

March 6, 1998

VIA FACSIMILE AND FIRST-CLASS MAIL

James M. Kovakas, Esq.
Attorney In Charge for FOI/PA Unit
Civil Division
U.S. Department of Justice
901 E Street, N.W. -- Room 808
Washington, D.C. 20530

Re: United States Department of Justice Civil Division's Compliance with the
JFK Assassination Records Collection Act, 44 U.S.C. § 2107

Dear Mr. Kovakas:

I am writing to inform you that the Review Board has completed its review of FOIA litigation files for 10 major FOIA cases involving requests for records on President Kennedy's assassination. We previously identified these case files for review (*see* Dec. 1, 1997 T. Jeremy Gunn Letter to J. Kovakas), and they were delivered to us on January 20, 1998. These records comprised 19 boxes.

Having reviewed these records in some detail, we recommend they be designated as assassination records under the JFK Act and placed in the JFK Collection at the National Archives and Records Administration ("NARA"). An internal Review Board memorandum summarizing the contents of these files is enclosed to support our recommendation. We considered the following factors:

1. The files do contain assassination records, usually as exhibits to pleadings and usually in redacted form.
2. The files provide information as to the identity of records relating to the JFK assassination and as to searches that were done to locate assassination records. For example, the files contain: FBI memoranda regarding the search for assassination records from its New Orleans and Dallas offices; deposition testimony regarding FBI laboratory records relating to the JFK investigation; and agency declarations that describe various assassination records.
3. The files disclose, in public pleadings and internal memoranda, the views of DOJ and various agencies regarding public release of these files. For example, the files contain

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discussions regarding whether agency records relating to, or made available for, the House Select Committee on Assassinations ("HSCA") were Congressional records exempt from FOIA or agency records subject to FOIA.

4. We want to ensure that these files are preserved as permanent records and not destroyed pursuant to any DOJ document destruction schedules that might normally be applicable.

Accordingly, we recommend that these files be transferred to the JFK Collection at the National Archives. For administrative convenience and to maintain the integrity of the files, we recommend that they be transferred *in their entirety* even though a more refined parsing could identify individual documents wholly unrelated to either the assassination or the disclosure issues (*e.g.*, papers on the recovery of attorneys' fees or pleadings on procedural matters).¹ I have personally checked with Mr. Steven D. Tilley, Chief for the JFK Collection at NARA, and he would be agreeable to accepting these records with a single record identification form ("RIF") prepared for each case file (the usual requirement is to prepare a RIF for each document). Please coordinate with Ronald Haron to retrieve these FOIA case files from our offices and to make arrangements for their inclusion in the JFK Collection.

In addition to our review of these files, the Civil Division agreed to check its vault facilities for any assassination records (*see* Dec. 22, 1997 Letter from T. Jeremy Gunn Letter to J. Kovakas). I understand this has been done and that you have located three categories of records: (1) records relating to Yuri Nosenko and his appearance before the HSCA; (2) certain DIA related materials regarding the assassination; and (3) a recent DOJ document authorizing FBI release of certain sensitive information under the JFK Act. We recommend that the first two record groups be designated as assassination records, but the third item need not be.

In view of our recommendation that FOIA case files relating to records on President Kennedy's assassination should be designated as permanent records, we again request that the Civil Division undertake to place in the JFK Collection other major FOIA cases involving Kennedy assassination records. We have identified some additional cases, as follows:

¹ There are some segregable portions of these files that are not related to the JFK assassination and need not be processed under the JFK Act. The box labeled "145-12-3587/(00) 1-3/(13) 1-2" contained material relating to a FOIA suit wholly unrelated to the JFK assassination, and the box labeled "Enclosures/145-12-5332/00-2/Ser.1" contained materials relating to a FOIA request for Department of Justice records on Martin Luther King.

1. *Weisberg v. General Services Administration*, Nos. 73-2052 and 75-1448 (D.D.C.). These cases involved requests for Warren Commission materials.
2. *Fensterwald v. CIA*, No. 75-897 (D.D.C.). This case involved a request for records on the JFK assassination.
3. *Shaw v. Department of State*, No. 80-1056 (D.D.C.). This case involved requests to CIA, INS and the State Department for records relating to the theory that French assassins participated in the murder of President Kennedy.
4. *Fensterwald v. Department of Justice*, No. 81-094 (D.D.C.) This case involved requests to FBI and DEA for records relating to the theory that French assassins participated in the murder of President Kennedy.
5. *Shaw v. FBI*, Nos. 82-755 and 756 (D.D.C.). We believe these cases involved requests for JFK assassination records.
6. *Shaw v. FBI*, Nos. 82-1602, -2108, -2109, -2110, -2128, -2130, -2156, -2379, -2522 (D.D.C.). These cases involved a request for Government records relating to the assassination of President Kennedy, including the allegation that French assassins were involved.
7. *Fitzgibbon v. Secret Service*, No. 86-1886 (D.D.C.). This case involved a request for Government records relating to an alleged plot by Rafael Trujillo to assassinate President Kennedy.
8. *Davis v. Department of Justice*, No. 88-0130 (D.D.C.). We believe this case involved a request for JFK assassination records.
9. *Mangold v. CIA*, No 88-1826 (D.D.C.). This case involved a request for records of CIA official James Angleton. An *in camera* declaration was submitted in this case.
10. *Assassination Archives v. Department of Justice*, No. 92-2193 (D.D.C.). This case involved a request for FBI records relating to Marita Lorenz and the JFK assassination.

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11. *Scott v. CIA*, No. 95-0686 (D.D.C.) . This case involved a request for CIA and FBI records on CIA official Win Scott, including a manuscript of Win Scott.

Finally, we request that the Civil Division re-submit a new Final Declaration of compliance that will confirm that its FOIA litigation files relating to Kennedy assassination records have been designated under the JFK Act and placed into the JFK Collection.

Thank you for your cooperation.

Sincerely,

T. Jeremy Gunn
Executive Director

cc: Steven D. Tilley, Chief, JFK Assassination Records Collection
NARA