# Chapter 1
# The Problem of Secrecy and the Solution of the JFK Act

## A. The Problem of Secrecy

"[U]ncage the documents.
Let them see light."[i]

The *John F. Kennedy Assassination Records Collection Act of 1992* was indeed a unique solution to the problem of secrecy. The problem was that thirty years of government secrecy relating to assassination of President Kennedy led the American public to believe that the government had something to hide. The solution was legislation that would require the government to disclose whatever information it had concerning the assassination.

The American public is well aware of the facts of this particular case: at approximately 12:30 p.m. on November 22, 1963, as President John Fitzgerald Kennedy traveled in a motorcade through Dealey Plaza in downtown Dallas, Texas, he was shot and suffered a massive head wound. Doctors at Parkland Memorial Hospital in Dallas pronounced the President dead shortly thereafter--at 1:00 p.m.

On that day, Dallas Police officers arrested Lee Harvey Oswald as a suspect in the President's murder. Oswald was also a Aside from the assassination investigations that the Dallas Police, the FBI, and the Secret Service conducted, President Lyndon B. Johnson immediately established the President's Commission to Investigate the Assassination of President Kennedy. Chief Justice of the U.S. Supreme Court Earl Warren headed the efforts of the "Warren Commission." Ten months later, the Warren suspect in a murder of Dallas patrolman that had occurred during the afternoon of November 22. By 1:30 p.m. on November 23, the Dallas Police had charged Oswald with assassinating the President. Less than 24 hours later, Lee Harvey Oswald was shot and killed by Jack Ruby during the Dallas Police Department's transfer of Oswald from the city jail to the county jail. Television cameras captured the scene of Ruby shooting Oswald. Although the FBI, Secret Service, and Dallas Police Department questioned Oswald in the day and a half that Oswald was in custody, Oswald's death obviously eliminated the possibility of further questioning or a trial.

Dallas Police officers arrested Jack Ruby who was tried and convicted of Oswald's murder in March 1964. (In October 1966, the Texas Court of Criminal Appeals reversed the verdict and ordered a new trial. Ruby died of cancer three months later before his new trial began.) Ruby maintained that he was not involved in the assassination of the President and that he had not known Oswald prior to hearing his name in connection with the assassination. Ruby claimed that his fury over the assassination led him to kill Oswald.

Commission Report concluded that Lee Harvey Oswald acted alone and shot the President from a sniper's nest on the sixth floor of his workplace, the Texas School Book Depository. For a variety of reasons, not the least of which was that Warren Commission conducted its investigations in secret and sealed its records, the American public never trusted the Commission's

conclusion. Subsequently, other federal entities conducted partial or complete reinvestigations of the assassination. The most significant of these reinvestigations was the House Select Committee on Assassinations (HSCA), which concluded in 1979 that President Kennedy's death was the result of a probable conspiracy.

In 1991, Oliver Stone's *JFK* popularized a version of President Kennedy's assassination that featured U.S. government agents from the FBI, the CIA, and the military as conspirators. While the movie was largely fictional, the information that Stone conveyed in the movie's closing trailer was true: the HSCA had reinvestigated the murder and issued a provocative report, but their records were sealed until the year 2029. Stone suggested at the end of *JFK* that Americans could not trust official public conclusions when those conclusions had been made in secret. Stone convinced his audience and, ultimately, Congress, to pass legislation -- the JFK Act -- that would work to release the secret records that prior investigations gathered and created.

The records of previous investigative bodies such as the Warren Commission and the HSCA were secret. Yet members of these commissions reached conclusions based on these investigative records. The American public lost faith when it could not see the very documents whose contents lead to these conclusions.

