Appendix C
Section-by-Section Analysis

A. Introduction

The JFK Act is a unique and extraordinary statute. Its intent is to secure the public release of records relating to President Kennedy's assassination and, in doing so, assure the public that the federal government was not withholding material information about this tragic event. To accomplish this objective, Congress created an independent presidential board with a wide array of powers to obtain and release the relevant records.

This appendix provides a section-by-section overview of the JFK Act.

B. Overview of the JFK Act

1. Section 2 -- Congressional Findings, Declaration & Purposes

In Section 2, Congress set out its purposes for passing the act. Congress declared that records relating to President Kennedy's assassination should be disclosed "to enable the public to become fully informed about the history surrounding the assassination." Records relating to the assassination were to "carry a presumption of immediate disclosure." Since most assassination records are more than 30 years old, Congress stipulated that, "only in the rarest of cases is there any legitimate need for continued protection."

Congress declared that legislation was "necessary" to provide for an "enforceable, independent, and accountable process for public disclosure" of assassination record. Congress found that such legislation was necessary because without it, congressional records on the assassination would not be opened until the year 2029 and because the Freedom of Information Act (FOIA), "as implemented by the executive branch, has prevented the timely disclosure of records" relating to the assassination.

Accordingly, Congress declared that the government would establish a collection of records on the assassination of President Kennedy at the National Archives. The collection is called the President John F. Kennedy Assassination Records Collection (JFK Collection) and its purpose would be to make records available to the public.

2. Section 3 -- Definitions

In this section of the JFK Act, Congress defined the term "assassination record" broadly to encompass all relevant records relating to the assassination. Section 3 of the act also defines other key terms to ensure that the act would apply to all entities within the federal government and that the act [SENTENCE NOT FINISHED].

The JFK Act defined "assassination record" as a record "related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or

otherwise came into possession of" the federal government (or state or local law enforcement offices that assisted in an investigation of President Kennedy's assassination). Congress noted specifically that "assassination records" encompassed records relating to the Kennedy assassination in the files of the Warren Commission, the Rockefeller Commission, the Pike Committee, the House Select Committee on Assassinations, the Library of Congress, the National Archives, "any presidential Library," "any executive agency," "any independent agency," and "any other office of the federal government," as well as "any state or local law enforcement office" that assisted in an inquiry into the assassination of President Kennedy.

In the JFK Act's legislative history, members of Congress specifically stated that they expected the Review Board to further define the term "assassination record." Chapter 3 of this report explains in detail the board's definition of the term.

3. Section 4 -- The JFK Collection at the National Archives and Records Administration

This section of the JFK Act instructs the National Archives and Records Administration (NARA) to establish the President John F. Kennedy Assassination Records Collection (JFK Collection) within 300 days after the JFK Act took effect.

This section provided that, after Congress passed the JFK Act, NARA "shall commence establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection." The JFK Collection would consist of "record copies of all government records relating to the assassination of President John F. Kennedy," which would be transmitted to the National Archives pursuant to the JFK Act. The JFK Collection would include: all "assassination records" that had been, or were required to be, transmitted to the National Archives; identification aids prepared for these assassination records; and "all Review Board records as required by this act." In addition, the JFK Collection also would include those assassination records whose public release was to be postponed.

4. Section 5 -- Review, Identification and Disclosure of Assassination Records by Government offices

Section 5 of the JFK Act obligates government offices to identify, review, process and transfer to NARA all assassination records within their possession.

This section required that "each government office ... identify and organize its records" relating to the Kennedy assassination. The JFK Act mandated agencies not to destroy or alter assassination records in their custody. The act prohibited government offices from withholding or redacting any assassination records if those records had previously been disclosed to the public. And government offices could not withhold or redact any assassination records created outside the government (except to protect names and identities as permitted by the act).

This section of the act further required each government office to review, identify and organize assassination records in its custody within 300 days of the act's enactment. Chapter 3 of

this report explains that no government office completed its work within the 300-day time line that the statute envisions.

Within 300 days, the act required each government office to:

(1) determine which of its records fit within the statutory definition of assassination records,
(2) determine which of its assassination records contained information from another government office and consult with the other government office concerning the information in the record,
(3) determine which of its assassination records it could release, unredacted, to the public,
(4) determine which of its assassination records were eligible for withholding under Section 6 of the act, and prepare those records for review by the Review Board.

To the extent that a government office had "any uncertainty" as to whether its records were "assassination record[s] governed by" the JFK Act, the act directed the government office to transmit the records to the Review Board, which would determine whether the records were, indeed, assassination records.

Pending review and identification of its assassination records, the act states that a government office retained custody of its records. However, this section gave the Review Board the power to obtain physical custody of the records "for purposes of conducting an independent and impartial review," or "for an administrative hearing or other Review Board function." In addition, this section required government offices to "make available to the Review Board any additional information and records that the Review Board has reason to believe it requires for conducting a review under this act."

