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Assassination Records Review Board

Final Report

Chapter 7— Conclusions and Recommendations

This final report to Congress and the President, outlining our activity, evaluating our experience, and assaying the process of classification and declassification of federal records, provides the Review Board with an important opportunity. In this chapter, we reflect on the course of our experience in dealing with the larger issues of classifying and declassifying federal records, and on the very large problem of secrecy and accountability in the federal establishment. We have framed the recommendations that seemed to us most responsive to these larger issues, in the context of the Kennedy assassination, as we suggest what the federal government might do to extend the experience of the Board and to apply our findings to related areas of government activity. Our recommendations, therefore, are formulated in a manner that we believe distills our experiences and permits us to contribute to a continuing dialogue both within government and beyond about how best to balance national security and privacy with openness and accountability.

Congress passed the legislation establishing our Board hopeful that, by creating mechanisms to open records concerning the Kennedy assassination, some of the suspicion of the federal government and belief that there had indeed been a cover-up might be dispelled. After the assassination, growing numbers of Americans disagreed with the finding of the Warren Commission that Lee Harvey Oswald, acting alone, was responsible for the murder of the President, with some 65% of Americans in disagreement within a few years of issuance of the Commission's report in 1964. By the 1980s, in excess of 80% of the American people did not agree with the conclusion of the Commission. These facts, together with Oliver Stone's conspiratorial claim in his movie, "JFK," motivated Congress to pass the President John F. Kennedy Assassination Records Collection Act of 1992.

The Act mandated that federal executive agencies release as many as documents as possible concerning the assassination and created the JFK Assassination Records Review Board to review all documents that the agencies decided that they could not themselves release in full. Our charge was not to investigate the assassination but rather to release as many of these restricted documents as possible. In opening up these records to the American people, Congress hoped, in the words of one of the legislative reports, that the efforts of the Review Board "will stand as a symbol and barometer of public confidence in the review and release of the government's records related to the assassination of President Kennedy…. Several provisions [of the Act creating the Board] are intended to provide as much independence and accountability as is possible within our Constitutional framework."

This is a high standard, and we hope that our record will show that we did our utmost to create with the greatest possible fidelity the most complete record possible of the documentation surrounding the assassination. In this way, the government might allow the American people to review its files and draw their own conclusions as to what might have happened and why on that fateful day in Dallas in November 1963.

The Board has also taken advantage of other provisions of the Act in pursuing its work. It has sought out the assistance of the Justice Department in issuing subpoenas to those who had information important to the work of the Board, and in working with the courts to open documents sealed by court instruction. This included the sealed materials of the "Brilab case" reviewed by Board staff in connection with exploring the possible ties of organized crime to the assassination of the President. The Board also worked with the State Department in efforts to retrieve documents concerning the surveillance of Lee Harvey Oswald in Russia and in Belarus, as well as in releasing documents containing information from foreign governments.

There are a great many unresolved issues relating to the assassination that need to be addressed, and our efforts have produced many more documents that shed light on events immediately surrounding the assassination. Perhaps even more important, the documentation that is now available has cast the event into its broadest possible context as an episode of the Cold War. Beyond that, we believe that our experiences as a Board are

most relevant to the important topic of classifying and declassifying federal records. Because of the provisions of the act, and because we were able to take advantage of favorable circumstances (i.e., the end of the Cold War and the growing concern about the extent of secrecy in government), five private citizens and the staff that reviewed the records under our direction have had an impact on the manner in which the federal government has managed its restricted records. What follows in this chapter is our effort to extend the consequences of our work, both in terms of creating the fullest possible historical record of the assassination and in terms of how classified records might be managed in order to promote openness in government and to roll back the culture of secrecy.

Ultimately, it will be years before the work of the Review Board can be judged, some thinking that it could be ten years before an adequate assessment of the Board's efforts might be made. The test will be in the scholarship that is generated by historians and others, studying the assembled documentation of the event and its aftermath. Does the historical record formed by the Board elicit confidence that the historical record is now reasonably complete? Will the mass of assembled documentation formed in the Assassination Records Collection at the National Archives answer the questions posed by historians and others? Will the Board's compliance program inspire confidence that the agencies have in fact produced all the relevant documentation that conforms to the Board definition of an "assassination record?"

