

EXECUTIVE SUMMARY

The Assassination Records Review Board was a unique solution to a unique problem. Although the tragic assassination of President John F. Kennedy was the subject of lengthy official investigations, beginning with the Warren Commission in 1964, and continuing through the House Select Committee on Assassinations, in 1978-79, the American public has continued to seek answers to nagging questions raised by this inexplicable act. These questions were compounded by the government penchant for secrecy. Fears sparked by the Cold War discouraged the release of documents, particularly those of the intelligence and security agencies. Even the records created by the investigative commissions and committees were withheld from public view and sealed. As a result, the official record on the assassination of President Kennedy remained shrouded in secrecy and mystery.

The suspicions created by government secrecy eroded confidence in the truthfulness of federal agencies in general and damaged their credibility. Finally, frustrated by the lack of access and disturbed by the conclusions of Oliver Stone's *JFK*, Congress passed the *President John F. Kennedy Assassination Records Collection Act of 1992* (JFK Act), mandating the gathering and opening of all records concerned with the death of the President.

The major purpose of the Review Board was to re-examine for release the records that the agencies still regarded as too sensitive to open to the public. In addition, Congress established the Review Board to help restore government credibility. To achieve these lofty goals, Congress designed an entity that was unprecedented.

Three provisions of the Act were at the heart of the design. First, Congress established the Review Board as an independent agency.

Second, the Board consisted of five citizens, trained in history, archives, and the law, who were not government employees but who had the ability to order agencies to declassify government documents—the first time in history that an outside group has had such power. Third, once the Board made the decision that a document should be declassified, only the President could overrule its decision. Fortunately, Congress also gave the Board a staff whose work was critical to its success.

The JFK Act required all government agencies to search for the records in their possession concerning the assassination and place them in the National Archives. The Act provided for the appointment of the members of the Review Board within ninety days, but the transition between the Bush and Clinton administrations caused an 18-month delay between passage of the Act and the swearing-in of the Board members. Only then could the Board hire staff and arrange for office space. This delay had two ramifications. First, the Act stated that the work of the Board was to be completed in three years, an unrealistic goal since more than 18 months had already elapsed. (The Board's work was eventually extended to four years.) Second, agencies were sending documents to the National Archives before the Board established its guidelines for their release. Consequently and unfortunately, once the Review Board did provide guidance to the agencies, much of their initial work had to be revised, further slowing the processing and re-reviewing by the Board and its staff.

The Board's first task was to define the term "assassination record" in order to frame the search for relevant records. The statutory definition, a record "related to the assassination of President John F. Kennedy," specifically included any record from the investigating

agencies, and records in the possession of the federal government, and any local or state government that assisted in the inquiry into the assassination. But, as noted in the Senate report, “it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records.” Congress empowered the Board to determine whether a document was an assassination record and to cast a broad net for such records. Board members engaged in extensive discussion and sought advice from the public before finally issuing its broad definition. The definition enabled the Board to look beyond the narrower confines of the assassination to find and release valuable documents from the early 1960s that enhance the historical understanding of that era, and the political and diplomatic context in which the assassination occurred.

The Review Board overcame its early challenges and, with the help of its able staff, developed guidelines for the release of documents. These served as the yardstick for both its staff and the federal agencies.

The Board’s most important task was to review the information the agencies wished to postpone rather than release and then to vote either to sustain the postponement or release the information. Since the Board was working in uncharted territory, it developed creative methods. Three review stages evolved over the four years of the Board’s existence. At first, the Board scrutinized each document with infinite care, and by choosing to meet often, made decisions on a document-by-document basis working to understand both the body of information at issue and the balance required by the JFK Act. It eschewed the more generic issue approach which was preferred by the agencies.

During the second stage, the Board delegated some routine decisionmaking to its Board staff, which proceeded with such care that even the slightest question about a document brought it to the Board’s attention. Finally, agencies recognized the voting pattern of the Board and for purposes of efficiency began bypassing the review process on their own initiative and releasing records under the Board’s guidelines. The Board’s review process ultimately ensured that the Review Board scrutinized each piece of

withheld information so that the American public would be confident that assassination records were open to the fullest extent possible.

The JFK Act established a stringent standard for postponing the opening of a record. Its minimal list of required postponements and emphasis on the bias toward disclosure separated it from either the Freedom of Information Act (FOIA) or the Executive Order that provides for disclosure of national security information. The Board proceeded cautiously as it examined its first documents under the provisions of postponement in Section 6 of the JFK Act. In particular, the Board balanced evidence for postponement against the public interest in release, bearing in mind the Act’s “presumption of immediate disclosure.” Before agreeing to postponement, the Board applied the stringent requirements for the “clear and convincing evidence” required by the Act. Decisions had to be made on names, dates, places, crypts, pseudonyms, file numbers, sources of information and the method by which it was obtained. Ultimately, the Board created a set of principles, a kind of “common law,” that could be applied to many of the documents. Although the agencies often objected to the Board’s decisions, they accepted both the statute and the Board’s interpretation of it and, for the most part, cooperated.

