

Assassination Records Review Board
600 E Street NW ■ 2nd Floor ■ Washington, DC 20530

MINUTES OF JANUARY 25, 1995 BOARD MEETING

Date: January 25, 1995

Time: 10 a.m.

*Place: Conference Room 409
National Archives and Records Administration
7th and Pennsylvania Ave., NW, Washington, D.C.*

*Attending: Review Board members -- John R. Tunheim, Esq. (chair), Dr.
Henry F.*

Graff, Dr. Kermit L. Hall, Dr. William L. Joyce, and Dr.

Anna

Kasten Nelson.

Review Board staff -- David Marwell (executive director),

Sheryl Walter

*(general counsel), Jeremy Gunn (chief, analysis and
review),*

Thomas Samoluk (press and public affairs officer), Tracy

Shycoff

*(administrator), and Philip Golrick (analyst, acting as
transcriber*

of meeting proceedings).
National Archives and Records Administration -- Steven Tilley
(JFK
Collection liaison).

Status: Closed pursuant to 5 U.S.C. §§ 552b (c)(6) and (c)(9)(B).

MINUTES OF PROCEEDINGS:

*Chairman John R. Tunheim called the meeting of the Assassination
Records Review Board ("Review Board") to order at approximately 10:10
a.m.*

I. PRELIMINARY MATTERS

*Chairman Tunheim inquired of Ms. Walter what steps were being
taken in order to conduct the meeting in compliance with the Government
in the Sunshine Act (5 U.S.C. § 552b) ("Sunshine Act"). She responded
that, for purposes of this meeting, Mr. Golrick was taking detailed notes
from which minutes would be prepared and made available to the public,
except for those portions properly closed to the public under applicable*

statutory exemptions. Chairman Tunheim asked what the Sunshine Act requires for keeping a record of business transacted at Review Board meetings. Ms. Walter responded that the statute allows an agency to select alternatives for memorializing a meeting's proceedings, including detailed minutes, electronic recordings or verbatim transcripts.

Dr. Hall stated that, in his view, it would be appropriate to have the Review Board's decisionmaking documented as fully as possible. Ms. Walter noted that because the Act requires that all Board records be made part of the John F. Kennedy Records Collection, which itself has been established as part of the Board's enabling legislation, whatever records are made of meetings eventually will become part of that collection, will be housed at NARA, and may be made publicly available after the work of the Board is completed.

Dr. Hall moved that the Review Board formally adopt as a standard

practice the detailed memorialization of meetings at which official agency business is transacted. Dr. Joyce seconded the motion. A vote was taken and the motion was unanimously passed by the Review Board. The staff was directed to look into the matter and make any necessary arrangements for future meetings.

II. MEETING AGENDA

Chairman Tunheim asked Mr. Marwell to list the items on the agenda of the Review Board. Mr. Marwell identified the following items for informal discussion or the conduct of official agency business:

A) Discussion of proposed interpretive regulations for publication in the

Federal Register;

B) Discussion of certain legal developments;

C) Discussion of the handling of a certain portion of House Select

Committee on Assassinations (HSCA) records now in the custody

of

NARA;

D) A preliminary report from Review Board staff on future Review

Board

activities;

E) Discussion of certain records, created by the Warren

Commission, as to

which NARA has recommended postponement under the

personal

privacy provision (Section 6(3)) of the President John F.

Kennedy

Assassination Records Collection Act of 1992 ("the Act");

F) Scheduling of future Review Board activities; and

G) The Review Board's meeting with FBI Director Louis Freeh,
scheduled

for the afternoon of January 25, 1995.

Before the Review Board discussed the first item on the agenda, Mr. Tilley asked whether the Board would prefer that he be absent during the Board's discussion regarding the proposed interpretive regulations. Dr. Hall noted for the record his preference that Mr. Tilley not attend this portion of the meeting, given NARA's arguable interest in how the Review Board defines "assassination record" and the desirability of maintaining the appearance and fact of the Review Board's independence in its activities. The other board members agreed with Dr. Hall. Accordingly, Mr. Tilley left the room for the following portion of the meeting.

A. Proposed Interpretive Regulations

Chairman Tunheim noted for the record that he had spoken by

telephone to each member of the Review Board about the proposed interpretive regulations, the text of which was circulated to the individual Review Board members the previous week. He expressed the hope that the Review Board could at this meeting preliminarily authorize publication of the proposed interpretive regulations in the Federal Register in order to solicit comment by interested agencies and members of the public. Final Review Board action on the proposed interpretive regulations would be considered after the receipt and consideration of public comment. Dr. Graff moved that the Review Board adopt the circulated text for that limited purpose. Dr. Hall seconded the motion. The Board members proceeded to discuss the text before them before voting whether to authorize its publication at this time.

