

MEMORANDUM

TO: David

FROM: Tom S.

RE: Discussion of "Related to" and "Reasonably" in context of "Assassination Record" Definition

DATE: December 7, 1994

The John F. Kennedy Assassination Records Collection Act of 1992 states in Sec. 3(2) that:

"Assassination record" means a record that is **related to** the assassination of President John F. Kennedy (emphasis added).

The Senate Report said on page 31 with regard to the Review Board's authority to request "additional information, records or testimony from individuals" under Section 7(j)(C)(ii) that:

It is expected that in conducting such requests for additional information and records the Review Board consider whether the records are **reasonably related to** the history surrounding the assassination of President Kennedy ... (emphasis added).

Judges and legal scholar have grappled with the meaning of "relatedness" and "reasonableness" since the beginning of jurisprudence.

Our goal should be to define the connection between a record and the assassination in the simplest terms, while being able to apply the approach in broad terms to cover every situation which will arise. One legal case stated that this difficult issue of defining relevancy is more a matter of logic than law. However, we can get some guidance from the case law on these issues.

Thus, with some legal context and with the clear intent of the legislation to go beyond the records from past Kennedy assassination investigations in mind, I suggest that the threshold question in determining whether or not a record is "related to" the assassination should be:

Is it more probable or less probable that a record is going to add to the American public's knowledge of the assassination?

This proposed threshold question should clearly be distinguished from asking simply if a record could **possibly** add to the public's knowledge of the assassination. There are many records which are possibly related to the assassination, but this status alone would not get the record in question over the proposed "more probable or less probable" standard.

Courts have attempted to frame the question of relevancy in different ways. One court characterized the "relevancy test" as a determination whether or not information "throws or tends to throw light" on a matter. Another court said that the test is whether or not the evidence in question will "logically increase one's knowledge and enhance likelihood of ascertaining truth ... "

Whatever approach the Board members decide on, interested parties are obviously going to disagree with their specific judgments. However, I suggest that the proposed "more probable or less probable" relevancy standard is the simplest and most effective approach.