The Board's efforts are aimed less at addressing a contemporary problem of what happened when the President was murdered than at trying to form a body of documentation that will support historical research in the future and help answer the questions and controversies concerning that traumatic event. Board members recognize that no body of documentation can answer all questions or quiet all issues, but we hope that our effort will has produced a reasonably thorough record of all the relevant available documentation. Beyond that, we hope that our efforts may show others how declassification might work and that our methods might become tools to facilitate the work of others seeking to expand access to restricted federal documents.

Over the course of the life of the Board, we have had a unique experience in declassifying federal records, *as we were the first such group of private citizens in American history to be assigned this responsibility*. Gradually, the Board review and determinations of documents, starting with our first formal vote in April, 1995, initiated a type of "common law," developing precedents that have guided the staff in their review of documents and recommendations to the Board. The Board considered staff recommendations, often reaching decisions that reflected our commitment to the mandate of the legislation as well as our joint interest in developing the fullest possible historical record concerning this tragic event.

At the same time, the Board determinations arising from this collaboration guided federal agency personnel who have increasingly used this information to facilitate their "consent releases" of many additional federal documents. There have been, of course, a variety of disagreements between the Review Board and the agencies, but the course of relations between the Review Board (staff and Board members alike) and the federal agencies has been characterized chiefly by growing mutual understanding and improved communication. Agency personnel have become increasingly aware that the responsible release of information can serve their interest and provide a positive use of their records. Indeed, the scrutiny invited by the release of documentation may advance the interests of the agencies. The information supplied through documents affords opportunity for evaluating agency accountability of responsible action as well as demonstrating how policy mandates and Constitutional provisions were executed.

In keeping with the congressional hope that the Board's efforts might have an impact on public confidence in the federal government, the Board has sought to consult the public frequently by conducting hearings (in Washington, Dallas, Boston, New Orleans, and Washington) to solicit ideas on identifying and locating assassination records. In addition, we conducted two experts' conferences for the same general purpose and undertook several efforts to depose witnesses where the documentary records were inadequate or unclear (especially in the area of medical records). The hearings proved to be especially productive,

directly leading, for example, to the donation of the personal papers of Warren Commission General Counsel J. Lee Rankin, the papers of William Wegman, defense attorney for Jim Garrison, and the records of the Louisiana Grand Jury that indicted Garrison, prompting a court battle with New Orleans District Attorney Harry Connick, Sr., that went all the way to the Supreme Court. The Board prevailed. In addition, the Board has sought to conduct as much of its own business as possible out in the open, applying to its own work the high standards that Congress set for it in releasing the records of others.

From the point at which the White House announced our respective nominations to the Review Board in the late summer of 1993 through to the end of the work of the Board, each of us has had contact with the public concerning the work of the Board. From the outset, it was apparent that there was a pattern in the responses of the various groups. First, the **federal agencies** themselves have gradually come to the realization that release of records in itself can be an opportunity for them to create a fuller record of their activity and effort in achieving important public policy objectives. Second, the **assassination research community** has had an intense interest in our work, monitoring it closely, urging us to be aggressive in our effort, and quick to call us to account for perceived shortcomings. Third, the **community of professional historians** has exhibited comparatively slight interest in our work, paying most attention to gaining access to records, especially those that shed light on the Cold War context in which the assassination was so obviously enmeshed. Fourth, the **general public** has been responsive to our activity primarily in terms of their evaluation of the work of the Warren Commission and its successors. Older Americans, those who

reached adulthood prior to the Kennedy Presidency, tend to support the conclusions of the Commission; younger Americans, especially those not born at the time, are almost universal in their disagreement with the Commission's findings. For those who fall between these age groups, the event elicits controversy.

Whether the provisions of the Kennedy Assassination Records Collection Act of 1992, and the effort of the Review Board in particular, have changed those views is difficult to say. Judging from the modest attention devoted to our work by the press, it would seem that our effort to augment documentation of the assassination has had a limited success. But it is important to note that the measure of our success will be found in future research projects, not in the intensity of current media attention.

