

MEMORANDUM

To: Review Board DRAFT--6/16/95
From: T. Jeremy Gunn
Date: June 16, 1995
Re: JFK Review Board Internal Procedural Rules Relating to Quorum and Voting Requirements
File: 3.12 (Board Meeting Procedures)

The Review Board should adopt formal procedures to govern its meetings. The procedures should include rules on quorum requirements, voting requirements, and record-keeping requirements. The Review Board has a great deal of discretion regarding which procedures it will adopt and it will subsequently be able to amend or revise its procedures.¹ With the exception of certain limited requirements imposed by the Sunshine Act,² the Review Board may adopt any procedures it wishes provided that they are "rational" and "reasonable."³ Any discussion of procedures should take place

¹The JFK Act does not establish any requirements related to quorums or to voting procedures for Review Board meetings. The sole relevant guidance from the Act is its repeated statement that it *presumes* disclosure, which suggests that a *majority* of the members of the Board would need to vote *for a postponement* (rather than requiring a majority to vote for a release) in order for the postponement to be sustained.

The Administrative Procedures Act, which regulates agency rulemaking and establishes notice and publication requirements, does not establish rules governing agencies' internal rulemaking and voting requirements. The relevant portion of the Administrative Procedure Act provides that the reporting requirements that pertain to most federal rulemaking procedures do not apply to an agency's "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice" 5 U.S.C. 553(b)(A).

Similarly, Executive Order 12866 (Sept. 30, 1993), exempts from reporting requirements rules that "are limited to agency organization, management, or personnel matters"

²Those requirements are set forth in the Review Board's proposed regulations on the Sunshine Act. The suggestions below adopt the same requirements as are set out in the Sunshine Act regulations.

³*See, e.g., Idaho v. ICC*, 939 F.2d 784, 788 (9th Cir. 1991) ("In the absence of Congress' explicit direction, the [Interstate Commerce] Commission is empowered to prescribe regulations and procedures to carry out [its obligations under its enabling statute]. We need only satisfy ourselves that the Commission set forth a rational basis for its notational vote counting policy.")

at an open meeting and the procedures adopted should be recorded and be made available to the interested public, although they do not need to be published in the *Federal Register*.

The following are some suggestions that the Review Board may wish to consider during its open meeting in New Orleans on June 27, 1995. The suggestions below are not recommendations of the Staff, but are offered solely as examples for the Review Board to consider and discuss. Although the suggestions are divided into two parts (General Procedures and Assassination Records Procedures), the Review Board is free to adopt one set of procedures to govern all of its activities. When a suggestion is made as to the number of Review Board Members necessary to support an action, the Review Board may wish to consider increasing or decreasing the number.

General Procedures

For all Review Board matters *other than decisions on the postponement or release of information*, the following rules shall apply:

1. Review Board meetings may take place only when a quorum of the Review Board is present.
2. Three Members of the Review Board shall be sufficient to constitute a quorum.

Calling new meetings

Agenda items

Emergency meetings

3. Review Board meetings may be held only as permitted by federal law (including the Sunshine Act) .
4. The affirmative vote of a majority of attendees at a meeting shall be sufficient to constitute a Review Board decision.
5. Minutes shall be kept of all Review Board meetings. The minutes shall be prepared by the Secretary of the Review Board. The Secretary of the Executive Director or other such person designated by the Executive Director shall act as Secretary of the Review Board.
6. For all open meetings, a draft set of minutes shall be sent by the Secretary of the Review Board to the Members of the Review Board within seven days of a meeting. The Review Board shall vote to adopt or to modify the minutes of a previous meeting at the next open

- meeting.
7. For all closed meetings, an electronic recording shall be made (and shall, at the termination of the Review Board, be made a part of the permanent JFK Collection). Minutes of closed meetings (containing both classified and unclassified material) shall be taken by the Secretary of the Review Board or by another such person designated by the Executive Director. The Review Board shall vote to adopt or to modify the minutes of the previous closed meeting at the next closed meeting.
 8. All Review Board votes to close a meeting or portion thereof must be recorded and each individual Member must be recorded. No other Review Board decisions must be recorded, except that upon the request of any Review Board member, there will be a record made and each Member shall be polled.
 9. No proxy may be used on a vote to close a meeting. Proxies will be permitted on all other Review Board matters.
 10. The Review Board shall be permitted to vote by notation voting (whether by written form or by telephone poll conducted by a member of the Senior Staff or by the Secretary of the Review Board). Three votes in support of any notation vote shall be sufficient to bind the Review Board.
 11. The Review Board may amend these rules only by a vote at an open meeting that has been noticed as including revision of procedures as an agenda item.

Assassination Records Procedures

For Review Board decisions on the postponement or release of information contained in assassination records, the following rules shall apply:

1. Formal determinations on the release or postponement of information may be made only when a quorum is present and three Review Board members shall constitute a quorum.
2. The Review Board may delegate to subcommittees of the Review Board (consisting of two or more Members) the authority to make Advisory Recommendations on behalf of the Review Board. The subcommittees may make the following types of Advisory Recommendations:

AR to release

AR to accept a postponement

AR that postponement be reviewed by the Review Board at a meeting.

Subcommittees are not required to meet collectively or in a quorum. The members of the subcommittees may individually review documents and record the results of their reviews on paper ballots. The votes for Advisory Recommendations to release or to postpone must be recorded. However, under the Sunshine Act, three Members of the Review Board may not deliberate about postponements except at properly noticed meetings of the Review Board.

3. Decisions to postpone records may be made only when three members of the Review Board are on record as supporting a postponement.⁴
4. In order for a subcommittee to render an Advisory Recommendation to release or to accept the postponement, the decision must be unanimous among members of the subcommittee.
5. The Review Board, while in a quorum, may vote to accept or to reject Advisory Recommendations to release or to postpone without having reviewed the postponements.

⁴See the following examples.

Example 1: Subcommittee of two makes Advisory Recommendation to release record. Three person quorum unanimously accepts recommendation. Record is released.

Example 2: Subcommittee of two makes Advisory Recommendation to release record. Four person quorum evenly divided on question to release record. Record is released.

Example 3: Subcommittee of two makes Advisory Recommendation to postpone record. Three person quorum unanimously agrees to release record. Record is released.

Example 4: Subcommittee of two makes Advisory Recommendation to release record. Four person quorum votes 3-1 to postpone. Record is postponed.

Example 5: Subcommittee of two evenly split on decision to postpone. Quorum of four is split 2-2 on decision to postpone, but the person on the subcommittee who voted to postpone is not present at final meeting. Because three Board members are on record as having voted to postpone, the record is postponed.

6. No vote on a postponement (or record) shall be made prior to the time that all Board members will have had an adequate opportunity to review the postponement (or record).
7. Members may vote by proxy.
8. The votes of all Board members shall be separately recorded for all votes.
9. The Review Board may vote on: (a) a group of records as a whole, (b) on a individual record as a whole, or (c) on particular postponements within a record. However, upon the request of any Member, the Review Board shall record the vote separately on an individual record or on a particular postponement.

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