

Judge John R. Tunheim
Chairman
Assassination Records Review Board

Prepared Testimony In Support of
H.R. 1553,
To amend the President John F. Kennedy Assassination Records Collection Act of 1992 to extend the
authorization of the Assassination Records Review Board
until September 30, 1998.

Before the
National Security, International Affairs and Criminal Justice Subcommittee,
House Government Reform and Oversight Committee

June 4, 1997

I. Introduction

Mr. Chairman and Members of the Subcommittee, I would like to thank you for the opportunity to testify on behalf of the Assassination Records Review Board in support of H.R. 1553, which would extend the authorization of the Review Board for one final year. The Board acknowledges that all of the issues surrounding the assassination of President Kennedy will likely never be fully resolved, however, this additional time will allow us to complete our work, including the review and public release of critical FBI and CIA records, submit a comprehensive and complete final report to the Congress and the President, and make available to the American public as much information as possible on the assassination of President John F. Kennedy.

I would also like to take this opportunity to thank Chairman Burton for introducing H.R. 1553, and Congressmen Waxman and Stokes for cosponsoring this bill. These Members have exhibited an admirable bipartisan spirit and an understanding that we as a government, and as a nation, must bring closure to a sad chapter of our history, and that we must seize this opportunity to do it now. In addition, we would like to express our appreciation to Chairman Hastert for chairing this hearing today. It provides an opportunity to explain what the Review Board has accomplished to date and discuss how we could finish our work in Fiscal Year 1998, if given the opportunity.

Please allow me to introduce the other members of the Review Board with whom I have had the professional honor and personal pleasure to work: Dr. Henry F. Graff, Professor Emeritus of History, Columbia University; Dr. Kermit L. Hall, Dean, College of Humanities, and Professor of History and Law, The Ohio State University; Dr. William L. Joyce, Associate University Librarian for Rare Books and Special Collections, Princeton University; and Dr. Anna K. Nelson, Distinguished

Adjunct Historian in Residence, The American University. We have been honored to engage in this important effort to make the history of the Kennedy assassination available to the American public and I am pleased to be here today to testify before this Subcommittee and answer any of your questions.

I would also like to describe briefly the professional staff that we are fortunate to have hired. The Executive Director is Dr. David G. Marwell, a professional historian who gained vast experience dealing with large numbers of important historical documents with the Office of Special Investigations at the Department of Justice and later as the Director of the Berlin Document Center. He leads a staff of 28 full-time employees, who have varied backgrounds as historians, lawyers, analysts, investigators, and administrators. The members of the staff have approached their unique task with seriousness of purpose, creativity, professionalism, and competence, and have assisted us in shedding new light on the assassination through the release of thousands of Federal Government records, and the acquisition of records in private hands and local governments that were not previously available to the American public. I believe that we assembled exactly the type of professional and diversified staff that Congress envisioned would be necessary to accomplish this difficult assignment.

II. Accomplishments to Date

As I know you are aware, the Review Board was created by The President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) as an independent Federal agency to oversee the identification and release of records related to the assassination of President Kennedy. I know that certain members of this subcommittee played a role in crafting and passing the JFK Act—a unique piece of legislation designed to remove doubt and speculation about the content of government records related to the assassination of President Kennedy. As a result of these lingering suspicions, Congress determined that an independent board was the most effective and efficient vehicle to make all assassination records available to the public.

The Review Board has accomplished much since we began releasing previously secret records in June of 1995. The Board has acted to transfer more than 14,000 documents to the President John F. Kennedy Assassination Records Collection (JFK Collection) at the National Archives and Records Administration. We would not have been successful in our efforts without the significant assistance of the National Archives. The JFK Collection currently totals approximately 3.7 million pages and is used extensively by researchers from all over the United States.

By the end of Fiscal Year 1997, the Review Board will have reviewed and processed nearly all of the assassination records that have been identified by the more than 30 different government offices believed to be in possession of relevant records, with the important exception of the FBI and the CIA.

I will elaborate on the status of records held by these two agencies later. The overwhelming majority of previously redacted information will have been made public by the Review Board.

