

Chapter 4

The Review Process

A. Introduction

When the Review Board and its staff began to process assassination records in late 1994, they quickly realized that they would have to develop streamlined processes for tracking the thousands of assassination records that would soon flow through the doors. The JFK Act required the Review Board to track every document and to publish in the *Federal Register* the number of every document that the Board released. During the first two years, the staff, with the help of a computer specialist, turned document review from a paper-driven, labor-intensive system into a document-based computerized system that automatically tracked each document throughout the review process. In addition to the logistical difficulties in developing a process that would track so many documents, each Federal executive agency or Government office had peculiar problems in attempting to comply with the JFK Act. The Review Board, therefore, had to develop a review process that would be broad enough to address each agency's individual needs. This chapter will explain the logistics of that process

B. JFK Act Requirements for Processing Documents

Section 3(2) of the JFK Act defines assassination record to include any records that were “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. To ensure “expeditious public transmission to the Archivist and public disclosure of such records,” section [...] of the JFK Act required each government agency to identify and organize all records it had pertaining to the Kennedy assassination and send them to NARA along with an electronic finding aid to ensure easier public access. The

entire process, including each agency's review of its records, was to take no more than three hundred days. The members of Congress purposefully established this precise timetable to guarantee the "expeditious" collection and transfer of records.

Generally, Federal Government agencies and offices held one or more of the following types of records: (1) records relating to an agency's assassination investigation; (2) records relating to an individual or to a subject that is relevant to the assassination story; (3) records that one of the official investigative entities used in an official assassination investigation, or (4) records relating to an agency's assistance to another agency in an official assassination investigation. The JFK Act placed the largest burden on agencies such as the FBI, CIA, Secret Service, and the Department of Defense, as those agencies were deeply involved in the investigation of the assassination. The JFK Act required the FBI, for example, to review, process, and transfer over 795,000 pages to NARA, with identification aids, within 300 days.

The National Archives and Records Administration ("NARA"), of course, also was dramatically affected by Congress' passage of the JFK Act. On August 23, 1993, NARA officially opened its JFK Collection as Congress mandated -- 300 days after Congress passed the Act. 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. 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.¹

Even if all of the agencies had identified and reviewed every one of their assassination records, the JFK Act required agencies to create an electronic identification aid for each assassination record, and creating these aids caused delays.ⁱⁱ Congress' goal in requiring the electronic finding aids was to create for the benefit of the public a "central directory comprised of identification aids."ⁱⁱⁱ NARA created the computer software that each agency would use to create its identification aids. NARA's goal was to develop a central database in which each assassination record bears a unique identification number (as well as other document-specific information such as the date, number of pages, originator, recipient, subjects, etc. . .). The database employs a 13 digit number as the unique identifier. The 13 digits are divided into three parts -- the first 3 digits identify the agency (all CIA records begin with "104"), the middle five digits identify the floppy disk number on which the agency created the identification aid, and the last five digits identify the particular record on the agency's floppy disk. NARA and the Review Board hope that the database system that NARA developed will allow NARA employees and the general public access to every assassination record in the JFK Collection.

Tracking each document in a large collection of records such as the JFK Collection is alien to conventional archival practice. However, to ensure accountability for every postponement claimed by the executive agencies, Congress required that the agencies, the Review Board, and NARA track the documents on a postponement-by-postponement basis.

C. Basic Elements of the Review Process

The JFK Act was, of course, a novel approach to Government declassification, and the Review Board members wanted the review process to reflect the fact that 5 American citizens would be the judges as to whether government secrets should continue to remain secrets. The

Review Board decided at its earliest meetings that it would meet often^{iv} and make decisions on a document-by-document basis, rather than on an issue-by-issue basis. In other words, rather than immediately making “Review Board policy” on postponements relating to protecting the privacy of individuals, the Review Board chose to review every privacy postponement claimed by an agency. The Review Board believed that its cautious approach to the records early in the Board’s lifetime would result in the fulfillment of the JFK Act’s objective -- to instill public confidence that all information that could be released would be released.

As part of its document-by-document review, the Review Board required agencies to, as the JFK Act requires, provide specific evidence in support of claimed postponements.^v By reviewing and evaluating every postponement at its earliest meetings, the Review Board developed a full understanding of the issues and of the types of evidence the agencies would provide. Once the Review Board became comfortable with the issues and with the quality of agency evidence, it could delegate some decision-making authority on individual postponements to the full-time staff.