The JFK Act specifically instructed the Review Board to go beyond the scope of previous inquiries. Since both the Board and its staff had high level security clearances, no agency could prevent a search through every file. After locating files designated by the agencies, the Review Board staff members pursued new sources of assassination records. Most of the Review Board’s additional requests for records went to the CIA and FBI, but there were also requests to the Secret Service, the Departments of State and Defense, the National Security Agency, and The President’s Foreign Intelligence Advisory Board.

Given the massive volume of federal records, the search for additional records was time consuming and often frustrating. For every assassination record located and included in the collection, the staff literally reviewed hundreds of documents. The documents located through this search for additional

records are among the most important in the collection—many were never reviewed by the prior investigations.

The Review Board, in its effort to make the JFK Collection valuable to historians, encouraged private citizens and organizations that possessed records of their own to donate them to the JFK Collection. The collection was significantly enriched by these donations. They included, for example, the desk diaries of former President and Warren Commission member Gerald Ford, the personal files of Jim Garrison, the New Orleans prosecuting attorney, notes taken during interviews with Lee Harvey Oswald by both a Dallas Police Captain and a former FBI agent, and films from individuals in Dallas and President Kennedy's aide, Dave Powers. They also include a donation of papers from the son of J. Lee Rankin, General Counsel of the Warren Commission, and the diary of Clay Shaw, the only person tried for the murder of John F. Kennedy (and subsequently acquitted). The Review Board added to the collection, too, information from state and local offices and officials who were tied to the Oswald investigation.

The JFK Act also encouraged the Review Board to work with the Department of State to include documents from foreign governments. The Board sought records from Russia, Belarus, Cuba and Mexico. For the most part, these attempts proved frustrating and fruitless owing to political and diplomatic constraints. Although many leads were pursued, only a few new records were obtained. Although this is a genuine loss to the historical completeness of the assassination records, work continues on these attempts and the Board is hopeful that eventually these records, particularly the voluminous KGB surveillance records on Oswald, will be added to the JFK Collection.

In the spirit of openness embodied in the JFK Act, the Review Board devoted a significant amount of time and resources listening to and corresponding with its various constituencies. It held a total of seven public hearings, one each in Dallas, Boston, New Orleans, and Los Angeles and three in Washington, DC. In addition, Board members participated in meetings of historical associations, spoke to countless public groups, and

cooperated with assassination researchers and the Coalition on Political Assassinations. Over 100 press releases were issued, and Board members made themselves available for many media interviews.

Twice, the Review Board called together a group of invited guests who are "experts" in their fields. The first conference was held in May 1995. It provided the Review Board and the staff with the opportunity to discuss prior investigative efforts that were thwarted due to lack of access to records. The participants provided the Board staff with recommendations for further searches. The second conference, held in April 1998, focused narrowly on the issue of document declassification. This informative meeting helped Board members to formulate recommendations for this final report.

From time to time the frequent and sustained contact with the public diverted the staff from its primary responsibilities—identifying and releasing records. However, the benefits far outweighed the costs. The Review Board received valuable leads from the public about the existence of other assassination records and, more important, received donations that enhanced the collection at the National Archives.

Finally, the Review Board staff implemented a program to ensure, to the fullest extent possible, that each agency complied with the JFK Act. A signed declaration was required from each agency, under penalty of perjury. This compliance statement described the record searches that the agency completed, records that it located, and other actions it took to comply with the law.

Before agencies submitted their Final Declarations of Compliance, the staff worked with them to resolve outstanding problems. In the compliance statement, each agency addressed the scope and adequacy of its search, the adequacy of its response to the requests for additional information, and the timeliness with which it processed its records for release. The Board and staff also decided to depose officials of agencies with poor records systems and those that failed to comply with the spirit of the Act.

The legacy of the JFK Review Board lies in

the more than four million pages of records now in the National Archives and available to the public with remarkably few redactions. These records include critical documentation on the events in Dallas, Lee Harvey Oswald, and the reactions of government

agencies to the assassination. They also include documents that enhance the historical understanding of that traumatic event in recent American history by placing it in the broader context of political and diplomatic events.