III. Release of Government Records Related to the Assassination

Before discussing what we will accomplish with one final year, I would like to highlight for the Members of the Subcommittee some of the important records that the Board has made public. They include:

- * Thousands of CIA documents on Lee Harvey Oswald and the assassination of President Kennedy that made up the CIA's Oswald File and detail the agency's investigative activities following the assassination;
- * Thousands of once-secret records from the investigation by the House Select Committee on Assassinations, chaired by Congressman Stokes, including the controversial Staff Report on Oswald's trip to Mexico City;
- * Thousands of records from the FBI's core and related assassination files that document the FBI's interest in Oswald from 1959-63, after he had defected to the Soviet Union, three years before the assassination; and
- * The extensive FBI files on its investigation of the assassination.

The important work in which the Review Board has been engaged can be best and most graphically demonstrated by showing you the "before" and "after" versions of one of the pre-assassination FBI documents to which I just referred and that the Board has released to the public. Prior to the Review Board's review, this FBI document (JFK Collection Record Number: 124-10023-10236, Attachment Number 1) was available to the public as you see it on the left. As you can see, it is heavily redacted. The only information that was not secret was the date of the memorandum, "October 12, 1960," that it was to the "Director, FBI," from "Legat, Paris" (the FBI representative in Paris), that the subject was "Lee Harvey Oswald, Internal Security," and that it had to do with a "Paris letter 9/27/60." The rest of the text was blacked out. Obviously, this version of the document left room for a great deal of speculation among historians and researchers regarding what was underneath the black ink on this document with the provocative subject title.

The Review Board aggressively pursued the release of the redacted information in this document and several others that relate to the FBI's interest in Oswald before the assassination. After protracted negotiations with the FBI, an initial FBI appeal to the White House in an effort to keep the document secret, and a direct appeal to the Swiss government, we were able to release the information. The

unredacted memorandum shows that the Swiss Federal Police had been enlisted by the FBI to try to locate Oswald and to determine whether or not he had enrolled at a school in Switzerland. Now the public is able to see the document in full and judge its importance. In its redacted state, the document could have meant anything that a researcher's imagination and speculation could invent. In its released form, it must be analyzed for what it says.

IV. Identification and Location of Additional Assassination Records

One of the most important, most difficult, and most time-consuming responsibilities of the Review Board is to identify and locate additional records that are relevant to the assassination. This is a task that to some degree must logically come later in the process, after the Review Board has gained a full understanding of the records that have already been identified. Although the Review Board has made a significant number of requests for additional records and information, some of which I would like to outline, much remains to be done before it can be confident that it has completed this responsibility.

I would like to highlight some of our efforts to identify and locate additional assassination records. Some examples:

- * Medical Records Inquiry. The Review Board has several ongoing efforts to identify and locate assassination records involving medical issues. As with any homicide, the medical records are among the most important pieces of evidence. As part of its attempt to ensure that the medical records are as complete as possible, the Review Board staff has deposed the principal pathologists involved in President Kennedy's autopsy, as well as other individuals who had knowledge of the autopsy and related photographic records.
- * Identification and Location of Additional FBI Records and Information. The Review Board has continued its efforts to locate additional FBI assassination records by making several requests for records and information. The FBI has assisted in this effort by giving the Review Board members access to requested files. The JFK Task Force at the FBI has, on the whole, been extremely cooperative and helpful to the Board and has provided the requested information.
- * Identification and Location of Additional CIA Records and Information. The Review Board has initiated a number of requests to the CIA for additional information and records. The Review Board expects that these requests will be promptly and fully satisfied during the upcoming year.

- * Identification and Location of Additional Secret Service Records and Information. Time consuming and careful review of Secret Service activities by the Review Board produced a series of requests for additional records and information that, in turn, led to the identification of additional relevant assassination records. For example, in response to the Review Board's first eight requests for additional information, the Secret Service has submitted more than 1,500 pages of material.
- * Identification and Location of Additional Military Records and Information. The Department of Defense (including its many components and the military services) (collectively "DOD"), identified few assassination records on its own initiative. DOD has nevertheless been cooperative with the efforts of the Review Board to locate assassination records. When such records have been located, DOD has been willing to release the records with few redactions.

