

Chapter 3: Establishment of the Review Board: Start-Up & Definition of “Assassination Record”

A. Introduction

Multiple provisions of the JFK Act provided optimistic deadlines by which Congress thought that Government offices, the National Archives and Records Administration (“NARA”), and the Review Board should complete particular activities. This chapter describes why the statutory deadlines were unrealistic and explains actions that the Review Board had to take in order to start its work. Once the Review Board members began to meet, they realized that they would immediately need to define the term “assassination record.” The Board’s definition of that term was the foundation that enabled the Board to begin its central work of records review.

B. Delay in Start Up

When Congress drafted the JFK Act, it estimated that the Review Board would require a maximum of three years to accomplish the objectives set forth by the JFK Act. There were, however, a number of delays in the early phase of the Board’s operation that affected the ability of the Board to meet the deadline set by Congress.

Although President Bush signed the JFK Act into law in October 1992, President Clinton did not appoint the members of the Review Board until well after he took office in January 1993, and the Board was not sworn in until April 1994. During the 18 month period between the passage of the JFK Act and swearing-in of the Review Board members, some Government agencies proceeded with independent reviews of their assassination-related files, as the JFK Act required, but without the Review Board’s guidance. Unfortunately, once the Review Board began work, the Government offices realized that they would need to re-review files under the Review Board’s strict standards. Thus, while Congress passed the JFK Extension Act in 1994¹ to reset the clock and to give the Board a full three-year mandate, it did not foresee the additional delays that occurred as a result of Government offices’ attempts to comply with the JFK Act without the Review Board’s guidance.

1. JFK Act Deadlines

a. 90 days for President to appoint Review Board members. Section 7(a)(2) of the JFK Act stated that the President would appoint Review Board members within 90 days after the enactment of the statute. The statute envisioned that the Board members would start work by the end of January, 1993. Of course, the Review Board members could not begin work until after they were sworn in on April 11, 1994, 15 months later than Congress had intended. During the original 90 day period set out by the JFK Act, the Bush administration was replaced by the Clinton administration, and although the delay caused by the change in administration is fully understandable, it significantly affected the schedule originally contemplated by Congress.

b. 300 days for NARA to establish JFK Collection. As the previous chapter explains, section 4 of the JFK Act instructed NARA to establish the JFK Collection within 300 days after Congress enacted the Act. On August 23, 1993, exactly 300 days after the enactment of the JFK Act, NARA officially opened the JFK Collection.

Congress had wanted the JFK Collection to include *all* Federal Government records concerning the assassination, with the exception of those very few records that it believed the Review Board would need to review. Given that most agencies had not processed their records by August 23, 1993, the JFK Collection obviously did not include the bulk of the assassination records that would ultimately make their way to Collection. On that day, the JFK Collection did include some records from the Warren Commission, the HSCA, the Secret Service, the Securities and Exchange Commission, the United States Information Agency, and the Criminal, Civil, and Civil Rights Divisions of the Department of Justice.ⁱⁱ

c. 300 days for Government offices to review, identify, and organize assassination records. Section 5 of the JFK Act required each Government office to review, identify and organize assassination records within its custody.ⁱⁱⁱ No government office completed its work within the 300 day time line that the statute envisions, and as of this writing (August 1998), some Government offices still have not reviewed, identified, and organized all assassination record within their custody.

As chapter 2 of this Report explains, the Act specifically 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 then prepare those records for review by the Review Board.^{iv} 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 for a determination as to whether the records were, indeed, assassination records.^v

Federal agencies, particularly the CIA and FBI, were not able to review and process the statutorily-defined “assassination records” in the time allotted and to make them available for Review Board action. Moreover, even if Government offices had been able to meet the 300 day deadline, the lateness of the appointment of the Review Board prohibited Federal agencies from obtaining early guidance from the Review Board on the questions of the definition of “assassination record” and the standards for postponements under Section 6 of the JFK Act.

Congress did realize that agencies would begin their JFK Act compliance before the Review Board began to operate, but as the Senate Report on the JFK Act states, they hoped that the pre-Review Board compliance would not cause additional delays.

