

MEMORANDUM

To: Review Board
From: T. Jeremy Gunn
Date: June 20, 1995
Re: JFK Review Board Internal Procedural Rules Relating to Quorum and Voting Requirements
File: 3.12 (Board Meeting Procedures)

DRAFT--6/20/95

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 any procedures it initially adopts.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 The Review Board's discussion of procedures should take place at an open meeting and the procedures adopted should be

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 presumption of disclosure, which may imply 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 (APA), which regulates agency rulemaking and establishes notice and publication requirements, does not establish rules governing agencies' internal rulemaking and voting requirements other than those imposed by the Sunshine Act. The relevant portion of the APA 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"

²The Sunshine Act requirements are set forth in the Review Board's proposed regulations. Where appropriate, 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.")

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 Review Board 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 constitute a quorum.
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 held in Washington, D.C.

8. All Review Board votes to close a meeting or portion thereof must be recorded and each individual Member must be polled. Polling of Review Board Members is not required for any other votes, except that upon the request of any Review Board Member, 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 shall make a public announcement for each open and closed meeting at least one week before such meeting and the announcement shall describe the time, place, and subject matter of the meeting; whether the meeting is to be open or closed; and the name and business telephone number of the official designated by the Review Board to respond to requests for information about the meeting.*
12. *The Review Board may call for an emergency meeting without being subject to paragraph 11 only if a majority of all Members determines by recorded vote that Review Board business requires that such meeting be scheduled in less than seven days and the public announcement required by paragraph 11 is made at the earliest practicable time.*
13. 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.

Review Board Procedures for Assassination Records Voting

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 [two/four] Review Board Members shall constitute a quorum for purposes of making formal determinations.
2. The Review Board may delegate to subcommittees of the Review Board (consisting of two [three] Members) the authority to make Advisory Recommendations (AR) on behalf of the Review Board. The subcommittees may make the following types of ARs:

AR to release

AR to accept a postponement

AR that postponement be reviewed by a quorum of the Review Board

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 ARs to release or to postpone must be recorded. However, as required by the Sunshine Act, three Members of the Review Board may not deliberate about postponements except at properly noticed meetings of the Review Board.

3. Formal determinations to postpone records may be made only when three [two/four] Members of the Review Board are on record as supporting a postponement.⁴

⁴See the following illustrations.

Example 1: Subcommittee of two makes AR to release record. Three person quorum at Review Board meeting votes 2-1 to accept recommendation. Record is released.

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

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

Example 4: Subcommittee of two makes AR 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.

4. In order for a subcommittee to render an AR to release or to accept the postponement, the decision must be unanimous among [or by majority of] members of the subcommittee.
5. The Review Board, while in a quorum, may vote to accept or to reject ARs to release or to postpone without having reviewed the postponements on a case-by-case basis. [This will allow subcommittees of the Review Board to establish a consent agenda where the subcommittee believes that no new issues are present and permit the Review Board to routinely ratify the subcommittee's "consent" recommendation.]
6. No vote on any postponement shall be made prior to the time that all Review Board Members will have had an adequate opportunity to review the postponement.
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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