

The Review Board requests that the following concept be inserted, if only by a footnote reference, in the Connick brief:

There is a separate and independent basis for affirming the Fifth Circuit's holding that the Shaw files come within the scope of the Act and the Board's authority. Under § 7(n) of the Act, the Board is authorized to issue interpretive regulations, which ultimately were promulgated at 36 C.F.R. § 1400 *et seq.*¹ Citing the authority of this Court, the Fifth Circuit held that "[i]nterpretive regulations are valid if they 'harmonize . . . with the plain language of the statute, its origin, and its purpose. See *Rowan Cos. v. United States*, 452 U.S. 247, 253 (1981). The regulations issued by the Board enable it to assimilate and preserve *all* assassination records -- whether they be in the hands of the federal government, a state, government, or a private citizen. These regulations are clearly in line with the stated purpose and express language of the Act and are, therefore, valid." [See footnote 3 of Fifth Circuit decision in *Connick v. U.S.*] The Fifth Circuit was correct.

The Review Board believes that it is very important that this independent basis for the Fifth Circuit's judgment be stated in the SG's brief. Such a basis would not have required that the fortuitous act that the staff of the House Select Committee on Assassinations examined the Shaw papers in order for the records to come within the scope of the JFK Act. Although not necessary for purpose of inclusion within the brief, we would point out in support of this position the following:

The Review Board has the "power" to:

"request the Attorney General to subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this Act" JFK Act § 7(j)(1)(c)(iii)

"hold hearings, administer oaths, and subpoena witnesses and documents" JFK Act § 7(j)(1)(c)(iii)

"The Review Board may issue interpretive regulations." § 7(n)

Under the legislative history, Congress foresaw that the Review Board would be issuing interpretive regulations to define the scope of "assassination records":

¹In relevant part, see 36 C.F.R. § 1400.1(a) and (b)(2).

'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.

See S. Report (Governmental Affairs) at 21 (emphasis added) (photocopy attached)

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S. Report at 21 (emphasis added) (attached)

It also was the sense of the House Committee on Government Operations that the Review Board should have the responsibility for defining more fully the meaning of "assassination records" and that the Congress did not intend to limit the scope of such records to those narrowly defined by the statute. Although the House version differed in many ways from the Senate version, and although the House version was *not* adopted, the intent can be seen in the following portion of the Committee Report.

Therefore, while the Review Board must include the records of those official investigations that are specifically identified in the Joint Resolution, it may also determine that records not specifically delineated may nevertheless be relevant. It is the Committee's intent that the Review Board consider any other records brought to its attention by members of the public in making such determinations.

House Report I at 21 (copy attached)