Section 5 further instructed government offices to create an electronic identification aid for each assassination record that an office would transmit to NARA. The act required the archivist to devise and prepare the "standard form of identification or finding aid" that would accompany each assassination record. The JFK Act envisioned that these identification aids would form a "uniform system of electronic records" for all government offices. To the extent that government offices identified assassination records that they had previously transferred to NARA and that were already open to the public at the time of the act, the act exempted the office from the obligation to create an electronic identification aid for the record.

Once government offices identified assassination records, the act required them to "transmit to the archivist, and make immediately available to the public, all assassination records that can be publicly disclosed...." If government offices believed that release of certain assassination records should be postponed, in full or in part, the act instructed the offices to transmit them to NARA to be included in a "protected collection," which would not be publicly available. The originating agency, together with NARA, must periodically review its postponed material to determine whether the agency could release it.

However, the JFK Act mandated that all postponed assassination records shall be opened

to the public no later than the year 2017 (25 years from the date of enactment of the JFK Act.) The only way that government offices could continue to postpone public release of material in assassination records after the year 2017 is if "the president certifies" that (1) "continued postponement is made necessary by an identifiable harm to the military, defense, intelligence operations, law enforcement, or conduct of foreign relations" and (2) "the identifiable harm is of such gravity that it outweighs the public interest in disclosure." Absent such certification, NARA will release all postponed records or portions of records in the JFK Collection in 2017.

5. Section 6 -- Grounds for Postponing Public Disclosure of Assassination Records

Section 6 of the JFK Act establishes a short list of reasons that federal agencies can cite as a basis for requesting postponement of public disclosure of assassination records. The act narrowly defines the standards for postponement to ensure that the JFK Act would release more information than the FOIA and the executive orders governing declassification. (A detailed overview of the section 6 postponement standards, as applied by the Review Board, is in Chapter 4 of this report.)

The JFK Act cited five possible grounds for postponement. Thus, government offices could request the Review Board to agree to postpone the release of information in an assassination record only if the agency could demonstrate -- by providing "clear and convincing evidence" to the Review Board -- a compelling need for postponement.

The section 6 postponement standards include:

a. Threat to National Security. Agencies could request the Review Board to postpone the release of information if disclosure posed a "threat" to the country's "military defense, intelligence operations, or conduct of foreign relations" of "such gravity" that it would "outweigh the public interest" and "would reveal

(1) an intelligence agent whose identity currently requires protection;
(2) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the U.S. government, and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or
(3) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States."

b. Disclosure of Confidential Informant. Agencies could request the Review Board to postpone the release of information if disclosure would reveal the "name or identity of a living person who provided confidential information to the United States and would pose a substantial risk of harm to that person";

c. Invasion of Privacy. Agencies could request the Review Board to postpone the release of information if disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion of privacy is so substantial that it outweighs the

public interest";

d. Understanding of Confidentiality. Agencies could request the Review Board to postpone the release of information if disclosure "would compromise the existence of an understanding of confidentiality currently requiring protection between a government agent and a cooperating individual or a foreign government, and public disclosure would be so harmful that it outweighs the public interest"; or

e. Protective Procedures. Agencies could request the Review Board to postpone the release of information if disclosure "would reveal a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or another government agency responsible for protecting government officials, and public disclosure would be so harmful that it outweighs the public interest."

6. Section 7 -- Establishment and Powers of the Review Board

This section is perhaps the cornerstone of the JFK Act in that it created a truly independent board that would oversee the federal government's implementation of the act. The JFK Act included provisions to ensure the independence of the Review Board and to ensure that the board's decisions would instill public confidence.

Section 7 instructed the president to nominate five citizens "to serve as members of the Review Board to ensure and facilitate the review, transmission to the archivist, and public disclosure of government records related to the assassination of President John F. Kennedy." The act requires members of the board to be "impartial private citizens" who were not presently employed by the federal government and had not "had any previous involvement with any official investigation or inquiry conducted by a federal, state, or local government, relating to the assassination of President John F. Kennedy."

The act further instructed the president to nominate "distinguished persons of high national reputation in their respective fields who are capable of exercising ... independent and objective judgment." The act envisioned a board consisting of at least one professional historian and one attorney, and it stated that the president should consider recommendations from the following professional associations: the American Historical Association, the Organization of American Historians, the Society of American archivists and the American Bar Association.

The act called for the president to appoint the board members, and the Senate to confirm them. To ensure independence, the act stipulated that the president could not remove board members except by "impeachment and conviction" or for specific cause. It also required that the president issue a report to Congress specifying the reason for removal.