**B. Prior Investigative Efforts**

> [T]here exists widespread suspicion about the government's disposition of the Kennedy assassination records stemming from the beliefs that federal officials (1) have not made available all government assassination records (even to the Warren Commission, Church Committion, House Assassination Committee) and (2) have heavily redacted the records released under FOIA in order to cover up simister conspiracies.[ii]

The American public has expressed its dissatisfaction with both the work and the conclusions of the official investigations of the assassination and it is this dissatisfaction that is responsible for Congress' initiative to establish the Review Board. Section 3(2) automatically defines the records of each of these official investigative entities as assassination records. As such, the Review Board worked to review and release *all* records that the investigative entities used in reaching their conclusions about the assassination.

Given that the Review Board's mandate has not been to reinvestigate the assassination, its Final Report does not summarize the investigative findings of each of the investigative bodies. At the same time, a brief description of each entity and the records it generated is useful for understanding the enormity of the Review Board's task.

**1. President's Commission to Investigate the Assassination of President John F. Kennedy (Warren Commission)**.[iii]

The Warren Commission existed for ten months and, in that time, conducted an extensive investigation into the assassination. The Warren Commission was The Warren Commission did not, however, reach its conclusion before conducting an extensive investigation. During its tenure, the Warren Commission deposed or interviewed 552 witnesses, generated or gathered approximately 360 cubic feet of records, including some artifacts and exibits. The Warren Commission's September 1964, 888 page, report, came with 26 volumes -- over 16,000 pages -- of testimony and exhibits.

President Johnson recognized the high public interest in the Warren Commission's unpublished records, and initiated a scheme for release of the material. The Johnson scheme resulted in release of 98% of the Warren Commission's records by 1992. Thus, at the time that Congress passed the JFK Act, only 3,000 pages of Warren Commisssion material remained for the agencies and the Review Board to release.

As the Review Board terminated its operations, all Warren Commission records, except those records that contain tax return information are available to public, with only minor redactions.

**2. The Commission on Central Intelligence Activities Within the United States (Rockefeller Commission)**

The 1975 Rockefeller Commission investigated the CIA's illegal domestic activities.[iv] In the course of its work, the Commission touched on several assassination-related topics, including the identity of the "three tramps," the possibility of CIA involvement in the assassination, and ballistics issues.[v] The Commission concluded that the CIA was not involved in the assassination, and that the President had not been hit by a shot fired from in front of the Presidential limousine.

The Commission's assassination-related files consisted of approximately 2,500 to 4,000 pages, 95% of which were still secret and in the custody of the Presidential Library of Gerald Ford when Congress passed the JFK Act.[vi]

As of 1992, approximately 2,500 to 4,000 pages of assassination-related material existed in the Ford Library, 95% of which were not available to the public.[vii]

**3. The Senate Select Committee to Study Governmental Operations with Respect toIntelligence Activities (Church Committee)**

In 1975 and 1976, the Senate investigated illegal domestic activities of government intelligence agencies.[viii] The Church Committee's investigation uncovered allegations that were relevant to President Kennedy's assassination, such as CIA assassination plots against Cuban Premier Fidel
Castro in the 1960-1963 period. The CIA did not communicate the existence of the plots to the Warren Commission, even though former CIA Director Allen Dulles (a

Warren Commission member) was aware of them.

The Church Committee's initial findings led Committee member Senator Richard Schweiker to call for a reinvestigation of the assassination. Through Senator Schweiker's efforts, the Church Committee formed a subcommittee to evaluate the intelligence agencies' handling of the assassination investigation. The subcommittee interviewed or deposed over 50 witnesses, acquired over 5,000 pages of evidence from intelligence agencies, and reviewed thousands of additional pages.[ix]

As of 1992, the Senate Select Committee on Intelligence possessed approximately 5,000 pages of assassination-related material from the Church Committee's investigations.[x] [xi] Although the Church Committee published some material in its reports, the bulk of the Committee's records remained closed.