Additional work would be required in our last year to ensure that all assassination records in the military archives have been made a part of the JFK Collection. Fortunately, the diligent efforts of the ARRB staff have set the stage for accomplishing this task.

V. Release of Private and Local Records

In addition to the release of records in the Federal Government's vast files, and consistent with the Board's mandate to make the historical record of the assassination as complete as possible, we have been aggressive in identifying and acquiring significant assassination-related records in the possession of private citizens and local governments, including:

- * The original personal papers of Warren Commission Chief Counsel J. Lee Rankin that give further insight into the operations of the Commission;
- * Copies of the official records of New Orleans District Attorney Jim Garrison's investigation of the assassination;
- * The original papers of New Orleans attorney Edward Wegmann, from his work as a member of the legal team that successfully defended Clay Shaw in 1969 against a charge of conspiracy to kill President Kennedy.
- * Copies of records from the Metropolitan Crime Commission of New Orleans, including records on District Attorney Garrison's investigation and prosecution of Clay Shaw and records regarding New Orleans organized crime figures;

- * Long-lost films taken in Dallas on November 22, 1963, that the public had never seen and that shed new light on the events of that day; and
- * Private collections of records from individuals including Warren Commission attorney Wesley Liebler, author David Lifton, FBI Special Agent Hosty, Attorney Frank Ragano, as well as others.

I am also pleased to announce today that the Review Board has just acquired the original personal papers of Clay Shaw, the late New Orleans businessman who is the only person ever tried in connection with the assassination of President Kennedy. Shaw was acquitted by a jury in 1969 after being charged as part of District Attorney Garrison's investigation. The Shaw papers will surely add another dimension to this particular chapter of the assassination story.

All of these records will enrich the historical record of the assassination for future generations of Americans. Once these records are processed and described by the National Archives, they will be available for research.

VI. The Need For Additional Time

Despite our best efforts and significant accomplishments, some of which I have outlined, the Review Board will not be able to complete its work within the original three-year timetable set by Congress for the following reasons:

- * First, the authors of the original legislation believed that our task would take three years. That estimate was based on the best available information at the time, but the legislation established an unprecedented process. There was no way of knowing the problems of scale and complexity that the Board would encounter, nor was there any way to factor in the comprehensive approach we have taken in fulfilling our mandate.
- * Second, the Board was not appointed until 18 months after the legislation was signed into law. As a result, without the guidance of the Board, Federal agencies initially defined for themselves the universe of records that should be processed under The Act and to speculate about the kind of evidence that would be needed to sustain the redaction of assassination-related information. Once the Board was in place, agencies needed to redo a considerable amount of work. In fact, many agencies have yet to complete their review and the Board is still seeking their compliance.
- * Third, our enabling legislation imposed several restrictions on the manner in which the Board could operate. Unlike other temporary agencies, the Board could not hire or detail

experienced federal employees, but rather had to hire new employees who had to undergo background investigations and be cleared at the Top Secret level. Locating and renovating space that was suitable for the storage of classified materials was required. As a result, the Board could not begin an effective review of records until the third quarter of our first year.

We are pleased and proud that the Review Board and staff have been able to overcome these obstacles, and that we have developed an efficient and effective process for the review of records. All involved in this process want to see that the job is done, and do not want to cease now with a reasonable conclusion in sight. We want to finish the job we began, and with one additional year we can.