Major Accomplishments of the Assassination Records Review Board

- Reviewed and voted on over 27,000 previously redacted assassination records;
- Obtained agencies' consent to release an additional 33,000+ assassination records;
- Ensured that the famous "Zapruder Film" of the assassination belonged to the American people and arranged for the first known authenticity study of the Zapruder Film;
- Opened previously redacted CIA records from the Directorate of Operations;
- Released 99% of the "Hardway/Lopez Report" documenting the CIA's records on Lee Harvey Oswald's trip to Mexico City before the assassination;
- Conducted a three-day audiotaped interview of former FBI Special Agent James P. Hosty, one of two agents who were responsible for the FBI's cases on Lee and Marina Oswald prior to the assassination;
- Acquired for public release two sets of original notes from Lee Harvey Oswald's interrogation in the Dallas Police Department taken by FBI Agent James Hosty and Dallas Homicide Division Captain "Will" Fritz (prior to the Board's existence, it was thought that no original notes existed);
- Clarified the controversial medical record of President Kennedy's autopsy and his treatment at Parkland Hospital by deposing 10 Bethesda autopsy participants, five Parkland Hospital treating physicians, and conducting numerous unsworn interviews of Parkland and Bethesda personnel;
- Secured records relating to District Attorney Jim Garrison's prosecution of Clay Shaw for conspiracy to assassinate President Kennedy, including Shaw's diaries, records from Shaw's defense attorneys, investigative records from the District Attorney's office, and grand jury records;
- Obtained the full release of FBI documents that describe the FBI's attempts to track Oswald's activities in Europe prior to the assassination;
- Made available to the public all FBI and CIA documents from previous official investigations;
- Acquired for the American people film footage depicting events surrounding the assassination, portions of which had never been seen before, including the Dallas television station KTVT outtakes of President and Mrs. Kennedy in Dallas and the aftermath of the assassination;
- Sponsored ballistics and forensic testing of Warren Commission Exhibit 567, the bullet "nose fragment" from the front seat of the Presidential limousine, (the HSCA Firearms Panel first recommended the testing in 1978, but the testing was not conducted until the Review Board existed);

- Permanently preserved *all* the autopsy photographs of President Kennedy in digitized form, and conducted sophisticated digital enhancement of selected, representative images;
- Reviewed IRS and Social Security tax, employment, and earnings records on Lee Harvey Oswald, the authenticity of which has been questioned by researchers who have not been allowed access to such material. Required IRS to prepare a releasable report without releasing tax return information, the disclosure of which is prohibited by Federal law.

Review Board Recommendations

With the passage of the JFK Act and the creation of the independent Review Board, Congress took a large step toward rebuilding public confidence in the federal government, confidence lost through years of excessive secrecy. The Review Board urges the Congress, government agencies, and the public to continue the effort to open documents under the provisions of the JFK Act and to build on the foundation created by the Board. To that end, the Review Board makes the following recommendations:

Recommendation 1:

The Review Board recommends that future declassification boards be genuinely independent, both in the structure of the organization and in the qualifications of the appointments.

Recommendation 2:

The Review Board recommends that any serious, sustained effort to declassify records requires congressional legislation with (a) a presumption of openness, (b) clear standards of access, (c) an enforceable review and appeals process, and (d) a budget appropriate to the scope of the task.

Recommendation 3:

The Review Board recommends that its “common law” of decision, formed in the context of a “presumption of disclosure” and the “clear and convincing evidence of harm” criteria, be utilized for similar information in future declassification efforts as a way to simplify and speed up releases.

Recommendation 4:

The Review Board recommends that future declassification efforts avoid the major shortcomings of the JFK Act: (a) unreasonable time limits, (b) employee restrictions, (c) application of the law after the Board terminates, and (d) problems inherent with rapid sunset provisions.

Recommendation 5:

The Review Board recommends that the cumbersome, time-consuming, and expensive problem of referrals for “third party equities” (classified information of one agency appearing in a document of another) be streamlined by (a) requiring representatives of all agencies with interests in selected groups of records meet for joint declassification sessions, or (b) uniform substitute language be devised to deal with certain categories of recurring sensitive equities.

Recommendation 6:

The Review Board recommends that a compliance program be used in future declassification efforts as an effective means of eliciting full cooperation in the search for records.

Recommendation 7:

The Review Board recommends the following to ensure that NARA can exercise the provisions of the JFK Act after the Review Board terminates: (a) that NARA has the authority and means to continue to implement Board decisions, (b) that an appeals procedure be developed that places the burden for preventing access on the agencies, and (c) that a joint oversight group composed of representatives of the four organizations that originally nominated individuals to serve on the Review Board be created to facilitate the continuing execution of the access provisions of the JFK Act.

Recommendation 8:

The Review Board recommends that the Review Board model could be adopted and applied whenever there are extraordinary circumstances in which continuing controversy concerning government actions has been most acute and where an aggressive effort to release all “reasonably related” federal records would serve usefully to enhance historical understanding of the event.

Recommendation 9:

The Review Board recommends that both the

Freedom of Information Act and Executive Order 12958 be strengthened, the former to narrow the categories of information automatically excluded from disclosure, the latter to add “independent oversight” to the process of “review” when heads of agencies decide that records in their units should be excluded from release.

Recommendation 10:

The Review Board recommends the adoption of a federal classification policy that substantially (a) limits the number of those in government who can actually classify federal documents, (b) restricts the number of categories by which documents might be classified, (c) reduces the time period for which the document(s) might be classified, (d) encourages the use of substitute language to immediately open material which might otherwise be classified, and (e) increases the resources available to the agencies and NARA for declassifying federal records.