### 4. The Select Committee on Intelligence of the House of Representatives (Pike Committee)

In 1975, the House of Representatives also established a committee to investigate illegal domestic activities of government intelligence agencies. The Pike Committee devoted less time to issues related to President Kennedy's assassination than did the Church Committee, but it completed some relevant work. However, due to the Pike Committee's internal conflicts as well as conflicts that it had with the Executive branch over access to records, the Committee never issued a report. The Committee did touch on some issues related to the assassination of President Kennedy. At the time that Congress passed the JFK Act, the number of Pike Committee records that contained information that might be related to President Kennedy's assassination was unknown.

### 5. The Select Committee on Assassinations of the House of Representatives (HSCA)

In 1976, the House of Representatives established its Select Committee on Assassinations ("HSCA").[xii] The HSCA reinvestigated President Kennedy's assassination and the assassination of Dr. Martin Luther King, Jr. The HSCA concluded that President Kennedy was probably murdered as a result of a conspiracy and suggested that organized crime may have played a role in the conspiracy. At the same time, the HSCA concurred with the Warren Commission's findings that Lee Harvey Oswald fired the two bullets that hit the President, and that one of those bullets struck both President Kennedy and Governor John Connally of Texas (the so-called "single bullet theory").

During its tenure, the HSCA took testimony from 335 witnesses and held 38 days of public hearings.[xiii] The HSCA generated approximately 414,000 pages of records relating to the assassination.[xiv] In 1992, the HSCA's unpublished records resided with the House Administration Committee (now the House Oversight Committee).

Because the HSCA investigated so many different possibilities in its investigation into possible conspiracies, its records, and federal agency records that the HSCA used,

have been among the most important records that the Review Board processed.

### 6. Other Congressional Investigations

The House Un-American Activities Committee ("HUAC"), for instance, compiled a small amount of pre-assassination records relating to Lee Harvey Oswald's activities in New Orleans. At the time of the assassination, the Senate Internal Security Subcommittee (the "Eastland Committee"), had ongoing investigations into the political situation in Cuba and, when the President was killed, it conducted a limited inquiry into the assassination.

To the extent that the two committees provided materials to the Warren Commission, their recordinvestigative records remained under the control of successor Congressional committees and had not been released prior to consideration of the JFK Act.

Later, in 1975, two House subcommittees held public hearings on issues relating to the treatment of assassination records. These were the House Judiciary Committee's Civil and Constitutional Rights Subcommittee (Edwards Committee) that investigated the destruction of the so-called "Hosty note" which Lee Harvey Oswald had left at Dallas FBI headquarters for Special Agent James Hosty on November 6, 1963. After the assassination, Hosty destroyed the note on the instructions of his superior, Special Agent in Charge J. Gordon Shanklin, and its existence remained unknown outside the FBI for twelve years. The Government

In addition to investigations of the above-referenced special committees and commissions, various Congressional committees have examined aspects of the assassination story.

Information and Individual Rights Subcommittee of the Government Operations Committee (Abzug Committee) examined issues of access and openness relating to Warren Commission records.

While the latter two hearings were published, it was not known during consideration of the JFK Act whether or not additional and unpublished records lay in the committees' files.

### 7. Records held by Executive Branch agencies

All of the major investigative efforts received assistance from the FBI and the CIA. Other agencies such as the Secret Service, the State Department, and the Department of Justice, were also involved in official investigations. Federal agencies generated records for the investigative bodies they worked with, but they also retained a vast body of records. At the time of legislative consideration of the JFK Act, for instance, the FBI had already released some 220,000 pages of assassination-related material under the Freedom of Information Act (FOIA). Nonetheless, the Bureau estimated that approximately 260,000 pages of additional assassination records remained withheld or unprocessed.[xv] Similarly, at the same point in time, the CIA had released only some 11,000 pages of a lode which was estimated to contain between 250,000 and 300,000 pages of assassination records.[xvi]

Other agencies with smaller caches of assassination records had released varying percentages of their holdings by 1992.