There is a sufficient volume of known assassination records [for the agencies] to organize and review at the outset. However, it is intended that the Review Board issue guidance to assist in articulating the scope or universe of assassination records as government offices and the Review Board undertakes their responsibilities. Such guidance will be valuable notwithstanding the fact that government offices will begin to organize and review their records before the Review Board is established. Government offices are required to begin the review and disclosure of records upon enactment to expedite public access to the many records which do not require additional review or postponement. However, the ultimate work of the Review Board will involve not only the review of records recommended for postponement, but requiring government offices to provide additional information and records, where appropriate. Guidance, especially that developed in consultation with the public, scholars, and affected government offices, will prove valuable to ensure the fullest possible disclosure and create public confidence in a working definition that was developed in an independent and open manner.^{vi}

Unfortunately, once the Review Board did provide guidance to the agencies, much initial work of the agencies needed to be revised, which, in turn, slowed down their processing and re-reviewing of assassination records. In addition, the protracted start-up of the Review Board, which resulted from certain statutory restrictions and requirements, prevented the Review Board from being able to engage in the efficient review of records until the second half of its first year.

In summary, the agencies, for different reasons, had not completed the work assigned to them by the JFK Act. The Review Board attributed such delays by the CIA and the FBI not to any intended disregard or disrespect for the law, but to an enormous volume of work that they had not been able to complete within the short deadlines provided by Congress.

d. 3 years for Board to complete work. The JFK Act envisioned that the Review Board could start up, complete its work, and close down within 3 years. The Act, however, contained certain provisions that considerably slowed the early phase of the Review Board's operation and delayed the point at which it could operate effectively in its review of records. As an independent agency, the Board had to locate and construct office space that was suitable for the storage of classified material. At the same time, the Board had to hire a staff and get it cleared at the Top Secret level. Significantly, the JFK Act provides that the Review Board could not hire (or detail) individuals employed by other Federal agencies.

Due to the above-referenced provisions, the Review Board did not have enough staff members to begin to review and process Government records until the beginning of 1995 -- two and ½ years after President Bush signed the JFK Act.

Finally, as Part II of this Report explains in detail, the review of Federal records related to the assassination proved to be a lengthy and time-consuming process. The JFK Act was unduly optimistic regarding the time that would be required to fulfill the Review Board's mandate as set forth by Congress. Neither Congress nor anyone else could have sufficiently appreciated the volume and complexity of work that would be required for the Review Board to complete the work mandated by Congress.

By the spring of 1996, the Review Board believed that in order for it to be faithful to its historical responsibility and commitment to release to the public all known assassination records, it required an additional year. Therefore, it recommended to Congress that the JFK Act be extended for one year.

2. Passage of H.R. 1553

On May 8, 1997, H.R. 1553 was introduced by Congressman Dan Burton (R-IN). H.R. 1553, a bill that would amend the JFK Act to provide one additional year for the Review Board to complete its work, was co-sponsored by Congressman Louis Stokes (D-OH) and Congressman Henry Waxman (D-CA).

On June 4, 1997, the National Security, International Affairs, and Criminal Justice Subcommittee, of the House Government Reform and Oversight Committee held a hearing on H.R. 1553. The Honorable Louis Stokes, Review Board Chair Tunheim, writer Max Holland, and teacher Bruce Hitchcock all testified in support of H.R. 1553. On July 3, 1997, President Clinton signed H.R. 1553 into law, thus extending the authorization of the Review Board for one additional year, to September 30, 1998.

Following the passage of H.R. 1553, the Review Board was required by the Committee on Government Reform and Oversight to provide monthly reports regarding its status and projected completion of its mandate. Beginning in August 1997, each month the Review Board sent updates to the Committee Chairman, Congressman Dan Burton (R-IN).

As this Report evidences, the Review Board used its additional year to complete its work in a careful and thorough manner and it terminated its operations, as promised, on September 30, 1998.

D. Defining assassination record

In order for the Review Board to begin the declassification of records related to the assassination of President Kennedy, it first had the task of establishing the definition of an "assassination record."