VII. The Job Ahead

The additional year of operations will permit the Review Board to finish its task by completing several major areas of our work. Please be assured that these are identifiable projects that are critical to ensuring that the JFK Collection is as complete as possible, that relevant Federal agencies have been held accountable, and that all that we have done is documented in our final report. The Board would focus in our final year on the following:

- * CIA Sequestered Collection. The Review Board has completed its review of the Oswald “201 file,” the file created and maintained by the CIA on Oswald and the assassination. The Review Board is now faced with the task of reviewing the agency’s “Sequestered Collection,” the large collection of files that was assembled by the CIA in response to requests made by the House Select Committee on Assassinations, chaired by Congressman Stokes, in the late 1970’s. These records find their relevance to the assassination defined in part by the course of the HSCA investigation. The Sequestered Collection originally consisted of 63 boxes of CIA- and HSCA-originated records as well as 72 reels of microfilm. Unfortunately, these records are in a confused order, poorly described, and are replete with duplicates. Some of these records are clearly of great significance, some are of only marginal interest, and the relevance of others cannot be identified.

- * FBI Sequestered Collection. The FBI divides its assassination records into two general categories. The first is the “Core and Related Files,” consisting of nearly 600,000 pages of files collected in the course of the massive FBI investigation into the assassination. The Review Board will complete its review of this significant collection by the end of FY 1997. The second, which the FBI refers to as its “HSCA records,” is a large collection of records that were identified as being of interest to the HSCA and which remain to be reviewed by the Board. Like the CIA’s Sequestered Collection, this voluminous body of records (approximately 280,000 pages) ranges widely in relevance to the assassination.

- * The Records of Some Federal Agencies and Congressional Committees. Additional time will allow the Board to finish its work with several agencies, including the Secret Service, the National Security Agency, and Congressional Committees, including the Senate Intelligence Committee.
- * Search for Additional Records. With one more year of operations, the Board's search for additional records held by Federal agencies, private individuals, and local governments would be concluded with greater confidence. Some of these records have been identified, but not yet acquired by the Board.
- * Federal Agency Compliance. In November 1996, the Review Board initiated a compliance program to ensure that Federal agencies have fully cooperated with the Board in discharging its responsibility of assuring Congress and the American public that the goals of the JFK Act have been accomplished to the greatest possible extent. The requests to document compliance with the JFK Act were sent to 27 U.S. government agencies and departments to confirm that the U.S. government has identified, located, and released all records relating to the assassination of President Kennedy. The agencies' statements of compliance will be included in the Review Board's final report to the Congress. The one-year extension will ensure that the compliance program is completed and fully documented in the final report.

It is important for the Review Board to complete these major projects. The Board believes that the completion of the task outlined above, the inclusion of these important records in the JFK Collection, and the documentation of Federal agency compliance as part of the final report will mark an appropriate point at which to conclude the Board's work. We are confident that all that remains for the Board can be accomplished in an additional year.

VIII. An Approach to the Review of the Remaining CIA and FBI Records

It is clear to the members of the Review Board that there is much work to be done. The review of the remaining CIA and FBI records is a cumbersome and complicated task. However, the Board and staff have the benefit of our experience to date that sets the stage for an efficient and effective review of the remaining records. I would like to briefly describe our early experiences reviewing records and how the past two years set a firm foundation for the future and would work to our advantage in our last year.

Our review of records in the early months was slowed by the complexities of the issues raised in the records. The unprecedented new standards of the JFK Act, which go far beyond those established under the Freedom of Information Act, required a time-consuming early phase.

At first, the review process proceeded slowly and the agencies were afforded ample opportunity to present their evidence. Over time, the Review Board began to standardize its interpretation of the relevant section of the JFK Act and the issues raised in the various documents. Now that the Review Board and the agencies are familiar with the rigorous demands of the JFK Act, the process has accelerated. In a progressively increasing number of cases, records that initially contained proposed postponements can be released through a “consent” process. In this consent process, the ARRB staff notifies an agency that its proposed postponements are not likely to be approved by the Review Board and the agency thereupon voluntarily consents to the release of the information.

In our review of the FBI’s “Core and Related Files” and the CIA’s “Oswald 201 File,” the records that have been the focus of our attention to date, we subjected every requested redaction to a rigorous test: did the evidence of the harm that would result from the release of the information outweigh the public interest in the information?