The JFK Act also provided the Review Board with authority to seek assassination records from non-federal sources. Various local law enforcement agencies assisted the Warren Commission and FBI in their post-assassination investigation. Some local authorities also possessed relevant pre-assassination records. New Orleans District Attorney Jim Garrison's investigation and trial of Clay Shaw for complicity in the assassination is a prominent example of a non-federal investigative effort that generated extensive assassination records. Other potential assassination records, however generated, exist in the custody of private citizens and foreign governments. Subject to time and resource constraints, the Review Board also made an effort to identify and secure as much of this indeterminate group of records as possible.

**C. Despite the investigations, people do not believe the government's conclusions.**

The circumstances of President Kennedy's assassination invited public skepticism from the start.

His death raised profound doubts in the minds of many Americans who could not understand the apparently confused and obscure motives of the alleged assassin, Lee Harvey Oswald. Oswald's murder caused further skepticism as it suggested both a conspiracy and a cover-up.

When President Johnson established the Warren Commission in an apparent effort to head off parallel investigations, calm domestic fears, and defuse any potential international repercussions of the assassination, many Americans welcomed a simple explanation of the event. Others, however, observed incongruities in the Warren Commission's investigation.

Warren Commission member and future President Gerald Ford declared early on that "the monumental record of the President's Commission will stand like a Gibraltar of factual literature through the ages to come." [xvii] Three decades later, an American author likened the Commission's work to "a dead whale decomposing on a beach." [xviii] The juxtaposition of these similes, as well as their temporal distance from one another, tells a story about the changing perception of the Warren Commission's work over time. And while neither is fully accurate, they concur, at least, on the issue of size. The Warren Commission's work product was massive. The size and scope of the published material provided critics with "a species of Talmudic text begging for commentary and further elucidation."[xix]

Critics found ammunition with which to attack the Commission's work. First, the Commission's time and resource constraints forced it to rely mainly on the FBI to conduct the day-to-day investigation of the murder. Second, the Commission failed to examine what was arguably the most critical evidence in the case: the photographs and x-rays from President Kennedy's autopsy.

**8. Investigative Records in the Custody of Non-Federal Sources**

Chairman Earl Warren felt that these materials were too gruesome to allow into the public record. He thought that it "would make a morbid thing for all time." The Commission relied instead on artistic renderings of the photographs prepared by an illustrator working from verbal descriptions provided by the chief autopsy prosector. Some critics viewed the Commission's failure to view the photographs and x-rays as gross negligence.

Doubts about the medical evidence were compounded for critics by the Commission's forensic conclusion that the President's back and neck wounds, and Governor Connally's back, chest, wrist and thigh wounds, were all caused by the same bullet. Nothing the Commission wrote or subsequently said could convince critics that Commission Exhibit 399, the so-called "magic bullet" (usually described as "pristine"), could have caused so many wounds while sustaining so little damage itself. Critics argued that if the Commission was incorrect about the single-bullet theory, then the Commission's conclusion that Oswald acted alone could not stand.

These examples of the issues that separated the Warren Commission from its early critics arose from critics comparing the Commission's report to the Commission's public exhibits. Once additional Warren Commission records dribbled out to the public at the National Archives in the mid-1960s, critics such as Mark Lane and Edward Epstein began to publish books that questioned the Commission's conclusions.[xx]

In 1967, New Orleans District Attorney Jim Garrion's indictment and trial of Clay Shaw for conspiracy to murder the President provided a credible platform and new momentum for Warren Commission critics. Flamboyant and articulate, DA Garrison was a media sensation. Although the American public had differing opinions concerning Garrison, Garrison's investigation altered the assassination debate. The investigation popularized a radical critique of the official version of the assassination. In addition to generating assassination records, the Clay Shaw trial was also the venue for an important assassination record milestone: the first public showing of Abraham Zapruder's film footage of the assassination.

