

July 25, 1997

BY FACSIMILE & FIRST-CLASS MAIL

Mr. Larry E. Curry  
Director  
Correspondence & Directives  
Washington Headquarters Services  
Office of the Secretary of Defense  
1155 Defense Pentagon  
Washington, D.C. 20301-1155

Re: Office of the Secretary of Defense Compliance with the JFK Assassination  
Records Collection Act, 44 U.S.C. § 2107

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Dear Mr. Curry:

I would like to thank you, Stewart Aly, Daniel Cragg, David Bosworth, and Jim Sexton for meeting with Doug Horne and me on July 17 to review the efforts of the Office of Secretary of Defense ("OSD") to comply with its obligations under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) ("JFK Act"). I am writing to memorialize our understanding of the results of our meeting and the status of OSD compliance to date.<sup>1</sup>

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<sup>1</sup> OSD is responsible for collecting assassination-related records within the Office of the Secretary of Defense, including the various Under Secretaries and Assistant Secretaries of Defense. The individual services (*i.e.*, the Navy, Army and Air Force) are responsible for conducting their own searches and, in fact, are separately certifying their compliance under the JFK Act.

Mr. Larry Curry  
July 25, 1997  
Page 2

1. OSD's Record Searches to Date. At our meeting, we discussed the methodology of OSD's record searches. As I understand it, OSD has thus far taken the following steps: In November 1995, the Director for Administration & Management, David Cooke, instructed various offices under the Secretary of Defense to conduct searches for assassination records.<sup>2</sup> See Nov. 9, 1995 Memorandum of the Director for Administration & Management (Attachment A hereto). It is our understanding that they were provided with a list of record categories identified by the Review Board (see Oct. 25, 1995 Letter from T. Jeremy Gunn to Stewart F. Aly (Attachment B hereto)), but please confirm that. These offices then formally reported on the results of their search efforts.

In addition to the Department-wide instructions, your office conducted a search of OSD archive records. In its initial Statement of Compliance, OSD stated that it had reviewed SF-135 archive transmittal forms for OSD records sent to storage and also reviewed certain archived records of the Secretary of Defense and Deputy Secretary of Defense for the period 1961- 1985. OSD also reviewed more highly sensitive materials kept in a secured area at the Pentagon.

With respect to the review of SF-135 forms, it was unclear what criteria were used to identify records that should be retrieved from storage; it was also unclear which records, based on this review, were in fact identified and inspected. Accordingly, we will ask that, in the Final Declaration of Compliance, you elaborate on the search of records within OSD's archive holdings, including an explanation of the criteria used to recall records from storage and an identification of the archive records that were, in fact, retrieved and inspected for assassination records.

With respect to the review of certain Secretary of Defense files in storage, it is our understanding that this review did not take into account all stored files of the Secretary of Defense for the years 1961-1985. Rather, your office inspected official correspondence files for the Secretary that are organized according to a subject classification. Using an OSD

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<sup>2</sup> The offices receiving the instructions were: (a) Under Secretaries of Defense; (b) Assistant Secretary of Defense for Command, Control, Communications & Intelligence; (c) Assistant Secretary of Defense for Legislative Affairs; (d) the General Counsel; (d) the Inspector General; (e) the Assistant to the Secretary of Defense (Intelligence Oversight); (f) the Assistant to the Secretary of Defense (Public Affairs). Most offices reported that they did not find any assassination records; the offices that did locate assassination-related records are discussed at paragraph 2 of this letter.

index, you reviewed the official correspondence files for the Secretary of Defense under certain categories (the categories were Crimes, Relations with Congress, and Cuba). As explained in more detail below, we request a more complete accounting of the files of Secretaries of Defense Robert McNamara and Harold Brown.

With respect to the review of more sensitive materials at the Pentagon, OSD's Compliance Statement noted that a search was made of "the available 'greens,' paper records of SCI documents." Please confirm, however, whether your search has taken into account all secured vault or storage facilities for SCI documents that may be under the control of any of the offices of OSD.

