

Date: 02/17/05

JFK ASSASSINATION SYSTEM
IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : CIA
RECORD NUMBER : 104-10142-10123
RECORD SERIES : JFK
AGENCY FILE NUMBER : 80T01357A

DOCUMENT INFORMATION

AGENCY ORIGINATOR : CIA
FROM :
TO :
TITLE : SSC REQUEST FOR WITNESSES ON OPERATIONAL SUBSTANCE -
ISSUES RAISED
DATE : 01/01/1978
PAGES : 5

SUBJECTS : WITNESSES
JFK ASSASSINATION

DOCUMENT TYPE : PAPER
CLASSIFICATION : SECRET
RESTRICTIONS : 1A
CURRENT STATUS : RELEASED IN PART PUBLIC - RELEASED WITH DELETIONS
DATE OF LAST REVIEW : 06/01/04
COMMENTS : JFK55 : F9 : 20040226-1050211

Released under the John F. Kennedy
Assassination Records Collection Act of
1992 (44 USC 2107 Note). Case#:NW
65924 Date: 10-26-2021

[R] - ITEM IS RESTRICTED 104-10142-10123

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HSCA in requests

SUBJECT: Senate Select Committee Requests for Witnesses
on Operational Substance -- Issues Raised

1. The Senate Select Committee has not yet actually scheduled DDO staffers who are now on active duty, but a specific request has been made to talk with James Kelly of EA Division regarding the assassination plot against Chou en Lai. The SSC has also expressed interest in several DDO staffers, including Robert Owen and Nestor Sanchez of LA Division, Arnold Silver, currently a Career Associate, and Bronson Tweedy, who is on short-term contract in Headquarters. We have been able to hold off actual scheduling of substantive operational conversations pending a resolution on how to handle covert action material. FR Division is standing by to appear for a non-operational briefing covering organization, mission, etc.

2. Attached hereto is a Senate Select Committee document entitled "Outline for Inquiry Procedures" which represents the Committee's own ground rules.

3. According to this attachment, witnesses or interviewees will fall into two categories:

- a. Those discussing information on the structure and functions of CIA plus substantive work, including the legal basis of DDO activity and the approval process; the capacities of CIA and its responsibility to provide information for other government entities. In this category, a CIA representative may be present at the interview.
- b. Those who will be asked questions regarding CIA or Executive Branch abuses or other controversial, specific matters where improprieties may have occurred. In this category, a CIA representative may not be present unless an exception is negotiated.

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- Officially covered personnel must be permitted to appear in alias or anonymously and the circumstances of the appearances should permit such anonymity. At a minimum their true identity should be kept out of the record.
- Non-officially covered personnel fall in an even more sensitive category. The issues are (1) need to appear at all? If so, (2) can their identity and cover be protected and kept out of the record?
- Foreign national agent personnel should not be called as witness out of deference to their special security problem and to avoid serious affect on their morale.

b. Legal Jeopardy of Interviewees

In category 3b, above, (abuses and improprieties) an important issue is: How can the legal rights of the individual be best protected in cases where U.S. law may have been violated. The problem of criminal jeopardy probably will not arise in the case of overseas operations, but the SSC could revive some of the domestic improprieties covered by the Rockefeller report, such as the LSD experiments or mail intercepts. The issues which this could raise concern:

- An employee's need to have prior consultation with the OGC regarding his legal rights and his legal jeopardy.
- An employee's right to engage legal counsel if he has reason to think U.S. law may have been broken.
- How can an Agency officer get financial help in hiring private counsel if it is necessary?

- How can the Agency protect the security of testimony given by a witness if a privately hired lawyer is present? Can cleared lawyers be found? Can uncleared lawyers quickly be cleared? If the lawyer takes notes of a classified nature, how can they be securely handled and stored?

Legal guidance should be sought from the OGC and clear and specific guidelines be available for those who seek it.

c. Secure Handling of Testimony

In both categories 3a and 3b, above, of these ground rules, documentary testimony must be protected from unsecure handling and storage. Moreover, steps must be taken to keep sensitive data out of any permanent record, not under CIA control. According to the attached ground rules (under paragraph B, "Procedures") the Committee assumes the responsibility for special handling of sensitive material and its ultimate disposition. The Committee also expresses its willingness to receive Agency guidance on this subject. We must be prepared to give it. Practically speaking, a great deal, if not most material, in category 3b and much of the substantive material in category 3a will be considered sensitive by the DDO and thus deserving of special handling.

d. Keeping Track of Testimony Given

Since the SSC, by its ground rules, intends to interview personnel without a CIA monitor being present in cases of abuses or improprieties, how can CIA keep track of testimony given in such cases?

- Provision is made by the SSC for exceptions to be made to the exclusion of a CIA monitor when particularly sensitive matters require it. The issue here raised is what should the DDO criteria be for requesting an exception so that an escort may be provided.

-- It is not completely clear but the SSC ground rules in paragraph B-4, attached, suggest that it will be the SSC's judgment as to what testimony given during category 3b interviews -- where a CIA escort is excluded -- will be shown to CIA so that special, adequately secure handling methods can be agreed upon.

e. In-House CIA System for Handling Interview Process

As it now stands no clear cut responsibility has been assigned for handling of DDO interviewees and doing the necessary record collecting prior to the interview as specified by SSC ground rules.

It is my suggestion that witnesses, like paper, be the IG's responsibility, recognizing it will pass on much of the actual action to the directorate involved.

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