

TESTIMONY

Public Hearing May 3, 1995

In establishing a process for public disclosure of all records relating to the assassination of President John F. Kennedy, Congress created this Review Board and empowered it to decide "whether a record constitutes an assassination record." In the Senate Report to the President John F. Kennedy Assassination Records Collection Act of 1992, Congress also indicated its intent that the Review Board "issue guidance to assist in articulating the scope or universe of assassination records." These final interpretive regulations, a proposed version of which was published at 60 FR 7506-7508 on Feb. 8, 1995, comply with that mandate.

As the Supplementary Information that accompanied the proposed interpretive regulations stated, the principle underlying these interpretive

regulations is

"to implement congressional intent that the JFK Collection contain 'the most comprehensive disclosure of records related to the assassination of President Kennedy.' Congress instructed that the Board apply a 'broad and encompassing' working definition of 'assassination record' in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. Many agencies have already begun to organize and review records responsive to the ARCA even before the Board was appointed and began its work. Nevertheless, the

aim of this guidance is that it will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it."

These final regulations are also intended to aid in the consistent, effective and efficient implementation of the ARCA and to establish procedures for including assassination records in the President John F. Kennedy Assassination Records Collection established by Congress and housed at NARA's facility in College Park, Maryland.

Notice and Comment Process

The Review Board sought public comment on its proposed interpretive regulations and set a thirty day period, which ended on March 10, 1995,

for the purpose of receiving written comments. The Review Board also heard testimony at public hearings on aspects of the proposed regulations. In addition, the Review Board sent copies of the proposed interpretive regulations to agencies known to have an interest in and be affected by the Review Board's work, particularly those who hold or created assassination records, and to the appropriate oversight committees in Congress as well as to OMB. The Review Board also sent notice of the proposed regulations and request for comments or sent copies of the Federal Register notice itself to many organizations and individuals who have demonstrate an interest in the release of materials under the ARCA or who have engaged in research into the assassination of President Kennedy.

The Review Board received written comments on the proposed interpretive regulations from numerous federal agencies, state and local government entities, and individuals. Federal agencies providing written

comments include the Federal Bureau of Investigation , the Central Intelligence Agency, NARA, and the Department of State. State and local government entities providing written comments include the Dallas (Texas) County Commissioner's Court, the Dallas County Historical Foundation, and the City of Dallas Records Management Division of the Office of the City Secretary. Altogether, approximately 30 sets of written comments were received.

Prior to publication of the proposed interpretive regulations, the Review Board heard testimony at a public hearing held in this room on December 14, 1994 from representatives of the NARA on the question of including artifacts in the scope of the term "assassination record." After publication of the proposed regulations and before expiration of the comment period, the Review Board heard testimony at a public hearing on March 7, 1995, held in the auditorium of the main building of the

National Archives, from the FBI and from several individuals and representatives of private organizations on their views regarding the text of the proposed regulations. Copies of all written comments received and transcripts of public testimony on the proposed regulations were placed in the public reading room at the Review Board's offices and made available for inspection and copying by the public upon request. Copies of comments and transcripts were provided to the public at no charge.

The comments received were thoughtful and, in many cases, very detailed comments. Nearly all of the comments expressed support for what was characterized as the proposed regulations' comprehensiveness and flexibility. All comments submitted were carefully studied and considered. Submitters made both technical and substantive suggestions; as I will shortly describe many of these suggestions were incorporated in the discussion draft of the interpretive regulations now before you.

Some comments did express concern at the broad scope of the Review Board's proposed regulations. A few comments also questioned the inclusion of records not in the possession of federal agencies, especially in the scope of the terms "assassination record" and "additional records and information."

However, the broad scope of the ARCA directs the Review Board to identify and make available to the public all documents that will enhance, enrich, and broaden the historical record of the assassination of President John F. Kennedy. These interpretive regulations seek to fulfill Congress's "inten[t] and emphasis that the search and disclosure of records under this Act must go beyond" the records of previous commissions and committees established to investigate President Kennedy's assassination. The Review Board may, as is provided in §1400.6, exercise discretion in the acceptance of copies, where appropriate, in lieu of originals of records for inclusion in

the JFK Assassination Records Collection. This flexibility addresses concerns that some commenters expressed about the removal of original records already housed, for example, in the archives of state and local institutions.

In addition, many comments from individual researchers requested the enumeration of specific records or record groups in several sections of the interpretive regulations, especially those dealing with the scope of the terms "assassination record" and "additional records and information."