2. Assassination-Related Records That Have Been Located. Based on the Department-wide instructions to locate assassination-related records, and on the search through archive records, it is our understanding that OSD has located the following assassination-related records to date:

(a) six Cuba-related documents from the Secretary of Defense official correspondence file.<sup>3</sup>

(b) eighteen documents from the Secretary of Defense official correspondence files relating to communications between the Secretary of Defense and the House Select Committee on Assassinations ("HSCA"). It appears that some or all of these documents came from a file designated "032 Assassinations," but please confirm this.

(c) certain FOIA files located by the Directorate for Freedom of Information & Security Review ("DFOI/SR"), which is under the Assistant Secretary of Defense for Public Affairs (we agreed the Review Board staff should review these files to assess whether they should be designated as assassination records).

(d) a file entitled, "President's Commission on Assassination of President Kennedy (1965-77)," which was located in archives by the Assistant Secretary of Defense for

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<sup>3</sup> It is our understanding that the official correspondence files for the Secretary of Defense contain only outgoing and incoming correspondence, and that, for the most part, they do not include communications within OSD. It is also our understanding that these files are referred to as "WHS/C&D/Correspondence Control Division's files." Please let us know if this is inaccurate.

Command, Control, Communications & Intelligence.

With respect to those records not yet processed, please apprise us as to whether you will seek to postpone release of any material. In addition, certain other files have been identified and need to be reviewed for assassination-related records:

(e) certain records retrieved from storage by the General Counsel's office.

(f) certain Cuba files of the Assistant Secretary of Defense for International Affairs, which were located by the Under Secretary of Defense for Policy.

We request that all originals of these records be collected and made available for inspection by the Review Board so that we can confirm what will be transmitted to the JFK Assassination Records Collection ("JFK Collection") at the National Archives and Records Administration ("NARA"). The designated records will then need to be processed and forwarded to the JFK Collection. The Final Declaration of Compliance should clearly identify each record group that has been designated and forwarded to the JFK Collection. We also request that you apprise us of the discovery of any additional assassination-related records as you continue your search efforts.

3. Files of Secretary of Defense McNamara. Please confirm that you have identified and reviewed all files of former Secretary of Defense McNamara that reasonably might contain materials relating to the assassination of President Kennedy, including any records relating to his communications with, or work for, the Warren Commission.<sup>4</sup> The initial Statement of Compliance did not make clear whether all archived files of Secretary McNamara were inventoried for a determination as to which files should be reviewed for assassination records.

To assure the adequacy of your search of Secretary McNamara's files, we recommend that, in the Final Compliance Statement, you identify with specificity the identity of McNamara files that were reviewed, regardless of whether they are characterized as official or unofficial files. As part of this accounting, please provide to the Review Board (and include

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<sup>4</sup> As we discussed, Secretary McNamara executed and submitted to the Warren Commission an affidavit stating that Lee Harvey Oswald was not an intelligence agent for any Department of Defense entity. See Sept. 21, 1964 Letter from Robert McNamara to Earl Warren enclosing Secretary McNamara's affidavit (Attachment C hereto). OSD has not located its copy of this record. To the extent reasonably achievable, we request that OSD locate this communication and any related papers.

Mr. Larry Curry  
July 25, 1997  
Page 5

with your Final Declaration of Compliance) all SF-135 forms encompassing 1963-64 records of Secretary McNamara.

At our meeting, you provided us with an archive transmittal form for certain records of Secretary McNamara that have been deposited with NARA. See SF-135 for Accession No. 71-A-4401 (Attachment D hereto). These records include chron files for the 1963-64 period.

We request that you survey these records and identify to the Review Board any files that may contain assassination-related materials. We will want to inspect these McNamara files first-hand.

4. Files for the General Counsel's Office under Secretary McNamara. We request that you identify and review the 1963-64 files of the Department of Defense General Counsel's office for assassination records. At that time, General Counsel John McNaughton "serve[d] as the liaison with the [Warren] Commission for the Department of Defense." See Letter from Mr. McNaughton to Earl Warren, apparently dated Jan. 8, 1964 (Attachment E hereto).<sup>5</sup> Furthermore, in December 1963, Mr. McNaughton provided written comments on a preliminary FBI report on the assassination. See Dec. 16, 1963 Memorandum from Mr. McNaughton to Nicholas Katzenbach (Attachment F hereto). Mr. McNaughton also was responsible for forwarding to the Warren Commission the military records of Oswald and Ruby. See Jan. 10, 1964 Letter from Mr. McNaughton to Mr. Rankin (Attachment G hereto).

