

BY HAND DELIVERY

October 27, 1997

The Honorable James H. Billington  
Librarian of Congress  
101 Independence Avenue, S.E.  
Washington, D.C. 20540-1000

Re: Library of Congress Compliance with the JFK Assassination Records  
Collection Act, 44 U.S.C. § 2107

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Dear Mr. Billington:

I am writing to request that the Library of Congress provide the Assassination Records Review Board ("Review Board") with a formal compliance statement demonstrating that it has complied with its obligations under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 ("JFK Act"). Under the JFK Act, all Federal agencies are required to transfer their assassination records to the JFK Assassination Records Collection ("JFK Collection") at the National Archives and Records Administration ("NARA").<sup>1</sup>

The compliance statement should detail the efforts of the Library of Congress to search for and make available to the public non-published records relating to the assassination of President Kennedy. We consider it important for the Library of Congress to document formally its compliance with the JFK Act; indeed, the JFK Act specifically identifies the Library of Congress as covered by the Act. *See* 44 U.S.C. § 2107 (3)(5)(C). The Review Board currently is obtaining comparable statements of

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<sup>1</sup> The Review Board has established a Compliance Program under the JFK Act under which all relevant Federal agencies document their compliance with the JFK Act and demonstrate that their record searches have been comprehensive. This program involves submission of initial affidavits, follow-up meetings with the agency, execution of final affidavits under oath, and, possibly, depositions. At this time, the Review Board does not believe it will be necessary to impose on the Library of Congress all the requirements of the Compliance Program provided that certain declarations now being requested are submitted by the Library and adequately address all issues raised herein.

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compliance from other relevant Federal agencies, including NARA and the Presidential libraries such as the John F. Kennedy and Lyndon B. Johnson Libraries. These agency compliance statements will be submitted with the Review Board's Final Report to Congress and the President.

A. Prior History of JFK Act Compliance by the Library of Congress

We believe that a compliance statement is the best way of assuring the American public that the Library of Congress has complied with the JFK Act. Before reviewing with you the formal compliance procedures that we are requesting of the Library, allow me first to set forth our understanding of the Library's work to date under the JFK Act.

In 1994, the Manuscript Division of the Library of Congress advised the Review Board that it had "not identified any records pertaining to the assassination of President John F. Kennedy in its classified collections," but would inform the Review Board "if we receive any classified papers relating to the assassination." See June 16, 1994 Letter from Audrey A. Walker to William Joyce (Attachment A hereto) (No information was requested or provided at that time to allow us to assess how the Manuscript Division had searched its closed records and how it had concluded that there were no materials relating to the assassination).

In 1996, we asked the Library of Congress, including the Congressional Research Service ("CRS"), to undertake efforts to locate any records in its custody that relate to President Kennedy's assassination and to designate such records under the JFK Act. See August 13, 1996 Letters from David G. Marwell to James H. Billington (Library of Congress) and Daniel Mulhollan (CRS) (Attachments B and C hereto). In our correspondence, we identified specific categories of records relating to the assassination that we had reason to believe might be in the possession of the Library of Congress and CRS. We also requested the Library of Congress to "designate an official at the Library who can act as a liaison with the Review Board" in order "to ensure that the Library of Congress is in full compliance with the JFK Act . . ." (see Attachment B). At present, the Library of Congress has not forwarded any documents to the JFK Collection at NARA, nor have we been apprised of what efforts were taken, if any, to locate assassination-related records within the custody or control of the Library of Congress.<sup>2</sup>

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<sup>2</sup> On September 26, 1996, we were advised by CRS that it had "to first study the Act thoroughly and consult with appropriate congressional committees" before complying with its obligations under the JFK Act. We were also told that "the Librarian of Congress [would] respond under separate cover" to our August 13, 1996 request for compliance with the JFK Act. See

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September 26, 1996 Letter from Daniel P. Mulhollan to David G. Marwell (Attachment D hereto).  
Since then, we have no record of receiving further communications from either CRS or the Library  
of Congress.