The Review Board staff quickly learned that the review system would necessarily consist of the following elements.

First, the Federal agency would review its record and communicate to the Review Board the location of its proposed postponements. (The JFK Act requires release of all information in assassination records in the year 2017 -- 25 years after the passage of the Act -- so the Review Board employs the term “postponed” to mean “redacted until the year 2017.”)

Second, the Review Board staff would then review the record and make a recommendation to the Review Board members as to whether to sustain or overrule the agency's request for postponement.

Third, having made its recommendation, the Review Board staff would need to schedule the document for the Review Board's next meeting. The staff determined that, in order to issue its *Federal Register* notices in a timely way as the JFK Act requires, it would need to track -- before the Board's vote on the record -- the document number, the agency's request for postponements within the document, as well as the staff recommendation for the document.

Then, once the Board voted on the record, the record would be ready for the Review Board staff to notify the agency of its determination, publish the Board vote in the *Federal Register*, and except for those records in which the agencies requested that the Review Board reconsider their decisions, transmit the record to NARA.

With the help of a computer specialist, the Review Board staff developed database systems for reviewing assassination records and tracking Review Board votes in the summer and fall of 1995. The staff could use the system to review any assassination record, regardless of its originating agency. The primary tracking system, mysteriously titled "Review Track," was designed to mirror NARA's electronic identification aid database.

Given that the JFK Act required the Review Board to publish all Review Board votes in the *Federal Register*, the staff designed the Review Track database to be able to generate the *Federal Register* notices.

D. Electronic Identification Aids

NARA's electronic identification aid database system is not perfect. Its flaws do not lie in faulty computer programming, however. Instead, the JFK Act's well-intentioned requirements that the Review Board track documents on a postponement-by-postponement basis was, at times, the so-called "tail that wagged the dog." Though the discussion of the database difficulties is certainly somewhat tedious, the Review Board is in a unique position to urge Congress to carefully consider including the type of "electronic identification aid" language that exists in the JFK Act in future records management legislation.

Congress' goal to create a database that will allow interested members of the public to find assassination records was a good one. Whether the best way to achieve that goal was to require agencies create a separate piece of paper to accompany each record that they process is, however, an open question.

The JFK Act is vague about the requirements of the identification aids and the electronic records system required for the collection.

In compliance with §§ 5(d)(1)(A) and (B) of the JFK Act, NARA created its database system and loaded it onto 5¼ inch floppy disks, which were, in 1992, the most basic medium of all government computer systems. NARA hoped that any government office could load data from the disk onto a computer, produce electronic identification aids on disks to accompany that agency's assassination records, and then send the same disks back to NARA, where NARA could integrate the disks into the main database for the JFK Collection.

Despite the predictable problems such as agencies' lack of appropriate computer equipment, or, more often, agencies' lack of employees to enter the data on appropriate computer

equipment, most government agencies managed to begin creating electronic identification aids for their assassination records.

The Review Board secured copies of all available disks from NARA and installed agency-specific databases on its computer network. Every Review Board staff member had access to these databases, which serve as research tools for the Review Board staff. The disks also served as a foundation for the Review Board's computer specialist to build the Review Track database.

The Review Board and the Federal agencies quickly learned creating electronic identification aids and keeping databases updated was a time-consuming, confusing, and cumbersome process. Usually, the originating agency would create its electronic identification forms on NARA's floppy disks. But in some cases, the originating agencies -- primarily the Army and the Joint Chiefs of Staff -- were so perplexed by the electronic identification aid process that Review Board staff simply agreed to create the electronic identification aids for the agency.

In order to track their processing of assassination records, the agencies generally created electronic identification aids during their initial review of records. Ideally, the agencies could have described the record on the identification aid, filled up their disks, and sent the disks on to NARA without modification. But, because the electronic identification aids contained information relating to the Review Board's actions -- or votes -- on the records, the agencies and the Review Board were constantly modifying and updating the data on the disks.

[Kevin and Bob -- I think there is a little more that we need to say in this section. What other problems exist with the RIFs? Why are we recommending against including

language like this in the next JFK Act? Do we think that the finding aids will even help researchers *find* subjects that they are interested in? Need to explain that the statute required all the wrong stuff -- like how many postponements there were and none of the right stuff, like what names and proper nouns appear in the record.]

