

## I. Introduction

The definition for assassination records is important not only for the Board and its operation, but also for the various agencies that hold records and the National Archives that will receive and maintain them. For this reason, the staff has devoted a great deal of thought and effort in arriving at a definition, and more important, a process for employing the definition.

## II. Background and Statutory Framework

The Board's enabling statute provides general guidance for defining "assassination record". In its "Definitions" section, the Act states 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 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 states that "'[r]ecord' includes 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 Congress's intent as to the scope of the definition that the Board eventually develops. The 1992 Senate Report states that "all government records related to '[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 "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 act's more relaxed standards" of as many records as possible arguably relevant to the assassination and its investigation and to make them publicly available in the collection at the National

Archives as soon as possible. See id. at 32.

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The statute'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 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.

Thus, underlying the Act is an intent that, in response to the erosion in public confidence in government that prompted the Act's passage, the Board should collect and release not just documents related to the assassination itself but documents recording the government's response to it and efforts over the years to investigate it. 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 to a component asked to identify responsive records) and appears to be intended to include the organized crime files gathered by the FBI at the request of the House Select Committee on Assassinations. 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 board with the authority to seek the fullest disclosure possible by going beyond the information and records agencies initially choose to release to the public and to the board." S.Rep 102-328 at 30. The Senate Report 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 acknowledges 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" while emphasizing how "[t]his provision is extremely important to the proper implementation and effectiveness of the Act." Id. Given the significance of this broad power to the successful completion of the Board's work and the agencies' already-expressed apprehensions about how the Board will eventually invoke this power, the Board may wish to defer defining the scope of "additional records" for purposes of finalizing a definition in the near future.

### III. Issues

#### 1. Original v. Copies

The JFK Records Collections Act establishes a JFK Assassination Record Group at the National Archives. This record Group will contain all assassination records as defined and determined by the Board. The Act does not address the question of whether the collection should contain originals or copies.

Archival collections are traditionally determined by the principle of provenance -- records are organized in an archive in the same way that they were maintained as active records. On the other hand, PL 102-526 creates a collection that is governed by the principle of pertinence. Many of the records that will be part of this collection have a home in the collection of their original provenance. Which collection should get the original? How should a copy be handled?

The Board could require that the JFK collection contain only originals. This option would require the Federal Agencies and the National Archives to provide only original documents and to insert copies in the collections from which assassination records were taken. The danger is that a document that is of only tangential importance (by anyone's standard) to the Kennedy Assassination, but of significant importance to another topic, would be represented by a copy in the collection where it has a more important status.

The proposed definition incorporates a balancing test that weighs the document's importance to the Kennedy Collection against its importance to the collection where it would normally be located.

Should copies be allowed in the collection, it is important to address the question of certification. The Board could require a certification for any copy that it permits into the collection. The certification should clearly state that the certifying officer has seen the original and has compared it to the copy, and that the copy is true and accurate. The location of the original (with all necessary file location detail) should be provided on the certification form. The Board can delegate certifying authority to the agency that has control of the original, or can require that certifying authority be limited to the ARRB and its staff.

### 3. Should Artifacts be included in the definition?

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

### 4. Relevance

This one is difficult.

## IV. Definitions

1. The term "record" in "assassination record" (Sec. 3(2), et seq.) includes:
  - (a) documents;
  - (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 a document, the Board may decide that a copy of the original can serve as the record.
  - (b) In the case of photographs, the term "record" means the negative as well as the first generation print.
  - (c) In the case of motion pictures, the term "record" means the "camera original" if available, otherwise, the best available copy.
  - (d) In the case of sound and video recordings, the original recording is the record if available, otherwise, the best available copy is the record..
  - (e) In the case of computerized information, the Board may decide that a copy of the original can serve as the record.

- (f) In the case of artifacts, the object itself is the record.

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 not available, the best available copy is the record.

- 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) all records that refer to or relate to Lee Harvey Oswald or any person using the name Lee Harvey Oswald
  - (i) all records that refer to or relate to Jack Ruby;
  - (j) all records that refer to or relate to Marina Oswald (prior to 1965);
  - (k) Other records or groups of records listed in the Registry of Assassination

Records RAR.

4. The term "additional information and records"<sup>1</sup> 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 identify:
    - (1) the agency's internal divisions (including, without limitation, bureaus, divisions, departments, sections, 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 Registry of Additional Records (ROAR).
4. "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.
5. The terms "and," "or," "any," and "all" shall be understood in their broadest and

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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).

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 records described with respect to an operation or program includes any records pertaining to that program by any other name, code, or cryptonym.

#### **V. Registry of Assassination Records**

1. The Assassination Record Catalog is the official listing of records determined by the Board to meet the definition of "assassination record."
2. This listing will serve as a vehicle to reflect board decisions on the designation of specific record groups as assassination records. Justifications for records to be included in this listing will be subjected to a two-pronged standard of relevance and reasonableness.
3. All decisions to include records in the RAR will be noticed in the Federal Register within 30 days of the decision.
4. The public may petition to have records included in the RAR by applying to the Board in writing.

#### **VI. Registry of Additional Documents and Required Information**

1. The ROAR is a listing of specific records or groups of records (a) that may reasonably lead to the discovery of assassination records; or (b) that are potential assassination records whose relevance has not yet been established.
2. A record or group of records can be added to the registry by the decision of the Executive Director or his designee.

The ROAR

All information that reasonably may lead to the discovery of assassination records; including, without limitation:

## Registry of Assassination Records

- a. 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);
- b. all documents that refer to or relate to the presence in the United States of any person affiliated with the OAS (Secret Army Organization) during 1963;
- c. all documents that relate to any threat to assassinate President Kennedy;
- d. 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;
- e. 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;
- f. all records of interviews conducted by any federal, state, or local official as part of any inquiry or investigation of the assassination;
- g. all records relating to investigations or reports on any private person who has conducted research relating to the Kennedy assassination;
- h. 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 Tippet, and Jack Ruby;
- i. 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.

## Registry of Additional Documents 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;

Perminex Corporation;

FBI investigations of gun running in Dallas in 1963;

Special Group (Augmented);

all documents 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;