1. Statutory Definition of "Assassination Record"

As Chapter 2 of this Report explains, 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).^{vii} Congress noted specifically that “assassination records” encompassed records relating to the Kennedy assassination among the files of the Warren Commission, the Rockefeller Commission, the Pike Committee, the House Select Committee on Assassinations (the “HSCA”), 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.^{viii}

The Senate Report on the JFK Act explains that Congress carefully crafted its definition but expected that the Review Board would need to further define the term.

The definition of assassination records is a threshold consideration for the successful implementation of the Act. Its scope will be the barometer of public confidence in the release of assassination records. While the records of past presidential commissions and congressional committees established to investigate the assassination of President Kennedy are included as assassination records under this Act, *it is intended and emphasized that the search and disclosure of records under this Act must go beyond those records.* While such records are valuable, they reflect the views, theories, political constraints and prejudices of past inquiries. Proper implementation of this Act and providing the American public with the opportunity to judge the surrounding history of the assassination for themselves, requires including not only, but going beyond, the records of the Warren and Rockefeller Commissions, and the Church and House Select Assassination Committees.^{ix}

The JFK Act explicitly empowered the Review Board to decide “whether a record constitutes an assassination record.”^x The Review Board took seriously its obligation to instill public confidence by searching for assassination records that fell outside the scope of previous investigations, but before the Review Board could embark on its search for such records, however, it had to grapple with the question of how far reaching its search should be.

2. Congressional Intent Concerning Definition

Having directed the Review Board to further define the term “assassination record,” Congress specifically gave the Review Board the power to issue interpretive regulations.^{xi} The legislative history of the Act explains why Congress thought that the Review Board -- and not the Congress -- had to define the term.

The term “assassination record” was not more specifically defined by the Committee because to do so before more is known about the universe of records would have been premature, and would have further injected the government between the records and the American public.^{xii}

The Congress was so interested in how the Review Board would define “assassination record” that it requested each Board member to provide written answers to the following question as part of the confirmation process:

The definition of “assassination records” contained in the Records Review Act establishing this Board was intentionally left very broad. What kinds of criteria and factors will you use in determining whether or not a document or other item will fall within the definition?

The Review Board members all answered that they favored a broad definition of the term, but each recognized that the Board members would, in Judge Tunheim’s words, have to “more fully understand the scope of the potential records before attempting to define the term.”^{xiii} Congress also asked the Review Board members to respond to questions concerning assassination records in the possession of private citizens, as well as questions concerning the Board’s authority to administer oaths and subpoenas and grant immunity to witnesses in furtherance of compelling disclosure of assassination records from private and foreign sources.^{xiv}

3. Review Board’s early deliberations and draft definition

On July 12, 1994, at one of the Review Board’s first meetings, they began to consider the scope of their definition of “assassination record.” At that meeting, the Board members agreed that they would need to conduct more research before they would be able to craft a definition as Congress intended. The purpose of the Review Board’s October 11, 1994, public hearing was to gather public input on how to define the term. At that hearing, members of the public encourage the Board to define the term broadly. By mid-November 1994, only weeks after the Board’s senior staff had begun work, the senior staff members were circulating draft definitions of this crucial statutory term. The Review Board and their senior staff spent most of the month of December, 1994 discussing the most important provisions of the definition, including provisions about whether certain types of records were relevant to the assassination, whether assassination artifacts should become part of the JFK Collection, and whether the Collection could include copies of original documents.

The Review Board members ultimately decided on a proposed definition and decided to publish the draft in the *Federal Register* in an attempt to solicit public comment. The January 8, 1995, *Federal Register* contains the Board’s proposed definition.

2. Comments from Public

With their proposed definition complete, the Board members began to seek comments from members of the public and from representatives of other Government agencies on the definition.

a. Notice and Comment

The Review Board sought public comment on its proposed definition and set a 30 day period for the purpose of receiving written comments.^{xv} The Review Board received written comments on its proposed definition from numerous federal agencies, state and local government entities, and individuals.