E. Tracking the Review of Assassination Records

1. Review Track Database

As noted above, the Review Track database is a modified NARA electronic identification aid database that Review Board staff used to process assassination records. The Review Track system evolved out of the Review Board staff's early handwritten review, and it continued to evolve as the Review Board and its staff streamlined the review process to meet the increasing volume of documents agencies could process. Review Track provided a flexible tool for the staff to wield in response to its changing needs.

The CIA, FBI, and NARA had identified large numbers of assassination records. Each of these three agencies established JFK Act task forces and, due to the deadlines imposed by the JFK Act, developed JFK Act review processes before the Review Board staff existed. The agencies had internal models for addressing large declassification projects, to wit, the Freedom of Information Act ("FOIA") model and the model the agencies use to implement executive orders related to declassification. Of course, Congress had expressly rejected both the FOIA and the Executive Order models in its passage of the JFK Act.

With the understanding that agencies had each processed records differently, the Review Track had to accommodate a number of variations in the electronic identification aids. Some agencies had released redacted assassination records to NARA without submitting the records to

the Review Board for a vote. Other agencies had initially, but not completely, reviewed records, but had given the records unique identifying numbers, anyway. Still other agencies had created electronic identification numbers for records that the agency did not believe were assassination related, and which the Review Board agreed were not related. Clearly, had the Review Board existed when the agencies began to review their records, some of the time-consuming computer glitches may have been avoided.

Even so, the Review Board staff generally received from the agencies electronic identification aids that revealed that the agency had performed its duties under the JFK Act. The Review Board staff then reviewed the document using Review Track. The staff copied the agency's electronic identification aid from disk, and evaluated each claimed postponement according to the Review Board's guidelines.

Once the Review Board became comfortable enough with a particular issue such that it would allow the staff to exercise decision making authority with regard to the particular issue, the Review Board staff implemented the Board's guidance. The Review Board called such issues "green" issues. (The following chapter discusses the Review Board's guidelines in great detail.)

If an analyst was unsure of the Review Board's position on a particular postponement, the analyst labeled the record "yellow" and slated the record for discussion at the next Review Board meeting. Similarly, if an analyst had no understanding of the Review Board's position on a particular type of postponement, the analyst would designate the record a "red" document, and slate it for Review Board discussion at the next meeting. The staff also labeled records as "red"

if the record contained information that the Review Board would generally agree to postpone, but the Staff believed the public interest in release might tip the balance in favor of release.

The distinction between “red” and “yellow” records was never crystal clear, and as the staff and the agencies subject to the JFK Act’s provisions came to understand the Board’s guidance, the staff identified fewer and fewer items for discussion. As the number of documents that the Review Board processed at each meeting increased dramatically through 1996 and 1997, the incidence of “red” documents became less frequent, and “green” records in which the staff was certain as to how the Review Board would vote, dominated every meeting.

2. Fast Track Database

The Review Board’s meetings in 1995 and 1996 focused on the core assassination records, such as files regarding Lee Harvey Oswald, Jack Ruby, the Warren Commission investigation, and the assassination investigations conducted by the agencies themselves. The Review Board applied the strictest scrutiny to claimed postponements in these files, and set the tone for release of all remaining assassination records.

After the Review Board finished its review of the bulk of the core files, it turned its attention to the thousands of pages of less relevant, but still important, files left to review. After comparing the remaining records to the remaining time left for the Review Board to complete its work, the Review Board decided to streamline its review process for less relevant documents.^{vi} In an effort to speed up the review, the Review Board staff streamlined the review and tracking system by modifying Review Track into a new tracking system also mysteriously called “Fast Track.”

Where Review Track required analysts to enter large amounts of data into the computer concerning each record, Fast Track required analysts and administrative staff to enter in only the unique identifying number and the number of claimed postponements. Review Board analysts and their agency counterparts documented their review of the documents on the actual documents. In other words, a Review Board analyst and an FBI analyst would sit down with an assassination record, apply the Board's standards on whether to release or postpone the information at issue, initial the document, and move on to the next record. This process was a revolutionary one in the tenure of the Review Board, as it allowed analysts to spend less time entering data into a computer and more time with the assassination records themselves.

The Review Board developed uniform substitute language codes so that the analyst could jot the code directly onto the record, either in the margin or above the redaction.^{vii}

Following the on-the-document review by the Review Board analysts, the record identification number, and the number of postponements were entered into the Fast Track database, either by the reviewing analyst *or* by an administrative staff member. Then, the staff presented all of its "green" records to the Review Board at its next meeting and asked the Board to accept the staff recommendations.

