

From the Desk of Robert J. EATINGER

NOTE FOR: J. Barry Harrelson @ DA
FROM: Robert J. EATINGER
DATE: 06/14/95 06:14:47 PM
SUBJECT: ARRB Questions

The JFK Assassination Records Review Board (ARRB) has indicated that they wish to take possession of the original records from CIA in order to conduct their review of the postponements sought by the Agency those records. Further, the ARRB has stated that the JFK Act (44 USC 2107 note) gives them the responsibility for transferring records to the National Archives and Records Administration, not the originating agency. You asked me to review the JFK Act and comment on these positions.

The JFK Act provides that the original records are to be held by the originating agency unless physical transfer is required to let the Board do its job. The Act states at section 9(a):

Pending the outcome of the Review Board's review activity, a Government office shall retain custody of assassination records for purposes of preservation, security, and efficiency, unless--

(1) the Review Board requires the physical transfer of records for reasons of conducting an independent and impartial review; or

(2) such transfer is necessary for an administrative hearing or other official Review Board function.

You should see also Section 5(b) of the Act which reposes in the originating agencies the responsibility to retain assassination records pending review activity by the ARRB.

I understand that the Board believes that the process of it coming to CIA to review the records may not be working well. It may then be arguing that it cannot adequately perform its function of reviewing unless it has the records. Unfortunately, if the Agency disagrees for security reasons, there is no arbiter set forth in the Act.

On the second issue, the JFK Act is clear. The Board does not transfer records to NARA. The powers of the Board are set forth in section 7(j) of the Act. In that section, the Board has the power to "direct Government offices to transmit to the Archivist assassination records as required under this Act..." Further, Section 9(c), which discusses determinations of the Board provides that "(1) The Review Board shall direct that all assassination records be transmitted to the Archivist and disclosed to the public in the Collection in the absence of clear and convincing evidence that ..." Section 5(e) of the JFK Act provides the actual responsibility to transfer records to NARA to the originating agencies, not to the ARRB.

Section 7(i) sets forth the duties of the Review Board and it does not list the transfer of assassination records to NARA. Its duties are only to render decisions whether records are assassination records under the Act, and whether information in an assassination record qualifies for postponement under the Act.

Thus, if the ARRB is arguing that it must take custody of the original records in order to meet its duty to transfer those records to NARA it is wrong. The statute clearly contemplates that the records remain with the originating agency in normal circumstances and only that the ARRB can direct its transfer once it has ruled on postponements.

CC: @ DCI