Dr. Joyce suggested, for the sake of clarity, several stylistic and organizational changes to the proposed interpretive regulations.

Specifically, he suggested that subheadings be added as follows and as appropriate for the text, such as "Introduction", "Definition", "Location of Assassination Records", and "Types of Records". Dr. Joyce also suggested that some of the material in the current text be reorganized for clarity and that the "Introduction" section initially specifically refer to the terms defined in the subsequent paragraphs.

Dr. Joyce further proposed, as a substantive matter, that the phrase "closest generation to the original available" be substituted for each occurrence of the phrase "best available copy". He observed that the closest generation to the original is most desirable for research purposes, but is not necessarily the "best" or "clearest" copy. Dr. Nelson agreed with Dr. Joyce's observation.

Dr. Graff and Dr. Hall agreed to incorporate Dr. Joyce's proposed changes into the draft for the purpose of the pending motion.

Chairman Tunheim asked Mr. Marwell how a record would be described in a Federal Register notice pursuant to the portion of the draft that creates a "Catalog of Assassination Records." Mr. Marwell replied that such a notice, depending on the circumstances, could describe a group of records or a single document, and would state the location of the records described. Dr. Nelson observed that, as a model for such notices, the Review Board could look to the format used by NARA when noticing destruction of records in the Federal Register.

Dr. Nelson suggested adding the phrase "including presidential libraries" to the paragraph describing "sources" of assassination records and additional records and information. She stated that, because presidential libraries are federal "record repositories," as presently described in that paragraph, this addition may be redundant. However, she believed that this addition was desirable in the light of recent trends toward categorizing

some papers that come into the possession of the president in the course of official duties as "government agency" records and others as "presidential" records. Chairman Tunheim agreed with Dr. Nelson's suggestion.

Dr. Hall observed that, although corporations may possess assassination records, they were not expressly mentioned in the draft of proposed interpretive regulations. In response to this concern, the phrase "persons, including individuals and corporations" was substituted for the word "individuals" in the paragraph describing sources of assassination records and additional records and information.

Dr. Hall asked Mr. Gunn to explain the intent of the current formulation of the definition of "assassination record" in the first paragraph of the proposed interpretive regulations. Mr. Gunn responded that this paragraph was intended to give a broad, general explanation of what an assassination record was. Chairman Tunheim concurred with that

described intent. Dr. Hall observed that the breadth of this formulation was very important but that potentially it could complicate the Review Board's completion of its responsibilities. He further stated that he did not oppose this language or wish to propose an alternative formulation, but only wished to call this matter to the attention of the other members of the Review Board. Chairman Tunheim expressed his view that, although the language in question may require more time for the Review Board's resolution of certain aspects of its duties under the Act, it would not in the final analysis complicate them. Dr. Nelson agreed with this assessment.

Dr. Joyce expressed concern that the phrase "investigations of the assassination" in the first paragraph of the proposed interpretive regulations may require revision. He noted that certain records may pertain to an "explanation" of the assassination, but not to a particular "investigation." The members of the Review Board considered whether the proposed

interpretive regulations' references to the definition of "assassination record" was sufficient or whether additions or changes may be appropriate.

Chairman Tunheim suggested that the phrase "or inquiries" be added after the word "investigations". The other Review Board members agreed.

Dr. Graff and Dr. Hall agreed, for the purpose of the pending motion, to incorporate into the draft the changes suggested by in the discussions.

Ms. Walter called attention to NARA's continued concern that the inclusion of artifacts in the definition of "assassination record" may create a precedent for designating artifacts as "government records" in other contexts, as was communicated to the Board during NARA's presentation at a previous public meeting.

After brief discussion and without a vote, the members of the Review Board reached a consensus that there was no need to further amend the proposed interpretive regulations for the purpose of the pending motion.

Dr. Nelson called for a vote on the pending motion to publish the text of the proposed interpretive regulations, with the agreed-upon changes and with additional technical revisions as necessary, in the Federal Register for public notice and solicitation of comment. The Review Board passed the motion by a unanimous vote. [A copy of the proposed interpretive regulations, incorporating the changes voted upon by the Review Board at this meeting and as published in the Federal Register, is attached to these minutes as Exhibit A.]