In the mid-1970s, President Gerald Ford established the Rockefeller Commission to investigate illegal domestic activities by the CIA, and started a trend that ran throughout the 1970s to examine U.S. government actions during the 1960s and early 1970s. As part of its forensic review of the assassination, the Rockefeller Commission viewed the Zapruder film in February 1975. Shortly thereafter, the television program *Goodnight America* showed the film. When the American public saw the film, many concluded that President Kennedy's fatal head wound had been caused by a shot *from the front.*

At the same time, the Church Committee uncovered U.S. government assassination plots against foreign leaders, including Cuba's Fidel Castro during the 1960-1963 period. Some of these plots involved Organized Crime figures. When the Committee found the intelligence agencies (primarily the CIA and the FBI) deficient in

their investigation of President Kennedy's death, critics called for a reinvestigation.

In September 1976, the HSCA began its work. By this time, skepticism about the official explanation of the assassination had hardened in the minds of millions of Americans.[xxi] This skepticism was fueled by a small cottage industry of authors, lecturers, and volunteer assassination researchers who noted that the government had not released germane records and had even lied to itself about the case.

The HSCA criticized the performance of the Warren Commission and investigative agencies like the FBI and the CIA for the initial assassination investigation, but it concluded that Lee Harvey Oswald had killed the President and that the single-bullet theory was sound. Despite these anti-critic conclusions, however, the HSCA did validate the critics struggle by concluding that there was a conspiracy and that the Warren Commission erred.

Under House rules, the HSCA's unpublished records were sealed for fifty years, until 2029. Because the HSCA investigation was marked by internal squabbling and disillusioned staffers, the Committee's records were the subject of ongoing controversy. Some ex-staffers claimed the HSCA report did not reflect their investigative work, and that information that did not conform with the Committee leadership's preconceived conclusions was ignored or left out of the report and supporting volumes. One notable example was the differing importance ascribed to anti-Castro activist Antonio Veciana's testimony by the Committee's report, on the one hand, and the Committee investigator who had dealt extensively with Veciana on the other.[xxii]

Initially critic-friendly, the Committee eventually sought to establish some distance for its inquiry. In the end, the Committee's report reflected an interesting mix of conclusions which only whetted researchers' appetite for the Committee's records. Although the HSCA's report stated that it believed the President's death was the result of a conspiracy, it could not identify any conspirators other than Lee Harvey Oswald.

Four years after the HSCA issued its report, a former member of the panel introduced legislation to open the Committee's records.[xxiii] The House Administration Committee held hearings, but the House never voted on the resolution and the HSCA records remained closed until Congress passed the JFK Act.

When Congress did finally vote to open HSCA and other assassination records had less to do with the ameliorative effect of time's passage than it did with a popular if controversial film. Oliver Stone's *JFK* would focus the attention of both the American people and Congress on the problem of secrecy in assassination records.

### D. The Solution: the JFK Act

> This resolution was introduced because of the renewed public interest and concern over the records pertaining to the assassination of President

> John F. Kennedy. . . . There has been considerable debate about these records, including accusations that these records, if released, would contain evidence of a government coverup or complicity of government agencies in the assassination of President Kennedy.[xxiv]

By 1992, the American public had expressed its desire for legislative action. Even When the second session of Congress opened in January 1992, members of Congress began to introduce bills and resolutions that would mandate the release of assassination records.[xxvi] While none of these early proposals enjoyed support from the Congressional leadership, they did start a discussion in Congress about secrecy and the assassination that resulted in the passage of the JFK Act. Meanwhile, influential voices joined the call to open the government's assassination records, perhaps most notably former President Gerald Ford, the last surviving member of the Warren Commission.[xxvii]