5. Files Relating to Work of the Department of Defense in Connection with the Investigation of the House Select Committee on Assassinations ("HSCA"). As we discussed, it is imperative that OSD locate all records within its custody or control that relate to any communications or work of the Department of Defense ("DOD") in connection with the HSCA's investigation into President Kennedy's assassination. In the 1977-78 period, the Department of Defense had extensive communications with the HSCA, responding to substantive inquiries of the HSCA and making available certain records for the HSCA's review. Indeed, at the time, DOD noted that it had "received an extraordinary volume of detailed requests from the" HSCA and acknowledged that a "substantial amount of information and files from DOD have been made available to" the HSCA. See March 31,

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<sup>5</sup> Please note that this letter was routed to several individuals and files, apparently within the General Counsel's office. To the extent reasonable, please check those files for materials relating to the assassination and the Warren Commission's investigation.

1978 Letter from John G. Kester to G. Robert Blakey (Attachment H hereto).

We wish to underscore the importance of locating these records by pointing out the nature of some of the issues that were the subject of communications between the Department of Defense and the HSCA. For example: (a) DOD had in its possession what it claimed was the camera used to take the Kennedy autopsy photographs, although the HSCA later concluded otherwise. *See* March 3, 1978 Letter from Mr. Kester to Mr. Blakey; March 27, 1978 Letter from Mr. Blakey to Secretary of Defense Harold Brown; and April 20, 1978 Letter from Mr. Kester to Mr. Blakey (Attachment I hereto); (b) DOD submitted to the HSCA an explanation for the destruction of the Army Intelligence dossier on Lee Harvey Oswald. *See* July 26, 1978 Memorandum from Judith A. Miller to Jacqueline Hess (Attachment J hereto); (c) DOD had reviewed certain of its "intelligence holdings" and concluded that this "review has revealed no intelligence material suggesting Cuban involvement in the assassination of President Kennedy." *See* June 19, 1978 Letter from Mr. Kester to Mr. Blakey (Attachment K hereto); and (d) the HSCA sought to obtain from DOD access to information regarding the Cuban intelligence network. *See* June 26, 1978 Letter from Louis Stokes to Secretary of Defense Brown (Attachment L hereto).

Accordingly, we request that OSD locate, not only its communications with the HSCA, but also any underlying records that it made available for the HSCA's review or any other records that relate to DOD's work for the HSCA. To facilitate locating these records, we identified for you several officials within DOD who, at the time, had responsibility for dealing with the HSCA. They were: Secretary of Defense Harold Brown,<sup>6</sup> General Counsel Deanne Siemmer, Special Assistant John Kester, and Assistant to the Special Assistant Judith Miller. There may be others. We have asked that you locate and review the files of these officials to determine whether they contain any records relating to their work on the HSCA's Kennedy investigation. In addition, please determine whether the files of the Assistant Secretary of Defense (Legislative Affairs) at the time, Jack L. Stempler, contain any materials relating to the HSCA. Please keep us apprised of your efforts to identify and review these files. We may wish to inspect any original files that you locate regarding the HSCA.

6. Final Declaration of Compliance. OSD's Final Declaration of Compliance will need to

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<sup>6</sup> Your staff indicated that some of Secretary Harold Brown's records are retained in a vault in the Forrestal Building. You agreed to determine the nature of these records and whether they may include any materials relating to the HSCA.

Mr. Larry Curry  
July 25, 1997  
Page 7

reflect the matters we have discussed, including the additional work it will need to undertake in searching for assassination-related records. Please note that the Final Declaration of Compliance will need to be executed under oath in the form prescribed by 28 U.S.C. § 1746.

We propose that the Final Declaration of Compliance be submitted by October 27, but we can extend the date in the event you need additional time.

We have attempted to reflect, as accurately as possible, the issues that were discussed at our compliance meeting on July 17, but please let us know if you think we have been inaccurate in any respect. Thank you again for your cooperation, and please feel free to call Doug Horne or me to discuss these matters or any questions you may have.

Sincerely,

Ronald G. Haron  
Assistant General Counsel

cc: Stewart F. Aly, Associate Deputy General Counsel, DOD