

March 22, 1995

TO: *Assassination Records Review Board*

FROM: *Sheryl Walter, General Counsel*

RE: *Treatment of documents under seal under the
Assassination Records Collection Act of 1992 (ARCA)
and sealed William Manchester materials*

Documents under seal

Under Section 10(a) of the ARCA, titled "Materials under Seal of Court",

"[t]he Review Board may request the Attorney General to petition any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court. . . [and] to petition any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under in injunction of secrecy of a grand jury."

Paragraph (b) of that section transmits "the sense of Congress" that "the Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under

seal by a court or under the injunction of secrecy of a grand jury."

The Review Board staff is working with officials at the Justice Department to determine how best to implement this power. For purposes of the Review Board's visit to the Kennedy Library, the immediate issue related to documents under seal is the William Manchester material at the Kennedy Library. The Kennedy Library provided some documentation on the status of these materials, excerpts of which are attached to this memo. Below is a summary of the circumstances leading to the current restricted status of these documents.

William Manchester materials at the Kennedy Library

The William Manchester materials housed at the Kennedy Library relate to interviews done by Manchester for his book *Death of a President*. They are described in court documents as four audiotapes of interviews with Jacqueline Kennedy and two audiotapes of interviews with Robert F. Kennedy and certified transcripts of the tapes.

From the documents provided to the Review Board by the Kennedy Library, it appears that prior to Manchester's publication of his book, Mrs. Kennedy sued him and his publishers in New York state court. A settlement agreement in this case, Kennedy v. Harper & Row, Cowles Communications and William Manchester, was executed on Jan. 16, 1967. (Robert Kennedy was a party to the settlement agreement although

not a plaintiff in the suit.) The agreement covers the tapes and transcripts described above and details an arrangement whereby Mrs. Kennedy, Robert Kennedy, and Manchester were to listen to the tapes separately and certify the accuracy of the transcripts. The tapes and transcripts were then to be deposited with the National Archives for eventual deposit at the Kennedy Library. The settlement also stipulates that all parties agreed to sign a letter to accompany the materials upon their deposit at the National Archives stating that the "tapes and transcripts shall not be made public or available for copying by anyone, including the said letter signatories [Manchester, Mrs. Kennedy, and Robert Kennedy], for a period of one hundred (100) years" from the date of the agreement, unless "on the express written consent of [Mrs. Kennedy]" or Manchester's or his publisher's certification that they need to inspect the transcripts in order to defend themselves in a legal action. A copy of the settlement agreement is attached to this memo.

A judgment and decree based on the settlement agreement was issued on January 31, 1967. (A copy of this decree is also attached.) The "material" covered by the decree, as defined in that document on page 3, covers:

- the manuscript of Manchester's book intended for publication;
- other versions of the manuscript;
- Manchester's notes of interviews of any member of Mrs. Kennedy's family or her household (including persons in the Kennedys' personal employ and persons who served as White House household staff, personal secretaries, and Secret Service and White House police attached in whole or part to the president or members of his personal family);

- *tape or other voice recordings furnished to or possessed by Manchester of Mrs. Kennedy or members of her family or members of her household (plus copies, abstracts, fragments, transcripts, summaries, and excerpts of such recordings); and*
- *letters and other written communications to and from President Kennedy and Mrs. Kennedy, between them and members of the household staff, (plus copies, abstracts, and summaries) furnished to or obtained by Manchester from March, 1964 through March, 1966.*

The decree permanently enjoins publication of the material described above or divulging the contents of the material to anyone except with the express written consent of Mrs. Kennedy except for use by Manchester and his publishers to defend against legal actions. None of the parties can make or authorize any visual or aural use of the manuscript or any of the material without Mrs. Kennedy's express written consent. All previous copies of the manuscript were to be destroyed, except for a limited number of file copies to be kept by Mrs. Kennedy and Manchester. Manchester was to deliver to Mrs. Kennedy all of the material described in the decree, except for the tapes and transcripts of the tapes separately covered by the settlement agreement.

By separate agreements, (undated, unsigned copies of which are attached) Mrs. Kennedy, Robert Kennedy, Manchester, and his publishers agreed to the donation of the audio tapes and transcripts to the National Archives for deposit at the Kennedy Library. The agreements reiterate the restriction that the "tapes and transcripts shall not be made public or available for copying by anyone or otherwise, including the parties hereto, for a period of one hundred (100) years" except "on the express written

consent of Jacqueline Kennedy, or her designee for this purpose." Provision is made for National Archives staff to have the right of access to perform necessary archival maintenance and preservation work. The donation form also "acknowledge[s] that the restrictions and conditions set forth herein are primarily for the benefit of Jacqueline Kennedy and Robert Kennedy and may not be waived or modified without the written consent of both of them and may be enforced by either of them."

A July, 1967 memo to the GSA Administrator from GSA's General Counsel,¹ acknowledges highly restrictive nature of the agreements described above.² The memo also acknowledges the very restrictive terms of the donation agreement but states that the GSA General Counsel was "entirely convinced that [the tapes and transcripts] would not be donated except on the restrictive terms of this agreement." An August, 1967 letter to Manchester, Mrs. Kennedy, and Robert Kennedy from the GSA Administrator notifies these parties of the delivery of the tapes and transcripts to the National Archives and thanks them for this "act of far-sighted and public-spirited generosity." The letter also pledges that "the tapes and transcripts will be carefully protected and preserved, and

¹ At that time the National Archives was under the control of GSA.

² "This Agreement was written in a very unusual, and from our point of view, not very satisfactory way. However, all of the other parties to it not only feel strong emotions with respect to the tapes and transcripts, but also apparently have encountered severe problems in communicating and dealing with one another."

that the conditions and stipulations set forth in the agreement covering the gift of these materials to the United States will be observed scrupulously."

It is unclear from the documents provided to us by the Kennedy Library whether the donation agreement was formally executed (although there is no reason to believe it was not). It is also unclear whether any archival work or preservation copying of the tapes has been done since delivery of the tapes and transcripts to the National Archives.