

# MEMO

**To:** Judge John R. Tunheim, Jeremy Gunn  
**From:** Thomas E. Samoluk  
**Subject:** NARA Meeting on Ballistics; Friday, November 7, 3:00 p.m.  
**Date:** July 18, 2017

## I. Introduction

We are scheduled to meet with Deputy Archivist Lew Bellardo and other representatives of the National Archives and Records Administration at Archives II in Room 4200 on Friday, November 7, 1997 at 3:00 p.m.

The topic for the meeting is the Review Board's request that NARA allow limited testing of Commission Exhibit 567 (CE 567), a bullet fragment found in the presidential limousine following the assassination of President Kennedy.

The meeting is at the request of Deputy Archivist Bellardo and is a follow-up to the September 15, 1997 letter from Jack to the Archivist.

It is not yet clear who will attend the meeting from NARA. However, I expect that Bellardo will be accompanied by Steve Tilley, General Counsel Elizabeth Pugh, and Assistant Archivist Michael Kurtz. I have a call into Steve to get more information regarding the NARA meeting attendees.

## II. Goals for the Meeting

Our goals for the meeting are to:

1. Get NARA to agree to the testing on CE 567.
2. Avoid Congressional and public notification prior to testing (discussed in Section IV below).
3. Agree to begin the planning for testing immediately with representatives from NARA, ARRB, FBI, and DOJ.

## III. Talking Points

The following talking points form the basis for our argument that limited testing should be conducted on CE 567 and were stated to NARA in David Marwell's letter of July 21, 1997 to Assistant Archivist Kurtz:

1. The Firearms Examination Panel of the House Select Committee on Assassinations recommended the analysis of CE 567 more than 19 years ago and for unknown reasons the recommendation of the Firearms Examination Panel of September 1978 was deleted from the published March 1979 HSCA final report;
2. The analysis that is being discussed is limited and defined in scope. The bullet fragment and adhering fiber will be altered, but will not be destroyed in testing. Comprehensive microphotography of CE 567, prior to testing, will ensure that its present condition is documented. Documentation of the testing procedures would also become an important part of the historical record.
3. According to the FBI, the artifact is deteriorating. The opportunity to clarify the nature of the substance that is adhering to CE 567 could be lost forever if it not undertaken now.
4. The Review Board is seeking to fulfill its mandate to make the record of the assassination as complete as possible for the American public.
5. Given the history of CE 567 with regard to the HSCA Firearms Examination Panel recommendation and its subsequent deletion from the March 1979 HSCA final report, failure to take this limited step to clarify this open question will, once it is made public, serve to erode the efforts that have thus far been made to ensure that the record of the assassination is accessible and complete.
6. Given that significant attention has been devoted to this issue by four Federal agencies (NARA, DOJ, FBI, and ARRB), failure to undertake the limited testing of CE 567 could further cast doubt on the Federal government's willingness to clarify the historical record.
7. We are fully aware of NARA's responsibility to preserve the records that are in its custody. Failure to perform the non-destructive examination outlined in this letter would, however, preserve an open and provocative question. The speculation that would surely result from this unfinished business is clearly not in the public interest.
8. We urge you to permit the requested examination and work with us to ensure that it is well documented and complete.

#### IV. Likely Issues For Discussion

Based on the correspondence and contact with NARA personnel regarding testing of CE 567, the following issues are likely to be raised at the November 7 meeting:

1. NARA's Mission to Preserve Evidence

The NARA representatives are likely to point to their inherent mission to preserve records and artifacts. I suggest that we should express sensitivity to their mission, but state that given the history of CE 567, the limited nature of the non-destructive testing, the ability to document the current

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condition of the artifact, and the record of recent discussions among four federal agencies on the issue, the most responsible action is to allow the limited testing being requested.

## 2. Congressional and Public Notification

Congressional and public notification prior to testing has been raised by NARA at a meeting we had with NARA, FBI, and DOJ in May 1996 and in the August 25, 1997 Kurtz letter to David Marwell. Prior notification of Congress and the public is not required and not desirable. Once Congress is notified, anything can happen. As soon as Congress is notified, it is likely to become public very quickly. Prior notification will complicate and slow the whole process down for everyone involved, if not prevent the testing from even happening. It is possible that Congress will want to have hearings. Furthermore, calls from the research community for additional steps to be taken to reopen other aspects of the investigation are likely to follow.

Our position is that prior notification of Congress and the public is not necessary because:

- a. We have the authority to do the limited testing;
- b. The present condition of the artifact will be completely documented;
- c. The testing will be carefully documented;
- d. The testing will be non-destructive;
- e. There will be independent expert presence involved in every step of the testing; and
- f. All documentation connected with the testing will be publicly available following the testing.

## 3. Specifics of Testing

We believe that the testing should be done by the FBI and they have stated they are willing and able to do it. In addition, we believe that there should be some independent expert presence involved in the testing and that everything should be carefully documented. NARA should be assured that we are interested in working with them to ensure that any concerns that they have are addressed.