In considering our review of the CIA and FBI “Sequestered Collections,” the Board recognized that it needed to develop a different approach, one that would take into account the varied degree of relevance of individual records to the assassination. Only in this way could the Board ensure that it would appropriately expend its resources in its last year. As a first step, the Board carefully analyzed each collection in order to determine what priority should be assigned to the category of records. In addition, the Board developed a set of guidelines for the review of these records which recognized that some categories of records did not require the intensive word-by-word review that had been the rule for the core collections that have been the subject of the Board’s attention to date. The development of these guidelines began with the August 6, 1996 Board public hearing and culminated in their adoption at the October 16, 1996 Board meeting. The ARRB staff will distinguish between records whose relevance to the assassination is clear and those not believed to be relevant (or “NBR”). Applying these new standards will permit the ARRB staff to identify and review the most significant remaining records in order of priority.

These detailed guidelines will reduce the loss of valuable Review Board and ARRB staff time expended to review, on a word-by-word basis, those documents that have a remote relationship, at best, to the Kennedy assassination. Those documents that are identified as relevant to the assassination will continue to be reviewed word-by-word. These standards of relevance are designed to ensure that the greatest number of true assassination records is properly identified, reviewed, and made public in the JFK Collection at the National Archives.

The fruits of our labor from the first three years would be realized in our last year, one in which we would be reviewing some of the most difficult records, and potentially most important records, but

with the benefit of our invaluable experience. I am happy to report that we have received assurances from the FBI and CIA that they will work with us in a final year to make sure that the necessary resources are applied so that our task can be completed.

IX. Conclusion

In making our recommendation for a one-year extension, we, the members of the Review Board, are fully cognizant of the difficulties inherent in extending a temporary commission. We are aware of the concern that temporary bodies may have a self-preserving and self-perpetuating instinct, and want to assure you in the clearest and most unambiguous manner that our recommendation is motivated strictly by our desire to complete the job. My colleagues and I were appointed as private citizens and have many competing claims on our time and energy. It is our collective conviction that the additional time is necessary and our sincerest commitment that we will complete our task by the end of Fiscal Year 1998, if given the means.

I would like to note that, as you may be aware, the Administration is supportive of the one-year extension for the Review Board and has submitted an FY 1998 budget amendment to allow us to complete our work, close out our operation, and submit our final report.

Since the Review Board began this effort three years ago, we have witnessed the widespread and passionate interest that the American public has in the assassination of President Kennedy. We have received thousands of letters, telephone calls, faxes and e-mail messages from individuals who care deeply about our history. They come from all walks of life, from all over the country, and are of all ages. Their interest is of varying degrees and they do not all agree on what happened in Dallas on November 22, 1963. However, they do agree that the public has the right to see the files on the assassination.

I believe that what the Review Board is all about can be summed up in a letter we received from a man from California just last week. The author is not a professional historian, not a student working on a paper for a history class, but simply a private citizen interested in learning about this tragic historical event. He wrote the following:

“In my humble opinion, it appears that the ARRB is having a healing effect upon the American public, who may be coming to realize that there may be closure in sight (in our lifetimes) with regard to the JFK assassination.”

These words capture why the Review Board was created by the Congress and why we hope that the Review Board will have the additional year to complete our task.

The Assassination Records Review Board was conceived as a means of eliminating uncertainty and speculation about the contents of government files relating to the assassination of President Kennedy.

We, the members of the Board, believe that a premature termination of the Review Board would surely generate intensified doubts within the general public about the commitment of Congress to release all information that relates to the assassination of President Kennedy, as well as renewed speculation about the conduct of our government and its institutions and personnel. If appropriate closure is not reached now, the identical issues will likely have to be addressed again in the future—at even greater cost. The additional year that we recommend will allow for a confident conclusion of this important task.

Mr. Chairman, and Members of the Subcommittee, on behalf of the members of the Assassination Records Review Board, I thank you for allowing us this opportunity to discuss our work and our future. We urge you to favorably report H.R. 1553. I would be happy to answer any questions that the members of the Subcommittee may have for me. The Board and staff stand ready to provide the Subcommittee with any additional information that may be required. Thank you.