Many helpful suggestions have been provided to the Review Board identifying particular records groups for review and inclusion in the JFK Assassination Records Collection. It is hoped that there will be continued correspondence from researchers and the general public in this regard.

However, to ensure that the final interpretive regulations are

interpreted broadly and to avoid duplicative and potentially too-narrow interpretation or implementation of these regulations, individual records or record groups were not enumerated further in this version of the regulations. To ensure that the public is aware of the Review Board's knowledge of and pursuit of specific records and record groups such as those identified in the public comments received on the proposed interpretive regulations and in other correspondence with or testimony before the Review Board, §1400.8 has been revised to create a Notice of Assassination Record Designations. With this mechanism to notify the public of records it has designated as assassination records to be included in the JFK Assassination Records Collection, it is unnecessary and duplicative to include in the final interpretive regulations a more detailed enumeration of individual records and record groups.

Moving on to changes made to individual sections of the draft, I will first address

1400.1 Scope of assassination record.

The Review Board received many comments on the text of this section, some technical in nature and some more substantive. The final regulations incorporate suggested technical changes, including revision of the section's title to make it more precise and other clarifying edits.

Many comments focused on the wording of subparagraph (a). Of particular concern to many was the portion of this subparagraph that provides that an "assassination record" includes records "that may have led to the assassination." Comments from both government agencies and private researchers suggested alternative language, some because they read the proposed regulation's scope as too narrow and others because they construe the language as overly broad. There was consensus among those submitting comments, however, that inserting the phrase "reasonably

related to" is an acceptable and appropriate alternative to the "may have led to" construction that appeared in the proposed regulations. This change has been made.

Many comments suggested that specific individuals, events or groups of records be added to this section. However, including records or record groups at this level of specificity in interpretive regulations like these which are intended to provide general guidance on the scope of the ARCA's key terms could potentially limit the scope of the regulations as applied, might prove confusing, and would be unduly duplicative. Such suggestions from the public will be taken into account and followed up on an ongoing basis and to work closely with agencies to clarify whether particular records or record groups are assassination records.

1400.2 Scope of additional records and information.

The title of this section was revised to conform to the new title of section 1400.1. Additional editing changes were made for clarity. A new subpart (6) was added to subparagraph (e) and a new subparagraph (f) was added after consideration of comments that noted the potential exclusion of certain categories from the scope of this section in the proposed interpretive regulations.

This section is intended to be used to obtain access to a wide variety of materials, classified and unclassified, which may not fall into the definition of "assassination record" but which will lead to the identification of assassination records. Some comments expressed concern as to the broad scope of this section. Language was added to clarify that the purpose of this section is to identify, evaluate or interpret assassination records, including assassination records that may not initially have been identified by an agency. Language was also added to indicate that an

intent to implement this section through requests made in writing. These written requests will be signed by the Review Board's executive director. In implementing this section its staff will work closely with entities to whom such requests are addressed to promote the ARCA's effective and efficient implementation.

1400.3 Sources of assassination records and additional records and information.

A new subparagraph (now subparagraph (g)) was added after consideration of comments noting the potential exclusion of records created by individuals or corporations or obtained from sources other than those already identified in the previous subparagraphs. Other comments suggesting the inclusion of additional specific sources were considered but

not included in the final version because they were determined to replicate language already in existing subparagraphs of this section.

1400.4 Types of materials included in scope of assassination record and additional records and information.

The National Archives and Records Administration provided oral testimony and written comments objecting to the inclusion of "artifacts" in this section. Other comments received strongly supported inclusion of this type of material within the scope of "assassination record." NARA's comments as contained in its written submission and as presented in oral testimony by NARA representatives at a public hearing of the Review Board held on December 14, 1994 were carefully considered. However, this section of the interpretive regulations was retained without change.

The Review Board believes that the unique nature of the issues of public trust and credibility of government processes that prompted enactment of the ARCA require that artifacts be included in the scope of items to be included in the JFK Assassination Records Collection. Included in the proposed regulations and retained in § 1400.7 here is language intended to address NARA's concerns about potential copying requirements related to artifacts and about preservation issues. NARA's comments on the proposed regulations noted its approval of the inclusion of that language.

1400.5 Requirement that assassination records be released in their entirety.

This section is intended to provide guidance to agencies that they are to produce for the Review Board's review records in their entirety and, except in rare instances and with the assent of the Review Board, withhold information in documents only under the postponement provisions of Section 6 of the ARCA. The purpose of requiring that records be produced in their entirety is to ensure that the context and integrity of the records be preserved and to clarify that the Review Board has the sole discretion to determine what records or portions thereof are or are not assassination records.