## 4. Legal Authority of the Review Board

Although this issue has not been raised by NARA, it should be briefly addressed here. I believe that if the Board's legal authority is questioned, we need to say that we are confident that the testing request is within the legal parameters of the JFK Act. The authority cited would probably come under Section 7(j). Informally, the DOJ has said that we clearly have the authority and are the appropriate agency to be making the request for the testing. However, rather than making an adversarial legal argument that we are telling NARA to do the testing, we want NARA to voluntarily accept and agree that this limited testing is the appropriate course to follow.

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V. Long-Term Chronology of Events Related to CE 567

For your background, I have compiled the following chronology of events related to CE 567, starting with the HSCA Firearms Examination Panel treatment of the fragment in September 1978 through March 1997, right before our official exchange of correspondence began with the Archives in May 1997 (listed in next section and attached):

September 8, 1978

House Select Committee on Assassinations, Report of Firearm Examination Panel  
page 33, VI. Recommendation:

A. The white fibrous material adhering to CE 567 (seat fragment) should be subjected to micro-chemical analysis to determine its composition.

March 1979

House Select Committee on Assassinations  
Final Report - Volume VII, Medical and Firearms Evidence, Report of the Firearms Panel  
page 381, Recommendations of the firearms panel  
Reference to CE 567 is deleted

April 1995

John T. Orr, Jr., Chief of the DOJ Antitrust Divisions Atlanta Field Office writes to Attorney General Reno to advise her of his theory that there was a conspiracy to assassinate President Kennedy. In his report he states that tiny strands of fiber from the Presidents shirt collar are embedded in the fragment [CE 567]. Orr makes no reference to the HSCA treatment of CE 567.

January 4, 1996

Internal Memorandum from Terry R. Lord, Acting Chief, General Litigation and Legal Advice Section to John C. Keeney, Acting Assistant Attorney General, Criminal Division regarding Orr's theory.

January 25, 1996

Memorandum from John C. Keeney, Acting Assistant Attorney General to Louis J. Freeh, Director, FBI requesting that the FBI "initiate an inquiry into specific aspects of Mr. Orr's assassination theory related to collected bullet fragments and residues now in the possession of the Federal Government."

March 29, 1996

Meeting at FBI with FBI and ARRB regarding the ballistics evidence and the type of examination that could be conducted.

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April 29, 1996

Letter from John C. Keeney, Acting Assistant Attorney General to David G. Marwell, Executive Director, JFK Assassination Records Review Board requesting "your participation in the consideration of specific proposed responsive actions involving assassination evidence in the performance of testing procedures."

May 8, 1996

Meeting at National Archives with NARA and ARRB to preliminarily discuss a reexamination of the ballistics evidence housed at the Archives.

May 20, 1996

Meeting on ballistics evidence with DOJ, FBI, NARA, ARRB. It is agreed at this meeting that the ballistics evidence will be preliminarily examined by the FBI.

May 23, 1996

FBI Evidence Inspection of ballistics evidence from the President Kennedy Assassination is conducted at Archives II Building with ARRB and NARA representatives in attendance.

June 3, 1996

FBI Written Report on Evidence Inspection Re: John F. Kennedy Assassination at Archives II Building conducted on May 23, 1996. With regard to CE 567, the FBI suggested that "a complete fiber analysis could be conducted of the fibrous debris adhering to CE#567 and the materials composing the shirt and the tie [of President Kennedy]."

June 25, 1996

Conversation with Jeff Fogel, DOJ; Miriam Nisbet, NARA; and Tom Samoluk, ARRB. Nisbet was to check on the status of the documentation project on the ballistics evidence and NARA's position on when Congress needs to be notified and on what specific testing. Based on that information from NARA, Fogel said that DOJ would decide what their specific request would be to NARA.

March 1997

After renewed contacts initiated by the Review Board, Jeff Fogel of the Department of Justice indicates that the Department does not intend to make a specific request for an examination of C.E. 567 because its role and intent could be misconstrued by conspiracy theorists. Miriam Nisbet of the National Archives indicates that a reexamination of CE 567 is currently being discussed at the

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National Archives, but no decision has been made on what, if any, testing of ballistics evidence will be allowed.

#### Post-March 1997

The attached correspondence described in the next section bring the chronology up-to-date.

#### VI. Attachments

I have attached the following documents for your information:

1. May 15, 1997 letter from Assistant Archivist Michael Kurtz to David Marwell in which Kurtz said that NARA “would not engage in or sponsor any testing that would alter the evidence.”
2. July 21, 1997 letter from Marwell to Kurtz in which David clarifies the Board’s position and role relative to matters involving additional ballistics testing. The letter requests the limited testing on CE 567.
3. August 25, 1997 letter from Kurtz to Marwell in which he stated that David’s July 21 letter had provided “a strong argument for further examination and ‘limited’ testing of CE 567.” The letter went on to state that the request should come to NARA as an “official Board action.”
4. September 15, 1997 letter from Chairman John Tunheim to Archivist John Carlin in which the Chairman reiterates the request made in Marwell’s July 21 letter and states that the request constitutes an “official action of the Board.”

#### VII. Conclusion

We hope to reassure NARA at this meeting that the limited testing of CE 567 being proposed by the Review Board is in the best interest of all parties and the public. NARA should be confident that we are interested in working with them to ensure that all of their concerns are addressed.

Please advise me if you have any questions or would like me to provide additional information.