

## MEMORANDUM

To: John R. Tunheim and David G. Marwell  
From: T. Jeremy Gunn  
Date: June 6, 1995  
Re: Draft Memorandum of Understanding Between the ARRB and the President Regarding the Processing of Executive Branch Assassination Records  
File: 3.10.2

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In anticipation of our meeting on Thursday, June 8, I am attaching a draft MOU and Protocol for establishing procedures for presidential review of the Review Board's formal determinations. The MOU is in preliminary form, but it should provide a basis for talking points. We can take a draft with us and be prepared to deliver a copy if the discussions go very well, although the probable result would be that we would revise it once the meeting is over.

I am not sure what is the best format. The attached draft employs "whereas" clauses prior to suggesting a protocol. This format helps us in forming what is essentially an argument that the President (who, under the JFK Act, has final authority either to postpone or release information<sup>1</sup>) should defer to the Review Board unless he has a specific basis for rejecting a Board determination. Because the JFK Act provides that the President has full power to decide for or against a postponement, and because the President could effectively thwart the whole process by failing to make decisions (whether for or against continued postponement), the most important provision of the proposed protocol is paragraph 3.

I welcome your suggestions -- including any proposed revisions of the format of the MOU.

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<sup>1</sup>See my June 6, 1995, Analysis of the President John F. Kennedy Assassination Records Collection Act, pp. 15-17.

[Draft]  
Memorandum of Understanding  
Establishing a Protocol for the Review of Assassination Records  
for the  
President of the United States  
and the  
Assassination Records Review Board

*Whereas* the President of the United States (the “President”) and the Assassination Records Review Board (the “Review Board”) are obligated to comply with the President John F. Kennedy Assassination Records Collection Act of 1992, Pub.L. 102-526, §§ 1 to 14 (as amended), 44 U.S.C. 2107 (the “JFK Act”); and

*Whereas* the JFK Act provides that “all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes,” [44 U.S.C. 2107 Sec. 2(a)(1)], and;

*Whereas* the JFK Act provides that “all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination” [Sec. 2(a)(2)], and;

*Whereas* the JFK Act provides that “only in the rarest cases is there any legitimate need for continued protection of such records” [Sec. 2(a)(7)], and;

*Whereas* the JFK Act established the Review Board to “render decisions . . . whether an assassination record or particular information in a record qualifies for postponement” before it is released to the public [Sec. 7(i)(2)], and;

*Whereas* the JFK Act requires the Review Board to “direct that all assassination records be transmitted to the Archivist [of the United States] and disclosed to the public in the [JFK Assassination Records] Collection in the absence of clear and convincing evidence” that there is a grounds for postponement under the JFK Act [Sec. 9(c)(1)], and;

*Whereas* the five Members of the Review Board were nominated by President William J. Clinton and were confirmed by the United States Senate; and

*Whereas* the JFK Act requires the Review Board to notify the President of its formal determinations with respect to postponement or release of government assassination records within 14 days of its

formal determinations [Sec. 9(c)(4)(A)]; and

*Whereas* the Review Board will be reviewing tens of thousands of executive branch records; and

*Whereas* a document-by-document review of assassination records by the President would be a time-consuming effort; and

*Whereas* the JFK Act allows the President only “30 days after the Review Board's determination and notice to the executive branch agency . . . stating the justification for the President's decision [Sec. 9(d)(1)], and;

*Whereas* the JFK Act requires the President to provide a written “justification for the President's decision, including the applicable grounds for postponement”[Sec. 9(d)(1)] and;

*Whereas* the JFK Act requires the Review Board to “publish in the *Federal Register* a copy of any unclassified written certification, statement, and other materials transmitted by or on behalf of the President with regard to postponement of assassination records” [Sec. 9(d)(3)] and;

*Whereas* it would be inconsistent with the spirit and the letter of the JFK Act for the President to fail to render his decision within the thirty day period, and;

*Whereas* the JFK Act anticipates that there will be an “expeditious public transmission to the Archivist [of the United States] and public disclosure of such records” [Sec. 2(b)(2)], and;

*Whereas* it is in the interest of the President, the Review Board, and the public that procedures for implementing the JFK Act be prompt, efficient, and cost-effective, and;

*Whereas* there is a need to establish an efficient procedure for the review of executive branch assassination records to ensure that both the President and the Review Board properly comply with the letter and the spirit of the JFK Act;

*Therefore* it is agreed between the President and the Review Board that a protocol should be established to provide for efficient procedures for the review and disposition of the records that the JFK Act presumes will be disclosed and made available to the public.

#### Protocol

1. As provided by the JFK Act, the Review Board will promptly notify the President or his designee once a formal determination has been made to release immediately or to postpone release of information in executive branch assassination records and such notification shall in any event be made no later than 14 days after the decision has been made.

2. The President or his designee shall be informed of all formal determinations by means of an Index that shall be hand delivered to the White House or to any other location specified by the President or his designee. The Index shall identify with specificity the documents on which a formal determination has been rendered and the basis for the formal determination.
3. Unless the President, within 30 days of receiving the Index, makes a specific finding rejecting a Review Board determination with respect to specific assassination records, the Review Board shall be authorized by the President to release assassination records to the National Archives consistent with the Review Board's prior determinations as recorded on the Index.
4. For each specific assassination record where the President disagrees with the formal determination of the Review Board, the President shall notify the Review Board, in writing, within 30 days of the date that the Index is provided to the President.
5. For each specific assassination record where the President disagrees with the formal determination of the Review Board, the President shall explain with specificity the basis for his disagreement so that the explanation can be attached to the record identification form that is to be sent to the National Archives.
6. The President or his designee(s) shall be granted full access to the assassination records at the Review Board's office, 600 E Street, N.W., Washington, D.C.

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for the President of the United States

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for the Assassination Records Review Board

June \_\_, 1995