Some federal agencies expressed concern about the scope of this provision and those concerns were taken into consideration. There may be records responsive to the provisions of the ARCA that are many hundreds of pages long but that contain only a small amount of material related to the assassination. In such cases, if an agency reasonably believes that

review of the entire record for postponement determinations would not further the disclosure purposes of the ARCA, the agency may request that the Review Board allow the agency to process under the ARCA only the portion that relates to the ARCA, including material sufficient to provide context for the postponed portion.

However, in such cases the Review Board shall retain sole discretion to determine whether review for inclusion in the JFK Assassination Records Collection of a portion of the record will fulfill the purposes the ARCA or whether the entire record must be processed under the postponement provisions of the ARCA.

1400.6 Originals and copies.

Many comments were received on this section requesting that

portions be clarified. Extensive changes were made to this section in response to these comments. Revisions were also made for purposes of internal consistency. The intent in this section is to express a strong preference for including original records in the JFK Assassination Records Collection but also an understanding that, for a variety of reasons, there may be situations where a copy instead of the original of an assassination record may be more appropriate for inclusion in the collection.

Incorporated in this version is language that is responsive to comments made by NARA requesting clarification that "record copies" of federal agency records may be included in the JFK Assassination Records Collection. In response to other comments from NARA, revisions were also made to take into consideration the important issue of preservation requirements, especially given that many of the records at issue are over three decades old. In this respect, the Review Board sought to treat records

in various media in a means appropriate to the unique characteristics of each medium.

1400.7 Additional guidance.

The Review Board received a variety of comments on this section of the proposed interpretive regulations, which is intended to provide additional guidance for implementation of the ARCA. All of the comments on this section were carefully considered and, except where the comments appeared to duplicate what was covered in this section already or was addressed elsewhere, this section was revised to reflect many of the suggested changes and to add clarity. For example, subparagraph (d) as it appeared in the proposed regulations has been broken into three subparagraphs -- new subparagraphs (d), (e) and (f) -- to eliminate potential confusion and to add clarity. The intent of these subparagraphs

is to make clear that all files on an individual, event, or activity are to be made available to the Review Board regardless of the labels on the files, where they may be found, or whether the records reflect the individual's event's, or activity's true name or identifier.

As I stated regarding §1400.4, subparagraphs (b) and (c) of §1400.7 were included in the proposed interpretive regulations and retained here in order to address concerns expressed by NARA regarding the inclusion of artifacts in the scope of the materials deemed "assassination records." These subparagraphs are intended to make it clear that the ARCA establishes unique standards as to the records to be included in the JFK Assassination Records Collection. By including artifacts as a type of "assassination record", the Review Board seeks to fulfill its mandate from Congress to assemble all materials reasonably related to the assassination in the JFK Assassination Records Collection. It is not intended that the

inclusion of artifacts here for purposes of implementing the ARCA should be construed to affect the implementation of other records collections.

Subparagraph (c) is intended to ensure that all artifacts in the collection are preserved for posterity and that public access be provided to those artifacts in a manner consistent with their preservation. In this regard, NARA should be encouraged to set out in writing the terms and conditions under which access to such materials may be allowed.

Finally, as to

1400.8 Implementing the ARCA -- Notice of Assassination Records

Determination

Comments received on this section as it appeared in the proposed interpretive regulations indicated some confusion as to the intent and operation of the mechanism established in this section. For this reason, the term "Catalog of Assassination Records" which appeared in the proposed

regulations was replaced and the section redrafted. In this version, the term "Notice of Assassination Record Determination (NARD)" was substituted for the prior references to a "catalog." The NARD is not intended as a mechanism to list all assassination records; records identified by federal agencies in the review of their own records will not, for example, be listed. Nor is it intended to replace the database and finding aids that have been compiled by agencies at NARA's direction as required by the Congress in the ARCA. Rather, the NARD is intended to document the Review Board's ongoing determinations that, in addition to records explicitly enumerated in the ARCA as assassination records (e.g., records reviewed by the HSCA) or identified by federal agencies in the searches they undertook or conduct in the future pursuant to the ARCA, certain other records also are assassination records and are to be included in the JFK Assassination Records Collection.

This is a summary of the changes that were made to the version of the proposed interpretive regulations that was published in February. I would be happy to answer any questions you may have.