The Review Board found very helpful the thoughtful and, in many cases, very detailed comments submitted on the proposed definition. Nearly all of the commentators supported the comprehensiveness and flexibility of the Board's definition. Submitters made both substantive and technical suggestions, many of which were incorporated into the final definition. Commentators addressed a broad range of concerns, such as whether the Board's proposed definition was too broad or too vague, and whether the Board should provide a list of names and subjects that, to the extent they appeared in documents, would presumptively be assassination records. The Board also received comments about whether the definition should cover state and local government records, private records, and assassination artifacts.

b. Public Hearings

The Review Board also heard testimony at public hearings on aspects of the proposed interpretive regulations. In these public hearings, the Review Board received testimony from NARA and the FBI on the scope of the definition. Members of the public also offered comments on the Board's proposed definition.

The Review Board carefully considered all comments and created its final draft of the definition. The Board discussed its final draft at a public meeting, and explained how it had incorporated many of the comments received by the Review Board on the proposed definition.

The Review Board's *Federal Register* notice establishing the final definition of the term "assassination record" summarized the principal substantive comments received and the Review Board's responses to those comments.^{xvi}

3. Definition

The Review Board's final definition of an "assassination record" was published in the *Federal Register* on [DATE].

As the Supplementary Information accompanying the proposed definition stated, the Review Board's goal in issuing the guidance was:

to implement congressional intent that the JFK Collection contain ‘the most comprehensive disclosure of records related to the assassination of President Kennedy.’^{xvii} The Board is also mindful of Congress's instruction that the Board apply a 'broad and encompassing' working definition of “assassination record” in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies have already begun to organize and review records responsive to the [JFK Act] even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.^{xviii}

The Review Board’s definition intended “to identify comprehensively the range of records reasonably related to the assassination of President Kennedy and investigations undertaken in its aftermath,” and “to aid in the consistent, effective, and efficient implementation of the JFK Act and to establish procedures for including assassination records in the JFK Assassination Records Collection established by Congress and housed at NARA's facility in College Park, Maryland.”^{xix}

a. Scope of assassination record.^{xx} The Board ultimately determined that any records that were "reasonably related" to the assassination would be assassination records. [T]he Review Board believed that its mandate from Congress was to assemble all materials reasonably related to the assassination in the JFK Collection.

Section 1400.1 of the Board’s final definition of “assassination record” reads as follows,

- (a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze, or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.
- (b) An *assassination record* further includes, without limitation:
 - (1) All records as defined in Sec. 3(2) of the JFK Act;
 - (2) All records collected by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);
 - (3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in §1400.8 of this chapter.

b. Scope of additional records and information.^{xxi} The Review Board determined that it would request additional records and information when necessary for identifying, evaluating, or interpreting assassination records, including assassination records that agencies may not have initially located or identified. The Review Board's regulatory definition included a description of some items the Review Board might request from Government agencies that included background information about how the agencies operate and, in particular, how they performed their declassification review.

c. Sources of assassination records and additional records and information.^{xxii} The Review Board sought to cast a very wide net in terms of where they might locate assassination records. The Board's regulation, therefore, allows the Board to seek assassination records in the possession of all Federal Government entities, all state and local government entities, private individuals, private institutions, all courts, and all foreign governments.

d. Types of materials included in scope of assassination record and additional records and information.^{xxiii} The Review Board tried to be as inclusive as possible in identifying the type of material it could seek for inclusion in the JFK Collection, and it included papers, maps, and other documentary material, photographs, motion pictures, sound and video recordings, machine readable information in any form, and artifacts.

The Board further required that, in accordance with the JFK Act, assassination records be released in their entirety unless the Review Board sustained agency postponements.^{xxiv} The Review Board's extensively defined when the Review Board would be willing to accept copies of assassination records in lieu of original assassination records for the JFK Collection.^{xxv} Finally, The Review Board established procedures for placing artifacts in the JFK Collection,^{xxvi} and the Review Board established a procedure by which it would designate records as assassination records.^{xxvii}

Conclusion

The enormity of the Review Board's task, specifically the crucial steps needed simply to begin the review of records, was underestimated. The delay in the start up, unrealistic deadlines, and the initial review of records by the agencies without the guidance of the Review Board all contributed to a beginning that was less than ideal. In addition the Review Board had to finalize the definition of an "assassination record" with great care, and in a timely manner. The Review Board tackled difficult issues early on, and made important decisions that paved the way for a significant increase in productivity later, as you will see throughout this report.