There were critics of our effort, those who believed that the "targeted declassification" effort of the Board not only interfered with the goal of systematic declassification, but was also too expensive. It is difficult, of course, to put a price tag on the nature of the information with which we were dealing, harder still to compare one method of declassification with that of another. Surely the circumstances of the assassination of President Kennedy and the response of the federal government to it have nurtured over the years suspicion and belief that the government may have conspired in the murder of its own leader. Our effort to release documentation to enable American citizens to draw their own conclusions about this event central to the course of history in mid-

century would seem to be justification enough for our effort, however that effort is judged by posterity.

Beyond that, we believe that our effort has created precedent and identified tools that future researchers might be able to employ with good effect. In addition, we hope that those in federal service might discover in this experience of releasing federal documents that the Republic has not collapsed under the weight of threats to national security, that openness is itself a good, and that careful scrutiny of government actions can strengthen agencies and the process of governance, not weaken it. Perhaps there are or will be problems that might also best lend themselves to the extraordinary attention that a Review Board with powers similar to those that we enjoyed can provide. Formation of a historical record that can augment understanding of important events is central not only to openness and accountability but to democracy itself.

Similarly, we believe that our effort represented a financial outlay that, while being significant, was warranted by the result. We have augmented substantially the historical record by working with agencies whose records are intrinsically sensitive, not only increasing the quantity of information available about the assassination, but also by providing substitute language in those cases where we voted to sustain restricted access. The Act was designed to foster the confidence of the American people in its government by reducing the amount of

secrecy concerning this event; we have bent our effort to this goal, and we believe that our efforts have constituted an effective approach to this problem.

At an early stage of our work, one of our number commented that we should strive to accomplish as much as we could, to be remembered for what we attempted. Or, to paraphrase Robert Kennedy, we worked hard to insure that our reach continually exceeded our grasp. Surely, we did not always attain that standard, but we did strive to contribute to what we hope will be a continuing effort to create the best possible historical record concerning the assassination.

In working to try to fulfill the congressional mandate, we have opted to make recommendations that reflect our experience and pose guidance for those who wish to capitalize on that experience to further reform the process of classification and declassification of federal documents. Accordingly, we enumerate here the following recommendations:

1. *The key attribute of the Assassination Records Review Board, established by the Congress to oversee a vigorous declassification program , was the independence conferred on the Board, in various ways, by the legislation.*

As a group of five outsiders, heretofore uninvolved in previous investigations or research concerning the assassination, but trained in historical, archival, and legal issues that are central to the records of the assassination, we collectively brought to our work a perspective framed by professional training and experience, but otherwise uninformed by knowledge of agency folkways or the culture of federal decision-making. (Some of us have had experience in government service and as students of American foreign policy.) The independence of the Board started with the juridical idea that the Review Board was in fact an independent executive agency with powers conferred on it through its enabling legislation. This independence was consequently as political as it was legal, thereby facilitating our dealing with the agencies, as did the precepts included by the Congress in the legislation.

The JFK Assassination Records Collection created both by the legislation (mandating that JFK assassination records be transferred to the Archives) and the Board (charged to review everything that the agencies felt they couldn't release) represents over four million pages of declassified records. This daunting mass of records stands as testimony not only to the centrality of the assassination as an event, but it also gives witness to the problem of so many federal records being classified. We must find a way to reduce this volume of secrecy if we are to encourage an open and accountable form of governing ourselves.

There have been several efforts in recent years to improve and augment the process of declassifying federal records, none more earnest than that undertaken by President Clinton in Executive Order 12958. The Information Security Oversight Office (ISOO) and the Inter-agency Security and Classification Appeals Panel (ISCAP) are, however, both comprised of government employees, who are either informed by the culture of classification or are subject to pressure by those actively involved. While the Board acknowledges the importance of classifying some information contained in federal records, it would appear that the necessary obligation of balancing classification and disclosure is most effectively carried out by those outside the federal establishment whose immediate job-related interests are not affected by supporting the classifying of information.