Having set out the parameters for establishing an independent board, Section 7 then delineated the board's responsibilities and powers. The act gives the Review Board the power to identify, secure, and release records relating to President Kennedy's assassination. Accordingly, the Review Board possesses the authority to "render decisions" on (1) "whether a record

constitutes an assassination record" and (2) "whether an assassination record or particular information in an assassination record qualifies for postponement of disclosure under this act."

In addition, the JFK Act gives to the Review Board the power to request obtain additional records and information from government offices. The Review Board used these provisions to seek out particular records that the agencies might not otherwise have located. Furthermore, these provisions allowed the board to make, in many cases, independent judgments as to the relevance of particular records. In this manner, the Review Board -- not federal agencies -- exercised discretion in deciding which agency records would become part of the JFK Collection.

The JFK Act gave the Review Board the authority to:

a. Direct the activities of government offices. The JFK Act allowed the Review Board to direct government offices to "organize [their] assassination records" and to transmit assassination records to the archivist, including portions of assassination records;

b. Review assassination records. The act further entitled the Review Board to "obtain access to assassination records that have been identified and organized by a government office";

c. Request from government offices additional information and records. The JFK Act enabled the Review Board to "direct a government office to make available to the Review Board, and if necessary investigate the facts surrounding, additional information, records, or testimony from individuals, which the Review Board has reason to believe is required to fulfill its functions and responsibilities under this act";

d. Subpoena private persons. The act allowed the Review Board to work with the U.S. attorney general to "subpoena private persons to compel testimony, records, and other information relevant to its responsibilities under this act";

e. Require government offices to account for missing records. The JFK Act expressly allowed the Review Board to "require a government office to account in writing for the destruction of any records relating to the assassination of President Kennedy";

f. Receive information from the public. Congress allowed the Review Board to "receive information from the public regarding the identification and public disclosure of assassination records"; and

g. Hold hearings, administer oaths and issue subpoenas. The JFK Act allowed the Review Board to "hold hearings, administer oaths, and subpoena witnesses and documents."

In addition, the act authorized the Review Board to issue "interpretive regulations." Indeed, the Review Board issued regulations that further defined the term "assassination record" as Chapter 3 of this report explains.

Finally, Section 7 gave the Review Board certain responsibilities to fulfill upon completion of its work. Thus, "[u]pon termination," the act requires the Review Board to submit a final report to the president and Congress. In addition, the "Review Board shall transfer all of its records to the archivist for inclusion in the collection, and no records of the Review Board shall be destroyed."

7. Section 8 -- Review Board Personnel

Section 8 of the JFK Act directs the Review Board to appoint an executive director and staff to perform the work of, and report to, members of the Review Board. Like the individual board members, the executive director could not be a present employee of the federal government, nor could the executive director be affiliated with any prior official investigation of the Kennedy assassination.

The act states that the executive director would serve as the board's liaison to government offices, would coordinate the board's review of records, and would be responsible for administering the board's official activities. The statute made clear that the executive director would "have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure." The Review Board members alone have that authority.

The act further states that Review Board staff members also must not be present federal employees. It made exception for administrative personnel.

8. Section 9 -- Review of Records by the Review Board

This section established procedural requirements for the Review Board to be able to postpone records.

The section first stated that the board "shall direct that all assassination records be transmitted to the public" absent "clear and convincing evidence" that the record is not an assassination record or is not otherwise qualified for postponement under the JFK Act. If the Review Board authorized a postponement, the act directed it to provide, if possible, a summary of the redacted information or a substitute record explaining the redacted information. The act further instructed the Review Board to release parts of records.

If the Review Board postponed release of a record in whole or in part, the act directs it to prepare a report to NARA that:

(1) described the board's action,
(2) provided the board's justification for the postponement, and
(3) identified the date when NARA should release the postponed portion of the record. To comply with this portion of the JFK Act, the Review Board created "final determination forms" for each postponed record.

In addition to notifying NARA of its decisions to release or postpone assassination

records, the act also required the Review Board to notify the originating agency (by letter) as well as the public (through notice in the Federal Register) of any board determination to designate a record as an assassination record.

While the JFK Act authorized the Review Board to make final and binding determinations concerning the release or postponement of a record, the act provided that the president could reconsider any board determination: "After the Review Board has made a formal determination concerning the public disclosure or postponement of disclosure of an executive branch assassination record or information within such a record, ... the president shall have the sole and nondelegable [IS THIS REALLY A WORD?] authority to require the disclosure or postponement of such record or information under the standards set forth in section 6 [of the JFK Act]...." Thus, if agencies disagreed with a Review Board determination to release information in a record, the affected agency could "appeal" to the president, and request that he overturn the Review Board's decision.

