

DRAFT 2/13/95 #1

MEMORANDUM OF UNDERSTANDING

DEPARTMENT OF JUSTICE SUPPORT ASSISTANCE TO THE
ASSASSINATION RECORDS REVIEW BOARD FOR ARRB'S SECURITY
CLEARANCE ADJUDICATION PROCESS

The Assassination Records Review Board (ARRB) has requested the assistance and counsel of the Department of Justice (DOJ) in the ARRB's review of background investigations and its adjudication of security clearances for candidates for permanent employment by the ARRB that have been or will be done by the Office of Personnel Management. This assistance and counsel will be provided in accordance with the terms of this Memorandum of Understanding (MOU) to provide support, advice, and consultation to the ARRB in the ARRB's adjudication of its employees security clearances.

The ARRB and DOJ acknowledge that the ARRB has the sole authority to adjudicate security clearances for the ARRB's employees under Executive Order 10450 (1953), which governs "Security Requirements for Government Employees," and that this assistance is being provided by DOJ at ARRB's request in order to provide supporting assistance and consultation to the ARRB in ARRB's adjudication of clearances for candidates for permanent employment at the ARRB. The DOJ's security clearance adjudication support to the ARRB under this MOU will include the review by DOJ of Sensitive Background Investigations (SBIs) that have been or will be conducted by the Office of Personnel Management (OPM) by separate agreement with the ARRB. The Department of Justice will make recommendations to the Executive Director of the ARRB for the granting or

denial of clearances on a case by case basis. In each instance that DOJ makes a recommendation for the grant or denial of a clearance, the recommendation will set out in detail the facts on which the recommendation is based and the rationale underlying the recommendation.

The DOJ's support will be limited to review of files prepared by OPM after undertaking a background investigation. No office of DOJ shall conduct or be required to conduct separate or additional background investigations of the ARRB staff whose files are reviewed by DOJ's for purposes of providing advice and recommendations to the ARRB for the ARRB's use in its adjudication of clearances. The DOJ's recommendations will provide advice and counsel on the ARRB's evaluation of facts and information relevant to the candidate's suitability for Federal government employment and/or trustworthiness for clearance access information classified under the provisions of Executive Order 12356 or any successor Executive Order and its implementing directives).

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Requests for supporting advice and counsel from DOJ shall be made in writing from the Executive Director of the ARRB to [who at DOJ? the Director, Security and Emergency Planning Staff at DOJ (SEPS)?]. As part of the ARRB's written request, the ARRB will forward to DOJ a copy

of the candidates' completed Standard Form 86 (SF-86), completed questionnaire (Questionnaire for Sensitive Positions) and its accompanying Authority for Release of Information, [a set of the candidate's fingerprints], and a copy of the background investigation file and any related materials compiled as part of OPM's background investigation on the candidate. [To comply with the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, the written request shall also be accompanied by a statement signed by the candidate who was the subject of each investigation for which a recommendation has been requested acknowledging that he or she is aware of and consents to ARRB's consultation with DOJ with the knowledge that facts or information evaluated shall be retained consistent with applicable statutes.]

If the ARRB determines after filing a written request for assistance from DOJ that the candidate is not to be employed on a permanent basis, the ARRB will promptly notify DOJ so that the evaluation process for purposes of making a recommendation regarding that candidate can be discontinued. The Executive Director of the ARRB or his designated representative will ensure that access to these recommendations is restricted to persons directly involved in making a determination as to the person's suitability for employment by the ARRB and/or trustworthiness for access to classified material. The Executive Director of the ARRB or his designated representative shall maintain records of the identities of persons receiving access to the recommendations and such records shall be furnished to DOJ upon request. No person having access to the reports will reproduce or disseminate the reports except in accordance with procedures agreed to by the Executive Director of the ARRB or his designated representative and the [Director of SEPS] or his designated representative.

The ARRB agrees not to allow the candidate or any person outside of

the employment or security clearance process direct access to the recommendations. Any request by the candidate for access to the recommendation will be referred to DOJ for processing in accordance with the Privacy Act and with the Freedom of Information Act, 5 U.S.C. §552. However, in all cases in which DOJ makes a recommendation under this MOU, the recommendation and explanation of the basis for the recommendation will become a permanent part of the employee's security file.

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In view of the ARRB's limited term of existence under the provisions of its enabling legislation, the President John F. Kennedy Records Collection Act of 1992, 44 U.S.C. §2107 note, and the ARRB's corresponding need to complete its adjudication of candidates' security clearances in a timely fashion, DOJ agrees to provide the ARRB with a recommendation no later than [14 days] after DOJ's receipt of a written request for that assistance from the ARRB and the complete background investigation file on which DOJ will base its recommendation.

For the Department of Justice:
Review Board:

For the Assassination Records

[name]

David G. Marwell
Executive Director

Date

Date

[additional signatures?]