to the Kennedy assassination that were prepared or collected by any person affiliated with any governmental investigation of the Kennedy assassination including, without limitation, the members and staff of the Warren Commission, the members and the HSCA.

## Catalog of Additional Records and Information

- (1) all files (including personnel, P, 201, subject, etc.) pertaining to all of the following individuals (including any files created under any alias or code name):

Gilberto Ugarte Alvarado  
James Jesus Angleton  
Manual Artime  
William Guy Banister  
"Maurice Bishop"  
Richard Bissell  
Desmond FitzGerald  
Sam Giancana  
John Fitzgerald Kennedy (all FBI files only)  
Robert Francis Kennedy (all FBI files only)  
Joseph Kramer  
Morita Lorenz  
Carlos Marcello  
John Martino  
John Thomas Masen  
Reginal Miller  
Joseph Milteer  
George de Mohrenschildt  
Richard Case Nagell  
Robert C. Nolan  
David Atlee Phillips  
Johnny Rosselli  
Theodore (Ted) Shackley  
Santos Trafficante  
Donnell Darius Whitter (gun running)

- (2) all records pertaining to the following operations, individuals, or programs (whether appearing under the following names or any other code names):

ZR/RIFLE;

"Executive Action";

AM/LASH;

All Mafia or organized crime references to President Kennedy;

JM/WAVE;

Operation Mongoose;

Permindex Corporation;

FBI investigations of gun running in Dallas in 1963;

Special Group (Augmented);

- (3) all records that refer to or relate to any attempt or involvement by any government agency to send troops, weapons, explosives, military vehicles, or personnel to Cuba between January 1, 1961 and December 30, 1964;
- (4) all documents that refer to or relate to any attempt or involvement by any government agency to assassinate or murder any person between 1958 and 1966 (including, without limitation, Fidel Castro, Ngo Dien Diem, Patrice Lumumba);