2. *Serious, sustained effort meaningfully to declassify federal documents requires congressional legislation with clear standards of access, enforceable sanctions and a budget appropriate to implement the legislation.*

The President John F. Kennedy Assassination Records Collection Act set admirable and effective standards through its precepts of "presumption to disclosure" for releasing records and "clear and convincing evidence of harm" in restricting them. No other single factor has been more influential in guiding the

Board in its action, and we urge that these standards be rigorously applied to other efforts to declassify federal records. In the same way, we urge that the rigorous appeals process, requiring executive agencies to appeal Board decisions only to the President, has also raised our declassification activity to a threshold level that prompts the agencies to weigh the political ramifications of any appeal. In the same way, the discerning enumeration in the Act of criteria for sustaining restricted access creates an obligation both for the Review Board and the agencies to apply these criteria to the many situations reported in the documents. These criteria provide a very important focus and disciplined way of thinking about federal records and the information they often contain.

There were other powers conferred on the Board by the Act that were central to the exercise of our duties. The agencies could challenge our decisions only by appealing our recommendations to the President who had the "non-delegable" responsibility to decide them. This stringent provision made the agencies think twice, of course, before expending valuable political capital on a White House appeal of assassination records. In the same way, the power of subpoena (exercised only after careful coordination with the Department of Justice) assisted the Board in its work by obliging certain individuals and organizations to share critical information with us. The State Department was also directed by the legislation to assist us in seeking documentation from foreign powers, and the Justice Department was also

helpful in facilitating contacts with courts in releasing materials that were subject to court-approved seal.

Moreover, the Act provided sufficient funds for the Board to hire staff to undertake its work. (By contrast, our temporary staff greatly outnumbered that of the Information Security Oversight Office in the National Archives.) We were fortunate to recruit talented, loyal, and dedicated colleagues, with whom we were able to work to fulfill to the best of our ability the several purposes encompassed in the legislation. Our accomplishment is, in a direct way, that of our staff, and we record our debt to them with gratitude. Other federal declassification efforts, including the beleaguered Archives, badly needs substantially more resources if they are successfully to accomplish their mandates. The work of our staff shows what adequate funding can achieve.

3. *Future legislation concerned with the declassification of federal records should follow the admirable standard in the Assassination Records Collection Act that asserts a "presumption to disclosure" in reviewing all classified documents, and stipulates the presence of an evidentiary standard that obliges those who would maintain classified records to establish "clear and convincing" evidence of harm in attempting to sustain restricted access to documents .*

As noted above, these standards have been a central consideration in guiding the work of the Board. Its importance cannot be overlooked, and the pervading influence of the standards was consistently reflected in our deliberations. In balancing the public interest and privacy rights, the Board voted consistently that the precept of a "presumption to disclosure" prevailed in every case where we believed that there was salient information relative to the assassination.

Our relations with the agencies often faltered over the "clear and convincing evidence of harm" standard, as this was a new criterion for them. This occasioned conflict and misunderstanding, especially as the agencies complained that satisfying the test entailed unwarranted expenditure of funds for which they were hard-pressed. The Board had little choice, however, than to insist on the provisions, and the agencies ultimately have learned, in general, how to satisfy the Board's expectations with respect to that provision.

While reviewing records, we observed that our relations with the agencies seemed to have followed a remarkably similar course from agency to agency. Initially, we found that they sent public relations staff to participate in our meetings, to advise us of their effort in trying to fulfill the goals of the legislation, and to assure us that their policies pertaining to restricting access to federal documents were based

on tried and true perceptions of the importance of the twin concepts of "national security" and the "privacy" of individual citizens. Essentially, we were asked to trust their judgment and to understand how these important twin concepts informed their work. It is also the case that the agencies initially approached the mandate of the Act as they would a F.O.I.A. request. They soon learned—with the prompting of Review Board staff—that the provisions of the Act were different and that a change in response would be necessary to meet the higher standard to sustain restricted access.