i. Cite to JFK Extension Act.

ii. Not all of the Government agencies listed processed their records under JFK Act standards. The JFK Act at § 4(a)(2)(A)(I) states that, if agency records are already in the possession of

NARA *and* the records are released in full, the records are not subject to the terms of the JFK Act.

iii. JFK Act at § 5(c)(1).

iv. JFK Act, § 5(c)(2)(A)-(H).

v. *Id.* § 5(c)(2)(F).

vi. *President John F. Kennedy Assassination Records Collection Act of 1992*, S. Rep. 102-328, 102d Cong., 2d Sess. (1992) at 21.

vii. *Id.* § 3(2).

viii. *See id.* § 3 (2)(A)-(L). Section 3(2) of the JFK Act specifically excluded from the definition of “assassination record” autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift. *See* JFK Act § 3(2).

ix. Senate Report at 21 (emphasis added).

x. JFK Act at § 7(I)(2)(A).

xi. JFK Act, § 7(n).

xii. Senate Report at 21.

xiii. Nominations of Graff, Tunheim, Nelson, Joyce, and Hall at _____. The Review Board’s precise answers to the question as to how they would define the term “assassination record” follow:

Henry Graff wrote, “Plainly any document that directly or tangentially deals with the Assassination will be subsumed under the head of ‘assassination record,’ but I believe that some documents and classes of documents will have to be labeled such on an *ad hoc* basis.” **Judge Tunheim** wrote that it was his view that “the Board should more fully understand the scope of the potential records before attempting to define the term. I favor a broad definition in order to fulfill the clear intent of Congress. One important criteria will be the extent to which the record adds to the public understanding of the events and characters involved in the assassination and its aftermath.” **Anna Nelson** explained that “My sense at this point is that the Board should encourage this broad definition of records while we establish the parameters of the issue. Defining the records is the perfect topic for public hearings. Most individuals who have extensively studied the available information have opinions on this matter. In addition, the index of names from the [HSCA] report, and the subject index in the National Archives will help clarify the issues for us. I’m sure the Board will spend considerable time on this issue because of its importance to the work of the Board.” **William Joyce** wrote that “The definition

of ‘assassination records’ will be a major challenge for the Review Board to resolve in a workable manner. In my view, the Review Board will need to establish criteria addressing: (a) the temporal proximity of the record in relation to the assassination, (b) the content of the record relative to the assassination, and (c) the relation of the record to important factors and issues perceived to be related to the assassination.” And **Kermit Hall** stated that “The statute creating the Review Board defines an assassination record as [statutory definition]. These materials are certainly, therefore, the core of what constitutes the ‘assassination records’ that the Board is duty bound to treat. Any of these materials that are held in private hands are also covered by the statute and are subject to its provisions. In general, I think that the Board should take a broad view of what constitutes an assassination record within the terms of statute.”

xiv. The Review Board’s answers to these questions are in the Nomination Hearings of Graff, Tunheim, Nelson, Joyce, and Hall at _____. See answers to questions 8 and 9.

xv. In an effort to receive comments from all interested parties, the Review Board sent copies of the proposed interpretive regulations to agencies known to have an interest in and to be affected by the Review Board’s work, particularly those that either created or now hold assassination records, and to the appropriate oversight committees in Congress. The Review Board also sent notices of the proposed interpretive regulations and request for comments to many organizations and individuals who have demonstrated an interest in the release of materials under the JFK Act or who have engaged in research into the assassination of President Kennedy.

xvi. Cite to Federal Register notice.

xvii. S. Rep. 102-328, *supra* at 18.

xviii. 60 FR 7506.

xix. Cite to definition.

xx. 44 C.F.R. 1400.1.

xxi. 44 C.F.R. 1400.2.

xxii. 44 C.F.R. § 1400.3.

xxiii. 44 C.F.R. § 1400.4.

xxiv. 44 C.F.R. § 1400.5.

xxv. 44 C.F.R. § 1400.6,

xxvi. 44 C.F.R. § 1400.7.

xxvii. 44 C.F.R. § 1400.8.