In the spring of 1992, On March 26, 1992, Congressman Louis Stokes introduced H.J. Res. 454 in the House of Representatives with 40 co-sponsors.[xxviii] On the same day, Senator David Boren introduced S.J. Res. 282 in the Senate with 9 co-sponsors.[xxix] Within weeks, both the House and Senate held hearings on the legislation.[xxx] In the hearings, members of Congress and representatives from government agencies and from the public agreed on the need to open assassination records. The CIA and the FBI, in particular, committed themselves Executive branch agencies, who were more insulated than Congress from public outrage, were anxious to put the issue of assassination records behind them. The Senate report ultimately stated that,"the records related to the assassination of President John F. Kennedy are the most publicly sought-after, unreleased records of our government."[xxv]

### E. Legislative History of Act

to full cooperation with Congress. Only the Justice Department, on behalf of the White House, raised serious concerns about the legislation. These had to do, first, with constitutional issues relating to the appointment process and status of the proposed Review Board and, second, the proposed criteria for the continued withholding of certain types of information.

The hearings established that existing mechanisms for the release of assassination records were not working and the only way to release assassination records was legislation.

During the summer of 1992, committees in both the House and Senate reported favorably on the legislation.[xxxi] The full Senate passed the legislation on July 27, 1992. The House of Representatives passed a somewhat different version on August 12, 1992. Differences between the House and Senate bills were unresolved as the end of the legislative session drew near, so the House of Representatives passed the Senate version on September 30, 1992, the date of enactment of what was Public Law 102-526, *The President John F. Kennedy*

*Assassination Records Collection Act of 1992.*

President George W. Bush signed the bill into law on October 26, 1992, just days before the 1992 federal election, but left the appointment of the Review Board to his successor, President Clinton. President Clinton appointed the five members of the Review Board in the latter half of 1993 and, after Senate review and confirmation, they were sworn in on April 11, 1994. The JFK Act included a specific sunset date (two years from the date of the statute's enactment) with an option for a one-year extension. This time-frame proved unrealistic, mainly due to the long lag between the date of enactment and the actual The JFK Act establishes a neutral and independent body--the Review Board--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 rapid disclosure of records, unimpeded by the usual obstacles to release. Congress crafted each of the JFK Act's statutory provisions to accomplish these objectives.

**F. Key Provisions of the JFK Act**

Congress stated that records relating to the assassination would "carry a presumption of immediate disclosure." Since most assassination records were more than 30 years old, Congress stipulated that, "only in the rarest of cases is there any legitimate need for continued protection."

Accordingly, Congress declared that the government would establish a collection of records on the assassination of President Kennedy at the National Archives. The JFK Collection's purpose would be to make records available to the public.

Congress defined the term "assassination record" broadly to encompass all relevant records. 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."

The JFK Act obligated all government offices to identify, review, process and transfer to NARA all assassination records within their possession. The JFK Act directed agencies not to destroy or alter assassination records in their custody. The Act prohibited government offices from

appointment, confirmation, and swearing in of the Review Board. Congress therefore decided to reset the time clock in 1994, passing the *President John F. Kennedy Assassination Records Collection Extension Act of 1994*.[xxxii] In 1997 Congress extended the life of the Review Board one final time, until September 30, 1998, through enactment of Public Law 105-25.[xxxiii]

The JFK Act is a unique 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.

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.

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.

The Act empowered the Review Board to obtain physical custody of federal records "for purposes of conducting an independent and impartial review," or "for an administrative hearing or other Review However, the JFK Act mandated that all postponed assassination records be opened to the public no later than the year 2017 (25 years from the date of enactment of the JFK Act.) Government offices could continue to postpone public release of material in assassination records after the year 2017 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." Without such certification, NARA will release all postponed records or portions of records in 2017.

The JFK Act established the standards for postponement to ensure that the JFK Act would release more information than the

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 had] reason to believe it required for conducting a review.

Once government offices identified assassination records, the Act required them to transmit the records to the archivist, and make the records immediately available to the public to the extent possible. 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.

FOIA and the executive orders governing declassification. 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.

