

INSERT A:

Comment: The proposed language of §1400.1(a) is unduly restrictive because the phrase "may have led to the assassination" requires at least a potential causal link to the assassination. Moreover, determining whether there is a causal link would require the Review Board to evaluate the validity of competing accounts of what led to the assassination of President Kennedy.

Response: A number of commenters put forward criticisms along these lines. Some of these commenters suggested that some form of a "reasonably related" standard be substituted for the "may have led to" language, while others suggested alternative formulations (e.g., "that may shed light on the assassination"). In adopting and eventually applying a "reasonably related" standard, the Review Board does not seek to endorse or reject any particular theory of the assassination of President Kennedy, although such theories may inform the Review Board's search for records reasonably related to the assassination and investigations into it. The Review Board believes that § 1400.1(a) as now worded advances that effort and will promote consistent broad interpretation and implementation of the ARCA.

Comment: The proposed language of § 1400.1(a) is too broad and open-ended. A more specific nexus to the assassination of President Kennedy should be required.

Response: As its text and legislative history make clear, the ARCA contemplates that the Review Board extend its search for relevant records beyond what has been compiled or reviewed by previous investigations. It is inevitable, therefore, that the Review Board must exercise judgment in determining whether such records constitute "assassination records." The Review Board regards its "reasonably related" standard as sufficient to ensure that agencies are not overburdened with identifying and reviewing records that, if added to the JFK Assassination Records Collection, would not advance the purposes of the ARCA.

Comment: § 1400.1 should specifically include as assassination records any records pertaining to particularly identified individuals, organizations, events, etc.

Response: The Review Board determined that, in almost every case, the types of records commenters sought to add were already adequately covered by § 1400.1 as proposed. Accordingly, the Review Board declined to include records or record groups at the level of specificity urged by these commenters because doing so might limit the scope of the interpretive regulations as applied initially by other agencies, or otherwise might prove duplicative or confusing. However, the Review Board welcomes and encourages suggestions from the public as to specific records or record groups that may constitute assassination records, and intends to follow up on such leads, including those provided in the written comments to the proposed interpretive regulations.

Comment: § 1400.2(a) is vague and overly broad in describing the scope of additional records and information.

Response: The Review Board has added language to clarify that the purpose of

requesting additional records and information under § 1400.2(a) is to identify, evaluate or interpret assassination records, including assassination records that may not initially have been identified by an agency. The Review Board also has added language to indicate that it intends to implement this section through written requests signed by its Executive Director. The Review Board contemplates that, with regard to such requests, its staff will work closely with entities to whom such requests are addressed to implement the ARCA effectively and efficiently.

Comment: The scope of additional information and records should specifically include records or information that:

- describe agencies' methods of searching for records;
- describe reclassification, transfer, destruction, or other disposition of records; or
- do not constitute assassination records, but have the potential to enhance, enrich, and broaden the historical record of the assassination.

Response: To the extent that, in the estimation of the Review Board, specifically including records and information of the types described would assist the Review Board in meeting its responsibilities under the ARCA, the Review Board has adopted the suggested language.

Comment: The scope of "assassination records" under § 1400.1 and "additional records and information" should not extend to state and local government or private records that are not in the possession of the federal government.

Response: The Review Board considered such comments carefully, but included that the terms of the ARCA preclude the narrower reading of the Review Board's responsibilities urged by such comments.

Comment: § 1400.3 should include as sources of assassination records and additional information and records individuals and corporations who possess such records even if not obtained from sources identified paragraphs (a) through (e) thereof, and should specifically include individuals and corporations who contracted to provide goods or services to the government.

Response: The Review Board has added paragraph (f) to this Section in response to these comments. The Review Board has concluded that, in view of paragraph (f), specifically identifying government contractors or other private persons would be unnecessary and redundant.

Comment: § 1400.4 should not include artifacts among the types of materials included in the term "record." Regarding artifacts as "records" would be contrary to NARA's accustomed practice and the usage of the term "records" in other areas of federal records law, and would result in substantial practical difficulties.

Response: The Review Board has carefully considered NARA's objections to the inclusion of artifacts as "records," but has concluded that this inclusion is necessary to achieve the purposes of the ARCA. The Review Board noted that artifacts which became exhibits to the proceedings of the Warren Commission have long been in the custody of NARA, and determined that certainly these artifacts should remain in the JFK Assassination Records Collection. The Review Board further believes that the unique issues of public trust and credibility of government processes that prompted enactment of the ARCA requires that artifacts be included within the JFK Assassination Records Collection. The strong support that commenting members of the public gave to this inclusion reinforces this conclusion. The Review Board included in its proposed regulations and retained in § 1400.7 of the final interpretive regulations language intended to address NARA's concerns about potential copying requirements and preservation issues unique to artifacts.

Comment: § 1400.5 should be modified to allow agencies to withhold from the JFK Assassination Records Collection material that is not related to the assassination of President Kennedy, even though it appears in a record that contains other material that is related to the assassination of President Kennedy.

Response: It remains the intent of this Section to make clear to agencies that, as a rule, entire records, and not parts thereof, are to become part of the JFK Assassination Records Collection. The purpose of requiring that records be produced in their entirety is to ensure that the context and integrity of the records be preserved. Only in rare instances will the Review Board assent to withholding particular information within an assassination record on the ground that such information is not relevant to the assassination. § 1400.5 has been modified to clarify that, although the Review Board may allow this practice in extraordinary circumstances, this determination is within the sole discretion of the Review Board.

Comment: The discussion of originals and copies in § 1400.6 is, in various respects, unclear and confusing.

Response: The Review Board made extensive changes to this section to address these concerns and to achieve greater internal consistency. The Review Board's intent in this section is to express its strong preference for including original records in the JFK Assassination Records Collection, but also its understanding that, for a variety of reasons, there may be situations where a copy instead of the original of an assassination record may be more appropriate for inclusion in the Collection.

Comment: § 1400.6 should be clarified as to whether "record copies" of federal agency records may be included in the JFK Assassination Records Collection.

Response: The Review Board has modified § 1400.6(a)(1) to clarify that the Review Board may determine that record copies may be included in the Collection.

Comment: The Catalog of Assassination Records (COAR) described in § 1400.8 should consist of, or be replaced by, the database and finding aids prepared by the federal agencies in

possession of assassination records.

Response: This and other comments received regarding the proposed § 1400.8 indicated some confusion as to the intent and operation of the mechanism established in this section. For this reason, the Review Board decided to replace the term "Catalog of Assassination Records" with the term "Notice of Assassination Record Determination" (NARD), and to redraft this section to clarify the Review Board's intent to use the NARD mechanism simply to document the Review Board's ongoing determinations that, in addition to records explicitly enumerated in the ARCA as assassination records (e.g., records reviewed by the HSCA) or identified by federal agencies in their own searches, certain other records also are assassination records to be included in the JFK Assassination Records Collection.

Comment: