

# Assassination Records Review Board

600 E Street NW ▪ Suite 208 ▪ Washington, DC 20530

## MEMORANDUM

January 4, 1995

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David G. Marwell  
Executive Director

The Defintion

Although I understand Kermit's view that the staff proposal for a definition of an assassination record is not entirely satisfying, I maintain the problem lies not with a failure to appreciate and meet an intellectual challenge, but rather with the challenge itself. I submit that it is impossible to formulate a definition that can stand by itself, and that can be used by interested parties to answer the significant question that needs to be addressed, namely is *this* or *that* record an assassination record. We have proposed a broad definition combined with a relatively liberal standard. We know that the definition and the standard are of limited use, however, to anyone attempting to determine whether a particular document is covered. Therefore, we have proposed a system to formalize decisions

of the Board in specific cases. Records that do not fit within one of the categories specified in the definition must be specifically designated by the Board as assassination records. The Catalog is the instrument for these determinations.

Kermit's December 19th memo indicates to me that we are far closer on this issue than it might appear.

The most significant differences cluster around an issue that Kermit approaches from several angles: how to handle the question of relevance. He takes issue with our "more likely than not" standard, suggesting (wrongly, I believe) that it "presumes a level of understanding about the assassination that may well send us barking up several wrong trees." The standard presumes nothing. We did not mean to suggest that the Board would have to know the state of knowledge of the American Public in order to make a decision about the relevance of a particular document. We meant, rather, that the Board would have to determine whether a standard of relevance and reasonableness had been achieved. It is important to stress that the standard is "more likely than not," and not simply, "possible." Perhaps it would have been clearer had we substituted "a reasonable person" for "the American Public" in our test. The focus of the standard is, after all, on the information and not the public that will receive it. Our test of reasonableness is not based on the "public embrace of a particular theory of the assassination," as Kermit suggests. The Board will, in the end, have to decide that some theories about the assassination are more worthy than others. There is no way, in our view, to avoid this kind of determination.

It is admittedly an unsatisfying solution to the toughest problem we face. We cannot codify what constitutes relevance. The Board will have to make individual decisions on the relevance of individual records or groups of records.

"It is easy to argue that we should define broadly and then limit what we ultimately classify as an assassination record as we go along. Such an approach might be just the ticket, but we should recognize that it has several limitations."

"I think you get close to a workable definition at the top of page 6.... "

#### 1. Broad v. Narrow

The staff definition does not adequately address the larger issues involved with the breadth or narrowness of a given definition.

2. Practical Considerations

The staff definition does not address the practical problems

3. The Moving Definition

4. Should we craft definitions with existing theories in mind?

5. Relevant and Reasonable

6. More Likely than not...

7. Artifacts