Fortunately, the Act contained very specific criteria stating that the agencies had to produce "clear and convincing evidence of harm" if redactions were to be sustained. This standard is difficult to achieve for records thirty-five years old, and the agencies faced extremely time-consuming—and expensive—procedures in order to meet that standard. Where they were able to show that agents or informants, for example, faced danger (organized crime informants living in the same city as they had back then, for example), we voted to sustain not releasing their names, but used the substitute language provision of the statute to state that the name of a protected agent or informant is recorded here.

4. *The Review Board "common law" of decisions, formed in the context of a "presumption of disclosure" and the "clear and convincing" evidence of harm criteria, might be analyzed for its value to future declassification efforts. Perhaps parts of this "common law" might be codified to provide further guidance for declassifying federal records.*

In undertaking our work, we were, of course, guided by the legislation and its provisions. The Congressional standards of a "presumption of disclosure" in the release of documents and that of "clear and convincing evidence of harm" in sustaining restricted access were guiding beacons in the work that we did. We were aggressive in employing both standards, much to the initial discomfort of agency personnel. As the issues were confronted and the standards applied, however, the application of these principles became gradually more apparent, and the public policy wisdom reflected in these unprecedented precepts became more evident.

As stated earlier, Congress wished the Board to become through its activity a symbol and barometer of public confidence in the review and release of the government's records related to the assassination of President Kennedy. This release was designed to enhance the perception of openness and accountability in the federal government, especially insofar as previous behavior was thought to contradict that. At the outset, we made slow progress indeed in resolving these matters.

Our approach was to discuss the records in seminar-like sessions, working to frame guidance by which our staff might then process records and relay our guidance to the agency staff with whom they were working. The experience of the Board in undertaking its legislative mandate was initially complicated by some internal conflict as Board members sought to find ways to reach common ground on issues such as privacy and liaison relationships, especially in documents that outlined relations between the U. S. government and its allies. Board members engaged in some spirited discussion as we struggled to frame an approach to records containing these and other attributes. There were remarkably few ideological or intellectual differences among Board members, but rather differences in tone and emphasis as we took one another's measure and moved ahead. In time, the body of decision-making began to grow, and the guidance that we provided was of assistance not only to our own staff, but to the agency staff who were able to use the decisions we were forging to structure their own processing of the records.

Where there were disagreements between the Review Board and agency staff, we conducted meetings designed to find common ground. Initial wariness and some misunderstanding gradually yielded to more trusting and productive effort to process records, thereby substantially achieving the goal that the Congress and the White House had intended.

In the course of our work, it became apparent that there were a great many documents that shared common characteristics. The names of agents and informants, crypts, digraphs, the location of C. I. A. stations abroad, and other numerical data used to identify documents, recurred constantly in the documents that we reviewed, and helped form the Review Board "common law" about how to treat redacted information in federal documents. As the effort to release federal documents presses forward, we believe that there may be common ways of handling these categories of information, so that similar substitute language may be provided, and there might also be consensus concerning how long the information needs to be restricted.

Codification of this nature would seem to allow restricted access to some of this information, and yet still indicate to researchers and other citizens what kind of identifying information had been withheld and for how long. The idea of substitute language for critical pieces of redacted information, together with less sweeping and more discerning application of what is to be withheld, would seem to offer a promising way of limiting the volume of restricted information in federal documents. The advantages of this procedure would seem evident and offer promise of further reforming restricted access to federal documents.

If the legislation passed by Congress represented a milestone of sorts in articulating useful principles by which to review classified records, there were also shortcomings in the Act that we present here in order to guide future declassification efforts:

- the timetable laid out for us to accomplish our work was unreasonably optimistic and required us to play "catch up" before we started;

- the provision that we could not hire those who were currently working for the government seemed unduly restrictive, and obliged us to undertake costly and time-consuming security checks for each of our employees (for whom security clearances were, of course, central to their work with classified documents);

- there is uncertainty in the Act about the status of openings that will occur after expiration of the statute, and whether any further appeals by agencies might be permitted, and, if so, who would represent the interest of openness;

