

## JFK Act, § 7(n)

### *Interpretive Regulations*

The Review Board may issue interpretive regulations.

## Senate Report, p. 21

### *Defining Assassination Records*

“Assassination records” are defined in Section 3. The 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. While the records of past presidential commissions and congressional committees established to investigate the assassination of President Kennedy are included as assassination records under this Act, it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records. While such records are valuable, they reflect the views, theories, political constraints and prejudices of past inquiries. Proper implementation of this Act and providing the American public with the opportunity to judge the surrounding history of the assassination for themselves, requires including not only, but going beyond, the records of the Warren and Rockefeller Commissions, and the Church and House Select Assassination Committees.

**The term “assassination record” was not more specifically defined by the Committee because to do so before more is known about the universe of records would have been premature, and would have further injected the government between the records and the American public.** There is a sufficient volume of known assassination records to organize and review at the outset. **However, it is intended that the Review Board issue guidance to assist in articulating the scope or universe of assassination records as government offices and the Review Board undertakes their responsibilities.** Such guidance will be valuable notwithstanding the fact that government offices will begin to organize and review their records before the Review Board is established. Government offices are required to begin the review and disclosure of records upon enactment to expedite public access to the many records which do not require additional review or postponement. However, the ultimate work of the Review Board will involve not only the review of records recommended for postponement, but requiring government offices to provide additional information and records, where appropriate. Guidance, especially that developed in consultation with the public, scholars, and affected government offices, will prove valuable to ensure the fullest possible disclosure and create public confidence in a working definition that was developed in an independent and open manner.

## House Report, p. 33

Section 10(j) [of the House version of the JFK Act] authorizes the Review Board to issue interpretive guidelines to assist in implementing the purposes of this joint resolution. The Committee does not intend for the Review Board to engage in notice and comment rulemaking as contemplated by the Administrative Procedure Act in issuing its interpretive

guidelines. The Committee does encourage consultation by the Review Board with a variety of diverse representatives of general and scholarly interest in assassination materials, including those identified in Section 10(e).

It is the Committee's intent that with a minimum of formality the Review Board shall promptly adopt and make publicly available any necessary interpretive guidelines. Among the topics which the Review Board may wish to address in such guidelines are coordination with executive branch agencies, security procedures, and personnel clearance procedures. **It is the Committee's intent that the Review Board exercise broad discretion in the management of its affairs through interpretive guidelines, but any delay in issuing such guidelines should not be allowed to delay the release of assassination materials.**

### Nominations of Graff, Tunheim, Nelson, Joyce, and Hall

After the nomination hearings, Congress asked every Review Board nominee to provide written responses to the following questions:

#### *Question 7*

The definition of "assassination records" contained in the Records Review Act establishing this Board was intentionally left very broad. What kinds of criteria and factors will you use in determining whether or not a document or other item will fall within the definition?<sup>1</sup>

---

#### <sup>1</sup>*Answers to Question 7*

- Graff:** Plainly any document that directly or tangentially deals with the Assassination will be subsumed under the head of "assassination record." but I believe that some documents and classes of documents will have to be labeled such on an *ad hoc* basis.
- Tunheim:** It is my view that the Board should more fully understand the scope of the potential records before attempting to define the term. I favor a broad definition in order to fulfill the clear intent of Congress. One important criteria will be the extent to which the record adds to the public understanding of the events and characters involved in the assassination and its aftermath.
- Nelson:** My sense at this point is that the Board should encourage this broad definition of records while we establish the parameters of the issue. Defining the records is the perfect topic for public hearings. Most individuals who have extensively studied the available information have opinions on this matter. In addition, the index of names from the [HSCA] report, and the subject index in the National Archives will help clarify the issues for us. I'm sure the Board will spend considerable time on this issue because of its importance to the work of the Board.
- Joyce:** The definition of "assassination records" will be a major challenge for the ARRB to resolve in a workable manner. In my view, the ARRB will need to establish criteria addressing: (a) the temporal proximity of the record in relation to the assassination, (b) the content of the record relative to the assassination, and (c) the relation of the record to important factors and issues perceived to be related to the assassination.
- Hall:** The statute creating the ARRB defines an assassination record as [statutory definition]. These materials are certainly, therefore, the core of what constitutes the "assassination records" that the Board is duty bound to treat. Any of these materials that are held in private hands are also covered by the statute and are subject to its provisions. In general, I think that the Board should take a broad view of

---

what constitutes an assassination record within the terms of statute.

*Question 8*

Many assassination records will likely be in the possession of private citizens, some of whom may be unwilling to permit disclosure. How far should the Board venture to seek out assassination records from these sources?<sup>2</sup>

*Question 9*

You have significant powers under the Board to reasonably search for assassination records. For example, the Board may administer oaths and subpoena and grant immunity to witnesses.