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Therefore, we again ask that the Library of Congress cooperate in assisting the Review Board in discharging its responsibility of assuring the public that the goals of the JFK Act have been accomplished to the greatest reasonable extent. The role of the Library of Congress as the national library for the United States, and as custodian for unique records and papers, makes it an important element of successful implementation of the law.

B. Specific Requirements for Documenting JFK Act Compliance by the Library of Congress

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Set forth below are certain formal procedures we request that the Library undertake in documenting its compliance with the JFK Act. These procedures are being specified pursuant to the Review Board's Congressional mandate under the JFK Act to "create an enforceable, independent, and accountable process for the public disclosure of such records," 44 U.S.C. § 2107 (2) (a) (3), and pursuant to its powers under Section 7(j)(1)(A), (B), (C), (D), and (F) of the Act.

In requesting the Library of Congress to identify and designate assassination records under the JFK Act, and to account for its search of such records, it is not our intention to require the Library to survey or identify published books and other materials that are generally available to the public. Rather, we are interested in having the Library identify archival records, special collections, manuscripts, CRS files, and other materials that are classified, restricted or otherwise unavailable to the public and that may relate to the assassination of President Kennedy. In particular, the Review Board seeks an assurance from the Library of Congress that it has adequately searched its closed or restricted holdings of the Manuscript Division and the records of CRS. In addition, if there are any other Library entities that maintain classified or closed materials (for example, if there are any restricted, closed or classified materials held in the video or audio collections of the Library), then we would like the Library to describe what it has done to identify any assassination-related records among those other non-public holdings.

Therefore, the Review Board now renews its August 13 request to the Library of Congress to appoint a compliance official who is responsible for ensuring that the Library meets its obligations under the Act. In addition, we request that the Library submit, as have other agencies, declarations, under oath, demonstrating that a thorough and diligent search has been made for records relating to the assassination of President Kennedy. We suggest that one declaration be submitted on behalf of the Manuscript Division of the Library, while a separate declaration be submitted on behalf of CRS. If there are any other entities within the Library of Congress that maintain significant holdings that are

classified or closed, then we request a similar declaration for that entity.<sup>3</sup>

1. Designation of Agency Compliance Official (or Officials) and Statement of Intent to Comply with the JFK Act

We request that, by November 12, 1997, the Library of Congress designate a Compliance Official who will be responsible for ensuring that the Library of Congress has complied with its obligations under the JFK Act, including the identification of assassination records from among its closed holdings and the transmission of those records to the JFK Collection at NARA.

We also request that, by November 12, 1997, the Library of Congress convey its agreement to adhere to the compliance requirements outlined in this letter. To the extent that any compliance procedure described below appears to be unreasonable or to present difficulties that we may not have anticipated, please explain why and make alternate suggestions to us.

2. The Manuscript Division

We request that the Manuscript Division provide a declaration with respect to whether there are any assassination-related records in its closed or restricted holdings. By making this request, the Review Board does not intend to question the good faith or diligence with respect to the Division's conclusion in 1994 that it possessed no "classified" records relating to the assassination. In fact, the staff of the Manuscript Division recently has been very cooperative and helpful in working informally with Review Board staff. Nonetheless, as we have requested of other agencies, we seek a more formal accounting by the Manuscript Division under oath. The declaration should provide the following information:

- a. The name and title of the person who is executing the declaration and the names and titles of the person(s) responsible for conducting the search of the Division's holdings.
- b. A description of the search that was done of the Division's restricted, closed,

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<sup>3</sup> These declarations should be executed under oath in the form prescribed by 28 U.S.C. § 1746. Thus, the declarant, at the conclusion of his or her declaration, should state that "I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on this \_\_\_ day of \_\_\_\_, 1997."

classified, or other non-public manuscript collections to locate any collections that might contain materials relating to the Kennedy assassination, including materials relating to the Warren Commission investigation, Lee Harvey Oswald, Marina Oswald, Jack Ruby, the House Select Committee on Assassinations, or the Church Committee's investigation of the Kennedy assassination.