- the sunset provision in our legislation undermined the careful review and disposition of records that the Congress sought. It created a burden in the disruptive manner in which staff left the Board in furtherance of job security for themselves and their families, and in the ways in which it created an opportunity for those not inclined to cooperate with us to try to wait us out. A more open-ended provision, in which the Board, supervised by its Congressional Oversight Committee and the Office of Management and Budget, would declare its progress, but not set a

termination date until the successful completion of our mandate was about to be successfully realized, would seem a desirable outcome;

■ if there were some mechanism, perhaps some type of preferred status in the Office of Personnel Management, by which staff might be assisted in their efforts to find other jobs, that, too, would be welcome. Anything that could facilitate the job security of staff working in term appointments obviously would assist their work by enabling them to stay more focused on the work at hand, not worrying over their future job security.

We submit that future legislation concerning the opening of restricted federal records should review carefully these provisions and take steps to insure that those problems are satisfactorily resolved.

5. *It is important that a solution to the problem of referrals for "third party equities" (classified information of one agency appearing in a document of another) be identified so that costly and inefficient referrals do not have to be made or can be dramatically reduced. One proactive means of addressing this problem is to convene representatives of all agencies with interests in selected groups of important documents. These representatives might discuss all the documents and refer information to one another all at once. A second approach would*

be to create uniform substitute language as a means of dealing with certain categories of recurring sensitive information .

Federal agencies are very protective of one another's prerogatives in this regard, meticulously referring records to the originating agency in all cases. The frequency of this occurrence has had a substantial impact on the rate and pace of release of such information. The Review Board staff developed an effective means of mitigating these referrals by convening on occasion (as occurred at the Kennedy Library with documents relating to Cuba) representatives of agencies with interests in the documents so that a group of documents might be collectively declassified at once, with representatives there to sign off on the specific interests associated with each agency. A second means of easing this problem might be to develop a uniform means (perhaps through substitute language that could be agreed to beforehand) of dealing with certain recurring categories of sensitive information.

It is not surprising that such information, especially among law enforcement and intelligence agencies, is shared extensively. One consequence of this sharing is that one agency's restricted information is often found in another's files. When this occurs, the agency creating the information must agree to its being released by another agency. Such equities are expensive to search and release. A means must be found by which to simplify this cumbrous cross-referrals process. A

federal information policy codifying recurring categories of restricted information would be a step by which to address and reduce if not finally resolve this problem.

6. *The Review Board compliance program was established to insure that all federal agencies holding assassination records would warrant under oath that every reasonable effort had been made to identify assassination records, following the definition of records as set by the Board and published in the Federal Register, and that such records had been made available for review by the Board.*

Throughout our work, we have been concerned that critical records might have been withheld from our scrutiny and that we will not have secured all that was "out there." It is all too easy to imagine that agencies and agency personnel not inclined to cooperate might simply have waited us out, using our sunset provision against us by waiting for it to take effect, thereby ending the need to cooperate at all since we would no longer exist. Our solution to this concern was to develop a compliance program whereby each agency had to designate a "compliance officer" to warrant, under oath and pain of perjury if the statements were known to be untrue, that records had been diligently searched for and turned over to the Board for review and/or released to the National Archives. This program entails a detailed review of the effort undertaken by each agency in pursuit of such records and constitutes a

useful record that may also guide future researchers in terms of what assassination records were actually uncovered. The program is also intended to be forward-looking, so that the agencies will continue to follow the provisions of the Act after the Board passes out of existence.

7. *It is important that the provisions of the JFK Act be accommodated after the Review Board ceases operations on September 30, 1998, so that the important provisions of the Act can persist and so that the decisions of the Board can continue to be implemented. The National Archives must have the authority and means to continue to implement Board decisions after the Board has ceased to exist. Equally important, an appeals procedure must be developed that puts the burden for preventing openings on the agencies through a type of appeals process similar to that provided by the Act.*

The creation of the President John F. Kennedy Assassination Records Collection at the National Archives has created a large collection undergoing intense use by researchers. Having created this national research resource, Congress should insure that the National Archives is given the additional resources that it needs to continue to manage this collection responsibly, and that it is also given the authority to administer the provisions of the original act as passed by Congress. We recommend that a Memorandum of Understanding be negotiated among the

National Archives, the FBI, and the CIA that would establish a common agreement on how to resolve some of the issues concerning the extensive assassination records of these two agencies, especially insofar as additional records will still be coming to the Archives and additional releases of documents are scheduled to take place after the dissolution of the Review Board.