F. Consent Releases

Once the Review Board established its voting patterns, the agencies recognized that the review process would run more efficiently if the agencies simply released records on their own initiative, rather than present records to the Board and wait for the Board to vote to release.

When agencies agree to release assassination records that the agency would have postponed prior to the Review Board's decisionmaking on an issue, the Review Board calls the release a "consent

release.” The agencies have released a large number of assassination records in full because of their awareness of the Review Board’s strong record of releasing assassination records.

Because most of the “consent release” documents already had electronic identification aids and thus, were already part of the Review Board’s tracking system, the Review Board developed a separate database for these records entitled “consent releases.” Thanks to the consent release database, the Review Board has a good idea of how many agency records were released as a result of its efforts. Every agency with assassination records in its collection released at least some of its records as consent releases. Indeed, the majority of documents that the agencies ultimately released under the JFK Act were consent releases.

G. Miscellaneous Bottlenecks and Problems in the Review Process

1. The problem of duplicates

Nearly every assassination record appears at least twice in the JFK Collection. In some cases, the originating agency had two or more copies of its own record. In other cases, two or more agencies possessed copies of the same record. The Review Board’s challenge, therefore, was to attempt to ensure that it processed all copies of the same document in the same way. Where possible, the Review Board and the originating agencies used information from the electronic identification aids to identify duplicates prior to the Review Board’s review of the record. For example, the FBI indexed its records so that it could keep track of all duplicates of a particular record, and, on the electronic identification aid for any one of the duplicate copies, the FBI listed the record numbers of all duplicate copies.

Other agencies were not as organized as the FBI. In processing CIA records, the Review Board staff often encountered over a dozen copies of some records. Because of the

decentralized manner in which the CIA has historically organized its files, neither the agency or the Review Board could determine where and when duplicates of particular records might appear. Since CIA files do contain so many duplicate records, the Review Board and the CIA ultimately agreed that, once the Review Board had voted on postponements in one copy of a record, the CIA would have to assume primary responsibility for processing exact duplicates to match the first copy. The CIA identified the duplicates in a re-review of the Collection, and the Review Board staff checked to determine that the records that the CIA identified as duplicates were, in fact, duplicates. The CIA has agreed to transfer all duplicates to NARA by September 1999.

2. The problem of referrals

When one agency uses another agency's information in creating a record, the other agency's information is called an "equity." Understandably, agencies try not to release other agencies' equities without first consulting with the other agency. The entrenched process by which the agency that possesses the record consults with the agency whose equities are present in the record is called the "referral" process. In processing government records for release under the terms of the Freedom of Information Act ("FOIA") or under the terms of the Executive Orders governing declassification, agencies: (1) identify other agency's equities in their records, (2) send to the other agency a copy of the record that contains that agency's equity, and (3) wait patiently -- sometimes for years -- for the other agency to process its equity in the record and return the record. Only after the other agency returns the record to the referring agency does the referring agency *begin* to process the record to protect its own information. For example, if the CIA provided the FBI with information about Lee Harvey Oswald's activities in Mexico City in

1963, the FBI would report, *in its own document*, the information that CIA provided to the FBI. When the FBI evaluates this record for release, *the first thing it does is send the record to CIA*, requesting the CIA to evaluate whether CIA information in the record can be released. CIA evaluates its information and eventually returns the record to the FBI. *Only then* does the FBI begin to evaluate whether it can release the FBI information in the record.

The agencies are loath to change this process, as they have a strong incentive to protect information which originates with another agency. Using the example above, if the FBI does not consult with CIA before releasing the information, CIA may then choose to release FBI information without consulting with FBI. If agencies cannot trust each other to protect information, agencies may be less likely to subsequently share information.