Section 7 of the JFK Act was perhaps its cornerstone in that it created a truly independent board that would oversee the federal government's implementation of the Act. The Act 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 Having set out the parameters for establishing an independent board, the Act delineated the board's responsibilities and powers. The Act gave the Review Board the power to identify, secure, and release records relating to President Kennedy's assassination. Accordingly, the Review Board possessed 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 gave the Review Board power to request obtain additional records and information from government offices. In addition, the Act authorized the Review Board to issue "interpretive regulations."

Finally, the Act gave the Review Board certain responsibilities to fulfill upon completion of its work. Thus, "[u]pon 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.

termination," the Act required 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."

The JFK Act directed the Review Board to appoint an Executive Director and staff to perform the work of, and report to, members of the Review Board. To ensure independence, staff members could not be present employees of the federal government, nor could the Executive Director be affiliated with any prior official investigation of the Kennedy assassination.

The Act directed the Board 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.

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 as well as the public 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 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, 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.

The Act provided that provisions of the JFK Act pertaining to the operation of the 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, the Act required the Review Board to submit, to the President and Congress, annual reports regarding its work.

The Act addressed public release, under the JFK Act, of certain special categories of records that may relate to the assassination, including records under seal and foreign records. The law expressed the “sense of Congress” that the Secretary of State should contact Russia to secure public release of records of the former Soviet Union that may relate to the assassination. Congress also urged the Secretary of State to contact other foreign governments that might have relevant records.

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.

Finally, Congress recognized that the Review Board would need 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.

## CHAPTER ONE
## ENDNOTES

i. *Assassination Materials Disclosure Act of 1992: Hearings on S.J. Res. 282 Before the Senate Comm. on Governmental Affairs,* 102d Cong., 2d Sess. 96 (1992) (Prepared Statement of Jack Valenti, Special Assistant to President John from November 1963 to June 1966).

ii. *Assassination Materials Disclosure Act of 1992: Hearings on S.J. Res. 282 Before the Senate Comm. on Governmental Affairs,* 102d Cong., 2d Sess. 96 (1992) (Prepared Statement of Athan G. Theoharis, Professor, Department of History, Marquette University).

iii. *See* Executive Order No. 11130, issued by President Lyndon B. Johnson on November 29, 1963.

iv. Executive Order No. 11828, issued by President Gerald R. Ford on January 5, 1975, established the Rockefelelr Commission. The Commission released its report on June 16, 1975 and terminated that same month.

v. The Rockefeller Commission covered its assassination-related findings in Chapter 19 of its Report, pp. 251-269.

vi. In accordance with practice at the time, President Ford retained Commission records as part of his personal papers when he left office. This practice was ended by the Presidential Records Act of 1978, 44 U.S.C. Sections 2201-2207 (1994). President Ford subsequently donated these and other records back to his presidential library in Ann Arbor, Michigan.

vii. President Ford called for the release of assassination records in 1992, after Oliver Stone's release of his movie, *JFK.* Subsequently, the Ford Library moved to release assassination-related material that was clearly unclassified from the Rockefeller Commission files. The Ford Library's action resulted in the release of approximately 5% of the total Ford Library holdings relating to the assassination.

viii. The United States Senate established the Church Committee with S. Res. 21 on January 27, 1975. The Committee formally terminated on May 31, 1976.

ix. *The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies,* Book V, Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate. 94th Congress, 2nd Session, S. Rpt. No. 94-755, 1976, p. 1.

x. The Church Committee itself recommended that the Congress establish a permanent intelligence oversight committee.

xi. *Assassination Materials Disclosure Act of 1992*, Report 102-625, Part 2, 102nd Congress, 2nd Session, p. 15. This was the House Judiciary's report on H.J. Res. 454.

xii. *See* H. Res. 1540 (September 17, 1976), H. Res. 222 (February 2, 1977) (granting the HSCA a temporary extension until March 31, 1977), and H. Res. 433 (March 30, 1977).

xiii. *Report of the Select Committee on Assassinations* 19 (July 17, 1979).