c. A brief description of the indices and other finding aids that the Division used to identify collections that may contain records relating to the assassination. We also request that this declaration attach a current list of all collections that are closed or that otherwise have some restriction on public access.

d. An identification of any collections that the Division determined should be reviewed for documents that may relate to the assassination and a description of the review that was done of those collections to identify specific documents. With respect to such collections, please enclose with the declaration any detailed indices (such as listings of file folder names) that may exist for that individual collection. With the assistance of the Manuscript Division staff, we have identified certain closed or restricted collections in the Library of Congress that *may* contain documents relating to the assassination of President Kennedy and that should be reviewed, including records of: the U.S. President's Commission on CIA Activities ("the Rockefeller Commission"); Curtis LeMay, Chief of Staff for the Air Force under President Kennedy; Paul H. Nitze, Assistant Secretary of Defense during the Kennedy administration and later Secretary of the Navy; Robert McNamara, Secretary of Defense under the Kennedy and Johnson administrations; Cord Meyer, a CIA official during the Kennedy administration; and Clare Booth Luce. The Review Board may seek to inspect these records.<sup>4</sup>

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<sup>4</sup> In addition, there are some open collections that may contain assassination-related records. The Library need not place any such records in the JFK Collection, with one exception. We have learned that the Manuscript Division has possession of an original Lee Harvey Oswald document, a January 26, 1962 letter from Oswald in Minsk to the International Rescue Committee. Unless the Library has an objection, we would ask that the original, as well as any administrative records relating to the document, be placed in the JFK Collection at NARA. It is our understanding that there are other open records that may be assassination-related, including records for John F. Kennedy, Robert F. Kennedy, Earl Warren, David Atlee Phillips, a CIA official, and Elmer Gertz, an attorney for Jack Ruby. We would ask that the declaration confirm that these collections are indeed available to the public without restriction and that the declaration attach any indices for these collections. We also

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ask that the declaration identify other open collections that have significant materials relating to the assassination of President Kennedy to the extent that such collections can be reasonably identified by the Division's finding aids.

e. To the extent that the Division identifies any closed materials or documents that relate to the assassination, please describe your efforts to open those records and to place them into the JFK Collection at NARA.

3. The Congressional Research Service ("CRS")

We request that CRS provide a declaration that would provide the following information:

- a. The name and title of the person who is executing the declaration and the names and titles of the person(s) responsible for conducting the search of CRS's holdings.
- b. A description of the search that was done to locate assassination-related records, including specifically records relating to the work that CRS may have performed in connection with the Kennedy investigation of the House Select Committee on Assassinations ("HSCA") or the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities ("the Church Committee") or that it may have performed for any other Congressional investigation relating to President Kennedy's assassination. This description should explain all the steps that CRS took to identify and locate assassination records including, but not limited to, a listing of the major record collections and files that were consulted in its search, any file indices consulted, the physical locations of the records that were searched, the off-site storage facilities (*e.g.*, Federal Records Centers) searched, the specific steps that were taken to locate and retrieve materials in archives, and any other steps taken to conduct this search.
- c. To the extent that CRS locates any assassination-related records, a description of the steps being taken to make the records available to the public and to place them in the JFK Collection at NARA.

At the completion of the Library's record searches, the Library should confirm to the Review Board that any assassination records have been properly processed and placed into the JFK Collection at NARA.

C. Conclusion

We look forward to receiving, by November 12, the initial response of the Library of Congress that designates its Agency Compliance Official(s) and includes its agreement to the procedures outlined in this letter. We request that the Library of Congress submit its report regarding JFK Act compliance,

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including declarations, by December 22, 1997. To the extent that you have any questions or suggestions regarding the JFK Act Compliance Program, please do not hesitate to contact me or our Associate General Counsel, Ronald G. Haron, at (202) 724-0088.

Thank you for your cooperation with our work.

Sincerely,

T. Jeremy Gunn  
Executive Director  
and General Counsel

cc: Lena Jones, Acting General Counsel  
Library of Congress