

MEMORANDUM

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June 7, 1996

To: Robert Areola

cc: Phil Golrick, Esq.
Laura Denk, Esq.

From: T. Jeremy Gunn
General Counsel

Subject: Assignment on JFK Act Statutory Interpretation
Responsibility of NARA (and Presidential Libraries) to Transmit to the JFK
Collection Records It Holds In Which Private Individuals May Have an Ownership
Interest

Please draft a memorandum that outlines the strongest reasonable argument that NARA must transmit to the JFK Collection all "assassination records" that it holds, including records in which a private individual may have an ownership interest. Your argument should be based upon a strict, comprehensive, and thorough analysis of the The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act), and appropriate references should be made to the JFK Act's legislative history. In addition to making your strongest argument, you should be careful to identify all reasonable arguments that might be made showing that NARA may not have responsibilities to transmit such assassination records to the JFK Collection.

You should be particularly mindful of the following provisions and issues:

- (a) the obligations of "government offices" generally under the statute;
- (b) "government records" is not explicitly defined;
- (c) "government office" and "assassination records" are defined;
- (d) the meaning of the terms (and their variants) "custody" and "possession" with respect

to records that are held by NARA;¹ and

- (e) issues surrounding the Whelan and Zapruder records.

For the purposes of your memorandum, you do not need to analyze the meaning of the term “assassination records” other than to the extent that the meaning might affect your analysis of other relevant portions of the JFK Act. You also need not pursue any research regarding Fifth Amendment “takings” beyond the memorandum that is being given to you.

Before devoting any substantial time to an area that might be peripheral, be sure to talk to me first. Please give me an oral report on your progress by Wednesday, June 11.

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¹For example: (a) Each government office is required to transmit “each assassination record in its custody or possession for disclosure to the public, review by the Review Board, and transmission to the Archivist.” Sect. 5(c); (b) “Each Government office shall--(1) transmit to the Archivist, and make immediately available to the public, all assassination records that can be publicly disclosed” Sect. 5(e)(1); (c) Sect. 3(5), Sect. 3(5)(D), Sect. 5(d)(3), etc.

Questions

To what extent does the Board have discretion?

Should Board issue guidelines on interpretation of JFK Act?