B. Legal Issues

Ms. Walter briefed the Review Board on the D.C. Circuit's recently issued opinion, ruling in favor of the government and dated January 20, 1995, in Assassination Archives and Research Center v. Department of Justice, No. 93-5310 (D.C. Cir.), which held that the Act did not create a private right of action for researchers seeking release of documents. Ms.

Walter distributed copies of this opinion to the members of the Review Board. [A copy of the D.C. Circuit's opinion is attached to these minutes as Exhibit B.]

No motions were proposed or votes taken during this portion of the meeting.

At this point, Mr. Tilley returned to the meeting.

C. HSCA RECORDS

Mr. Marwell reported to the Review Board that there were a number of HSCA records, now in the possession of NARA, as to which NARA informally has sought guidance from the Review Board. Mr. Marwell stated that these records principally contain information from state and local law enforcement agencies, tax records, and other investigatory proceedings and raise privacy and other confidentiality concerns.

Mr. Marwell explained that staff members had advised NARA that it

was NARA's responsibility initially to decide which of these records should be released, postponed or referred to other agencies, and that, if for some reason further guidance from the Review Board were required, NARA should submit a written request. The members of the Review Board expressed their agreement with this course of action.

No motions were proposed or votes taken during this portion of the meeting.

D. PRELIMINARY STAFF PROPOSALS FOR BOARD ACTIVITIES

1. Structure of the review process.

Mr. Marwell then distributed to the members of the Review Board preliminary drafts of forms to be used by the Review Board and its staff at various stages of the review of particular documents. Mr. Marwell explained the staff's preliminary concept of the process of reviewing records that agencies sought (in whole or in part) to have postponed for final

determination by the Review Board.

The Review Board discussed on a preliminary basis how agency notification and input should be incorporated into the review process. No motions were made or votes were taken. The Review Board requested the staff to continue to refine the details of the review process.

2. Scheduling of proposed "experts" conference.

Mr. Marwell submitted a preliminary proposal for an "experts' conference" to be sponsored by the Review Board. The proposed conference would comprise both informal meetings of staff members (and interested Review Board members) and outside individuals with special expertise in locating and analyzing major categories of assassination records, and public hearings before the Review Board addressing matters of broader policy. The members of the Review Board expressed agreement that such a conference was a sound concept. The Review Board directed the staff to

formulate a more concrete proposal and explore tentative dates for the Review Board's consideration. No motions were proposed or votes taken during this portion of the meeting.

E. REVIEW OF WARREN COMMISSION RECORDS

Mr. Tilley explained that NARA has reviewed Warren Commission records in its possession. NARA has referred approximately 19,000 pages -- including multiple copies of many of the same documents -- to other agencies.

As to four documents (multiple copies of which appear in the records of the Warren Commission), NARA has recommended postponement in part under the personal privacy provisions (Section 6(3)) of the Act. NARA sought postponement of allegations, contained in these documents, regarding the personal lives of Sylvia Odio and Charles Steele, including allegations from informants regarding certain instances of sexual conduct.

Mr. Gunn distributed copies of these documents and provided background information on Ms. Odio's and Mr. Steele's connections to assassination-related events. After reading the documents, the members of the Review Board discussed the proper application of Section 6(3) of the Act generally and to these documents in particular.

The members of the Review Board agreed by consensus to defer final decision on these documents. No other motions were proposed or votes taken.

F. SCHEDULING OF FUTURE REVIEW BOARD ACTIVITIES

Given the late hour, discussion of this item was deferred other than to confirm a tentative Review Board visit to Washington D.C. on March 6 and 7 for review of records and for a public meeting to consider, among other issues, comments that may have been received by that time on the proposed interpretive regulations.

G. REVIEW BOARD MEETING WITH FBI DIRECTOR FREEH

Chairman Tunheim noted that the members of the Review Board were scheduled to have an informal "get-acquainted" meeting with FBI Director Louis Freeh at 1:30 that afternoon. Chairman Tunheim stated that the session with Director Freeh was expected to last about 30 minutes.

Dr. Graff moved that the meeting be adjourned. Dr. Hall seconded the motion, and the motion was carried by a unanimous vote at approximately 12:20 pm.

I certify that this is a complete and accurate account of the official business and other proceedings at the meeting of the Assassination Records Review Board held on January 25, 1995.

Sheryl L. Walter
General Counsel

Date