Finally, Section 9 of the act required the Review Board to submit, to the president and Congress, annual reports regarding its work. The act stated that the Review Board should include the following items in its annual reports:

(1) updates of the Review Board's activities,
(2) updated information concerning the board's financial expenditures,
(3) updates on the board's progress in releasing records,
(4) projections for completion of the Review Board's work,
(5) issues regarding agency cooperation,
(6) updated information on the Review Board's decisions to postpone records,
(7) information concerning the volume of records that the Review Board reviewed and postponed, and
(8) suggestions for additional legislative measures.

9. Section 10 -- Disclosure of Other Materials

This section addressed public release, under the JFK Act, of certain special categories of records that may relate to the assassination.

[THESE TWO SENTENCES ARE DIFFICULT TO UNDERSTAND. SIMPLIFY.] First, this section authorized the Review Board to ask the U.S. attorney general to petition any court to release information under seal or subject to grand jury secrecy rules. In addition, Congress expressed its sense [EXPRESSED ITS SENSE? MORE DIRECT VERB HERE? URGED? SUGGESTED?] that the attorney general "should assist the Review Board in good faith" to unseal any records that the board determines to be relevant.

Second, this section also expressed the sense [EXPRESSED THE SENSE?] of Congress that the secretary of state should contact Russia to secure public release of records of the former Soviet Union, including KGB records, that may relate to the assassination. Congress also urged the secretary of state to contact other foreign governments that might have relevant records.

10. Section 11 -- Rules of Construction

Section 11 proved to be essential because it articulated how to interpret the JFK Act in light of other laws and regulations relating to disclosure of federal government records.

Congress clearly emphasized the supremacy of the JFK Act over other laws that might preclude disclosure of assassination-related records. Thus, where the JFK Act required public disclosure of a record, the act would "take precedence over any other law ..., judicial decision construing such law, or common law doctrine that would otherwise prohibit such transmission or disclosure...." The only records that the act exempted from its "supremacy clause" were (1) IRS tax-related records in which Section 6103 of the IRS Code precluded disclosure, and (2) records donated to the United States under a deed of gift whose terms precluded disclosure.

This section further provided that the JFK Act would not impair any rights under FOIA. In addition, the act instructs that its terms should not be construed to limit the authority of the president, an executive agency, the Congress, or any other federal government entity from publicly disclosing its records. Finally, the JFK Act applies to both houses of Congress and would be treated as rules of the House and Senate that superseded prior, inconsistent congressional rules that might preclude disclosure.

11. Section 12 -- Termination of Effect of Act

This section simply provided that the provisions of the JFK Act pertaining to the operation of the Review Board ceased to be effective when the term of the Review Board expired. However, all remaining provisions of the JFK Act continue in force: "The remaining provisions of this act shall continue in effect until such time as the archivist certifies to the president and the Congress that all assassination records have been made available to the public in accordance with this act." This provision is significant because it underscores the continuing obligation of federal agencies to release records on the assassination after the board's term expires.

C. Conclusion

The JFK Act establishes for a neutral and independent body that could ensure maximum disclosure of federal government records on the Kennedy assassination and, in the process, restore the public's confidence that their government was not keeping secret any relevant information. The JFK Act envisioned that government agencies and the Review Board could achieve comprehensive and quick disclosure of records, unimpeded by the usual obstacles to release. Congress crafted each of the JFK Act's statutory provisions to accomplish these objectives.

Thus, the JFK Act required agencies to transmit, according to a definite and short timetable, their records on the assassination to NARA for public disclosure. Congress had learned, however, that it could not rely on agencies to ensure maximum disclosure, so it created the citizen Review Board and required that the president select individuals who were not current federal employees nor

affiliates of a prior investigation into President Kennedy's death.

Furthermore, the Act purposefully defined "assassination record" broadly so that the Board, rather than the agencies, could decide whether to include particular record in the JFK Collection. The Act also sought to eliminate impediments to release, so that, unlike the FOIA, the JFK Act allowed the Board to keep secrets only
where agencies could provide clear and convincing evidence to the Board demonstrating the need for the secret. The Act required agencies to present all proposed redactions to the Review Board and gave the Review Board significant authority to release information. The Act, then, stood in stark contrast to the FOIA, in which agencies unilaterally apply FOIA exemptions and themselves determine what information to withhold from the public.

Finally, Congress recognized that the Review Board would need the power to request materials that the agencies themselves would not have identified as assassination-related. The Act guaranteed that the Review Board could enforce its authority through its use of the subpoena power and the power to grant immunity.

In sum, the JFK Act provided a new and unusual legislative remedy to the problem of Government secrecy. It required Federal agencies to disclose, forthwith, their records on the assassination and it empaneled an independent Board to ensure the full identification and release of those records. The practical application and results of this legislative remedy are discussed in the next chapters of this Report.

CHAPTER 2
ENDNOTES