xiv. House Report 102-625, Part 1, 102nd Congress, 2nd Session, *Assassination Materials Disclosure Act of 1992*, p. 13. This is the report of the House Committee on Government Operations on H.J. Res. 454.

xv. Report on the *Assassination Materials Disclosure Act of 1992*, House Judiciary Committee, p. 12. See also pp. 59 and 67 of the Senate Governmental Affairs Committee's hearing on S. J. Res. 282.

xvi. Report on the *Assassination Materials Disclosure Act of 1992*, House Judiciary Committee, p. 13.

xvii. Quoted in Anthony and Robbyn Summers, *The Ghosts of November*, Vanity Fair, December, 1994, p. 88.

xviii. Norman Mailer, *Oswald's Tale: An American Mystery*, Random House, New York, 1995, p. 351.

xix. *Oswald's Tale*, p. 351. Author Norman Mailer, like many before and after him, would find it "startling to discover, a one pans these government volumes for bits of gold, how much does gleam in the sludge" (p. 352).

xx. Epstein's book was the first to reflect access to the FBI's Summary Report on the Assassination (provided to the Commission in early December, 1963) as well as the Bureau's Supplemental Report of January 13, 1964.

xxi. Doubts about the Warren Commission's findings were not restricted to ordinary Americans. Well before 1978, President Johnson, Robert Kennedy and four of the seven members of the Warren Commission itself all articulated, if sometimes off the record, some level of skepticism about the Commission's basic findings.

xxii. See Gaeton Fonzi, *The Last Investigation*.

xxiii. H. Res. 160 was introduced by Congressman Stewart McKinney of Connecticut. It was co-sponsored by four additional former members of the HSCA: Representatives Robert Edgar, Harold Sawyer, Harold Ford and Walter Fauntroy.

xxiv. U.S. Congress. House. Committee on the Judiciary. *Assassination Materials Disclosure Act of 1992*, p. 33 (statement of Representative Louis Stokes).

xxv. Report of the Senate Governmental Affairs Committee (Report 102-328) to accompany S. 3006, *The President John F. Kennedy Assassination Records Collection Act of 1992.*

xxvi. These early proposals were H.R. 4090, introduced by Congressman Trafficant of Ohio on January 3, 1992, H. Res. 325, introduced by Congressman Gonzalez of Texas on January 22, 1992; H. Res. 326 and H.R. 4108, both introduced by Congressman DeFaxio of Oregon on January 24.

xxvii. George Lardner, Jr. "Ford Urges House Leaders to Seek Release Of All Records on Kennedy Assassination," *Washington Post*, January 30, 1992, p. A-12.

xxviii. *Congressional Record*, v. 138, March 26, 1992, pp. H1984-1986 (daily edition).

xxix. *Congressional Record*, v. 138, March 26, 1992, pp. S4392-S3297 (daily edition).

xxx. The House Government Operations Committee held hearings on April 28th, May 15th and July 22nd. The House Judiciary Committee held a hearing on May 20th. In the Senate, the Governmental Affairs Committee held a hearing on May 12th.

xxxi. The House Government Operations Committee approved the legislation in June (Report 102-625 I, June 29, 1992) and the House Judiciary Committee in August (Report 102-625 II, August 11, 1992). The Senate Governmental Affairs Committee approved legislation in July (Report 102-328, July 22, 1992). The Senate committee approved an amendment in the nature of a substitute; the bill forwarded to the full Senate for its consideration therefore had a new designation, S. 3006. This was the bill the full House eventually voted on in September.

xxxii. Public Law 103-345, enacted October 6, 1994. The Extension Act had been introduced as H.R. 4569.

xxxiii. Introduced as H.R. 1553 by the Chairman of the Government Reform and Oversight Committee, Congressman Dan Burton of Indiana, the bill was approved by the House on June 23, 1997 and by the Senate two days later. President Clinton signed the bill into law on July 3, 1997.