---

<sup>2</sup>*Answers to Question 8:*

- Graff:** I believe that the Board must respect the privacy of citizens who choose to maintain it by withholding materials. still, I hope that we will be able to exercise considerable persuasion on such people, in the interest of history and public service.
- Tunheim:** I firmly believe that the Board has an obligation to seek out assassination records from all sources; public and private. The goal of Congress in passing S. 3006 was to ensure broadest possible disclosure of the records relating to the assassination. The fact that a document exists only in private hands should not deter the Board in any way from seeking to compel its transmission to the National Archives.
- Nelson:** The Board has an obligation to examine the records of former public officials who participated in any aspect or phase of investigation concerning the assassination, or of former public officials closely allied with Kennedy, as well prosecutors, etc. The Board should tread carefully when seeking papers from those who were always private citizens. Papers of individuals who were likely to have played a large role and that may be rich in information may be worth pursuing. In other instances, the peripheral nature of the individual may not be worth the legal problems in obtaining them. In general, this will have to be a flexible policy.
- Joyce:** Through fair and impartial application of the criteria developed by the ARRB and keeping in mind always the express purposes of the enabling legislation, I believe that the ARRB should be as aggressive as it needs to be to achieve disclosure of relevant records. That also applies to records held by private citizens, if such records are within the purview of the legislation.
- Hall:** Personal materials kept by private individuals of events surrounding the assassination pose difficult issues. There is, for example, the question of whether such materials have been "taken" as private property under the statute. Moreover, a diary maintained by a private individual living, let us say, in Nome, Alaska, that recounted his or her reaction to the assassination is surely not covered by the statute. If, however, a private individual has any of the kinds of materials cited in the statute, then these materials do fall under the Board's purview and are subject to disclosure. Private individuals should not be in the position of holding public records that bear on the assassination. Public officials that maintained private records relating to the assassination, to the extent that those records fall within the bounds of the statute, might also be susceptible to disclosure.

- (b) To what extent would you propose compelling disclosure of a record from private and foreign sources?<sup>3</sup>

### House Judiciary Committee Hearings from May 20, 1992

Did not find anything.

#### Green Book

Sen. Glenn at 2

I believe the major issues include, first, how will agencies and others who hold records define the universe of, quote, "relevant" Kennedy assassination materials. It is important to be able to go beyond the frame of reference of previous inquiries of Commissions and Committees, but the question must be asked, where will the search for documents end. In other words, what is relevant?

Sen. Boren at 16

One involves setting the boundaries of, quote, "assassination material." The joint resolution defines the term "assassination material" as "a record that relates in any manner or degree to the assassination of President John f. Kennedy." Given the wide ranges of theories that have

---

<sup>3</sup> *Answers to Question 9(b):*

**Graff:** I would hope to proceed as earnestly as possible within the law and the protection of privacy to compel disclosure.

**Tunheim:** Compelling disclosure of a record from a private and foreign sources would depend largely on the importance of the record for fully understanding the assassination and its aftermath. If in the judgment of the Board, the record is significant, and not reviewable in a public agency, the Board should utilize a broad standard for compelling such disclosure.

**Nelson:** As an historian, I have never had the experience of serving on a group that had such powers. Fortunately, the Board has a member from the ABA whose expertise will be essential on these matters. Currently, I think the Board should consider use of all its powers, including offering immunity, compelling disclosure from private and foreign sources and disclosing information under seal of a court. I also think the Board should be very cautious in using these powers. Before resorting to legal confrontation, the Board should make every effort to reach agreement through negotiation. In addition, the Board should weight the value of the information to be gained and exert all its powers when there is some indication that information is vital.

**Joyce:** In light of the broad powers of the ARRB to search reasonably for assassination records, I believe: (b) the Board might propose disclosure of a record by private and foreign sources, though I would seek legal guidance as to what steps would be necessary (much less desirable!) to compel such disclosure.

**Hall:** If the material fell under the statutory provision for an assassination record, then the Board should compel its disclosure, or at least consider whether it should be postponed for disclosure.

developed as to who killed President Kennedy and why, many types of records arguably relate in some way to the assassination. What records regarding, for example, Cuba, Vietnam, and organized crime should be covered? This matter requires careful consideration.

\* \* \*

I do, however, suggest that the Committee, either in the Joint Resolution itself or in report language, set more precise parameters defining "assassination material," or else direct the Review Board to do so promptly after it is established. Otherwise, we may end with widely varying interpretations by the various records agencies and committees as to what documents should be forwarded to the Review Board executive director.