8. *The Review Board model could be applied in certain extraordinary circumstances (such as, for example, the U. S. entry into World War II or perhaps in the war in Vietnam) where continuing controversy concerning government actions has been most acute and where an aggressive effort to release all "reasonably related" federal records would serve usefully to address the issues at hand.*

The public stake in creating a mechanism such as the Review Board to inform American citizens of the details of some of the most consequential events in American history would seem on occasion to be warranted. Moreover, the release of documents enables citizens to form their own views of events, to evaluate the actions of elected and appointed officials, and to hold them to account. There will not be a large number of such events, but there must be procedures grounded in experience that might be used to uncover the truth when these events, tragic as most

of them are, occur. The provisions of the JFK Act have been effective in fostering the release of such documents, and the Board's experience suggests that similar legislation (especially with some of the remedies discussed above) would be successful in the future.

9. Both the Freedom of Information Act (FOIA) and Executive Order 12958 should be strengthened, the former to narrow the categories of information automatically excluded from disclosure, the latter to add "release" to the process of "review" of federal records, and to try to limit to the maximum possible extent the period of time for which records might be classified, and in both cases for there to be substitute language for all sustained restrictions..

Despite the sound public policy goals encompassed in both the Freedom of Information Act (F.O.I.A.) and the most recent Executive Order (12958) on, both of these measures fall short of their goal, as witnessed by the inability of researchers to use these measures to release assassination records. The categories of exclusion are far too broad in the case of F.O.I.A. to constitute a meaningful program of opening restricted federal records, and the succession of Executive Orders issued since the F.O.I.A. legislation more than twenty years ago bears that out. The most recent Executive Order fails by not creating for the federal agencies a standard of "release" to accompany that of "review." All the review in the world does not open a single

document to scrutiny. That occurs when the mandate to release becomes internalized in the agencies and when the penalties for secrecy rival in consequence those for unauthorized release of national security information.

The mandate of the Review Board, underscored by powers conferred in its legislation and further aided by an adequate appropriation, exceeds what the F.O.I.A. legislation and Executive Orders can accomplish because the Review Board has the authority and resources to accomplish its goals. Proponents of the Freedom of Information Act and the declassification via Executive Order need to review the JFK Records Collection Act of 1992 to identify how best to augment the resources and authority of those instruments.

10. A federal classification policy that substantially:

limits the number of those in government who can actually classify federal documents,

restricts the number of categories by which documents might be classified,

reduces the time period for which the document(s) might be classified, and

increases the resources available to the agencies and NARA for declassifying federal records is what is needed. Moreover, the most effective means of declassifying already restricted documents is the systematic declassification program undertaken by the National Archives, though it surely needs far more resources and enforceable sanctions to be a truly successful effort.

It is clear that an aggressive federal policy is necessary to address the significant problems of lack of accountability and an uninformed citizenry that are created by the current practice of excessive classification and obstacles to releasing such information. This need is not something recently identified, though the Moynihan Commission on Secrecy in Government is a recent expression of this long-standing concern. A clearly conceived, precisely rendered policy outlining its goals, and procedures to accomplish them, should be adopted. It is critical that the federal government address these needs forthrightly and with a humble sense that such an action is egregiously overdue. In the same way, an aggressive, adequately funded program for declassifying systematically already restricted federal records is equally urgently needed.

These recommendations are designed to ensure that the comprehensive documentary record of President Kennedy's assassination is both actively developed after the Board passes out of existence, and that the experience of the Review Board might be turned to the larger purpose of addressing problems inherent in the excessive classification of federal records and all the negative consequences that flow from it. The Board effort to accomplish the purposes of the legislation has been as focused and aggressive as we knew

how to do so. It will be for others, of course, to judge our success in achieving these goals, as we hope that our effort might be adopted and extended by others equally committed to opening federal documents in the name of accountability and openness in government.