Because the JFK Act did not contemplate or address the “referral” issue, the agency referral process impeded the pace of review and the Review Board ability to release records. The Review Board realized that, in order to complete its work, it could not allow the agencies to engage in their traditional referral process, but instead, it would have to begin to micromanage the referral process in one of three ways: (1) managing the referrals itself, (2) sending “dunning letters” to agencies that were delinquent in returning referred documents, or (3) sponsoring joint declassification sessions at the Review Board offices.

a. Managing Referrals. When the Review Board itself controlled the referral process as it did with the Warren Commission, HSCA, and Presidential Library records, agencies tended to return referred records much more quickly than if the record came from another agency through traditional channels. Managing the referrals, however, took an enormous amount of

staff time and simply caused the Review Board to spend its time managing records rather than reviewing records.

b. Dunning Letters. When agencies were delinquent in returning referred documents, the Review Board mailed letters to the agencies stating simply that if the agency did not process and return the record by a specified deadline, the Review Board would automatically vote to release the record. The dunning letters proved to be very effective in convincing agencies to return their referrals.

c. Review Board Joint Declassification Sessions. One the most effective tools that the Review Board developed in addressing the problems caused by the referral process was the “joint declassification sessions.” The Review Board staff invited declassification representatives to come from each agency that had equities in a given group of records. The declassification representatives then came to the Review Board’s office on a given day and began to review the records. By the end of the one or two day session, the referral process was complete. The Review Board sponsored one joint declassification session at the JFK Library and six joint declassification sessions at the Review Board offices. An unforeseen advantage to joint declassification sessions was that agencies tended to be more likely to agree to release of a record when they realized that other agencies had already agreed to release.

G. Document processing after Review Board votes

The JFK Act states that agencies must deliver records to NARA within 45 days of a Review Board vote. The 45 day limit proved to be unreasonable and, as such, the agencies almost never adhered to the statutory time frame.

After the Review Board voted on an assassination record, the JFK Act required the staff to attach a “final determination form” to the record. For those records that existed in the Review Track system the final determination form identified each postponement, its location within the document, and the substitute language for the postponement. For those records that existed in the Fast Track system, the final determination form identified the number of Review Board approved postponements in the document, and listed the substitute language options which correspond to codes noted directly on the document.

Review Track Archive. Finally, after the Review Board staff completed its final determination forms and attached the forms to the records, the electronic identification aid for the document could move into a database called “Review Track Archive.” Review Track Archive contains all assassination records on which the Review Board voted.

i. 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.

ii. JFK Act at § 4(a)(2).

iii. JFK Act at § 4(a)(2)(B).

iv. For a group of five citizens who were each otherwise fully employed, the Review Board members met as a group very often -- once or twice each month. The Review Board held the majority of its regular meetings in Washington, D.C. Due to the Review Board's need to discuss classified and privacy protected material, the Review Board voted to close most of its meetings to the public. During its tenure, the Review Board held 48 closed meetings and processed for release XXXXXXXX documents. All of these documents are now a part of the JFK Collection at NARA.

v. Section 6 of the JFK Act lists criteria that agencies can cite when requesting postponements. The criteria and the Review Board's standards for sustaining claimed postponements are fully explained in Chapter 4 of this report.

vi. The next chapter explains in detail the standards that the Review Board established for the review of the "Segregated Collections."

vii. *FBI Substitute Language Codes* are as follows: A. Informant Name; B. Informant Identifying Information; C. Informant Symbol Number; D. Informant File Number; E. Operational Detail; F. Identifying Information to Protect the Privacy of an Individual; G. File Number; H. Classified Case Caption. *CIA Substitute Language Codes* are as follows: 01 Crypt; 02 Digraph; 03 CIA Employee; 04 Asset; 05 Source; 06 Name of Person; 07 Pseudonym; 08 Identifying Information; 09 Date; 10 Location; 11 Country; 12 CIA Installation in Africa/Near East*; 13 CIA Installation in East Asia/ Pacific*; 14 CIA Installation in Northern Europe*; 15 CIA Installation in Western Europe*; 16 CIA Installation in Western Hemisphere*; 17 Cable Prefix for Africa/Near East*; 18 Cable Prefix for East Asia/ Pacific*; 19 Cable Prefix for Northern Europe*; 20 Cable Prefix for Western Europe*; 21 Cable Prefix for Western Hemisphere*; 22 Dispatch Prefix; 23 File Number; 24 Operation Details; 25 None; 26 Scelso; 27 CIA Job Title; 28 CIA; 29 Name of Organization; 30 Social Security Number; 31 Alias Documentation; 32 Official Cover (Details of Official Cover) [*-a second number is included with this type of postponement to facilitate tracking individual locators throughout the Collection.] *Military Substitute Language Codes* are as follows: A. Operational Details; B. Name of Person; C. Source/Asset; D. Identifying information to Protect the Privacy of an Individual; E. Location; F. Country/Nationality; G. Name of Organization; H.

Intelligence/Counterintelligence Officer; I. No Suitable Substitute Language